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Winner of the Council of Europe Human Rights Prize

CAJ's submission to the
Review of Rating Policy Consultation paper
(issued in May 2002)

July 2002

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What is the CAJ?

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, the Lawyers Committee for Human Rights and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, monitoring, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include prisons, policing, emergency laws, the criminal justice system, the use of lethal force, children's rights, gender equality, racism, religious discrimination and advocacy for a Bill of Rights.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

Submission from the
Committee on the Administration of Justice
to the
Review of Rating Policy Consultation Paper
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Introductory remarks

According to the “Review of Rating Policy: A Consultation Paper”, issued by the Department of Finance and Personnel in May 2002, Northern Ireland’s rating policy is in need of significant reform (page 2). The rating system has not been radically changed since its introduction in 1852, despite the fact that it has a serious impact on all sectors of society – both in terms of the demands made on rate-payers and in terms of the opportunities the revenue provides.

It is particularly important to note that evaluation of the rating policy comes at a time when the Northern Ireland Executive is deciding how best to address the £6 billion infrastructure deficit. Needs and Effectiveness studies are currently being prepared in response to the first two Northern Ireland budgets; the Executive is contemplating its policy on Private Finance Initiatives and long-term budget issues; and, very significantly, the May 2 Gordon Brown announcement allowed the Executive new borrowing powers. A re-assessment of the Barnett Formula, the system by which Whitehall allocates budgetary funds to Northern Ireland, is also said to be underway, although to what extent is not clear. Income from rates offers great potential to the Executive to supplement money allocated by the Treasury, and can also be used as a lever in further borrowing.

The Committee on the Administration of Justice (CAJ), as a local cross-community human rights group, is eager to see this Review used as an opportunity to address inequalities and inefficiencies rooted in the current arrangements. If handled properly, this long-overdue review could serve to promote greater equality, and meet the objectives of targeting social need and promoting social inclusion which were set out in the Programme for Government.

In the following submission, page numbers of the Consultation Paper relevant to the issues we raise are referenced where appropriate. The document is divided into three sections:

- The Rating Policy Consultation Process (page 3);
- General Rating Policy Issues and Current Policy (page 4);
- Response to the 12 Key Issues identified by the DFP (page 6).

1. The Rating Policy Consultation Process

CAJ believes that during the consultation period, the following issues should be addressed by the DFP:

- (a) ***Thorough Targeting Social Need (TSN) evaluations and Equality Impact Assessments (EQIAs) must be completed on all reform options during the consultation period. (See para. 6.)***

Rating policy is an area where analyses should be relatively easy to conduct accurately, because of existing data on rates and property values, titles and deeds. The Review includes a New TSN analysis on the current system, concluding that “*inequities exist in the current Rating system*” (para. 45), but postpones conducting additional EQIAs and TSN analyses until “*it comes to developing options at a later stage*” (para. 49). Generally TSN evaluations and EQIAs on reform options should be conducted before or during the consultation period, so that equally impact determinations can be incorporated into policy decisions. For example, the Review states that “*First indications are ... that a discrete capital value system is highly likely to be positive in terms of New TSN as it would tend to reduce the relative burden on people and areas that are less well off*” (para. 49), but provides no more specific details. The DFP should have brought together the relevant statistics and data during the ‘development of policy options’ stage (cited on the rating policy website as Stage 2, before the consultation period), so that consultees would be in a position to make informed comparisons, and comment knowledgeable on the different options. This data is also necessary to the government in determining suitable options, and therefore needs to be done at the first opportunity.

- (b) **Additional public meetings should be considered.**

The public consultative meetings on this important topic were not widely publicized, and CAJ knows of many community sector groups who were not aware that they happened until after they occurred. Notice was fairly short, and the business and domestic rate discussions were unhelpfully separated out (see on for a discussion of this). As the different options begin to emerge, it is vital for members of the public and community and voluntary sectors to be given an opportunity to participate actively in this process. Such meetings should be held in areas accessible to local communities and obviously they must take place before the DFP moves to initiate legislation in this area. To facilitate this, it will likely be necessary to extend the consultation period. The recently announced event on September 23 is welcome, but is being held after the consultation period is technically completed. We anticipate that after rating policy options are evaluated, additional public meetings will be useful in considering the findings.

