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LOCAL GOVERNMENT, ENGLAND

RATING AND VALUATION, ENGLAND

**The Business Rate Supplements (Transfers to Revenue
Accounts) (England) Regulations 2009**

<i>Made</i> - - - -	<i>18th September 2009</i>
<i>Laid before Parliament</i>	<i>23rd September 2009</i>
<i>Coming into force</i> - -	<i>15th October 2009</i>

The Secretary of State, in exercise of the powers conferred by section 29(1) and (3) of, and paragraphs 2 and 5 of Schedule 3 to, the Business Rate Supplements Act 2009(a), makes the following Regulations:

Citation, application and commencement

1. These Regulations, which apply in relation to England only, may be cited as the Business Rate Supplements (Transfers to Revenue Accounts) (England) Regulations 2009 and shall come into force on 15th October 2009.

Interpretation

2. In these Regulations—

“the Act” means the Business Rate Supplements Act 2009;

“business day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day that is a bank holiday in England under the Banking and Financial Dealings Act 1971(b)

“relevant levying authority”, in relation to a billing authority and a financial year, means the levying authority that served on the billing authority a notice under section 18 or 19(3) of the Act in respect of that year; and

“revenue account” means the account maintained by a levying authority under paragraph 1(1) of Schedule 3 to the Act.

Transfer of BRS Revenues: billing authorities which are levying authorities

3. A billing authority which is a levying authority shall make the transfers required by paragraph 1 of Schedule 1 to these Regulations in accordance with paragraphs 2 and 3 of that Schedule.

(a) 2009 c.7. These powers are exercisable by the appropriate national authority. The appropriate national authority is defined by section 30(1)(a) in relation to local authority areas in England as the Secretary of State.
(b) 1971 c. 80.

Transfer of BRS Revenues: billing authorities which are not levying authorities

4. A billing authority which is not a levying authority shall transfer the amounts it receives in respect of any BRS levied for its area from its collection fund to the relevant levying authority's revenue account in accordance with the rules in Schedule 2.

Amendment of the Local Authorities (Funds) (England) Regulations 1992

5.—(1) Schedule 2 (rules for estimation and apportionment of surpluses and deficits) to the Local Authorities (Funds) (England) Regulations 1992(a) is amended as follows.

(2) In paragraph 2—

- (a) in sub-paragraph (3)(c) after “non-domestic rates” insert “, business rate supplement”;
and
- (b) in sub-paragraph (4)(c) after “non-domestic rates” insert “, business rate supplement”.

Signed by authority of the Secretary of State for Communities and Local Government

18th September 2009

Shahid Malik
Parliamentary Under Secretary of State
Department for Communities and Local Government

SCHEDULE 1

Regulation 3

Transfer of BRS Revenues: billing authorities which are levying authorities

Transfers

1. A billing authority which is a levying authority shall transfer any amounts it receives in respect of BRS during a financial year from its collection fund to its revenue account.

In year transfers

2.—(1) Subject to sub-paragraph (2), on, or as soon as possible after, the first business day of each calendar month in each financial year commencing with the financial year beginning in 2010, the billing authority shall transfer the amount it received in respect of BRS in the previous month calculated in accordance with sub-paragraph (3).

(2) Nothing in sub-paragraph (1) requires a calculation or transfer to be made in the month of April.

(3) The amount to be transferred shall be calculated in accordance with the formula—

$$\left(\frac{A}{B + C} \right) C$$

where—

(a) S.I. 1992/2428, to which there are amendments not relevant to these Regulations.

A is the aggregate amount paid into the billing authority's collection fund under section 90(1)(c) and (ca) of the 1988 Act(a) in the month to which the calculation relates ("the relevant month");

B is the total liability under Part 3 of the 1988 Act of all non-domestic ratepayers in the billing authority's area that should have been discharged during the relevant month, less the amount of any payments the billing authority was required to make in that month to non-domestic ratepayers in respect of non-domestic rates; and

C is the total liability under the Act of those liable to the BRS in the billing authority's area that should have been discharged during the relevant month, less the amount of any payments the billing authority was required to make in that month to those liable to the BRS in respect of the BRS.

