EXPLANATORY MEMORANDUM TO

THE NON-DOMESTIC RATING (SMALL BUSINESS RATE RELIEF) (ENGLAND) REGULATIONS 2023

2023 No. 1250

1. Introduction

1.1 This explanatory memorandum has been prepared by Department for Levelling Up, Housing and Communities by Command of His Majesty.

2. Purpose of the instrument

2.1 Small businesses may be eligible for up to 100% relief from business rates. This instrument sets the conditions which must be satisfied for that relief to apply and determines the value of the relief. The policy regarding the relief is unchanged but this instrument is needed to replace an earlier set of regulations following changes to the configuration of the relevant enabling powers.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Section 43 of the Local Government Finance Act 1988 ("the 1988 Act") determines the liability for non-domestic rates for occupied properties (known in rating law as occupied "hereditaments") on rating lists held by local authorities. Section 43(4A) provided for the chargeable amount to be reduced where conditions prescribed by the Secretary of State were satisfied. The amount of reduction was determined by the factor E which was calculated in accordance with provisions also prescribed by the Secretary of State under section 44(9) of the 1988 Act.

6.2 These were the provisions under which the government delivered Small Business Rate Relief (SBRR). The Non-Domestic Rating (Reliefs, Thresholds and Amendment) (England) Order 2017 ("the 2017 Regulations") contained the conditions which must be satisfied for SBRR to apply and the provisions to calculate the value of the factor E (and therefore the value of the relief).

6.3 The Non-Domestic Rating Act 2023 ("the 2023 Act") received Royal Assent on 26 October 2023. Section 1 of the 2023 Act repealed and re-enacted the provisions for determining the chargeable amount for occupied hereditaments in a new Schedule 4ZA to the 1988 Act. The provisions allowing for SBRR have been reproduced at paragraph 4 and paragraph 10 of Schedule 4ZA including the powers for the Secretary of State to prescribe conditions (paragraph 4(2)(a)) and prescribe provisions for calculating the factor E (paragraph 10(6)).

6.4 Under section 19(1) and (2) of the 2023 Act, the new Schedule 4ZA has effect from the financial years beginning 1 April 2024 onwards. This instrument will from 1 April 2024 prescribe the conditions which must be met for SBRR to apply and the provisions for calculating the factor E (and therefore the level of relief). It replaces the provisions in the 2017 Regulations.

6.5 Prior to the amendments made by the 2023 Act, only hereditaments to which section 43(4B) of the 1988 Act applied were eligible for the lower Small Business Non-Domestic Multiplier (defined as B in section 44 of the 1988 Act) rather than the National Non-Domestic Multiplier (defined as D in section 44 of the 1988 Act). Therefore, the 2017 regulations provided rules for determining which ratepayers are entitled to the Small Business Non-Domestic Multiplier (those with a rateable value less than £51,000)[1]. Paragraph 10(9) of the new Schedule 4ZA contains new powers allowing the Treasury to prescribe whether the multipliers B or D should apply to a hereditament. The government intend to use these powers to directly prescribe the threshold for the Small Business Non-Domestic Multiplier and, accordingly, such a provision has not been replicated in this instrument.

7. Policy background

What is being done and why?

7.1 The policy on SBRR has not changed since 1 April 2017. The purpose of the policy is to target relief at small business. Therefore, SBRR is available on occupied local list hereditaments of up to £15,000 rateable value where the ratepayer occupies only one hereditament in England, except that occupation of other hereditaments is ignored where:

- the ratepayer has occupied the further hereditament for less than 12 months (this gives businesses a 12 month period of grace when they expand into a 2nd or further properties). SBRR is not available on the other properties, or
- the other hereditaments are individually less than £2,900 rateable value and collectively less than £28,000 (where the main hereditament is in greater London) or £20,000 (outside London). This allows businesses to take, for example, lock-ups and garages without losing their SBRR on (say) their shop. Again SBRR is not available on those further properties.

7.2 For eligible hereditaments, the relief is 100% up to £12,000 rateable value which then tapers down to 0% at £15,000 rateable value.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

[1] Under the existing law this does not extend to charities, unoccupied properties or properties on the central rating list as they are not entitled to SBRR.

9. Consolidation

9.1 The instrument consolidates the rules for the SBRR scheme.

10. Consultation outcome

10.1 The policy on SBRR has been unchanged since 2017 and no consultation was undertaken.

11. Guidance

11.1 No guidance has been provided with this instrument as it does not change the policy on SBRR. Existing guidance on SBRR is available on gov.uk[2] and the Department for Levelling Up, Housing and Communities provides general guidance to local authorities through its Business Rates Information Letters[3].

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies as the instrument does not change the policy on SBRR.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because it amends a local taxation regime and amendments to any tax are excluded from the definition of a regulatory provision[4].

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 The instrument does not change the policy on SBRR but to minimise the impact of the requirements on small businesses (employing up to 50 people), local authorities are allowed to determine the least burdensome method of identifying eligible small businesses. There is no legal requirement for an application for SBRR.

14. Monitoring & review

14.1 Data on the volume and value of SBRR awards is collected from local government and reported in the Department's Non-Domestic Rating Returns[5]. The government continues to keep the administration of business rates under review[6].

15. Contact

15.1 Nick Cooper at the Department of Levelling Up, Housing and Communities Telephone: 0303 444 3610 or email: nick.cooper@levellingup.gov.uk can be contacted with any queries regarding the instrument.

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[2] https://www.gov.uk/apply-for-business-rate-relief/small-business-rate-relief
[3] https://www.gov.uk/government/collections/business-rates-information-letters
[4] Section 22(4)(a) of the Small Business, Enterprise, and Employment Act 2015.
[5] https://www.gov.uk/government/collections/national-non-domestic-rates-collected-by-councils
[6] The instrument, which is in connection with a local taxation regime, is not subject to the duty to review regulatory provisions in secondary legislation in section 28 of the Small Business, Enterprise, and Employment Act 2015.

15.2 Chris Megainey, Deputy Director for Local Taxation, at the Department for Levelling Up Housing and Communities, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Simon Hoare at the Department for Levelling Up Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.