(c) Consultations on business and domestic rates should be held in combination.

The domestic and business rates are “two sides of the same coin” and it is illogical in our view that the discussions be run separately. Yet the public consultation sessions to date were divided by sector with “issues for business ratepayers” discussed in the mornings, and “issues for domestic ratepayers” discussed in the afternoons. Clearly changes made in either sphere will have an impact on the other, and it is vital that consultees have an opportunity to the extent possible to hear the concerns of *all* affected constituencies. It is particularly important that domestic ratepayers, who will be dramatically affected by decisions made about the business rate policy, are made aware of those debates. Any domestic/non-domestic separation may undermine the DFP’s stated purpose of seriously reforming rating policy and securing the necessary public support for amassing more revenue to address infrastructure demands.

(d) Effective information flow

The rating policy website recently published a brief summary of the issues raised at last month’s consultation sessions. This release was welcomed and there should also be a mechanism for timely information exchange as TSN, EQIA and other analyses are conducted on policy options. As proposed above, consultations should be continued long enough so that the public can react to the evaluations of rating options. This will facilitate the development of a more informed and knowledgeable debate of the various options.

2. General Rating Policy Issues and Current Policy

On the basis of the information we have to date, CAJ believes the following aspects of current rating policy are most in need of immediate reform:

- (a) Currently manufacturing industry and agricultural land and buildings are “de-rated”. (See para. 94 and 99; Questions 8 and 9 below). Industrial derating was introduced in the UK in 1929 to discourage foreign competition. It was abolished in England and Wales in 1963 and in Scotland in 1995 and, according to the review “*is unique in the world and no other region or country gives blanket relief to industry or, for that matter, any business sector*” (para 90). This provision results in a loss in revenue to the public purse of £64.3m. Alternatively, as the Review indicates, if this provision did not exist there could be a reduction in the non-domestic regional rate of 16%, because other businesses are compensating for this subsidy. Agricultural land is also excluded from the tax base, resulting approximately in a loss of revenue of £200m for land and £15m for buildings. CAJ is not aware of any justification for this situation, and believes that in principle both the industrial and agricultural sectors should be subject to payment of rates (see on for reliefs).

- (b) Rental values that determine domestic rates were established in 1976; those for non-domestic properties were established in 1995. According to the Review, “*new and altered properties are assessed by direct comparison with similar properties already in the [Valuation] List and not at current rental levels*” (para. 26). The market has changed extensively since 1976 (and probably even 1995), and unfairness has crept in (para. 39-43). CAJ believes that both domestic and non-domestic rates should be updated to 2002 levels. Once these rates are set, they should be adjusted at regular intervals, or alternative methods of keeping the numbers current should be used. It would be important to consider international systems that don't rate property based on direct comparisons but instead based on a property's market value or another determination.
- (c) The tax base in NI is currently regressive, meaning that it consists of a smaller percentage of income as income rises. Instead, the percentage of an individual's income that goes to rates should be steady or rise as wealth or income rises (a 'progressive' system). (See para. 58, **Question 2 below, and related discussion throughout Review.**)
- (d) Relief is given to a wide range of groups and organisations, so currently there are reliefs for charitable use, church property and that occupied by full-time clergy, traditional charities, public sector leisure centres, charity shops, freight transport, sport and physical recreation, farm houses, and nursing and residential homes. (See para. 69, 73, 94, 99, 108, and 111; **Questions 3, 4, and 8-11 below.**) But, according to the Review, “*the effectiveness, relevance and value for money of our current range of reliefs have never been reviewed or considered collectively*” (para. 33). Strangely, however, the Review does not proceed to remedy this situation by discussing different options and carrying out a substantive collective review of current reliefs, even though an ending of current reliefs and exemptions would increase rates revenue by 20%. Instead, the Review brings up reliefs at various points in the document and indicates that the Executive is considering adding further reliefs – e.g., a small business relief, “wider rural reliefs”, reliefs for single householders, the elderly, and people with disabilities. Others have pushed for new reliefs for hotels, Orange Halls, equestrian centres, catering services, etc. (para. 101). In addition to a collective review of reliefs, CAJ believes that there should be regular reviews to ensure that those reliefs that exist in fact benefit constituents who are in most need. In particular, we recommend that all current reliefs be examined carefully, as well as any proposed further reliefs, and that all reliefs be decided upon in a systematic manner – aimed at addressing genuine social need and disadvantage.

