

**EXPLANATORY MEMORANDUM TO**  
**The Non- Domestic Rating (Small Business Rate Relief)**  
**(Amendment) (England) Order 2006**

**2006 No. [2313]**

**1.** This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 This Order amends the Non-Domestic Rating (Small Business Rate Relief) (England) Order 2004 (S.I. 2004/3315) (“the 2004 Order”). It replaces a condition that ratepayers apply annually to continue to receive small business rate relief with a condition that an application is made once in each five year period between revaluations of business properties provided that the ratepayer’s circumstances do not change. Where certain circumstances do change a fresh application will be required, but provided this is made within four weeks of the change (starting on the day after the day on which the change takes place) and does not otherwise affect the ratepayer’s entitlement, the ratepayer’s benefit from the relief will be uninterrupted.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative Background**

4.1 The 2004 Order was made under section 43(4B) and (4C) of the Local Government Finance Act 1988 (“the 1988 Act”). Section 43 of the 1988 Act prescribes the formulae for the calculation of non-domestic rates in respect of occupied locally listed hereditaments. Section 43(4A) provides the formula to be used where subsection (4B) applies and, in practice, these provisions give effect to small business rate relief. Subsections (4A)-(4D) were inserted into the 1988 Act by section 61 of the Local Government Act 2003.

4.2 The conditions in subsection (4B) are that:

- (a) the rateable value of the hereditament on the first day of the chargeable financial year is not more than any amount prescribed by the Secretary of State by order;
- (b) on the day concerned any conditions prescribed by the Secretary of State by order are satisfied; and
- (c) the ratepayer has made an application for the purposes of the subsection by such date and in such form as the Secretary of State prescribes by order.

- 4.3 The 2004 Order prescribes the rateable value, conditions and form of application for the purposes of subsection (4B) and one of the conditions is that the application is completed annually. This Order will amend that condition so that the ratepayer must apply for small business rate relief only once between each revaluation of non-domestic hereditaments. Under section 41(2) of the 1988 Act, non-domestic hereditaments must be revalued every five years and the last revaluation took place on 1st April 2005.
- 4.4 As a consequence of this change, it will become an additional condition of entitlement to small business rate relief that the ratepayer notifies the billing authority of certain changes in circumstances that may affect their entitlement to the relief. These are:
- (a) increases in the rateable value of a property occupied by the ratepayer which is not in the area of the billing authority granting the relief – these changes will have to be notified in writing; and
  - (b) the ratepayer coming into occupation of any property which is not mentioned in their application for relief – these changes will have to be notified by way of a fresh application for relief.
- 4.5 If such changes are notified to the billing authority within four weeks of the day after the day on which they occurred and do not otherwise affect the ratepayer's entitlement, the ratepayer's benefit from the relief will be uninterrupted.
- 4.6 Other changes which would affect a ratepayer's entitlement to relief under the 2004 Order and which are unaffected by this Order are a change in the rateable value of the hereditament for which relief is being granted, or a change in the rateable value of a different hereditament occupied by the ratepayer which is situated in the area of the billing authority granting the relief. However, these changes are notified to the billing authority by the valuation officer and this Order does not require the ratepayer to duplicate that.
- 4.7 This Order clarifies that a ratepayer may only benefit from small business rate relief in respect of one property and that it is not necessary for the ratepayer to have occupied the property on the first day of the first financial year in respect of which they are seeking relief.

## **5. Extent**

- 5.1 This instrument applies to England.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

