EXPLANATORY MEMORANDUM TO

THE NON-DOMESTIC RATING (UNOCCUPIED PROPERTY) (ENGLAND) REGULATIONS 2009

2009 No. 353

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

2.1 The Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008 (S.I. 2008/386) ("the 2008 Regulations") prescribe the class of property whose owner will be liable for non-domestic rates when the property is empty and the exceptions from that class. One of the exceptions is that the property has a rateable value of less than £2,200. These Regulations modify that exception for the financial year beginning on 1st April 2009 only, so that the owners of empty properties with a rateable value of less than £15,000 will not be liable for rates.

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

3.1 None.

4. Legislative Context

4.1 The 2008 Regulations specify the class of property whose owner is liable for non-domestic rates when the property is empty (provided that the other conditions in section 45(1) of the Local Government Finance Act 1988 are met). This class is prescribed by regulation 3 as, broadly speaking, all properties. Regulation 4 specifies exceptions to the class so that rates are not payable in respect of the properties described in that regulation when they are empty.

4.2 Regulation 4(g) of the 2008 Regulations provides that properties with a rateable value of less than £2,200 are excepted from the class prescribed by regulation 3. For the purposes of the financial year beginning on 1st April 2009 only, these Regulations modify regulation 4(g) so that properties with a rateable value of less than £15,000 are excepted from the class prescribed by regulation 3.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

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

7.1 The Chancellor of the Exchequer announced in the 2007 Budget Report the Government's intention to modernise business rates in respect of empty properties. The purpose of the reforms is to enhance the supply of commercial property available to new and existing businesses and thereby to help to reduce rent levels, which currently place a burden on the competitiveness of the UK.

7.2 The Rating (Empty Properties) Act 2007, which received Royal Assent in July 2007, gave effect to key elements of the Government's reforms, primarily by raising the rates liability for empty commercial properties from 50% to 100% of the basic occupied rate, following an initial three month rate-free period which is provided for in the 2008 Regulations. This is extended to six months in the case of industrial properties. These arrangements took effect on 1st April 2008.

7.3 In increasing the rates liability for empty commercial properties, the Government considered that the £1.3 billion subsidy to the owners of those properties was no longer justified. The Government considers that the principle of the reforms is right for the long term and that they increase the incentive to re-let and re-develop empty property.

7.4 However, the Government has listened to concerns expressed by property owners, in particular those who own properties with low rateable values, and has decided that for the financial year 2009/10 all empty properties with rateable values up to £15,000 will be excepted from empty property rates. The Government considers that re-introducing relief for all empty properties would not be a well targeted way of assisting small business or the owners of properties with low rateable values. Time limited relief for the owners of lower value properties will help small businesses and individual property owners manage short-term pressures due to difficult property market conditions.

8. Consultation outcome

8.1 There has not been a specific consultation on this change to the empty property rates threshold, which was announced as part of the Pre-Budget Report 2008. The Government has kept empty property rates under review since the increase in the rate to 100% of the occupied rate from 1st April 2008, and has engaged generally with industry and representative groups to gain information on how the reforms are working overall.

9. Guidance

9.1 The increase in the empty property rate threshold for one year does not substantively affect the operation of the current system and no further guidance is required.

10. Impact

10.1 Any unoccupied property with a rateable value of less than £15,000 owned by either business or the public sector will not generate liability to empty rates in the financial year 2009/10.

10.2 It is estimated that this could increase the cost of relief from empty property rates by £205 million during 2009/10.

10.3 A full Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 These Regulations apply to small businesses and other businesses which own empty properties with low rateable values.

11.2 The purpose of the Regulations is to minimise the impact of empty property rates in the financial year 2009/10. Accordingly, it would not be appropriate to minimise the impact of these Regulations on firms employing up to 20 people.

11.3 The basis for the final decision was to assist small businesses and other business which own empty properties with low rateable values.

12. Monitoring & review

12.1 The policy will be reviewed on an ongoing basis.

13. Contact

13.1 Richard Enderby at the Department for Communities and Local Government, telephone 020 7944 4224 or email richard.enderby@communities.gsi.gov.uk, can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency:	Title:	
Department for Communities and Local Government	**Impact Assessment of Amendment to Empty Property Relief**	
Stage: Final Proposal Stage	**Version:** 0.1	**Date: 1 January 2009**
Related Publications:		

Available to view or download at:

http://www.

Contact for enquiries: Richard Enderby **Telephone:** 020 7944 4224

What is the problem under consideration? Why is government intervention necessary?

The current economic climate makes it harder for owners to re-let, re-develop or sell empty properties.

A time limited increase in the threshold for liability to empty property rates will help small businesses and individual owners of lower value properties manage short-term pressures due to difficult property market conditions during the current financial climate.

