EXPLANATORY MEMORANDUM TO

THE NON-DOMESTIC RATING (SMALL BUSINESS RATE RELIEF) (ENGLAND) (AMENDMENT) (No.2) ORDER 2009

2009 No. 3175

THE NON-DOMESTIC RATING (RURAL SETTLEMENTS) (ENGLAND) (AMENDMENT) ORDER 2009

2009 No. 3176

THE NON-DOMESTIC RATING (STUD FARMS) (ENGLAND) ORDER 2009

2009 No. 3177

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 Non-Domestic Rating (Small Business Rate Relief) (England) (Amendment) (No.2) Order 2009

2.1 This instrument amends the Non-Domestic Rating (Small Business Rate Relief) (England) Order 2004[1] ("the 2004 SBRR Order")[2]. Amendments are being made for two purposes.

2.2 Firstly, with effect from 1st April 2010 the rateable value thresholds prescribed in the 2004 Order – which determine a ratepayer's entitlement to Small Business Rate Relief ("SBRR") and the amount of relief – are being increased to take account of changes to rateable values of hereditaments[3] due to occur with effect from 1st April 2010 as a result of revaluation[4]. Secondly, an amendment is being made so that where a ratepayer has made an application in respect of one valuation period and on the first day of the new valuation period the conditions for eligibility for SBRR are satisfied in respect of the hereditament and the ratepayer, the ratepayer need not make a fresh application in respect of the new valuation period.

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[1] S.I. 2004/3315.

[2] The 2004 Order has been amended by the Non-Domestic Rating (Small Business Rate Relief) (Amendment) (England) Order 2006 (S.I. 2006/2313) and the Non-Domestic Rating (Small Business Rate Relief) (England) (Amendment) Order 2009 (S.I. 2009/354) and references in this explanatory memorandum to the 2004 Order are references to that Order as amended by the 2006 and 2009 Orders.

[3] A hereditament is the unit of property which is the subject of rating and 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] Pursuant to section 41(2) of the 1988 Act non-domestic properties are re-valued every 5 years and the next revaluation (revaluation 2010) will have effect from 1st April 2010 to 31st March 2015.

The Non-Domestic Rating (Rural Settlements) (England) (Amendment) Order 2009

2.3 This Order amends the Non-Domestic Rating (Rural Settlements) (England) Order 1997 ("the 1997 Order") to increase the rateable value thresholds for rural rate relief to take account of changes to rateable values of hereditaments due to occur with effect from 1st April 2010 as a result of revaluation.

The Non-Domestic Rating (Stud Farms) (England) Order 2009

2.4 This Order makes provision to increase the amount of the rateable value deduction for stud farms to take account of changes to rateable values of hereditaments due to occur with effect from 1st April 2010 as a result of revaluation.

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

None

4. Legislative Context

The Non-Domestic Rating (Small Business Rate Relief) (England) (Amendment) (No.2) Order 2009

4.1 The 2004 SBRR 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 SBRR.

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

a) the rateable value of the hereditament on the first chargeable day of the 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 SBRR Order prescribes the conditions and form of application for the purposes of subsection (4B). It also prescribes the amount of E which is a value used in the formula used to calculate a ratepayer's liability to non-domestic rates where they are entitled to SBRR[5].

[5] See sections 44(9) and 43(4A) of the 1988 Act.

4.4 The Non-Domestic Rating (Small Business Rate Relief) (Amendment) (England) Order 2006 amended the 2004 SBRR Order so that, amongst other things, a ratepayer only had to apply for small business rate relief once between each revaluation of non-domestic hereditaments. This Order makes a further change to the 2004 SBRR Order so that ratepayers will not have to reapply between revaluations as long as they meet the conditions which apply at the beginning of the new valuation period.