- 7.1 The Chancellor, in his pre-budget report, announced proposals to relax the requirements for applying for small business rate relief. He said:
- “Already the Government has started to reduce the burden of form filling ahead of new principles to be published next year on shortening forms and greater data sharing between regulations, for instance by abolishing a requirement for 400,000 small businesses to reapply for small business rate relief every year”.*
- 7.2 Under the current arrangements, ratepayers have to re-apply annually for the relief, which places a burden on the ratepayer and also on the billing authority in processing the application. In light of this and the Chancellor’s announcement, the Department for Communities and Local Government proposed, in a consultation paper issued on 22nd May 2006, that ratepayers should apply for small business rate relief once, for up to five years between revaluations of non-domestic properties, provided their circumstances had not changed in that period.
- 7.3 Where circumstances do change it was proposed that, as a condition of entitlement, ratepayers should be required to notify the billing authority of the changes. Under the proposed amendments, failure to notify the authority of the change, within the specified timeframe of 4 weeks, will result in a loss of relief from the date the change happened until the date notification is made. This mechanism will help authorities to keep track of those ratepayers’ eligibility for small business rate relief.
- 7.4 The consultation closed on 28th July 2006 and there were 56 respondents. 49 respondents agreed with the proposal that ratepayers should only apply once, provided their circumstances do not change within the five years between revaluations.
- 7.5 The consultation proposed that the requirement to notify the billing authority should only apply in very specific circumstances. It was proposed that changes in rateable value and changes in occupation of hereditaments should be notified to the authority either in writing or by way of a re-application. 41 respondents agreed with our proposals to notify the billing authority of changes in rateable values, while 5 disagreed. Most (28) of the respondents who commented (39) thought this notification should be in writing. 46 respondents agreed with the proposal for notifying changes in occupation and the majority of those respondents (35) felt notification should be in the form of a new application.
- 7.6 Following the end of the consultation the Department has taken the decision to further reduce the burden on ratepayers by streamlining the requirements on ratepayers to notify the authority of changes. Only increases in rateable values of properties occupied by the ratepayer in a different billing authority area will now need to be notified to the billing authority granting small business rate relief. Similarly, only where a ratepayer takes up occupation of a new property will they be required to notify the billing authority granting the relief. These slight amendments to the Department’s original proposals will mean the

requirement to notify changes now only applies where the change might affect the ratepayer's eligibility for the relief.

- 7.7 A small number of respondents to the consultation pointed out that a failure to notify the authority of a change that would remove the ratepayer's eligibility for small business rate relief may not be immediately picked up by the billing authority under the proposed five yearly application system. However, billing authorities have the power, under the Non-Domestic (Collection and Enforcement) (Local Lists) Regulations 1989 (S.I. 1989/1058), to adjust the amount payable under a rates demand notice after it has been issued, which will enable them to recover relief granted where a change in circumstances has not been notified to them.
- 7.8 The consultation also proposed to make some other minor amendments which will help to clarify the operation of the scheme. One of the conditions of the relief is that the hereditament for which the relief is being claimed must be on the rating list on the first day of the financial year. Some administrators and ratepayers have taken this to mean the ratepayer must be in occupation of the hereditament on the first day of the financial year. This was not the intention behind the provision. The Department clarified this point through a Frequently Asked Questions document posted on the Department's website. The consultation proposed to further remove the scope for misinterpretation of the provision by clarifying this point in the amended legislation.
- 7.9 Another issue that had arisen relates to the handling of properties with a rateable value below £2,200. Under the provisions of the 2004 Order, these properties can be disregarded when deciding whether a ratepayer occupies just one hereditament in England. Some billing authorities, however, have interpreted this to mean that small business rate relief can be granted on more than one property. This Order makes it clear that small business rate relief can only be granted on a single property in line with the original intention behind the scheme.

## **8. Impact**

- 8.1 A Regulatory Impact Assessment is attached to this memorandum.

## **9. Contact**

Relwyn Reffell at the Department for Communities and Local Government Tel: 020 7944 3810 or e-mail: [relwyn.reffell@communities.gsi.gov.uk](mailto:relwyn.reffell@communities.gsi.gov.uk) can answer any queries regarding the instrument.

# FINAL REGULATORY IMPACT ASSESSMENT (RIA)

---

## TITLE OF PROPOSAL

Amendments to Small Business Rate Relief Scheme

## PURPOSE AND INTENDED EFFECT

### Objective

To reduce the administrative burdens for small businesses applying for small business rate relief and also for billing authorities who process those applications for relief.

### The Background

The small business rate relief ("SBRR") scheme began on 1 April 2005 and has now been operating for over a year. The primary legislation for the scheme was inserted into the Local Government Finance Act 1988 by the Local Government Act 2003. Detailed conditions and arrangements for the scheme are in the Non-Domestic Rating (Small Business Rate Relief) (England) Order 2004 (SI 2004 No. 3315), ("the 2004 Order").