What are the policy objectives and the intended effects?

The aims of the policy:

(i) Exempt owners of empty non domestic properties with a rateable value below £15,000 from their business rates during the financial year 2009/10.

(ii) To help owners of low value empty properties manage short term pressures in the current financial climate.

What policy options have been considered? Please justify any preferred option.

The policy options considered were:

(i) Do Nothing; and

(ii) Raise the rateable value threshold of exemption for paying empty property rates from £2,200 to £15,000.

The preferred option is (ii) raising the rateable value threshold of exemption to £15,000, and this was announced in the Pre-Budegt Report on 24 November 2008.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? This policy will be subject to ongoing review though the annual collection of business rates statistics.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

John Healey

.....Date: 10th February 2009

Summary: Analysis & Evidence

Policy Option: Alter the exemption threshold	Description: Ensure that emprty porperties with a rateable value of less than £15,000 are not liable for empty rates in 2009/10

COSTS

ANNUAL COSTS	
One-off (Transition)	**Yrs**
£ 185 million	1
Average Annual Cost (excluding one-off)	
£ 0	

Description and scale of **key monetised costs** by 'main affected groups' Empty property relief is funded by reduced payments into the business rates pool. We estimate that this amendment could increase the cost of the relief by £205 million during 2009/10 - overall cost to Government will be £185m as a the amendment will increase corporation tax receipts.

Total Cost (PV) **£ 185 million**

Other **key non-monetised costs** by 'main affected groups'

BENEFITS

ANNUAL BENEFITS	
One-off	**Yrs**
£ 185 million	1
Average Annual Benefit (excluding one-off)	
£ 0	

Description and scale of **key monetised benefits** by 'main affected groups' This amendment could increase the tax relief to owners of empty non domestic property by £205 million in 2009/10 - overall benefit will be £185m as a the amendment will increase corporation tax receipts.

Total Benefit (PV) **£ 185 million**

Other **key non-monetised benefits** by 'main affected groups' Owners of small empty non domestic properties are likely to face particular hardship in the current economic climate. This amendment will allow exemption of business rates for properties under £15,000 RV which will aid the immediate cash-flow of affected businesses.

Key Assumptions/Sensitivities/Risks The analysis assumes that the rateable value (RV) of empty properties matches the distribution of RV for all properties. Deviations in RV of empty properties will change the cost of this scheme. It is possible that a greater share of properties will be below the £15,000 RV threshold.

Price Base Year 2009	Time Period Years 1	**Net Benefit Range** (NPV) £	**NET BENEFIT** (NPV Best estimate) **£ 185 million**

What is the geographic coverage of the policy/option?			England	
On what date will the policy be implemented?			1st April 2009	
Which organisation(s) will enforce the policy?			Local Authorites	
What is the total annual cost of enforcement for these organisations?			£ 0.00	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ 0	
What is the value of changes in greenhouse gas emissions?			£ 0	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ de minimis Decrease of £ 0 **Net Impact** **£** de minimis

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Background

1. As from 1 April 2008 the Rating (Empty Properties) Act 2007 and subsequent regulations:
   - Raised the liability of owners of empty non-industrial properties to 100% of the occupied rate after a 3 month exemption period and raised the liability of owners of empty industrial properties from the previous exemption to 100% of the occupied rate after a 6 month exemption period; and
   - Provided a new zero rate for charities and community amateur sports clubs which own empty properties;

2. The Government's objectives for these reforms to the existing empty property relief from business rates were:
   - To improve UK competitiveness, by increasing incentives for property that is empty to be either re-let or for the property and site to be re-developed and thereby reduce rents and prices for new and existing businesses;
   - To improve efficiency in land and property markets, by matching the incentives for the efficient use of property in use with similar incentives for the use of empty stock;
   - In doing so, to reduce the need for development of business premises on greenfield sites, and to provide opportunities for re-development of brownfield and for both housing and business property;
   - To reduce distortions in the tax treatment of different forms of commercial property, in particular the significant tax advantage given to long term empty warehousing and industrial premises over retail and office space; and
   - To raise revenue in the most efficient and simple way, with as few distortions to the economy and to incentives for efficient allocation of resources as possible.

3. The Government considers that in the longer term the reforms to Empty Property Relief that were effective from April 2008 are necessary for the efficient use of non domestic properties and that a £1.3 billion subsidy to owners of empty commercial property cannot be justified. Charging rates beyond the initial rate-free periods when properties stand empty increases the incentive to re-let and re-use empty property

4. However, in the current economic climate, increasing numbers of property owners may find it harder to re-let, re-develop or sell empty properties. To alleviate the short term burden on owners of small empty non domestic properties, the Government is raising the rateable value threshold for liability to empty property rates from £2,200 to £15,000. This arrangement is time limited between 1st April 2009 and 31st March 2010.