The Non-Domestic Rating (Rural Settlements) (England) (Amendment) Order 2009

4.5 The 1997 Order was made under sections 43(6B)(b)[6] and 47(3A)(b)[7] of 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(6A) provides the formula to be used where subsection (6B) applies and, in practice, these provisions give effect to mandatory rural rate relief. Section 47 of the 1988 Act makes provision about discretionary rate relief which may be granted by the billing authority in certain cases, including where the rural settlement condition is met. Subsection (3A) sets out the criteria which apply when ascertaining whether the rural settlement condition is met which include (see subsection (3A)(b)) that the rateable value of the hereditament shown in the local non-domestic rating list at the beginning of the chargeable financial year is not more than any amount prescribed by the Secretary of State by order.

4.6 Article 3 of the 1997 Order, which this Order amends, prescribes rateable value limits above which hereditaments will not be eligible for mandatory or discretionary relief. Article 3 of the 1997 Order has been amended by the Non-Domestic Rating (Rural Settlements) (England) (Amendment) Order 2001 and the Non-Domestic Rating (Rural Settlements) (England) (Amendment) Order 2004 ("the 2004 Rural Settlements Order") as part of earlier revaluations.

The Non-Domestic Rating (Stud Farms) (England) Order 2009

4.7 This Order replaces the Non-Domestic Rating (Stud Farms) (England) Order 2004 ("the 2004 Stud Farms Order") for hereditaments shown on non-domestic rating lists compiled on or after 1st April 2010. The Order is made under paragraph 2A of Schedule 6 to the Local Government Finance Act 1988 ("the 1988 Act") which was inserted by sections 79(3) and 139 of and paragraph 38(11) of Schedule 5 to the Local Government and Housing Act 1989 (c.42).

4.8 Paragraph 2A provides for deductions to be made from what would otherwise be the rateable value of hereditaments comprising buildings used in whole or in part for the breeding and rearing of horses and ponies, or for either purpose, and which are occupied together with agricultural land or buildings ("stud farm hereditaments"). The deduction is to be the smaller of the amount prescribed in the Order and the amount which would otherwise be the rent that a hypothetical tenant would pay for so much

[6] Subsection (6B) was inserted by section 1 of, and paragraph 2 of Schedule 1 to, the Local Government and Rating Act 1997.
[7] Subsection (3A) was inserted by section 1 of, and paragraph 3 of Schedule 1 to, the Local Government and Rating Act 1997.

of the hereditaments as consist of buildings used for such purposes. That reduced rateable value will then be used to calculate the ratepayer's liability to non-domestic rates under the relevant provisions of the 1988 Act.

5. Territorial Extent and Application

These instruments apply to England.

6. European Convention on Human Rights

As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statements are required.

7. Policy background

- ***What is being done and why***

Changes to rateable value limits and deductions

7.1 In July 2009, in the consultation paper on the transitional arrangements for the non-domestic rating revaluation 2010 in England[8], the Government announced the overall trends arising from increases in rateable values across England as part of the revaluation of hereditaments that is due to take effect from 1st April 2010. All three of these instruments make changes which increase rateable value limits or deductions from rateable values which are used to determine eligibility to certain reliefs. This is to ensure that the reliefs continue to be targeted at the right businesses following the changes to rateable values that will occur across England from 1st April 2010 as a result of the revaluation.

7.2 Non-Domestic Rating (Small Business Rate Relief) (England) (Amendment) (No.2) Order 2009 increases the rateable value thresholds as follows:

- The first condition prescribed in the 2004 SBRR Order is that the ratepayer occupies only one hereditament in England. However, in determining whether that condition is satisfied, the ratepayer's occupation of any other hereditament is to be disregarded where (amongst other things) the rateable value shown in the rating list does not exceed the amount prescribed. The Order amends the 2004 Order so that the amount prescribed will increase from £2,199 to £2,599 with effect from 1st April 2010.

- The second condition prescribed in the 2004 SBRR Order is that the rateable value of the hereditament, in respect of which relief is sought, is not more than the amount prescribed. The Order amends the 2004 SBRR Order so that with effect from 1st April 2010, the amount prescribed will rise from £21,499 to £25,299 for hereditaments situated in Greater London and from £14,999 to £17,999 for those situated outside Greater London.

