

April 2012 Information Leaflet (Revised)

CHURCH PROPERTY AND LOCAL AUTHORITY RATES

**A Summary of the Provisions of the
Local Government (Rating) Act 2002**



1. Introduction

Church property that is used for religious purposes has historically been exempted from general rates imposed by local authorities (LAs). It is important to note that the exemption has been for general rates, not targeted rates, such as water, sewerage or other specific levies, and applies only to property used for some but not all, religious purposes.

2. Local Government (Rating) Act 2002 (the Act)

This Act came into effect in July 2003 and continues to provide for the exemption from general rates of some church property

3. When is land exempt from rates?

Part 1 of Schedule 1 of the Act lists ‘*Categories of non-rateable land*’. This includes clause 9,

Land used solely or principally -

- (a) *as a place of religious worship;*
- (b) *for a Sunday or Sabbath school or other form of religious education and not used for private pecuniary profit.*

The test is:

Is the land (N.B. the word ‘land’ includes the buildings on the land) solely or principally i.e. more than 50%, used for religious worship and or religious education (which includes a Sunday school)?

If so, it is fully non-rateable.

Part 1 of Schedule 1 also includes:

‘Land owned or used by’, most schools (clause 6), institutions for the instruction and training of students in theology and associated subjects, of up to 1.5 hectares (clause 7), a cemetery, crematorium or burial ground of up to 2 hectares (clause 10), Maori customary land, (clause 11), and land on which a Maori meeting house is erected of up to 2 hectares, (clause 13), so all such land is also fully non-rateable.

Clause 21 of Part 1 of Schedule 1 warrants special mention. That clause reads:

“Land used or occupied by, or for the purposes of, an institution that is carried on for the free maintenance or relief of persons in need, being land that does not exceed 1.5 hectares for any one institution.”

What is meant by ‘free’ for this purpose is then dealt with in Note 6 of Part 1 of Schedule 1 and reads:

- *For the purposes of clause 21, an institution must be treated as being carried on for the free maintenance and relief of the persons to whom that clause applies if—*
 - (a) *those persons are admitted to the institution regardless of their ability to pay for the maintenance or relief; and*

(b) no charge is made to those persons or any other persons if payment of the charge would cause those persons to suffer hardship.

We believe that food banks, soup kitchens, night shelters, temporary accommodation, refugee and similar activities which are clearly carried on for the *“maintenance and relief of persons in need”*, **free of charge** are therefore non-rateable. However these general comments are/should be subject to express advice with all the facts known.

Land in several other categories listed in Part 1 of Schedule 1 is also non-rateable. Church entities should, if necessary, consult the Act for a full list.

4. What is rated?

What is rated is a *“rating unit”*. That is defined in the Act by cross reference to the Rating Valuations Act 1998 and, in particular, Section 5B. Primarily land comprised in a Certificate of Title (CT) constitutes a rating unit, but the Valuer-General can in some circumstances determine that the land in two or more CTs, or part of a CT, can also constitute a rating unit. That can include a stratum estate under the Unit Titles Act and also estate in leasehold of a building or part of a building.

Section 27(5)(b) of the Act provides that information *‘may be recorded separately for different parts of a rating unit, if separate records are necessary because of different rating treatment of each part resulting from:*

(b) the application of Part 1... of Schedule 1 to one or more parts of the rating unit’.

It is important to note that the reference in this Section is to *“parts of a rating unit”*, whereas the various categories of non-rateable property set out in Section 3 above refer to *‘land’*.

Therefore the reference to *“different parts”* in Section 27(5) (b) refers to two or more different parcels of land within a single CT i.e. a *“rating unit”*

If land within a CT or other rating unit, comprises both land which is non-rateable and land which is rateable, then those two or more parts can be recorded separately by the LA in their rating records. Those parts which do not qualify for a rates exemption can then be rated in the normal way.

The Valuer-General, who has power under the Act to make such rules, has stipulated that when Section 27(5)(b) is applied, the sum of the valuations for the individual parts must be equal to the value of the rating unit.

Example:

A diocesan building on land which comprises a single CT, is used partly for religious education and partly for general church administration. Since part of the building is not principally used for religious education, the LA, using Section 27(5)(b), has divided the rating unit between the exempt and rateable parts and has billed the diocese accordingly. Their invoice is accompanied by a schedule which records the valuations of the two parts separately and their combined value.

The diocese will need to pay rates on that part of the building used for administration, but not on the part used for religious education.

5. The application of the law

It is the Church's understanding that if church land is used solely or principally for the purpose of religious worship and/or as a Sunday school or other form of religious education, then the land is fully exempt for general rates. Therefore:

- (a) Places of religious worship such as churches and chapels, which meet the test set out above, are fully non-rateable.
- (b) If church land is not used on a Sunday for religious education (Sunday school) but is used during the week for a mix of religious education and other community activities, then so long as the religious education activities constitute more than 50% of the **use of the property by time or by space***, then the property would be considered fully non-rateable.
- (c) If church land is used for Sunday school on a Sunday and is not used for any other use during the week, then the property would be considered fully non-rateable.
- (d) If church land is used both on a Sunday (for Sunday School) and also during the week for a mix of religious education and other community activities, and the Sunday School and RE uses combined are more than 50% of the total use by time, then the property would be considered fully non-rateable.
- (e) This also applies to church buildings which are used for a mixture of religious worship, religious education and other purposes such as administration. They are also fully non-rateable if religious worship or religious education (or both together), comprise more than 50% **of use by time or by space***, all though, as set out in the example above, the LA could opt to separate out that part of the building used for administration as a different rateable part of the rating unit.