5. The time limited increase in the threshold for liability to empty property rates will help small businesses and individual owners of properties manage short-term pressures due to difficult property market conditions during the current financial climate. Owners of small empty non-domestic properties may also be able to use this time to plan ahead for the business rates they will face in the future.

6. The time limited nature of this policy had the potential to introduce a significant administrative burden to local authorities and businesses if the proposals were targeted on small businesses that have only one empty property, in a similar fashion to Small Business Rate Relief. Raising the threshold for liability to empty property rates from £2,200 to £15,000 for all empty properties is the administratively simplest way to allow increased relief to low value properties.

Impact of raising the threshold

7. This section examines the likely impact of raising the threshold for liability to empty property rates paid by the owners of empty property from a rateable value of £2,200 to £15,000.

8. **There is a large amount of uncertainty regarding these estimates. This means that any changes to our assumptions can have implications for the true value of empty property relief to be given out in 2009/10.**

9. We have very little information about the rateable values (RV) of empty properties, meaning that there is a large degree of uncertainty regarding the take up of empty property relief by eligible properties. If there are a significantly greater number of properties under the £15,000 threshold than expected then the cost of allowing 100% relief will increase accordingly.

10. For our analysis we have assumed that the RV of empty properties will match the distribution of RV of occupied properties. Currently 72% of properties in England are rated below £15,000 RV and so we have assumed that an equivalent share of empty properties will be below this threshold.

11. Empty property relief totalled £1.4 billion in 2007/08. This value is 3% of the total rateable value (RV) on the ratings list in England within this year. We applied the value of 3% to the amount of RV between £2,200 and £15,000. This calculation represents the extra cost to extend the exemption threshold to £2,200 and can be seen in table 1 below. This produces a crude estimate of the likely cost of allowing 100% relief. We expect that similar amounts of rateable value will fall under this threshold in 2009/10; historical data suggests that empty property relief given out does not differ significantly between years.

Table 1: Showing the estimated costs of raising exemption threshold from £2,200 RV to £15,000 RV.

	RV thresholds		
	£2,200 to £5,000	£5,000 to £15,000	Totals
Midpoint	£3,600	£10,000	
Number of properties	364,404	542,525	906,929
RV affected [1](£ million)	1,310	5,425	6,735
Cost of exemption [1](£ million) *(Previous row multiplied by 3%)*	***40***	***165***	***205***

[1]**Figures are rounded to the nearest £5 million**

12. Table 2 below shows the costs as detailed on the Pre-Budget Report (PBR) of 24th November 2008

Table 2: showing the costs of the policy as proposed at PBR, including the effects on corporation tax. All figures are shown in £million. The changes to the empty property relief will increase corporation tax receipts to the Treasury as busienss rates are an offset cost before the liability for corporation tax is calculated. A reduction in the relief will also reduce corporation tax receipts.

(£m)	08-09	09-10	10-11
Effect on NNDR revenue	0	-205	0
Corporation Tax consequences	0	20	10
Scoring as per PBR	0	-185	10

The lifetime of the policy

13. This policy is time limited to a year, ending on 31st March 2010. At present we expect that this policy will not be extended, and no additional costs will be introduced to the scheme after this time.

Key assumptions, sensitivities & risks

14. The estimates in the table above are subject to the following sensitivities:
    a. If the distribution of RV of empty non domestic properties does not follow the national distribution of non domestic properties, this can have implications for the cost of this policy. If more empty non domestic properties are below the £15,000 rateable value threshold than we have estimated, then the cost of allowing relief will be greater than our predicted values. If fewer empty non domestic properties become exempt from paying business rates than we have suggested, then the cost of this amendment will be lower than we have stated in table 1.
    b. We have not been able to make estimates about the current number of empty non domestic properties who may be exempt from paying business rates for another reason, for example empty properties which are listed buildings are exempt from paying empty property rates, as are properties where the owner is facing insolvency or liquidation. These permanent exemptions may mean that the figure in table 1 represents an overestimation of the numbers of businesses that would be affected by this policy, because some owners below the £15,000 RV threshold will already be allowed a business rates exemption.
    c. Since we have little data on the actual numbers of properties claiming empty property relief, we have examined the value of relief given out over previous years. The total amount of relief given out to empty properties over the past 8 years has remained relatively constant. This suggests that a significant increase in the number of claimants below £15,000 RV in 2009/10 would be unexpected, and therefore the cost of this policy is unlikely to increase substantially from our estimates above.

