

EXPLANATORY MEMORANDUM TO
THE NON-DOMESTIC RATING (SMALL BUSINESS RATE RELIEF)
(ENGLAND) ORDER 2012

2012 No. 148

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. **Purpose of the instrument**

The purpose of this instrument is to make provision in relation to the small business rate relief scheme in England in respect of days falling on and after 1st April 2012. It prescribes the conditions for eligibility for the relief and the amount of relief in relation to eligible hereditaments¹ applicable from that date.

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

None

4. **Legislative Context**

4.1 The Order is being made under sections 43(4B), 44(9)(a) and 143(1) and (2) of the Local Government Finance Act 1988 (“the 1988 Act”). Section 43(4B) was amended by section 70 of the Localism Act 2010². The amendments made by section 70 (amongst other things) removed the legislative requirement for the Secretary of State to prescribe, by order, a date by which a ratepayer seeking small business rate relief must make an application for relief.

4.2 The Order prescribes the conditions that must be satisfied before small business rate relief can be granted by a billing authority and also prescribes the rates of relief in relation to days falling on and after 1st April 2012. This Order replaces the existing SBRR Order - the Non-Domestic Rating (Small Business Rate Relief) (England) Order 2004 – for those purposes with effect from 1st April 2012. The 2004 Order will continue to have effect for the purposes of determining eligibility for small business rate relief and the amount of relief in respect of days falling prior to 1st April 2012.

4.3 Where a ratepayer satisfies the eligibility criteria for small business rate relief contained in article 2 of the Order, the ratepayer’s daily liability for non-domestic rates in respect of the hereditament concerned is determined

¹ A hereditament is the unit of property which is the subject of rating.

² See article 4 of the Localism Act (Commencement No 2 and Transitional and Saving Provision) Order 2012 (S.I. 2012/57). See, also, article 9 of that Order which contains relevant saving provision.

under section 43(4A) of the 1988 Act in accordance with the formula $(A \times D) / (C \times E)$ where: A is the rateable value of the hereditament³; D is the small business non-domestic rating multiplier for the financial year⁴; C is the number of days in the financial year; and E is such amount as is prescribed in relation to the hereditament by the Secretary of State by order. Article 4 of the Order prescribes the amount of E for the financial year beginning on 1st April 2012 and article 3 of the Order prescribes the amount of E for subsequent financial years.

5. Territorial Extent and Application

This instrument applies to England.

6. European Convention on Human Rights

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 Government's Coalition Agreement committed to find a practical way to make Small Business Rate Relief automatic. The Government consulted on options and committed to:

- remove the legal requirement for eligible ratepayers to submit an application form in order to get the relief; and
- remove the single property criterion in order for a ratepayer occupying a small hereditament to have his or her liability calculated by reference to the small business non-domestic rating multiplier.

7.2 In order to fulfil the first commitment mentioned above, Parliament has (as explained in paragraph 4.1 above) amended section 43(4B) of the Local Government Finance Act 1988 and has made this order, under the amended section 43(4B), which does not contain a statutory requirement for ratepayers seeking relief to make an application to their billing authority. This will bring Small Business Rate Relief into line with other reliefs, none of which legally require an application form to be submitted. However, as with all other reliefs, local authorities must still satisfy themselves that the ratepayer meets the eligibility criteria.

7.3 The Government is also, through this Order, removing the existing criterion which requires that ratepayers occupy only one hereditament of which the rateable value is below the small business rate relief rateable value threshold in England in order to be eligible to have their liability calculated by reference to the small business non-domestic rating multiplier. This is because

³ The rateable value of the hereditament (the measure of liability for rating) is the notional annual rent at which it is estimated the hereditament might reasonably be expected to let.

⁴ The small business non-domestic rating multiplier for a financial year is determined by the Secretary of State in accordance with the provisions contained in Schedule 7 to the 1988 Act.

evidence shows that ratepayers who would only be eligible for the small business multiplier – and not for the additional discount (relief) – are a large proportion of those that are not claiming the relief. This will therefore make it easier for authorities to apply the lower multiplier to bills. It should be noted, however, that as small business rate relief can only be granted in respect of occupied properties, liability in respect of unoccupied properties cannot be calculated by reference to the small business multiplier and the changes do not, therefore, affect the position for unoccupied properties. Neither do the changes affect the position for ratepayers entitled to other mandatory reliefs.

7.4 The single property criterion is remaining in place in order for ratepayers to be eligible for a discount (i.e. relief in addition to having liability calculated by reference to the small business multiplier). Provision has been made for this in prescribing the amount of E (which determines the amount of relief an eligible ratepayer receives) in articles 3 and 4 of the order. It should be noted that where a ratepayer meets the sole property criterion because other hereditaments the ratepayer occupies meet the conditions for being disregarded (see articles 3(6) and 4(7) of the Order), the small business non-domestic rating multiplier should be used to calculate liability in respect of the disregarded hereditaments (albeit the disregarded properties will not be eligible for the additional relief which can only be granted in respect of one property).

7.5 In addition, in the Autumn Statement the Chancellor announced that the previously announced doubled level of small business rate relief, which was to apply for the first 6 months of the 2012/13 financial year, would be extended to cover the whole of the 2012/13 financial year. Article 4 of this Order implements that commitment. The Non-Domestic Rating (Collection and Enforcement) (Amendment) (England) Regulations 2012 (S.I. 2012/24) remove the instalment plan put in place to deal with what would have been (without the Chancellor's November announcement) an uneven level of Small Business Rate Relief in 2012-13. Authorities will therefore be able to bill using the usual instalment plan.

8. Consultation outcome

The Government consulted key business partners, including the Federation of Small Businesses, on options for delivering the Coalition Agreement commitment to find a practical way to make Small Business Rate Relief automatic. The responses established that there was no practical way to make Small Business Rate Relief (in its existing form) fully automatic. In consequence the Government committed to make the changes explained in paragraphs 7.1 to 7.4 above. Further details of options can be found in the Impact Assessment at the following link:

<http://www.communities.gov.uk/publications/localgovernment/localismsmallbusiness>

9. Guidance

The Government is providing information to authorities on the delivery of the policy changes through the usual method of Business Rates Information Letters. The letters can be found on the Department for Communities and Local Government website at the following link:

<http://www.communities.gov.uk/localgovernment/localgovernmentfinance/businessrates/busratesinformationletters/>

10. Impact

An Impact Assessment can be found on the Department for Communities and Local Government website at the following link:

<http://www.communities.gov.uk/publications/localgovernment/localismsmallbusiness>

11. Regulating small business

The legislative changes contained in this Order are intended to benefit small businesses. Further details can be found in the Impact Assessment mentioned in paragraph 10.

12. Monitoring & review

Details of the monitoring and review are contained within the Impact Assessment.

13. Contact

David McDonald at the Department for Communities and Local Government
Tel: 0303 44 42135 or email: david.mcdonald@communities.gsi.gov.uk can answer any queries regarding the instrument.