The Review notes that those in England pay significantly higher rates, in addition to paying water and sewage charges (para. 12). Because average house prices and incomes are lower in NI than in GB – and rates are used for

other powers there – it is difficult to make a direct comparison. To the extent that comparisons are made, they should also be done between NI and the Republic of Ireland and other countries. The Review dismisses a comparison with the Republic because it “has an entirely different tax regime” (page 5, fn. 4), but clearly social conditions make such an analysis relevant. In general, international examples can be useful in deciding on new policy and should be looked at during this consultation period.

More generally, there is an implication in the document that the Executive may be considering increasing rates beginning with the 2004-05 budget. This is a somewhat surprising starting point, given that:

- (i) there appear to be many savings to be made by reforming the rates system. Many millions of pounds can be relatively easily raised by reforming the system prior to determining that additional charges, if any, must be made;
- (ii) there are a number of other funding sources available to the Executive (see earlier references to new borrowing powers, etc.).

A decision in principle to increase rates – after an examination of the results of this review – will need to be properly argued in follow up consultation exercises. The duty to conduct TSN and EQIA evaluations applies to rate increases as well.

3. Twelve questions raised by DFP

The DFP identified twelve key issues to be focused on during the rating policy consultation period. CAJ has attempted to respond to most of these issues, but has already argued that more information would be required to contribute fully to this debate. In particular, it is of the utmost importance that thorough TSN and EQIA evaluations, mandated by Section 75, are conducted on all reform options. Consultees cannot effectively respond to the DFP’s questions – nor can government conclusively decide between various options – until an assessment has been made of social need and equality concerns.

(1) *Should we consider taxing ownership instead of occupation?* (See para. 38.)

CAJ believes that taxing ownership could increase the tax base and may have the additional advantage of discouraging the under-use of property. The Review says that in moving from an occupation to an ownership rate, the “*New TSN impact is likely to be neutral*” (para. 36). However, without New TSN and EQIA evaluations, it is difficult to determine the overall impact on the population. For example, it is likely that taxation of landlords will trickle down to tenants, who may or may not be negatively affected by the change. Would it not be more efficient to tax ownership? CAJ notes that administrative costs are cited as a disadvantage to switching to an

ownership taxation system (table A). While wanting a system that is cost-effective, it may well be that an increased tax base would greatly outweigh any such additional costs.

(2) Should a capital value based system be examined in detail (individual or banded) for domestic properties? (See para. 58.)

CAJ believes that a capital value based system should be thoroughly evaluated, because it is likely to have a positive TSN impact. According to the Review, a capital value system is “*highly progressive in redistributing the rating burden in that it would tax a larger percentage of the income of those on higher incomes. ... New TSN impact is likely to be positive*” (para. 79). The current system is regressive, and is a particular burden on the poorest households. CAJ believes that creating a fairer system should be a key organising principle for the DFP in carrying out this review.

As noted in the Review, any such switch will imply financial costs to set up a new system and appropriate transitional arrangements (table B). Expenses of this nature are difficult to avoid if one is determined to make changes to rates to ensure greater equality of treatment. These costs are, however, one-off, and if a capital value system is indeed TSN positive, and the current system is regressive, administrative and transitional obstacles should not impede important reform. It should be kept in mind that the inefficiencies and inequities in the current system are costly.