Environmental Costs and Benefits

15. There are no associated environmental costs or benefits with this amendment

Social Costs & Benefits

16. There are policy is aimed at helping property owners who may find it harder to re-let, re-develop or sell empty properties due to difficult property market conditions during the current financial climate. Supporting businesses in being able to trade has many social and economic benefits for the areas surrounding the business.

Impact on 'main affected groups'

17. *Owners of empty properties:* owners of low rateable value empty non-domestic properties, which may include public and private sector entities, will be exempt from business rates in 2009/10, which will alleviate financial difficulties due to difficult property market conditions during the current financial climate. In the long term this change will allow owners to plan ahead for the future of their property.

18. At the national level this will mean that 72% of all hereditaments, occupied and unoccupied, would be covered by the threshold and if any of these are empty in 2009/10 they would not be liable for empty property rates.

19. *Local Authorities:* Local authorities will not have to collect business rates from owners, including public sector entities, of empty properties below a £15,000 RV during 2009/10. The annual billing and collection of empty property rates is part of the current business rates system and this chnage should not add greatly to the administration of the current system.

Enforcement

20. Local authorities manage and enforce the busieness rates system. This is not being significantly altered by the increase of the threshold for liability to empty property rates to £15,000 RV. It is not envisaged that this change will impact greatly upon enforcement of empty property rates.

Admin Burden & Hampton Principles

21. This policy will not significantly increase the administrative burden on Local Authorities who will bill ratepayers according to their liability for rates for 2009/10.

22. The policy will not represent an additional burden for businesses affected by this scheme, as this policy will not require additional regulation or need for administration. This policy adheres with the important Hampton Principle of allowing economic progress by increasing the protection made to businesses; in this case shown by reducing the tax burden on small businesses.

EU Requirements

23. The proposal to amend empty property rates does not relate to any EU Legislation.

Value of offsetting measure

24. The government is not proposing any offsetting measure.

Greenhouse emissions

25. The amendment to empty property rates will not in itself have any effect on greenhouse emissions.

Competition Assessment

26. The Government's general presumption is that all owners of empty property should be liable for the reformed empty property rate, and that exemptions should only be provided in exceptional circumstances. This supports the overarching objectives for reform, which seek to improve competitiveness by reducing differences in the tax treatment of different types of property, and to improve efficiency by providing strong incentives to bring property back into use. Increasing the exemption threshold meets this criterion as the time limited exemption is being implemented to allow for the exceptional current financial climate.

Small Business Impact Test

27. When assessing the impact of this change to empty property rates on small businesses an important factor is the tendency of small firms to be tenants rather than owners of business property, and the incidence of the empty property rates is expected to fall primarily on owners of properties.

28. The current economic climate makes it harder for property owners to re-let, re-develop or sell empty properties and the time limited increase in the threshold for liability to empty property rates will help small businesses and individual owners of low value properties manage short-term pressures due to difficult property market conditions during the current financial climate.

Rural proofing

29. The amendment to empty property rates is expected to have broadly equivalent impacts in rural and urban areas.

Race equality

30. The initial screening test was completed and concluded that this policy would not require a full race equality impact assessment.

Disability equality

31. The initial screening test was completed and concluded that this policy would not require a full disability equality impact assessment.

Gender equality

32. The initial screening test was completed and concluded that this policy would not require a full gender equality impact assessment.

Health Impact Test

33. The initial screening test was completed and concluded that this policy would not require a fully health impact test as this policy does not have a significant impact on human health.

Human rights

34. There are two provisions of the European Convention which could be relevant to the amendment to empty property rates - Article 1 of the First Protocol and Article 14.

35. Article 1 of the First Protocol provides that everyone is entitled to the peaceful enjoyment of his possessions, and may not be deprived of them except in the public interest and subject to the conditions provided for by law and by the general principles of international law. There is an exception for the right of the State to secure the payment of taxes and discretion for the State to impose taxes in the public interest. The Department is confident that the amendment to the empty property rates regulations is in the public interest and proportionate to the policy aims.

36. The second provision is Article 14 of the Convention which provides that the enjoyment of the rights and freedoms set out in the Convention shall be secured without any discrimination. This means that any differential treatment in terms of the right to peaceful enjoyment of property, protected by Article 1 of the First Protocol, including differential treatment for tax purposes, is in principle unlawful. The European Court has, however, consistently said that differential treatment is not unlawful provided that it is objectively and reasonably justified.

Implementation/next steps

37. This Impact Assessment is attached to the regulations that will implement the amendment to empty property rates.

38. The policy will be reviewed through the current annual collection of business rates data including the amount of relief given and the number of properties that may receive the relief.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	*Results in Evidence Base?*	*Results annexed?*
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Annexes