End of year transfers

3.—(1) No later than 30th April in each financial year commencing with the financial year beginning in 2010, the billing authority shall calculate—

- (a) the amount it received in respect of BRS in the preceding financial year;
- (b) the amount it transferred to its revenue account during that year; and
- (c) the difference between those two amounts.

(2) Where the amount calculated under sub-paragraph (1)(a) is more than the amount calculated under sub-paragraph (1)(b), the billing authority shall transfer the amount of the difference from its collection fund to its revenue account.

(3) Where the amount calculated under sub-paragraph (1)(a) is less than the amount calculated under sub-paragraph (1)(b), the billing authority shall either—

- (a) transfer the amount of the difference from its revenue account to its general fund; or
- (b) reduce an instalment or instalments to be transferred under paragraph 2 after the date of the calculation made under this paragraph by an amount equal to the amount of the difference.

(4) For the purposes of sub-paragraph (1), the amount that a billing authority receives in a financial year ("year X") in respect of BRS is calculated in accordance with the formula—

$$\left(\frac{D}{E + F} \right) F$$

where—

D is the aggregate amount paid into the billing authority's collection fund under section 90(1)(c) and (ca) of the 1988 Act in the year X;

E is the total liability under Part 3 of the 1988 Act of all non-domestic ratepayers in the billing authority's area—

- (a) that should have been discharged in the year X, and
- (b) that should have been discharged in an earlier financial year but which was not, less the amount of any payments the billing authority was required to make in year X to non-domestic ratepayers in respect of non-domestic rates; and

F is the total liability under the Act of those liable to BRS in the billing authority's area—

- (a) that should have been discharged in the year X, and
- (b) that should have been discharged in an earlier financial year but which was not,

(a) Section 90 was substituted by paragraph 20 of Schedule 10 to the Local Government Finance Act 1992 (c. 14). Subsection (1)(ca) was inserted by paragraph 4 of Schedule 3 to the Act.

less the amount of any payments in respect of BRS that the billing authority was required to make in year X to those liable to BRS.

(5) Transfers under sub-paragraphs (2) and (3)(a) shall be made as soon as practicable in the financial year following the one to which they relate.

(6) Transfers under sub-paragraph (3)(b) shall be made on the same day the instalment to which they relate is transferred.

SCHEDULE 2

Regulation 4

Transfer of BRS Revenues: billing authorities which are not levying authorities

Interpretation

1. In this Schedule—

“final return”, except in the expressions “revised provisional return” and “varied provisional return”, means the return required by paragraph 7(1);

“provisional return” means the return required by paragraph 2(1);

“revised provisional return” means the return permitted by paragraph 6(2);

“the new notice” means the notice referred to in paragraph 5(1); and

“variation provisional return” means the return required by paragraph 5(2).

Provisional returns

2.—(1) On receipt of a notice under section 18, or a notice under section 19(3) which has been served in the circumstances mentioned in section 19(1), of the Act, a billing authority shall submit to the relevant levying authority a return (a “provisional return”) setting out the amount it expects to transfer from its collection fund to the levying authority’s revenue account in the financial year to which the notice relates (“the relevant year”).

(2) The amount to be shown in the billing authority’s provisional return shall be calculated in accordance with the formula—

$$A - B$$

where—

A is the billing authority’s estimate of the aggregate amount it will collect by way of BRS in the relevant year; and

B is 5% of A.

(3) The provisional return shall include an explanation of how the billing authority arrived at “A”.

(4) Where notice is served on the billing authority under section 18 of the Act, the provisional return must be submitted no later than 31st March in the financial year preceding the relevant year.

(5) Where notice is served on the billing authority under section 19(3) in the circumstances mentioned in section 19(1) of the Act, the provisional return must be submitted no later than the 31st day after receipt of the notice.