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http://www.communities.gov.uk/publications/localgovernment/nndrrevaluation2010

- The Order also increases the rateable value thresholds which apply when determining the amount of E for the purposes of the formula which is used when a ratepayer is entitled to SBRR. The rateable value threshold for entitlement to the higher rate of relief is being increased from £5,000 to £6,000 and for the lower rate of relief, from £10,000 to £12,000.

7.3 The amendments made by the Non-Domestic Rating (Rural Settlements) (England) (Amendment) Order 2009 increase the rateable value thresholds for rural rate relief above which those hereditaments to which the relief would otherwise apply will not be eligible for the relief. For mandatory relief, they increase: from £7,000 to £8,500 the rateable value limit for a sole shop, general store or post office situated in a designated rural area[9]; and from £10,500 to £12,500 the rateable value limit for a sole public house or petrol station situated in a designated rural area[10]. The rateable value limit for discretionary rate relief for hereditaments situated in a designated rural area is increased from £14,000 to £16,500.

7.4 The Non-Domestic Rating (Stud Farms) (England) Order 2009 increases, with effect from 1st April 2010, the maximum amount of the rateable value deduction (see paragraph 4.8) from £3,500 to £4,200. This increase is in line with the overall increases in rateable values across England.

Change to the application process for SBRR

7.5 As explained in paragraph 2.2, as well as increasing the relevant rateable value thresholds, the Non-Domestic Rating (Small Business Rate Relief) (England) (Amendment) (No.2) Order 2009 amends the 2004 SBRR Order to remove the requirement to re-apply for SBRR in each new valuation period (where the relevant conditions are met). Where a ratepayer has made an application in respect of one valuation period and on the first day of a new valuation period the conditions for eligibility for the relief are satisfied in respect of the hereditament and the ratepayer, the existing application will also have effect as if it were an application made in respect of the new valuation period. In such cases ratepayers will not need to make fresh applications in respect of the new valuation period in order to continue to receive SBRR, nor will they need to make fresh applications in respect of subsequent valuation periods as long as they satisfy the relevant conditions for relief applicable on the first day of the subsequent valuation period concerned.

7.6 The Government has decided to remove the requirement to reapply in these circumstances in the interests of maximising take-up of SBRR by eligible businesses, and of reducing bureaucracy and costs for both small businesses and local authorities.

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[9] Under section 43(6C) of the 1988 Act, one of the conditions for mandatory rural rate relief is that the hereditament is used as a qualifying general store, qualifying food store or qualifying post office (or that it meets such other conditions as are prescribed by the Secretary of State – see footnote 10). For a general store, food store or post office to qualify it must (amongst other things) be the only hereditament used for that purpose in the rural settlement concerned.

[10] The Non-Domestic Rating (Public Houses and Petrol Filling Stations) (England) Order 2001 (SI 2001/1345) added sole petrol filling stations and sole public houses to the list of hereditaments (mentioned in footnote 9) that qualify for mandatory rural rate relief under section 43(6A) of the 1988 Act.

- ***Consolidation***

7.7 No decision has yet been taken on producing a consolidated version of the amended Non-Domestic Rating (Small Business Rate Relief) (England) Order 2004, but the matter will be kept under review.

7.8 The Non-Domestic Rating (Rural Settlements) (England) Order 1997 has been amended for each of the two revaluations since 1997 but otherwise remains largely unchanged. It is considered convenient for the users of the 1997 Order for the changes to be clearly identifiable in an amending instrument. For these reasons, the Department does not intend to consolidate the 1997 Order.

8. Consultation outcome

8.1 In respect of the changes to rateable value limits and deductions, no consultation was carried out as the changes are being made to ensure that effect continues to be given to government policy on these reliefs following the changes to rateable values that will occur across England from 1st April 2010 as a result of the revaluation.