As to ‘banding’ versus an individual approach, CAJ believes that banding may be a less attractive option. Although banding (which consists of graduated groupings of property values) is a less expensive option, and is used in Britain, it can be a regressive tax system. Banding may be easier to implement, but it can result in those at the top end of the market paying disproportionately less rates than others. It also over-simplifies the rates landscape, grouping people together so that some pay too much and some too little. A more precise system, although more expensive to set up, is ultimately likely to be more cost efficient and fair. Accordingly, CAJ would argue that the banding option would need to be carefully scrutinized for TSN and equality impact before being seriously explored. (This same question is asked in regard to non-domestic properties in Question 6 below. CAJ has argued that it is unhelpful to separate out domestic and non-domestic ratings systems, since they are inter-dependent. It seems to us that a consistent system across domestic and non-domestic sectors regarding valuation systems is likely to be more efficient).

(3) Should consideration be given to providing some form of relief for groups such as sole householders, the elderly and the disabled? (See para. 69.)

CAJ believes that instead of simply adding further reliefs to the list that already exists, the DFP should carry out a systematic review of the relief system, and assess current – and proposed – reliefs for their TSN/equality impact. Any relief scheme creates an increased rate burden which is felt by the rest of the population, and must therefore be carefully scrutinised and well argued.

When looking at current reliefs, it will also be important to ascertain that the reliefs are being properly administered. For example, are the authorities able to confirm that those receiving benefits still qualify? Just by way of example, it is worth noting the fact that there are currently reliefs for farmhouses, presumably to encourage small farming, but farmhouses are likely nowadays to be owned by non-farmers.

When giving consideration to the appropriateness or otherwise of granting reliefs to a single-person household, one needs to note that such a relief would not automatically take into account ability to pay. Such a move is unlikely to be beneficial from a TSN/equality perspective; in Britain where single adults receive a 25% discount the system has been widely criticised as not encouraging the efficient use of property.

Again while CAJ believes that there will need to be reliefs for low-income residents based on need, it is unclear if reliefs for the elderly and the disabled as categories are optimal. Instead, it is necessary for the DFP to subject all these relief proposals (and any additional ones proposed) to TSN/EQIA evaluations. (It is also important that terms are defined: the Review does not clarify how the DFP defines disabled people for purposes of rating relief.) Reliefs based on income or assets, although more expensive to administer, are likely to be fairer than blanket reliefs for disadvantaged groups. Circuit breakers, common in the United States, place limits on the proportion of income that can be taken by property taxes. This method of relief – and other options, including deferment programmes and those not mentioned in the Review – should also be assessed and the costs properly estimated.

(4) *Should further consideration be given to some form of relief graduated on an income basis? (See para. 73.)*

Given that CAJ is unclear how this option differs from targeted low income relief, we believe that this proposal should be explained in more detail before a determination can be made. The option proposes basing the tax rate on income bands or income tax thresholds, and the review claims that no such system exists internationally. Since the Review notes there are targeted schemes operating in other countries, further clarification and comparisons between these systems should be made. It is particularly important to compare relief options after TSN/EQIA evaluations are conducted and issued for consultation. According to the review, at the present time “*those on low incomes have their rate bill paid through the housing benefit system*” (page 5, para 9). How does this compare to the proposed relief and targeted low

income relief? Has a TSN evaluation been completed to determine if this is an effective system?

(5) *Should we consider taxing ownership instead of occupation for the non-domestic sector? (See para. 76.)*

As before, CAJ would assume that taxing ownership rather than occupation would be more efficient and fairer. However, TSN, EQIA, and economic analyses are necessary before a final decision can be made by government, in addition to details on how the system will be implemented. If it is decided to make a change, it may be worth noting that taxing ownership is likely to be less expensive to administer than taxing occupation. Currently, non-domestic vacant properties result in a revenue loss of £36m.

(6) *Should a switch to capital value be considered in more detail for non-domestic property? (See para. 83.)*

CAJ believes that a capital value based system should be thoroughly evaluated because it is likely to have a positive TSN impact. The Review suggests that a full study of the market impact would need to be carried out before a switch to a capital value system is made, but without conducting such a study it notes that the existing system “works quite well” (Table E) and a capital value system would cause redistribution, requiring complicated transitional arrangements. A full study should be carried out now, while this policy is being assessed. In addition, CAJ believes that bureaucratic obstacles should not be barriers to reform, particularly in regard to an outdated system with a negative TSN record.