The scheme gives 50% rate relief for properties with rateable values up to £5,000. For properties with higher rateable values, the percentage of relief gradually tapers off, with no relief for properties above £10,000 rateable value. The relief is funded by a supplement on the rate bills of ratepayers not eligible for the relief, except those with eligible hereditaments between £10,000 and £15,000 (£21,500 in London).

In addition:

- the property for which relief is being claimed must be on the local non-domestic rating list on 1 April of the chargeable year in which relief is being claimed, the chargeable day for which relief is sought and, if any, each intervening day;
- the relief is only available to ratepayers with either one property, or one main property and other additional properties, providing the rateable value of any additional property is less than £2,200 and the total value all the properties remains under the appropriate overall threshold;
- ratepayers must apply to their local billing authority for the relief for each chargeable year; and
- applications must be made no earlier than 1 October in the preceding financial year and within six months of the end of the year concerned or six months of notification of an alteration by a valuation officer to a rateable value which makes the hereditament eligible for relief.

The scheme applies in England only. On the basis of returns completed by local authorities before the start of the financial year, an estimated £390 million is expected to be claimed in small business rate relief for 2005-06. Businesses may apply for small business rate relief up until 6 months after the end of the financial year concerned, so final figures are not yet available.

### Rationale for Government Intervention

On 5 December, as part of the Government's drive to reduce burdens on business, the Chancellor announced in his pre-Budget report proposals to relax the requirements for applying for SBRR. He said:

*"Already the Government has started to reduce the burden of form filling ahead of new principles to be published next year on shortening forms and greater data sharing between*

*regulations, for instance by abolishing a requirement for 400,000 small businesses to reapply for small business rate relief every year”.*

It is envisaged the result of implementing this arrangement will reduce the burden on businesses as they will be required to apply only once for up to five years between revaluations, provided their circumstances do not change. It should also result in a reduction in the burden on local billing authorities who currently have to process applications for SBRR on a yearly basis.

Apart from implementing the arrangement announced by the Chancellor we are also taking the opportunity to make some other minor amendments to the 2004 Order. When the scheme was introduced in 2005 it prompted a number of questions from billing authorities and agents on the operation of the relief and on interpretation of the legislation.

Some authorities had interpreted one of the conditions of the SBRR scheme to mean the ratepayer must be in occupation of the hereditament on the first day of the financial year. This was not the intention of the scheme and this was clarified in the frequently asked questions document published on the ODPM website.

Another issue that has arisen relates to properties with rateable values below £2,200. These properties can be disregarded when deciding whether a ratepayer occupies more than one hereditament. Some authorities initially interpreted the 2004 Order to mean rate relief can be granted on all of the properties occupied by a single ratepayer, where the rateable values are below £2,200.

The proposed clarifications affect neither eligibility for the scheme nor the arrangements for applying for it. The FAQs clarifying the intentions behind the scheme were made available by the then Office of the Deputy Prime Minister in July 2005. The proposed clarifications mean it will no longer be necessary to consult the relevant FAQs.

## **Consultation**

The Department for Communities and Local Government (formerly ODPM) has been in regular contact with billing authorities and ratepayers over the operation of the SBRR scheme and the minor clarifications proposed arise from issues raised by stakeholders during this period. We have also consulted HM Treasury, the Small Business Service and the Federation for Small Business over the current proposals.

A Partial RIA accompanied the Department's formal consultation on these proposals from 22 May 2006 to 28 July 2006. There were 56 responses to the consultation from a range of stakeholders including local authorities, rating surveyors and business representative organisations.

49 respondents agreed with the central proposal that small businesses should be able to apply for small business rate relief once during the five-year lifetime of a rating list provided their circumstances remained unchanged. 49 respondents agreed that businesses receiving the relief should notify the billing authority of any relevant changes of circumstances at the time they happened, rather than waiting until the next revaluation.

41 respondents agreed with the proposals for requiring businesses to notify the billing authority of changes in rateable value, while 5 disagreed and 3 respondents thought all changes in rateable value should be notified to the billing authority. Most (28) of the respondents who commented (39) thought this notification should be in writing, while a minority favoured a new application (6), any simple notification or had no preference (5). 46 respondents agreed with the proposals for requiring notification of changes in occupation and 35 respondents thought such notification should be in the form of a new application. 43 respondents thought a business no longer wanting to receive relief should simply be required to write to the billing authority.