**The terminology "by time or by space" will be a matter of fact and degree having regard to both the physical space used and the level of use in time terms. The fundamental use of the building may also bear on the issue.*

6. What is religious education?

The words “*religious education*” are unambiguous and the fact that the education given is about religion must be determinable. Rooms used for a youth group programme which includes Christian teaching would meet the test, but an otherwise similar group which does not include such education does not, even though it might be run by Christians.

7. Exemption verses relief

The Churches believe that the Local Government (Rating) Act 2002 provides for the exemption from the payment of general rates for qualifying property. That is a statutory provision.

The possible provision of rates relief which may be offered by some LAs is purely a discretionary activity by the authority which can continue or be withdrawn by a decision of the LA. Any church group considering accepting an offer of *rates relief* as an alternative to *rates exemption* should carefully consider the ramifications of that decision.

8. Use of church property for charge or donation

The new Act provides that property that otherwise qualifies as non-rateable land does not lose that exemption merely because a charge for use is made or a donation is sought, so long as the proceeds are *not used for private pecuniary profit*.

Note 3 of the Notes to Part 1 of Schedule 1 of the Act reads:

For the purposes of clauses 3, 9, and 10, land must not be treated as being used for private pecuniary profit solely because charges are made for the admission to or use of that land if the net proceeds of the charges are applied, -

...

(b) solely for the purposes of the society, organisation, association ... that makes those charges and no part of the charges is distributed as profit to any individual.

NB. As per Section 3. above, clause 9 relates to worship, Sunday School or religious education and clause 10 to a cemetery, crematorium or burial ground (see page 1).

This is an important Note since it means for example, that if a church is hired out for a funeral or concert etc. then it does not thereby lose its rates exempt status (provided all rent received is used for church purposes).

Church entities should be careful that any use allowed, whether charged for or not, does not involve giving away or transferring the right of control of the property to the user but is a *õbare licenceõ* to use and is determinable on reasonable notice by the church entity.

9. Who is the ratepayer?

Under Section 11 of the Act, **as from 1 July 2003**, the landowner or the lessee of the “rating unit” is the “ratepayer”. However the lessee only becomes the ratepayer if the lease:

- (i) *is registered, after the commencement of this section, under section 115 of the Land Transfer Act 1952; and*
- (ii) *is for a term (including renewals) of not less than 10 years; and*
- (iii) *provides that the lessee must be entered in the rating information database and the district valuation roll as the ratepayer in respect of the unit.*

If these conditions are satisfied, then the lessee of the land is entitled to the rates exemptions set out in this paper and the Church itself becomes the ratepayer. It should therefore ensure that the rent paid takes the rate exemption into account.

Example:

A Church decides to enter into a 15 year lease on a warehouse which it will convert into a place of worship. The lease agreement provides that the landlord/lessor will pay the insurance and rates on the land.

The Church renegotiates the lease to require that they, as lessee,* become the ratepayer of the rating unit (thus relieving the landlord of responsibility for the rates), with an offsetting reduction in the rent.

Both the Church and the lessor are satisfied with this arrangement, the Church because the land is now fully non-rateable as a place of religious worship and the lessor because his net income from the property is unchanged.

**If the lease agreement provides that the lessee is responsible for the rates when the warehouse becomes fully non-rateable, the resultant savings will be retained by the Church.*

However if the three conditions in Section 11 are not satisfied, and land is leased or rented by a church entity, then it will be the landowner/landlord/lessor who will be entitled, as the ratepayer, to the rate exemptions set out in this paper and not the Church. This is because the exemptions always arise from the **use** to which the land is put, regardless of ownership.

In such circumstances however the church entity should be careful to ensure that their rent is determined net of rates, so that the benefit of the exemption flows to their account rather than to the benefit of the landowner/landlord/lessor.

Example:

A Church enters into a tenancy agreement to rent, on a monthly basis, the first floor of a downtown building as a temporary place of worship pending the restoration, seismic strengthening and modification of their 80 year old church. That floor is a stratum estate title and will be fully non-rateable when it becomes a place of worship. The tenancy agreement provides that the landlord will pay the rates.

The Church renegotiates the agreement by requesting a reduction of the monthly rental to reflect the fact that the landlord will have no rates to pay because the rented floor is now non-rateable as a place of worship.

Again both the Church and the landlord are satisfied with this arrangement.

The post 2002 Act position is a major change from the previous law where the “*occupier*”, whether the landowner or the lessee was the ratepayer, provided, in the case of lessees, such occupancy was under a lease of at least 12 months.

There are transitional provisions between the pre 2002 position and the new law, which are spelt out in detail in Section 11 of the Act.

Some Churches have experienced difficulty with their LA when land is newly leased for use as a place of religious worship (or some other category of non-rateable land), during a rating year. The LA accepted that the use of the land had changed to a non-rateable category, but stated that rates (whether already invoiced or otherwise), must continue to be paid until the end of the LA's financial year.

This is incorrect. Land which is in a non-rateable category (see Section 3. above) is **always** non-rateable, from the date it is first used for a non-rateable purpose.

Under Section 47 of the Act the LA is required to issue an amended and correct invoice, from the date the land became non-rateable and deliver it to the Church entity ratepayer.

Summary

Where land is used solely or principally for religious worship, Sunday school, religious education or the other purposes set out in Section 3. above, **that land is fully non-rateable**, even if a church or hall is hired out to community groups (so long as the proceeds are not used for private pecuniary profit).

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