(7) *Should further consideration be given to taxing vacant property? (See para. 89.)*

In order to make a useful comment on this issue, evaluations should be made to determine the implications of taxing vacant property. £36m is lost by not taxing non-domestic vacant property (and £9m from domestic property). The Review considers that the role of rates may be one that has shifted from being a charge for services to a property tax (para. 18). This conceptual shift is relevant to taxing vacant property, and should be considered together with this question and Questions 1 and 5. CAJ would like the DFP to consider the justifications for the current system, and benefits to changing it, in light of TSN/equality evaluations.

(8) *Should the removal of Industrial Derating be considered? (See para. 94.)*

CAJ believes that no serious case has been made for retaining this arrangement dating from 1929. De-rating should be introduced, after equality and TSN analyses on industrial rating are conducted. We were surprised to discover that the industrial and agricultural sectors were derated. The agricultural sector is addressed in Question 9, but we believe it is quite crucial to address these sectors in a similar way – recognising that in principle they should both be subject to rates, but that reliefs to promote development and assist small business owners/farmers may well be needed.

(9) The Executive is not reconsidering the rating of agricultural land and buildings. However, should further consideration be given to wider rural reliefs to help sustain the economies of declining rural areas? (See para. 99.)

The proposal to not challenge the derating of the agriculture sector is not well argued. In principle, CAJ believes that blanket reliefs for entire sectors are counterproductive. Accordingly, CAJ believes that the DFP should not take this major sector out of the review, and should re-examine the exemption of agricultural land and buildings. As stated in regard to the domestic sector, the more precise the system, the fairer the system will be to all sectors. Proper assessments of the sector should be made, but it seems there is no reason why businesses like those that involve large-scale agriculture should be viewed differently than other corporate enterprises.

It seems sensible to examine the rating of agriculture at the same time as industrial rating and other reforms. Apart from being logical, it is more cost efficient to make any changes at one time. Moreover, the discussion of reliefs needs to be dealt with in a systematic manner and it is best to examine relief for small farmers and those in disadvantaged rural areas in the one process. Equally, the DFP should ensure that the valuation of agricultural and rural areas is updated, so that non-agricultural businesses do not benefit from agriculture derating. For example, the outdated valuation system is likely to allow buildings once used for agricultural and now used for other commercial purposes to escape from rates.

All rural reliefs, like other domestic and non-domestic reliefs, should be decided after TSN/EQIA evaluations are conducted and different options can be compared. The DFP doesn't provide details on the "Rural Rate Relief" it is considering. This information should be included in rating materials during the consultation period. An overall relief policy must take into account all aspects of NI society, including domestic and non-domestic sectors, and cannot be considered piece-meal. A broad vision should be taken when creating a relief system, so that they are considered carefully and collectively.

(10) Should relief for small businesses be considered further? (See para. 108.)

CAJ has argued above for a comprehensive, systematic approach to reliefs, rather than a piece-meal approach. In principle, we would argue against blanket reliefs (small businesses included). As in the domestic sector, any reliefs should be considered after TSN/EQIA evaluations are conducted and a broad view of rating policy can be considered. Reform of rating policy may improve revenue, and correct inequalities, without the use of additional reliefs.

The DFP, surprisingly, does not propose the revocation or re-evaluation of those reliefs that do currently exist. In the next phase, the DFP should clarify the amount of revenue lost through reliefs given to church property, freight transport, leisure centres etc. and discuss if these are the most optimal recipients of relief. A similar exercise should be applied to any new reliefs that have been or are being proposed (eg per para. 101: for community halls, commercial equestrian centres, hotels, catering facilities, licensed premises, small businesses and businesses in historic town centres, and businesses affected by hardship).

(11) Should there be provision to provide undue hardship relief under exceptional circumstances? (See para. 111.)