Assumptions relating to provisional returns

3.—(1) In estimating “A” for the purposes of paragraph 2, the billing authority shall make the same assumptions about the matters listed in sub-paragraph (2) as it made under Schedule 2 (assumptions relating to provisional amounts) to the Non-Domestic Rating Contributions

(England) Regulations 1992(a) for the purposes of the calculation required by paragraph 5(2) of Schedule 8 (non-domestic rating: pooling) to the 1988 Act.

(2) The matters are—

- (a) the hereditaments that will be shown in the non-domestic rating list for the billing authority's area in the relevant year;
- (b) the rateable value of those hereditaments;
- (c) whether a hereditament is occupied, partly occupied or unoccupied; and
- (d) the identity of the occupier or, as the case may be, owner of a hereditament.

Transfer of funds by instalments under provisional returns

4.—(1) A billing authority shall transfer to the relevant levying authority's revenue account the amount shown in its provisional return.

(2) That amount shall be transferred in instalments and the number of instalments shall be equal to the number of months in which BRS is to be collected in the relevant year.

(3) Subject to sub-paragraph (4), the amount of each instalment shall be calculated by dividing the amount shown in the provisional return by the number of instalments to be paid.

(4) Where that calculation would result in instalments not equal to a whole number of pounds, each instalment other than the final instalment shall be rounded to the nearest pound; and the amount of the final instalment shall be such as is required to ensure that the amount shown in the provisional return is transferred.

(5) Instalments shall be payable on or before the final business day of each month in which BRS is to be collected.

Revisions to provisional returns and adjustment of instalments following a variation to a BRS

5.—(1) This paragraph applies where a levying authority serves a notice ("the new notice") under section 19(3), served in the circumstances mentioned in section 19(2), of the Act in respect of a financial year ("the year concerned") and the billing authority is required by section 20(4) of the Act to make new calculations.

(2) The billing authority shall submit to the relevant levying authority a return (a "variation provisional return") setting out—

- (a) the amount it has transferred from its collection fund to the relevant levying authority's revenue account during the year concerned;
- (b) the total amount it expects to transfer from its collection fund to the relevant levying authority's revenue account during the year concerned; and
- (c) the amount of the difference.

(3) For the purposes of sub-paragraph (2), the total amount the billing authority expects to transfer from its collection fund to the relevant levying authority's revenue account during the year concerned shall be calculated in accordance with the formula—

$$(C + D) - E$$

where—

C is the billing authority's estimate of the aggregate amount it will collect by way of BRS in respect of each day of the financial year to which the new notice does not apply;

D is the billing authority's estimate of the aggregate amount it will collect by way of BRS in respect of each day of the financial year to which the new notice applies; and

(a) S.I. 1992/3082, to which there are amendments not relevant to these Regulations.

E is 5% of the aggregate of C and D.

(4) Paragraph 3 shall apply to the estimation of “C” and “D” as it applies to the estimation of “A”.

(5) The variation provisional return shall include an explanation of how the billing authority arrived at “C” and “D”.

(6) The variation provisional return is to be submitted no later than the 31st day after receipt of the new notice.

(7) If the amount referred to in sub-paragraph (2)(c) is greater than zero, the rules in paragraph 4 shall apply to the variation provisional return as if—

- (a) in sub-paragraph (1) of that paragraph “the amount shown in its provisional return” were a reference to the amount referred to in sub-paragraph (2)(c); and
- (b) in sub-paragraph (2) of that paragraph “the number of months in which BRS is to be collected in the relevant year” were a reference to the number of months in which BRS is to be collected in the relevant year after the variation to which the new notice relates takes effect.

(8) If the total amount calculated under sub-paragraph (3) is equal to the aggregate of the instalments the billing authority has paid to the relevant levying authority in the relevant year, no further instalments shall be payable.

(9) If the total amount calculated under sub-paragraph (3) is less than the aggregate of the instalments the billing authority has paid to the relevant levying authority in the relevant year no further instalments shall be payable and the relevant levying authority shall either—

- (a) refund to the billing authority from its revenue account the amount of the difference; or
- (b) authorise the billing authority to reduce an instalment or instalments to be transferred under paragraph 4 after the date of the calculation made under this paragraph by the amount of the difference.

