EXPLANATORY MEMORANDUM TO

THE BUSINESS RATE SUPPLEMENTS (ACCOUNTING) (ENGLAND) REGULATIONS

2010 No. 403

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") allows certain local authorities to levy a supplement – known as a business rate supplement ("BRS") – on the national non-domestic rate. These Regulations make further provision as to the accounting arrangements for BRS and for refunds and credits after the end of the imposition of BRS.

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

3.1 The Act received Royal Assent on 2 July 2009 and the powers in paragraph 3 of Schedule 3 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 BRS on the national non-domestic rate, commonly referred to as the business rate, with effect from 1st April 2010. The Act makes provision for 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 will perform the billing authority function.

4.3 Under Schedule 3 to the Act, a levying authority that imposes a BRS and a functional body with whom the Greater London Authority makes arrangements under section 3(5) must, in accordance with proper practices, keep revenue accounts solely for BRS, and secure that sums received by the levying authority or functional body are credited to that Account. These Regulations make further provision for the accounting arrangements for the BRS.

4.4 The Regulations make provision as to the items to be credited and debited to the BRS revenue account, in Regulation 1 and Schedule 1. The Regulations also provide for any deficit on the BRS revenue account to be met from the general fund of the levying authority or functional body. Regulation 6 of and Schedule 2 to the Regulations also set out the arrangements for refunds and credits, after the end of the imposition of BRS or if cancelled by the Secretary of State. Refunds are to be made, if the revenue account is in credit, to persons who have paid BRS and bodies that have made a financial contribution, subject to a minimum refund level. The minimum refund level does not apply if the BRS is cancelled by the Secretary of State.

4.5 The Regulations also make minor amendments to the Business Rate Supplements (Transfers to Revenue Accounts) (England) Regulations 2009[1], to correct certain omissions and also to provide that any voluntary contributions made to authorities for the purpose of enabling the project to which the BRS relates to be carried out are transferred direct to the appropriate BRS revenue account.

5. Territorial Extent and Application

5.1 This instrument applies to England**.**

6. European Convention on Human Rights

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[2], 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. This was supported by the review of sub-national economic development and regeneration[3].

7.2 In October, alongside the 2007 Pre-Budget Report and Comprehensive Spending Review, the Government published *Business rate supplements: a White Paper*[4].

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[1] SI 2009/2543

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

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

[4] *Business rate supplements: a White Paper*, HM Treasury and Communities and Local Government, October 2007.

7.3 The Business Rate Supplements Bill was introduced into the House of Commons on 4 December 2008 and received Royal Assent on 2 July 2009.

7.4 In May 2009, the Department consulted on draft proposals for the administration arrangements associated with BRS[5]. The consultation opened on 13 May and closed on 19 August.

7.5 The consultation made proposals for the accounting arrangements that should apply for a BRS. The consultation made proposals for what credits and debits should be shown in a levying authority's BRS Revenue Account and as to the arrangements that should be made for refunds to ratepayers of any BRS money that has been collected and not spent at the time the BRS comes to an end, and for the administrative expenses of those arrangements. It proposed in particular that there should be a minimum threshold of £5 for refunds to ratepayers.

7.6 Views were invited on whether these proposals would allow for sufficient transparency and accountability in the accounting arrangements and whether the proposed arrangements for refunds and credits were reasonable.

7.7 The Business Rate Supplements (Transfers to Revenue Accounts) (England) Regulations 2009 made provision for BRS revenue in collection funds to be transferred to the appropriate BRS revenue account. The amendments provide that any voluntary contributions made to authorities for the purpose of enabling the project to which the BRS relates to be carried out are transferred direct to the appropriate BRS revenue account and are not subject to the calculations set out in those Regulations.

8. Consultation outcome

8.1 In regard to whether the accounting arrangements should provide sufficient transparency and accountability, eight respondents agreed that the proposed accounting arrangements provide sufficient transparency and accountability. Two further respondents agreed, but added that arrangements should not be left to agreement between the levying authority and billing authorities.

8.2 Two authorities commented that BRS income and expenditure must be included for the purposes of estimating income and expenditure for the year and included in budget requirement calculations, with one respondent commenting that, where billing authorities fails to pay over any BRS funds due on the agreed instalment date, levying authorities should have the power to apply a late payment charge.

8.3 A different respondent commented that the accounting system should be sufficiently transparent to enable businesses to be assured that BRS is being used correctly. On the same issue of transparency, another respondent commented that it would be more appropriate to retain a separate personal

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

account to track the collection of BRS by the authority and transfer of payments to the levying authority.

8.4 One respondent said it should be made clear that the BRS levy can cover both the billing authority and levying authority's costs in relation to ballots and administration.

8.5 In the light of the responses on this issue, the Government has decided to prescribe the items that must be credited and debited to the BRS revenue account. The Government also acknowledges the comments made by two of the respondents about the relationship between BRS and budget setting, and will not make specific provision for BRS income and expenditure to be excluded for the purposes of estimating income and expenditure for the year.

8.6 The transfer of BRS revenue in collection funds to the appropriate BRS revenue account has been addressed in the Business Rate Supplements (Transfers to Revenue Accounts) (England) Regulations 2009 . These regulations also make provision for adjustments at the end of the year if the amount of BRS collected differs from the instalments paid, and for the payment of interest in the event of late payment of outstanding amounts. The Business Rate Supplements (Administrative Expenses) (England) Regulations 2010[6] also makes provision as to the administrative expenses of a BRS.

8.7 In response to the comments made about transparency, the Government does not propose to introduce any additional measures through secondary legislation as this issue is already addressed in paragraph 11 of Schedule 1 to the Act which requires levying authorities to give information about expenditure incurred in their prospectus. In addition, Schedule 3 to the Act requires levying authorities that impose a BRS to keep a revenue account that is solely for that BRS.

8.8 Twenty two respondents had views on whether there should be a minimum £5 threshold for refunds for ratepayers of monies collected but not spent by the time the BRS comes to an end . While some respondents agreed with the level, others preferred a higher level or commented that it would need to be adjusted for inflation. Three other respondents questioned the need for a threshold and suggested that local authorities should be left to resolve the matter between themselves. Two respondents also commented on the need to offset refunds against liability to non-domestic rates.

8.9 In the light of the responses to this question, the Government proposes that provision should be made for refunds to be made to BRS ratepayers, but that this should be calculated by means of a formula based on a de minimis percentage of BRS liability, rather than on a fixed sum. This will provide a consistent approach for all levying authorities and avoids the needs to review a fixed sum at regular intervals.

[6] SI 2010/134

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 will be that billing authorities will need to make some changes to their software systems to enable BRS to set up the necessary accounting arrangements to enable BRS to be transferred from the billing authority (who will collect the BRS) to the levying authority. In such cases, these administrative costs will be offset from the BRS collected.

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 and these Regulations do not specifically apply to small businesses.

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 July 2009).

13. Contact

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