

**EXPLANATORY MEMORANDUM TO  
THE BUSINESS RATE SUPPLEMENTS (COLLECTION AND ENFORCEMENT)  
(ENGLAND) REGULATIONS 2010**

**2010 No. 187**

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The Business Rate Supplements Act 2009 (“the Act”) allows certain local authorities to levy a supplement – known as a business rate supplement (“BRS”) – on the national non-domestic rate (“NNDR”). These Regulations amend the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (“the 1989 Regulations”) and the Council Tax and Non-Domestic Rating (Demand Notices) (England) Regulations 2003 (“the 2003 Regulations”) to enable billing authorities to collect and enforce BRS – where applicable - as part of the collection and enforcement process for non-domestic rates (“NDR”).

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

- 3.1 The Act received Royal Assent on 2nd July 2009 and the powers in sections 17 and 21 are exercised for the first time in making these Regulations.

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 a BRS on the NNDR, commonly referred to as the business rate, with effect from 1st April 2010. The Act makes provision for a BRS to be levied with effect from the start of the financial year, or at any other time during the year.

- 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 and the Common Council of the City of London (in its capacity as a local authority) will perform the billing authority function.

- 4.3 Section 21(1) of the Act (collection and enforcement) enables the appropriate national authority, by regulations, to make provision about the collection and recovery of sums due under the Act and sub-section (2)(b) provides that such regulations may amend any provision of regulations made under paragraphs 1 to 4A of Schedule 9 to the Local Government Finance Act 1988 (“the 1988 Act”). Similarly, regulations made under section 17(3) of the Act (regulations to make provision for cases where a person who has died was (or is alleged to have been) subject to a BRS) may, by virtue of subsection (4)(b), amend any provision of regulations made under section 63 of the 1988 Act (death).
- 4.4 Pursuant to those powers, these Regulations amend the 1989 Regulations and the 2003 Regulations. The 1989 Regulations make provision for the collection and enforcement of NDR under the 1988 Act and the 2003 Regulations govern matters contained in, and information to be supplied with, NDR and council tax demand notices (“bills”), although they do not apply in relation to council tax bills which relate to years beginning on or after 1st April 2010<sup>1</sup>. The relevant provisions of the 1989 Regulations were made under section 63 of, and paragraphs 1 to 4 of Schedule 9 (non-domestic rating: administration) to, the 1988 Act and the relevant provisions of the 2003 Regulations were made under paragraphs 1 and 2 of that Schedule.
- 4.5 The amendments which are being made to the 1989 Regulations mean that where a ratepayer is also liable to pay BRS, the NDR liability and the BRS liability will form a single liability for collection and enforcement purposes. Consequently, the billing authority concerned will bill for, collect and enforce the BRS as part of the established collection and enforcement process for NDR.
- 4.6 The amendments which are being made to the 2003 Regulations mean that where the amount payable to a billing authority by a ratepayer under the 1989 Regulations (as amended by these Regulations) consists of both NDR and BRS, the bill which the billing authority concerned is required to send to the ratepayer must also contain certain information which explains the ratepayer’s BRS liability. It should be noted that the 2003 Regulations are also being amended with effect from 1st April 2010 by the Council Tax and Non-Domestic Rating (Demand Notices) (England) (Amendment) Regulations 2010 (S.I. 2010/140). However, since the amendments to the 2003 Regulations which are being made by these Regulations are consequential on the changes being made to the 1989 Regulations, all amendments relating to the collection and enforcement of BRS have been kept together in this instrument.

## **5. Territorial Extent and Application**

- 5.1 This instrument applies to England.

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<sup>1</sup> The Council Tax (Demand Notices) (England) Regulations 2009 (S.I. 2009/3193) apply to council tax demand notices which relate to a year beginning on or after 1st April 2010.

## 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

- *What is being done and why*

- 7.1 Sir Michael Lyons Inquiry into Local Government<sup>2</sup>, published in March 2007, considered the case for returning business rates to local control. Its analysis was that that would not be appropriate at present; however, in his final report Sir Michael recommended introducing a new local power to set a supplement on the current NNDR, or business rate, to provide local authorities with greater flexibility to raise revenue to invest in local economic development.
- 7.2 The Government made clear in the 2007 Budget Report that it agrees with the Lyons Inquiry report that the current structure of business rates provides certainty for business which promotes investment, and so does not propose changing the national system of business rates. It further set out that the Government believes that the introduction of a discretionary power to levy a Business Rate Supplement, as recommended by the Lyons Report, will provide a new tool for local authorities, working in partnership with local business, to support projects aimed at promoting the economic development of local areas, where appropriate. This was supported by the review of sub-national economic development and regeneration<sup>3</sup>.
- 7.3 In October, alongside the 2007 Pre-Budget Report and Comprehensive Spending Review, the Government published *Business rate supplements: a White Paper*<sup>4</sup> and subsequently introduced the Business Rate Supplements Bill, which gained royal assent on 2nd July 2009.
- 7.4 In May 2009, the Department consulted on draft proposals for the administration arrangements associated with BRS<sup>5</sup>. The consultation opened on 13 May and closed on 19 August.
- 7.5 The consultation made proposals for how BRS could be effectively collected and enforced by local authorities. The consultation proposed that the collection and enforcement of BRS should form part of the process for the collection and enforcement of NNDR and that the bill issued as part of the