Other revisions to provisional returns and adjustments of instalments by billing authorities

6.—(1) During a financial year, a billing authority may recalculate—

- (a) the amount calculated under paragraph 2(2);
- (b) the amount calculated under paragraph 5(3); or, as the case may be,
- (c) the amount last calculated under sub-paragraph (3) of this paragraph.

(2) Where the conditions in sub-paragraph (6) are satisfied, the billing authority may submit to the relevant levying authority a return (a “revised provisional return”) setting out—

- (a) the amount it has transferred from its collection fund to the relevant levying authority’s revenue account during the year;
- (b) the total amount it expects to transfer from its collection fund to the relevant levying authority’s revenue account during the financial year; and
- (c) the amount of the difference.

(3) For the purposes of sub-paragraph (2), the total amount the billing authority expects to transfer from its collection fund to the levying authority’s revenue account during the financial year shall be calculated in accordance with the formula—

$$F + G$$

where—

F is the amount arrived at by applying the formula in paragraph 7(2) in respect of each day in the financial year before the day on which the recalculation under sub-paragraph (1) of this paragraph is made; and

G is the amount arrived at by applying the formula in paragraph 2(2) in respect of the day on which the recalculation under sub-paragraph (1) of this paragraph is made and each subsequent day in the financial year.

(4) The revised provisional return shall include an explanation of how the billing authority arrived at “F” and “G” referred to in sub-paragraph (3).

(5) The conditions are—

- (a) the recalculation must result in an amount that is less than the amount which the billing authority last calculated as the amount it expected to transfer from its collection fund to the relevant levying authority’s revenue account during the financial year; and
- (b) the billing authority must not have submitted a revised provisional return in any period of three months commencing on 1st April, 1st July, 1st October or 1st January.

(6) If a billing authority submits a revised provisional return, paragraph 4 shall apply to that return as if—

- (a) the reference in sub-paragraph (1) of that paragraph to “the amount shown in its provisional return” were a reference to the amount referred to in sub-paragraph (2)(c) of this paragraph; and
- (b) the reference to “the number of months in which BRS is to be collected in the financial year” were a reference to the number of months in which the BRS is to be collected in the relevant year after the revised provisional return is submitted.

(7) If the total amount calculated under sub-paragraph (3) is equal to the aggregate of the instalments the billing authority has paid to the relevant levying authority in the relevant year, no further instalments shall be payable.

(8) If the total amount calculated under sub-paragraph (3) is less than the aggregate of the instalments the billing authority has paid to the relevant levying authority in the relevant year no further instalments shall be payable and the relevant levying authority shall either—

- (a) refund to the billing authority from its revenue account the amount of the difference; or
- (b) authorise the billing authority to reduce an instalment or instalments to be transferred under paragraph 4 after the date of the calculation made under this paragraph by the amount of the difference.

Final returns

7.—(1) After the end of the financial year, the billing authority shall calculate the amount it collected during that year by way of BRS and shall submit a return (a “final return”) to the relevant levying authority showing—

- (a) that amount;
- (b) the amount the billing authority transferred to the levying authority’s revenue account during the financial year; and
- (c) the amount of the difference.

(2) For the purposes of sub-paragraph (1), the amount that the billing authority transferred to the levying authority’s revenue account in the financial year (“year X”) is calculated in accordance with the formula—

$$\left(\frac{H}{J + K} \right) K$$

where—

H is the aggregate amount paid into the billing authority’s collection fund under section 90(1)(c) and (ca) of the 1988 Act in year X;

J is the total liability under Part 3 of the 1988 Act of all non-domestic ratepayers in the billing authority’s area—

- (a) that should have been discharged in year X, and
- (b) that should have been discharged in an earlier financial year but which was not, less the amount of any payments the billing authority was required to make in year X to non-domestic ratepayers in respect of non-domestic rates; and

K is the total liability under the Act of those liable to BRS in the billing authority's area—

- (c) that should have been discharged in year X, and
- (d) that should have been discharged in an earlier financial year but was not, less the amount of any payments in respect of BRS that the billing authority was required to make in year X to those liable to BRS.