There was a wider range of views about how long a business should have to notify the billing authority of changes with a handful of respondents favouring 2 months or 6 months, but the period favoured by most respondents was 4 weeks.

Two respondents commented on the partial RIA. The first saw it as a balanced assessment while the other commented on incentives for businesses occupying an additional property to inform the billing authority.

## **OPTIONS**

Two options have been identified:

Option 1 - Do nothing

Option 2 - Amend the legislation.

### **Option 1: Do nothing**

Under the current system ratepayers who may be eligible for SBRR must apply to their local billing authority for each year in which business rates are chargeable on the property. The local billing authority then has to process the application to determine whether to grant the relief. These requirements and the associated administrative burdens will remain if the 2004 Order is not amended.

### **Option 2: Amend legislation**

#### Application process

To introduce a requirement that ratepayers eligible for SBRR apply only once during the period between five yearly revaluations, provided their circumstances remain unchanged.

#### Conditions of entitlement

To make it a condition of entitlement to SBRR that the ratepayer notifies the billing authority of relevant changes in circumstances.

##### (i) Changes in rateable value

To require ratepayers to notify the billing authority that is granting the relief of changes in the rateable value of any properties they occupy in another billing authority area. Where there is a change in the rateable value of a property for which SBRR is being paid or another property occupied by the ratepayer which in the area of the billing authority granting the relief, that change will be notified to the billing authority by the Valuation Officer and there will be no requirement for the ratepayer to notify the billing authority separately.

##### (ii) Changes in occupation

To require the ratepayer to notify the billing authority where the ratepayer vacates a property or moves into a new property.

## **COSTS AND BENEFITS**

### **Sectors and groups affected**

Both small businesses eligible to apply for SBRR and local billing authorities would be affected by our proposals. We do not consider the proposals will affect any other sectors, as eligibility for the scheme will not be affected.

#### Race Equality Assessment

There are no racial equality issues related to the proposed changes.

#### Health Impact Assessment

There are no health impact issues in relation to the proposed changes.

#### Rural Impacts

There are no rural criteria for eligibility for SBRR.

### **Benefits**

## **Option 1: Do Nothing**

### Economic

The present arrangements for applying for small business rate relief have been in place for approaching 18 months. Any change in these arrangements, even where this makes them less onerous for businesses and authorities may involve a small cost in adapting to the new arrangements. This could be avoided by leaving them unchanged.

To do nothing would mean the Government would not be faced with the administrative costs of taking the amending legislation through Parliament.

### Environmental

None.

### Social

None.

## **Option 2: Amend legislation**

### Economic

Introducing the requirement for eligible small businesses to apply only once for SBRR in the life of a rating list provided their circumstances do not change would reduce the administrative and cost burdens to small businesses and local billing authorities. This is in line with the Government's general commitment to Better Regulation and reducing administrative burdens.

The administrative burden of applying for SBRR has been estimated at £13.8m. This is calculated at 450,000 transactions a year at £30.63<sup>1</sup> per transaction. While such calculations are indicative, given that this proposal could reduce the estimated cost by up to 80% this would result in a cost saving of up to £11.04m. The exact amount will depend however on the extent to which ratepayers circumstances change during the five-year life of the rating list. On the basis of data from the Valuation Office Agency it is estimated that during the 2005-06 financial year, there were around 30,000 changes in rateable value of hereditaments within overall SBRR thresholds. However, the data does not include any property that changes more than once in the year and not all the properties included in the 30,000 figure will be in receipt of SBRR.

At present billing authorities have to assess fresh applications for SBRR each year from ratepayers whose circumstances and hence eligibility for relief have not changed. Under the proposed legislation, authorities would have to assess applications from all small businesses in these areas only at the time of a five yearly revaluation. Having to deal only with changes in recipients' RV or occupation is likely to significantly reduce the volume of work for authorities.

### Environmental

None.

### Social

None.

### Costs

## **Option 1: Do Nothing**

### Economic

---

<sup>1</sup> Transaction costs based on work for Administrative Burdens Measurement Exercise conducted by PwC September 2005 to June 2006.

Small businesses and local billing authorities would continue to be faced with the administrative burden of dealing with applications for SBRR on an annual basis.