CAJ believes that the whole system of rates should be geared to promoting equality, targeting social need, and promoting social inclusion. Therefore, in principle, one would hope that “hardship relief” is not needed, but clearly we could only comment when the particular provisions of any hardship relief scheme are elaborated. The Review states that currently that there is no mechanism for addressing emergency hardship situations that occur between revaluations, and mentions Foot and Mouth epidemic and border petrol filling stations as areas where hardship relief would be considered (para. 109). The Programme for Government already reserves a portion of the budget for emergency and priority allocations, so the DFP should clarify that such a relief will not be redundant. Clearly TSN/EQIA evaluations need to be considered, so that hardship relief is not given at the expense of regular service provision for disadvantaged groups.

One would also need to consider in this context:

- ❖ What will be the process for deciding who benefits, and in what emergencies?
- ❖ How will the lost revenue be accounted for, and be allocated without hindering budget expenditures? Will a certain amount of “proposed lost revenue” for hardships be assumed each year? If so, how much?
- ❖ What safeguards will be provided so that the mechanism of hardship relief provisions is not abused?

***(12) If it is agreed to move toward the introduction of water charges, how might any water and sewerage costs be distributed among domestic consumers?'* (See para. 130.)**

Four options are proffered: a. a uniform contribution or flat rate; b. a contribution based on net annual value (as in England); c. a contribution based on the capital value of the property (as in Scotland); or d. a combination of 1 and 2. Of those on offer, rates linked to the capital value of the property seems to be the least regressive. **CAJ would argue that TSN/EQIA evaluations need to be carried out to confirm this and/or determine which of these options is most likely to benefit the most disadvantaged in society.**

A cursory review of the topic would conclude that flat rates unduly burden disadvantaged households, and would be the least acceptable solution. None of the alternatives being considered reflect use of water and sewerage services, despite the positive environmental impact that such a move might make. We are told that the introduction of domestic metering is not being considered because it would mean that larger households, or those using large volumes of water because of health conditions, would pay more in charges than smaller households regardless of ability to pay (para. 126). CAJ recognises these important concerns but wonders if consideration was given to the option of allowing households a choice between paying a flat rate or with a metered rate (no mention is made of this option in the Review).

Any of the proposed options could allow for an exemption of some domestic consumers that do not benefit from aspects of the services, and/or introduce legislation to protect vulnerable or low-income users. The Executive should clarify its proposals regarding exemptions, and incorporate them into proposed options.

In general, the Review does not consider social benefit analyses, although this is clearly essential to any introduction of water charges and easily assessed with existing data. CAJ believes that it is the duty of the DFP, in order to comply with its section 75 duty, to make these comparisons, instead of simply presenting the public with questions about complex alternatives. Clearly it is crucial to conduct these studies now, and present the results to consultees to allow a more informed contribution.

¹ Domestic water and sewerage services were partly funded from Regional Rates prior to April 1999, but now are deducted as a regional budgetary expense. (In fact, it is surprising that Regional Rates were not lowered when this change occurred in 1999.) The Review argues that water and sewerage are "a significant pressure on the Executive's spending programmes" (para. 118) because the Treasury does not provide additional funding for these services. Non-domestic water charges do provide £39m toward the cost of the services. The Review also claims that water service faces a £3bn investment requirement over the next 20 years to comply with EU directives on water quality, to meet demand, and to replace ageing infrastructure (para. 119). It seems the government is leaning toward introducing water charges to off-set these costs.

4. Conclusion

CAJ believes that the DFP has raised many important issues in this consultation paper around much needed rating reform. At this stage, we believe that it is essential that various reform possibilities and options discussed in the paper are carefully scrutinized to determine if they meet Targeting Social Need and equality standards. We believe this can be done thoroughly and efficiently, given the available information on rates and water costs. It is important that CAJ and other consultees are able to consider the results of these studies, so as to comment more knowledgeably as the consultation process evolves.

With new rating legislation, the government has a very important opportunity to promote fairness and remedy existing inequities; CAJ looks forward to helping in whatever way possible to achieve those goals.