(3) The final return must be submitted no later than 31st May in the financial year following that to which it relates.

Payments and refunds under final returns

8.—(1) Where, as regards a financial year, L is more than M, the billing authority shall transfer the amount of the difference from its collection fund to the relevant levying authority's revenue account.

(2) But where L is less than M, the relevant levying authority shall either—

- (a) refund to the billing authority from its revenue account the amount of the difference; or
- (b) authorise the billing authority to reduce an instalment or instalments to be transferred under paragraph 4 after the date of the calculation made under this paragraph by the amount of the difference.

(3) In sub-paragraphs (1) and (2)—

L is the amount shown in the billing authority's final return for the financial year under paragraph 7(1)(a); and

M is the amount shown in the billing authority's final return for the financial year under paragraph 7(1)(b).

(4) Transfers under sub-paragraph (1) and refunds under sub-paragraph (2)(a) shall be made no later than 30th June in the financial year following that to which they relate.

(5) Transfers under sub-paragraph (2)(b) shall be made on the same day the instalment they relate to is transferred.

Certification

9. A billing authority's returns under this Schedule shall be certified by the authority's chief finance officer.

Payment of interest

10.—(1) If—

- (a) a billing authority fails to transfer any instalment due under paragraph 4 or an amount due under paragraph 8(1); or
- (b) a levying authority fails to make a payment due under paragraph 8(2)(a) and there is no authorisation under paragraph 8(2)(b) (in the absence of an authorisation under sub-paragraph (2)(b)),

interest shall be payable on the amount outstanding for every day of the period beginning with the day on which the amount was due to be transferred or paid and ending with day before the day on which it is paid.

(2) A levying authority required to pay interest under this paragraph shall not make that payment from its revenue account.

(3) Interest under this paragraph shall be calculated and paid in accordance with regulation 8 of the Local Authorities (Funds) (England) Regulations 1992^(a) as if the reference in paragraph (1) of that regulation to regulation 7 of those Regulations were a reference to this paragraph.

EXPLANATORY NOTE

(This note is not part of the Regulations)

In England, the Business Rate Supplements Act 2009 (“the BRS Act”) gives county councils, district councils in areas where there is no county council, and the Greater London Authority the power to levy a supplement (a “BRS”) on the national non-domestic rate with effect from 1st April 2010.

In areas where a single local authority performs all local authority functions, that local authority will be both the levying authority for BRS and the billing authority. In areas where there remain two tiers of local government, the county council will be the levying authority and functions of the billing authority will be performed by the district councils in the area. In London, the London borough councils will perform the billing authority function.

In both single and two tier local authority areas, BRS revenues will be paid initially into the billing authorities’ collection funds, maintained under the Local Government Finance Act 1988. However, paragraph 1 of Schedule 3 to the BRS Act requires that BRS revenues must be paid into a revenue account maintained solely for the purposes of the BRS.

These Regulations make provision for the transfer of BRS revenues from a billing authority’s collection fund into the levying authority’s BRS revenue account. Regulation 3 and Schedule 1 deal with single tier local authority areas, and require that BRS revenues are transferred as they are collected on a monthly basis. Regulation 4 and Schedule 2 deal with two tier local authority areas and require billing authorities to estimate the amount they expect to collect by way of BRS during each financial year and to pay that amount less 5%, as an in-year contingency protection to allow for the costs of, and losses in, collection, into the relevant levying authority’s BRS revenue account in instalments throughout the year. At the end of each financial year, the billing authority must calculate what it actually collected during the year. Paragraph 8 of Schedule 2 then makes provision for a final adjustment to be made.

Regulation 5 makes a minor consequential amendment to the Local Authorities (Funds) (England) Regulations 1992.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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(a) S.I. 1992/2428, to which there are amendments not relevant to these Regulations.