Local billing authorities may need to refer to the FAQs document in order to interpret the legislation in line with the original intentions of the scheme.

#### Environmental

None.

#### Social

None.

### **Option 2: Amend legislation**

#### Economic

The Government would be faced with the administrative cost of taking the amending legislation through Parliament.

Businesses and billing authorities will need to adapt to the less onerous arrangements.

#### Environmental

None.

#### Social

None.

### **EQUITY AND FAIRNESS**

Removing the need to re-apply every year for SBRR will impact on all eligible small businesses in the same way. The precise impact will depend on whether a ratepayer's circumstances change during the 5-year period. The ratepayer may be required to notify the billing authority of the change either in the form of a re-application or in writing.

### **SMALL FIRMS IMPACT TEST**

The proposal to remove the requirement to apply annually should positively impact on small businesses by reducing the administrative burden of completing the application form. As this amendment will make the process for applying for the relief less onerous, there may also be an increase in the take up rate for the relief.

The Federation of Small Businesses (FSB) commented on the proposals and welcome the proposed changes. The DTI Small Business Service have also been consulted and are content with the approach.

### **COMPETITION ASSESSMENT**

The competition filter test has been applied and there is nothing to suggest our proposed amendments will negatively impact on any particular area of the market. The proposal to relax the annual application process should positively impact on small businesses by reducing the administrative burden they face.

### **ENFORCEMENT AND SANCTIONS**

Local authorities will, as now, be responsible for collecting the rates and they have well established powers to enforce payments through the Magistrates courts. Including the requirement to notify the billing authority of changes in circumstances as a condition of entitlement will act as incentive to

ratepayers to keep the billing authority informed of changes that might affect their entitlement to SBRR.

As now it will be a criminal offence for a ratepayer to give false information when making an application for small business rate relief.

## **IMPLEMENTATION AND DELIVERY PLAN**

The Non-Domestic Rating (Small Business Rate Relief) (Amendment) (England) Order 2006 will make the necessary amendments to implement the new arrangements. It is envisaged that the amending Order will come into force on 1 October 2006. As businesses may apply for small business rate relief six months in advance of the financial year concerned, all applications for the relief for 2007/08 will be under the new arrangements.

## **POST-IMPLEMENTATION REVIEW**

When the SBRR scheme was introduced the Government stated its intention to monitor the scheme through a long term evaluation of rate reliefs to ensure that it benefits small businesses. The proposed amendments to the scheme will be form part of the long term evaluation

## **SUMMARY AND RECOMMENDATION**

<b>Option</b>	<b>Total cost per annum Economic, environmental, social</b>	<b>Total benefit per annum Economic, environmental, social</b>
1 - Do nothing	- Continued need for annual applications for the relief	- Avoids any need for business to adapt to the streamlined arrangements - Not supported by the overwhelming majority of respondents
2 - Amend legislation	- Business needs to adapt to new arrangements	- Estimated savings of up to £11.04m if 80% reduction in applications

We recommend making the proposed amendments to the legislation as clarified and slightly refined in light of the responses to the consultation on the proposals. The requirements to notify billing authorities of changes in rateable value will apply only to increases in rateable value of a property in another billing authority's area and will be in writing. The requirements to notify the billing authority of changes in occupation will apply only to occupying an additional property and will be done through making a fresh application. It is envisaged the changes will positively impact on small businesses as well as reducing the administrative burden on local billing authorities processing the applications. Introducing the requirement for ratepayers to notify the billing authority when they occupy a new property would allow the billing authority to keep track of changes in the ratepayer's circumstances. As this will be a condition of entitlement, it will be in the ratepayer's interest to notify any changes as soon as possible as entitlement to the relief may be lost for a period.

### **Declaration and Publication**

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

*Signed Phil Woolas.....*

**Date 23rd August 2006**

***Phil Woolas MP, Minister for Local Government and Community Cohesion, Department for Communities and Local Government.***

**Contact point for enquiries and comments:**

Mr Relwyn Reffell, DCLG, Council Tax and Business Rates Division, Zone 5/B1 Eland House, Bressenden Place, London SW1E 5DU (Tel: 020 7944 3810; e-mail [relwyn.reffell@communities.gsi.gov.uk](mailto:relwyn.reffell@communities.gsi.gov.uk)).