8.2 In respect of the removal of the requirement for re-application for SBRR, there was a small, informal consultation with some local authorities and the Federation of Small Businesses which took place in September and October 2009. They gave favourable responses regarding the saving on administration costs caused by removing the requirement to re-apply for relief.

9. Guidance

9.1 Government does not intend to issue any formal guidance to accompany these instruments. However, a Business Rates Information Letter (BRIL 12[11]) was issued on 18 September 2009 to inform local authorities of the proposed removal of the need to reapply for SBRR.

10. Impact

10.1 The impact on business of the removal of the need to reapply for SBRR in each valuation period is to remove the administrative burden of re-application for those businesses that are currently receiving SBRR and that satisfy the eligibility conditions which apply in relation to the new and any subsequent valuation periods. There is no impact on charities or voluntary bodies.

10.2 The impact on the public sector is to reduce the administrative burden of managing SBRR for those authorities which have small businesses claiming relief where they remain within the new relief thresholds after revaluation.

[11] http://www.communities.gov.uk/documents/localgovernment/pdf/1338668.pdf

10.3 An Impact Assessment is attached to this memorandum. This relates to the removal of the requirement to reapply for SBRR at revaluation. It does not cover the increased thresholds for SBRR as those changes ensure that effect continues to be given to government policy on SBRR following the changes to rateable values that will occur across England from 1st April 2010 as a result of the revaluation. No impact assessment has been produced for either of the other instruments for the same reason.

10.4 The impact on business of increasing the rateable value thresholds for SBRR and rural rate relief should be positive, as it will ensure that where a ratepayer is receiving relief in respect of a hereditament prior to 1st April 2010 and on 1st April 2010 the rateable value of that hereditament increases, as long as the rateable value does not increase above the new, higher thresholds the ratepayer will continue to be eligible for relief (although the amount of relief may change as a result). Likewise, the impact on business of increasing the maximum rateable value deduction should be positive, as it will ensure that the amount of relief being received by ratepayers under the relevant provisions increases in line with the effects of revaluation.

10.5 The impact on the public sector is minimal; once the computer billing software has been updated with the new relief levels, bills will be printed and issued in the usual way. There will also be some administrative work updating website information, but this will be necessary for the 2010 revaluation and can be done in the course of business as the information is already in the public arena.

11. Regulating small business

11.1 The change to the SBRR scheme explained in paragraph 7.5 will benefit eligible small businesses by removing the requirement that ratepayers must re-apply for SBRR in respect of a new valuation period.

11.2 The Non-Domestic Rating (Rural Settlements) (England) (Amendment) Order 2009 only applies to small businesses in designated rural areas which satisfy the eligibility conditions for the relief. It is of benefit to those businesses.

11.3 The Non-Domestic Rating (Stud Farms) (England) Order 2009 does not apply to small business generally, only to stud farm hereditaments. It is of benefit to businesses which pay rates for such hereditaments.

12. Monitoring & review

12.1 The amount of the rateable value limits and deductions provided for in these instruments will continue to be monitored but it is not anticipated a review will be necessary until the next revaluation in 2015.

12.2 In relation to the change to the SBRR application process, Communities and Local Government will review the policy 18 months after the April 2010 revaluation when relevant data will be available from national non-domestic rating returns provided annually by local authorities to the Department.

13. Contact

Tim Fairclough of Business Rates and Valuation Division at Communities and Local Government (tel: 0303 44 43609 or email: tim.fairclough@communities.gsi.gov.uk) can answer any queries regarding the Non-Domestic Rating (Small Business Rate Relief) (England) (Amendment) (No.2) Order 2009.

Janet Burton at Communities and Local Government Tel: 0303 44 41756 or email: (janet.burton@communities.gsi.gov.uk) can answer any queries regarding either the Non-Domestic Rating (Stud Farms) (England) Order 2009 or the Non-Domestic Rating (Rural Settlements) (England) (Amendment) Order 2009.