

EXPLANATORY MEMORANDUM TO
THE LICENSING ACT 2003 (CONSEQUENTIAL AMENDMENT) (NON-
DOMESTIC RATING) (PUBLIC HOUSES IN ENGLAND) ORDER 2007

2007 No. 724

1. Preliminary

1.1 This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order modifies the consequential amendments to the Non-Domestic Rating (Public Houses and Petrol Filling Stations)(England) Order 2001 (S.I. 2001/1345) (“the 2001 Order”) made by the Licensing Act 2003 (Consequential Amendment)(Non-Domestic Rating)(Public Houses in England) Order 2006 (S.I. 2006/591) (“the 2006 Order”).

2.2 Article 2 of the 2001 Order prescribes conditions that public houses and petrol filling stations must meet in order to qualify for the relief from non-domestic rates afforded by section 43(6A) and (6B) of the Local Government Finance Act 1988 (c. 41). Qualifying premises are entitled to have their rate liability determined by reference to a formula different to the one set out in subsection (4) of section 43, provided they satisfy the prescribed conditions.

2.3 The 2001 Order originally defined a “public house” by reference to the Licensing Act 1964, which Act was repealed by the Licensing Act 2003 (“the 2003 Act”). The 2006 Order modified this, and related definitions to remove references to the 1964 Act.

2.4 During the 2006/7 financial year it came to the attention of the Department for Communities and Local Government that there were areas in which the provisions as amended by the 2006 Order could be improved, so as better to reflect the provisions of the 2003 Act as they operate in practice.

2.5 This Order therefore substitutes a new definition of “public house” and revokes the definition of “relevant public house” inserted by the 2006 Order. The new provisions will have effect for financial years beginning on or after 1st April 2007.

2.6 In summary, the new definition of “public house” will include any premises as defined in the 2003 Act which has a premises licence authorising the sale by retail of alcohol for consumption on the premises. In addition, the premises must be used principally for retail sales of alcohol to members of the public for consumption on the premises, and the sales must not be subject to the condition that buyers reside at or consume food on the premises.

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

3.1 None.

4. Legislative Background

4.1 This Order makes further amendments consequential on the introduction of the 2003 Act, which came fully into force on 24th November 2005.

4.2 Section 198(2) of that Act provides that the Secretary of State may, in consequence of any provision of the Act or of any instrument made under it, make such amendments in any Act passed or any subordinate legislation made before the provision comes into force. This Order is the third use of this power. The first was the Licensing Act 2003 (Consequential Amendments) Order 2005 (S.I. 2005/3048), and the second was the 2006 Order.

4.3. The 2001 Order was made under section 43(6B)(c)(ii) of the Local Government Finance Act 1988. This allows the Secretary of State to prescribe conditions which, if satisfied, extend the relief from non-domestic rates for specified types of property in rural areas in subsection (6B) to further classes of property. The 2001 Order does this for public houses in rural areas which fulfil the general criteria in subsection (6B) and which in addition are the only property in their area that falls within the definition of “public house” given in the Order.

4.4 Following the coming into force of the 2003 Act, which repealed the Licensing Act 1964, the definition of “public house” given in article 1(2) of the 2001 Order was amended by the 2006 Order to bring it into line with the new licensing regime.

4.5 The current Order modifies the 2006 changes, so as better to reflect the manner in which the Licensing Act 2003 operates in practice.

5. Extent and application

5.1 This instrument extends to England and Wales but applies in respect of public houses situated in England only.

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 With effect from 24th November 2005 the 2003 Act established a single integrated scheme for the licensing of certain activities conducted on or from particular premises. Previously, there were different licensing regimes and procedures for different kinds of activity.

7.2 In consequence of the coming into force of the 2003 Act and the repeal of the old licensing provisions, the 2001 Order, which, in the definition of “public house” referred to the now obsolete distinction between a “justice’s on-licence” and a

“justice’s off-licence” was amended by the 2006 Order to reflect the new arrangements.

- 7.3 The purpose of the new definition was also to ensure that rate relief continued to extend to public houses only, and not “off-licences”.
- 7.3 The exclusion from relief of restaurants, hotels and guest houses was also continued in the amendments introduced by the 2006 Order.
- 7.4 During the 2006/7 financial year, it came to the attention of the Department for Communities and Local Government that there was potential for the 2006 amendments to confer relief on a wider class of premises than had ever been intended, including under the 2001 Order as originally enacted. This is because the focus on the conditions that happen to be included in a licence could lead to relief becoming available in individual cases where the actual use of the premises differs significantly from what the licence conditions contemplate or authorise. For example, a village hall may be able to acquire a licence with conditions that resemble those in a licence held by a public house. They could do this for several reasons, for example, to avoid the need to comply with the limits on numbers of temporary event notices contained in Part 5 of the Licensing Act. This could in the future lead to a growing disparity between the policy intention, that the sole public house in an area receives rate relief, and the actual operation of the provisions of the 2001 Order, which the modifications in the current Order will avoid. Leaving the 2006 Order as it is could also lead to some premises losing their entitlement to rate relief on the ground that they are no longer the sole “public house” in a particular area in circumstances where they should be entitled to relief in accordance with the policy.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

- 9.1 Andrew Cunningham at the Department for Culture, Media and Sport Tel: 0207 211 6344 or e-mail: andrew.cunningham@culture.gsi.gov.uk can answer any queries regarding the instrument.