EXPLANATORY MEMORANDUM TO

THE LICENSING ACT 2003 (CONSEQUENTIAL AMENDMENT) (NON-DOMESTIC RATING) (PUBLIC HOUSES IN ENGLAND) ORDER 2006

2006 No. 591

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 makes consequential amendments to the Non-Domestic Rating (Public Houses and Petrol Filling Stations) (England) Order 2001 (S.I. 2001/1345) ("the 2001 Order") following the coming into force of the Licensing Act 2003 ("the Act"). The 2001 Order extends rural rate relief to certain pubs and petrol filling stations; one of the criteria for a pub to benefit from the relief is that it fits the definition of "public house". This definition requires updating to bring it into line with the new licensing arrangements introduced by the Act.

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

3.1 None.

4. Legislative Background

4.1 The Order follows the implementation of the Act, which came fully into force on 24th November 2005.

4.2 Section 198(2) of the 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 second use of this power, the first being the Licensing Act 2003 (Consequential Amendments) Order 2005 (S.I. 2005/3048).

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 pubs in rural areas which fulfil the general criteria in subsection (6B) and which additionally fall within the definition of "public house" given in the Order and which are the only property in their area which does so.

4.4 Following the coming into force of the Act, which repealed the Licensing Act 1964, the definition of "public house" given in article 1(2) of the 2001 Order requires amending to bring it into line with the new licensing regime.

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 With effect from 24th November 2005 the Licensing Act 2003 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 Licensing Act 2003 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", requires amending to reflect the new arrangements. The new definition refers to the conditions attached to a licence – that is to say whether a licence only permits the sale of alcohol for consumption off the premises or permits the sale of alcohol for consumption on and off the premises – so that the relief continues to extend to pubs only, rather than "off-licenses".

7.3 Restaurants, hotels and guest houses were excluded from the definition of "public house" by reference in the definition of "public house" in the 2001 Order to the now obsolete concept of a "Part IV licence". Under the Licensing Act 1964, this was a limited licence with conditions attached available to restaurants, hotels and guest houses which did not wish to apply for a full justice's on-licence. A "Part IV licence" was not available to a pub. However, it is possible that, contrary to the original policy intention, a business entitled to apply for a Part IV licence but which had in fact instead successfully applied for a full justice's on licence would have been a "public house" within the meaning of the 2001 Order.

7.4 As far as possible, the arrangements which existed under the 2001 Order have been replicated. However, the new and old licensing arrangements are not an exact match: a restaurant, hotel or guest house which in receipt of rural rate relief by virtue of having a full justice's on-licence could now cease to be eligible for the relief under the revised definition. Although it was never intended that restaurants, hotels or guest houses should benefit from this rate relief, the Government does not wish any business that has benefited from this anomaly in the definition of public house to suffer a sudden loss in entitlement. To achieve this, the Order provides for a transitional arrangement. Any business in receipt of rural rate relief in financial year 2005/06 which would cease to qualify following the coming into force of the Order will continue to get the relief throughout financial year 2006/07 before entitlement ceases in 2007/08.

7.4 When the 2001 Order was debated in the House of Lords, Baroness Farrington of Ribbleton, for the Government said:

"My Lords, this order allows a mandatory 50 per cent rate relief to a pub … in a village with a population of up to 3,000 provided it is the sole such outlet in the village and has a rateable value of up to £9,000.

The order will provide support to these businesses where they are the last such outlets in a rural settlement. It is intended to help ensure that isolated settlements continue to have access to essential community services ..."[1]

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

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.

[1] See Hansard, House of Lords, 30th March 2001, Column 584