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<sup>2</sup> The Lyons Inquiry into Local Government, *Place Shaping: a shared ambition for the future of local governance*, Sir Michael Lyons, March 2007.

<sup>3</sup> *Review of sub-national economic development and regeneration*, HM Treasury, Department for Business Enterprise and Regulatory Reform and Communities and Local Government, July 2007.

<sup>4</sup> *Business rate supplements: a White Paper*, HM Treasury and Communities and Local Government, October 2007.

<sup>5</sup> Business rate supplements: draft proposals on ballot and administration arrangements – Consultation which can be accessed at: <http://www.communities.gov.uk/publications/localgovernment/businessratesuppadmin>

annual billing round should show the breakdown between the ratepayer's BRS liability and NDR liability.

- 7.6 Views were invited on whether these proposals would allow billing authorities to administer the collection and enforcement of a BRS efficiently and effectively. In view of the general support for the Government's proposals these regulations amend the 1989 Regulations and the 2003 Regulations so that BRS is collected and enforced as part of the NDR collection and enforcement process.

- ***Consolidation***

- 7.7 Those aspects of the 2003 Regulations which concern council tax have been consolidated by the Council Tax (Demand Notices) (England) Regulations 2009. The Department intends to carry out a review of the 2003 Regulations with a view to producing a consolidated version of the Regulations, as they relate to rate demand notices, prior to the financial year beginning on 1st April 2011.

- 7.8 The collection and enforcement procedures provided for in the 1989 Regulations are not changed by the amendments made by these Regulations. As such, the Department does not consider that it is necessary to consolidate the 1989 Regulations at this time. However, the matter will be kept under review.

## **8. Consultation outcome**

- 8.1 Of those consulted, twenty four responded to the question regarding the Government's proposals for how BRS could be effectively collected and enforced by local authorities. Nine respondents agreed with the proposed arrangements for administering BRS. One respondent commented that the secondary legislation should make clear that BRS must be administered on the same basis and collected in the same way as NDR.
- 8.2 A number of the other respondents made comments about the potential cost impact of collecting and enforcing BRS for local authorities; for instance costs associated with enforcement of the BRS element of a combined bill and the costs associated with producing a combined BRS and NDR bill. Some authorities also had concerns about the added complexity which the addition of the BRS to the bill would result in.
- 8.3 Some of the points raised by respondents are addressed by the Business Rate Supplements (Administrative Expenses) (England) Regulations 2010 ("the administrative expenses Regulations"), which allow for the reasonable costs a billing authority incurs in the collection and enforcement of BRS to be offset (where appropriate) against collected revenues. In response to the concerns about the complexity of the information required to be contained in a bill, software updates to produce a combined bill should make the production of such bills less administratively burdensome (the reasonable costs incurred by a

billing authority in updating its software for these purposes will be covered under the administrative expenses Regulations).

## **9. Guidance**

9.1 Since the collection and enforcement of BRS is to be done as part of the collection and enforcement of NDR – a process with which billing authorities are already familiar - 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 will be to issue a bill as part of their annual NDR billing round to include liability for a BRS where a levying authority has imposed a BRS. Any further collection and enforcement of a BRS would be as a consequence of a ratepayer's failure to meet their combined BRS and national NDR liability. Local authorities would therefore be using existing collection and enforcement mechanisms in respect of the combined liability. Any collection and enforcement of BRS liabilities would be as part of the general ongoing administration of the national non-domestic rating system.

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

## **11. Regulating small business**

11.1 All properties with a rateable value of £50,000 or less are excluded from any potential liability for BRS. Therefore, whilst these regulations apply to the collection and enforcement of all businesses' BRS liabilities, small businesses with property which does not exceed the £50,000 threshold, will not be liable for any BRS levied in their local area.

## **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 2<sup>nd</sup> July 2009).

## **13. Contact**

Marie Hazzard at the Department for Communities and Local Government Tel: 030 344 43608 or email: [marie.hazzard@communities.gsi.gov.uk](mailto:marie.hazzard@communities.gsi.gov.uk) can answer any queries regarding the instrument.