EXPLANATORY MEMORANDUM TO

THE BUSINESS RATE SUPPLEMENTS (RATEABLE VALUE CONDITION) (ENGLAND) REGULATIONS

2009 No. 2452

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 Business Rate Supplements Act 2009 ("the Act") gives certain local authorities the power to levy a supplement – a business rate supplement or "BRS" – on the national business rate. BRS will only be payable in respect of non-domestic properties which have a rateable value that exceeds a prescribed amount. These Regulations prescribe that amount as £50,000 for non-domestic properties in England.

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

3.1 None.

4. Legislative Context

4.1 In England, the Act gives county councils, district councils in areas where there is no county council, and the Greater London Authority ("levying authorities") the power to levy BRS on the national non-domestic rate, commonly referred to as the business rate, with effect from 1st April 2010.

4.2 Business rates are payable under Part 3 of the Local Government Finance Act 1988. Under that Part, all non-domestic properties are ascribed a rateable value for the purposes of calculating the ratepayer's liability in respect of that property.

4.3 By virtue of section 12(1) of the Act, the ratepayer in respect of a property will not be liable to a BRS on top of their business rates liability if the property has a rateable value that does not exceed a prescribed amount. In England, these Regulations prescribe that amount as £50,000, so that in areas where one is levied a BRS will be payable only in respect of properties with a rateable value of £50,001 and above.

4.4 The Act received Royal Assent on 2nd July 2009 and the power in section 12(1) is exercised for the first time in making these Regulations.

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 negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Sir Michael Lyons' Inquiry into Local Government[1], published in March 2007, identified the need for local authorities to have greater flexibility to raise revenue to invest in their local areas. In his final report, Sir Michael recommended introducing a new local power to set a supplement on the current national non-domestic rate, or business rate.

7.2 The Government responded to Sir Michael Lyons' recommendation in Budget 2007, stating that "a local government supplement has the potential to support local economic development, but would need to be subject to credible accountability to ratepayers and real protection for businesses – particularly [Small to Medium Sized Enterprises] – that might be disproportionately affected".

7.3 Following this, in July 2007, the Government published the review of sub-national economic development and regeneration[2] (known as the sub-national review ("SNR")). The SNR stated that "[BRS] have the potential to provide a powerful new tool for local authorities to invest in infrastructure to support long-term economic growth in their areas, backed by mechanisms to ensure that there is a strong voice for business and supplements are introduced only where they can command support from all those affected".

7.4 In October 2007, alongside the 2007 Pre-Budget Report and Comprehensive Spending Review, the Government published *Business rate supplements: a White Paper*[3] ("the White Paper").

7.5 The White Paper provided that, in England, BRS would not be payable in respect of properties with a rateable value of £50,000 or below. This was on the basis of economic evidence that suggested that smaller businesses tended to be disproportionately affected by changes to business rates. In order to offer those businesses protection, and in support of the Government's objectives for enterprise, the Government considered that there was therefore a case for setting a threshold for liability to BRS.

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[1] The *Lyons Inquiry into Local Government*, *Place Shaping: a shared ambition for the future of local government*, Sir Michael Lyons, March 2007.
[2] *Review of sub-national economic development and regeneration*, HM Treasury, Department for Business Enterprise and Regulatory Reform and Communities and Local Government, July 2007.
[3] *Business rate supplements: a White Paper*, HM Treasury and Communities and Local Government, October 2007.

7.6 An assessment of potential yield, based on 2007 data, showed that business properties with a rateable value of £50,000 or less would generate 31 per cent of the total yield available through a BRS. Exempting those properties would protect over 90% of businesses in England while preserving most of the potential yield. To provide consistency, the White Paper provided that the threshold of £50,000 would apply across England.

7.7 The White Paper also recognised that some levying authorities might wish to offer more generous safeguards for local businesses and signalled that the proposed legislation would make provision for them to do so. That provision has been made in section 15 of the Act.

8. Consultation outcome

8.1 The plans set out in the White Paper, including the £50,000 threshold, followed extensive debate with key stakeholders, including the following.

- The *Lyons Inquiry into Local Government*, which recommended introducing a new local flexibility to set a supplement on the current national business rate, followed a wide consultation with experts, stakeholders and the public.

- The SNR, which followed Sir Michael Lyons' recommendation to introduce a local flexibility to set a supplement on national business rates, also followed extensive engagement with stakeholders.

- Prior to the publication of the White Paper, informal discussions were held with key stakeholders including the Local Government Association, London Councils, the British Retail Consortium, British Chambers of Commerce and the Federation of Small Businesses.

- A second series of informal discussions was held with key stakeholders, including many of those involved in the discussions prior to the publication of the White Paper. This provided an opportunity to reassure stakeholders that the Government's intentions had not changed since publication of the White Paper.

8.2 The £50,000 threshold for England was also the subject of debate during the passage of the Act through Parliament and this provided the opportunity for the Government to restate its intention to set the threshold at this level.

9. Guidance

9.1 In May 2009, the Government issued guidance for levying authorities on how to assess the compliance of proposed BRS arrangements with the requirement in the Act that the money they raise is only used for expenditure that the authority would not otherwise have incurred (the "additionality" requirement); and on assessing project costs to establish whether a ballot is required on BRS proposals. Further guidance will be issued shortly on the use of BRS revenues and on governance arrangements for BRS funded projects. No specific guidance is required in respect of these Regulations.

10. Impact

10.1 The impact on business, charities or voluntary bodies is that liability to BRS will only accrue for those organisations where their properties have a rateable value of £50,001 or above. Businesses, charities and voluntary bodies whose properties' rateable values are below this threshold will not be liable. The Act also provides flexibility for levying authorities to increase the threshold for liability to their BRS so that further properties are excluded.

10.2 Section 14 of the Act caps levying authorities' annual BRS multiplier at 0.02 and, therefore, annual BRS liability at 2p per pound of rateable value. Those businesses, charities and voluntary bodies that are not exempt from paying BRS will pay less if the levying authority sets a lower multiplier for a BRS and will have their BRS liability reduced if they receive relief from their business rates liability. The Act provides that any relief on a business rates bill should be mirrored for BRS. For example, a charity that receives 80% mandatory relief from business rates will receive 80% relief from its BRS liability.

10.3 The impact on the public sector is the same as the impact on business, charities and voluntary bodies: there is no distinction in the liability of public and private sector organisations.

10.4 An Impact Assessment has not been prepared for this instrument.[4]

11. Regulating small business

11.1 The legislation applies to small business.

11.2 All properties with a rateable value of £50,000 or less are excluded from any potential liability for BRS. Therefore, firms employing up to 20 people whose properties have a rateable value of £50,000 or less will be exempt from paying BRS.

11.3 The basis for the final decision on what action to take to assist small business is that, as explained in section 7 above, economic evidence suggested that smaller businesses tended to be disproportionately affected by changes to business rates. In order to offer those businesses protection, the Government considered that there was therefore a case for setting a threshold for liability to BRS, and that £50,000 is the appropriate level.

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[4] An assessment of the impact of a rateable value threshold of £50,000 for BRS was prepared as part of the Impact Assessment for the introduction of the Business Rate Supplements Bill to Parliament. A copy of that assessment is available at www.communities.gov.uk/publications/localgovernment/businessratessupplementsia. An updated assessment reflecting amendments to the Bill that are incorporated in the Act will be published in due course. However, no amendments were made to the Bill that affected the £50,000 rateable value threshold.

12. Monitoring & review

12.1 The BRS policy will be reviewed to establish the actual costs and benefits, and whether or not the policy has achieved the desired effects, five years after Royal Assent to the Act.

13. Contact

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