

EXPLANATORY MEMORANDUM TO
THE BUSINESS RATE SUPPLEMENTS (TRANSFER TO REVENUE ACCOUNTS)
(ENGLAND) REGULATIONS

2009 No. 2543

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 (“the Act”) allows certain local authorities to levy a supplement – known as a business rate supplement (“BRS”) – on the national non-domestic rate. A BRS must be levied for a specific, defined, project and, under Schedule 3 to the Act, a revenue account must be maintained solely for the BRS. These Regulations make the practical arrangements required to ensure that BRS revenues are transferred into the BRS revenue account.
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, in London, 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 In areas where a single local authority performs all local authority functions, that local authority will be both the levying authority and responsible for billing those liable to the BRS – the “billing authority”. In areas where there are two tiers of local government, the county council will be the levying authority; billing authority functions will be performed by the district councils in the area. In London, the London borough councils will perform the billing authority function.
 - 4.3 BRS revenues will be paid initially into the billing authorities’ collection funds, maintained under sections 89 and 90 of the Local Government Finance Act 1988 (“the 1988 Act”), alongside certain other specified revenues including those received in respect of council tax and business rates. Paragraph 4 of Schedule 3 to the Act amended section 90(1) of the 1988 Act to add BRS to the list of revenues that must be paid into the collection fund. However, paragraph 1 of Schedule 3 to the Act requires that levying

authorities must maintain a revenue account that is solely for the purposes of the BRS.

- 4.4 These Regulations specify the process by which billing authorities in both single and two tier areas must transfer BRS revenues from their collection fund to the revenue account for the BRS during the course of a financial year, and make arrangements for a final calculation of the amount of BRS collected during a financial year after it has ended, so that any adjustments required to the total sum transferred during the course of the year can be made.
- 4.5 The Regulations also make minor amendments to the Local Authorities (Funds) (England) Regulations 1992 (S.I. 1992/2428), so that, as is the case for business rate revenues, BRS revenues are not taken into account when a billing authority calculates whether there is a surplus or deficit of council tax revenues in its collection fund in accordance with the rules in Schedule 2 to those Regulations.
- 4.6 The Act received Royal Assent on 2nd July 2009 and the powers in section 29 and paragraphs 2 and 5 of Schedule 3 are 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 Government¹, 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 the Budget of 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 SMEs [small and medium sized enterprises] – that might be disproportionately affected".

¹ *The Lyons Inquiry into Local Government, Place Shaping: a shared ambition for the future of local government*, Sir Michael Lyons, March 2007.

- 7.3 Following this, in July 2007, the Government published the review of sub-national economic development and regeneration² (known as the sub-national review (“SNR”)). The SNR stated that “[BRSs] 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 reflected the Government’s intention that only the upper-tier authority in any area should be entitled to levy BRSs. This was consistent with the SNR which clearly identified the importance of sub-regions as economic entities and the Lyons Inquiry which pointed to the additional complexity that would be created by allowing district councils to levy supplements in two-tier areas and the potential impact that this would have on businesses.
- 7.6 In developing policy for BRS, the Department considered the practical arrangements for collecting BRS, bearing in mind that responsibility for collecting and enforcing payment of non-domestic rates rests with unitary authorities and district authorities and, in London, the London boroughs and the City of London. Schedule 3 of the Act therefore makes provision for the making of regulations governing the transfer of BRS collected by a billing authority to the BRS revenue account of that authority in unitary areas, or to the levying authority in two-tier areas.
- 7.7 These Regulations set out those arrangements.

8. Consultation outcome

- 8.1 In May 2009, the Department published a consultation paper containing its proposals for both the administration of BRS and the ballot process in those cases where a ballot is to be held. The consultation opened on 13 May and closed on 19 August.
- 8.2 The consultation invited views on the arrangements for the collection and enforcement of BRS. Among the proposals were that non-domestic rates (“NDR”) and BRS liability should be shown on the same demand notice; that provision should be made for the payment of BRS in instalments throughout the year and for the payment of interest where instalments are not paid; and for BRS collected by billing authorities to be transferred to the appropriate BRS revenue account. Stakeholders were invited to give their specific views on whether the proposed arrangements in the consultation paper were sufficient to

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.

allow billing authorities to administer the BRS efficiently and effectively. They were also asked whether there should be a mechanism for addressing any shortfall in BRS revenue that might arise.

- 8.3 In response to the consultation, concern was expressed that levying authorities would need to have a clear idea at the start of the financial year about how much BRS they could expect to receive from billing authorities throughout the course of the year, to assist with their financial planning and cash flow. This is because the amount actually collected by the billing authority may be less than the levying authority's anticipated yield due to bad debts and changes to the rating lists occurring during the year. Stakeholders also felt that, because BRS will be collected at the same time as NDR, any shortfall in revenue should be formally apportioned between NDR and BRS.
- 8.4 The Department has developed a set of arrangements in response to these concerns. The arrangements provided for in these Regulations are based broadly on those that exist in relation to the calculation of billing authorities' contributions to the central non-domestic rating pool for NDR. Under that system, billing authorities estimate their contribution to the non-domestic rating pool before the start of the financial year in question and pay regular instalments to the Department for Communities and Local Government based on that estimate. There is provision for billing authorities to revise their estimated contribution during the year. After the end of the financial year, the billing authority's contributions to the pool are adjusted to reflect the actual amount of non-domestic rates collected during the year.
- 8.5 As BRS will be collected with NDR, these Regulations provide a formula for authorities to apportion revenue collected between BRS and NDR. In single-tier areas, any BRS revenues collected must be paid into a revenue account set up and maintained solely for the purposes of the BRS. At the end of the year, the billing authority must calculate the amount of BRS it has collected during the year and how much it has transferred to the BRS revenue account.
- 8.6 Where there is a shortfall between these two sums, the authority must arrange for the difference to be transferred from its collection fund to the BRS revenue account. Where the billing authority has transferred more revenue to its revenue account than it has received in its collection fund for BRS, the Regulations make provision for any difference to be transferred to the billing authority's general fund, or to be offset against future payments to the levying authority.
- 8.7 In two-tier areas, the billing authority must estimate how much it expects to collect during the forthcoming year and submit this estimate to the levying authority by means of a provisional return. This will form the basis of instalments to be paid to the levying authority during the year. The Regulations make provision for the billing authority to deduct an amount as an in-year contingency protection.
- 8.8 Billing authorities may revise their provisional returns during the year and, as in single-tier areas, there is provision for final adjustments to be made after the end of the financial year.

9. Guidance

9.1 No guidance will be issued in relation to these Regulations.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is a requirement on billing authorities to calculate the amount of BRS they receive and to transfer that amount either to their BRS revenue account or to the levying authority. In two-tier areas, billing authorities must estimate how much they expect to collect during the forthcoming year and submit this estimate to the levying authority. This will form the basis of instalments to be paid to the levying authority during the year. After the end of the financial year in question, billing authorities will also be required to calculate the amount of BRS actually collected and make final adjustments accordingly.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 In general terms the BRS legislation applies to small businesses, although all properties with a rateable value of £50,000 or less are excluded from any potential liability for BRS.

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 (which was given on 2nd July 2009).

13. Contact

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