EXPLANATORY MEMORANDUM TO

THE BUSINESS RATE SUPPLEMENTS (ADMINISTRATIVE EXPENSES) (ENGLAND) REGULATIONS 2010

2010 No. 134

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. These Regulations allow local authorities collecting the BRS to meet expenses they incur in collection and recovery of the BRS from the sums collected by way of BRS or through reimbursement from the local authorities levying the BRS.

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. 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 These Regulations make provision in relation to the administrative expenses of the collection and recovery of BRS due under this Act.

4.4 Where a levying authority is the billing authority, it is permitted to deduct sums in relation to certain administrative expenses from the amount of BRS that it is required to transfer during any financial year from its collection fund to its revenue account under the Business Rate Supplements (Transfers to Revenue Accounts) (England) Regulations 2009 ("the Transfers Regulations).

4.5 Where the levying authority is not the same authority as the billing authority, these Regulations make provision for certain administrative expenses of collection and recovery to be recovered by the billing authority. Where the BRS is to be levied with effect from the start of the financial year, billing authorities may retain sums to cover administrative expenses that they would otherwise transfer to the levying authority's revenue account under the Transfers Regulations. In other cases, where BRS is to be levied after the start of the financial year, the administrative expenses incurred by billing authorities are reimbursed by the levying authority.

4.6 The Act received Royal Assent on 2nd July 2009 and the powers in section 22 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 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. This was supported by the review of sub-national economic development and regeneration[2].

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

7.3 In May 2009, the Department consulted on draft proposals for the administration arrangements associated with BRS, including how the administrative expenses incurred by billing authorities should be calculated. The consultation opened on 13 May and closed on 19 August. The consultation paper presented three options.

Option 1: A fixed percentage of the annual BRS yield collected by the billing authority.

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[1] The *Lyons Inquiry into Local Government, Place Shaping: a shared ambition for the future of local governance*, 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.

Option 2: A fixed amount, irrespective of the type and scale of the BRS-related project, the level of the supplement, or the number of properties liable for BRS within the billing authority area.

Option 3: The amount to be retained to be agreed locally between the billing authority and the levying authority, subject to an upper limit.

7.4 Views were invited on whether option 3 (the Government's preferred option) provided the most appropriate arrangement for calculating administrative expenses associated with BRS, or whether alternative arrangements should be introduced. The consultation paper acknowledged that any arrangement for calculating authorities' administrative expenses would need to strike the right balance between billing authorities being able to cover their reasonable costs and local businesses liable for BRS being satisfied that value for money is being achieved.

8. Consultation outcome

8.1 Of the 18 consultees that responded on this specific issue, there was no support for option 1, 3 favoured option 2, and 12 were broadly in favour of option 3. However, none of the responses to the consultation commented on how much collecting and enforcing BRS was likely to amount to, nor how to identify the "additional" costs falling on billing authorities when BRS is collected as part of the annual billing round for non-domestic rates (NNDR).

8.2 One respondent commented that the cost of software upgrades needed for the calculation and collection of BRS should be paid in full and as a separate calculation from the ongoing administrative costs. Three others suggested that the amount to be retained by billing authorities should be calculated according to a formula similar to that used for calculating the costs of collection allowance for NNDR. Two respondents felt that there should be a formal mechanism for dealing with disputes between levying authorities and billing authorities, if option 3 were adopted. Some stakeholders argued that the introduction of BRS could lead to an increase in enforcement action and that this should be taken into account in deciding on the level of administrative expenses that may be retained by billing authorities.

8.3 The Department has developed a set of arrangements in response to the issues raised by consultees. The way in which administrative expenses are calculated will vary depending on the nature of the expenses and when they are incurred. Initial administrative expenses are those incurred to enable BRS to be levied and accounted for (for example, changes to computer software) and associated costs, such as those involved in training staff on BRS-related issues. Once authorities have systems in place to enable BRS to be levied and collected, they will be faced with further administrative expenses to deal, for example, with queries from BRS-liable ratepayers and with the transfer of BRS revenue to the levying authority.

8.4 Where the levying authority is also the billing authority, the regulations make provision for the authority to deduct initial and further administrative expenses from the amount of BRS that the authority is required to transfer from its collection fund to its BRS revenue account.

8.5 In two-tier local authority areas, where BRS is levied with effect from the start of the financial year, the regulations make provision for billing authorities to offset their actual initial administrative expenses against the monthly instalments they are required to make to the levying authority under the Transfers Regulations. Billing authorities may also deduct their further administrative expenses from the amount due under the final returns they have to make to the levying authority under the Transfers Regulations. The maximum further administrative expenses are a percentage of the total BRS yield over the levying authority area, based on the billing authority's share of BRS-liable properties in the levying authority area. However, to allow for the probability that ongoing BRS-related administration costs falling on billing authorities will diminish over time, the Regulations also make provision for a reduction over a number of years of the percentage of total BRS yield to be retained by billing authorities.

8.6 Where BRS is levied or varied outside the annual billing round, the Regulations provide for billing authorities' initial and further administrative expenses to be reimbursed by the levying authority. The nature of the further administrative expenses in these situations will be similar to those involved in the preparation of demand notices for NNDR, albeit on a smaller scale. The Regulations therefore provide that the further administrative expenses for BRS where the supplement is levied outside the annual billing round are a percentage of the cost of collection allowance for that billing authority for NNDR, calculated in accordance with the Non-Domestic Rating Contributions (England) Regulations 1992.

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 their initial and ongoing administrative costs. The initial administrative expenses must be reflected in the provisional return that billing authorities are required to send to the levying authority under the terms of the Transfers Regulations. The further administrative expenses that may be reclaimed by billing authorities are determined by formulae in the Regulations and whether the BRS is levied from the start, or after the start, of the financial year. These further expenses must also be set out in returns that billing

authorities are required to submit to the levying authority, and these returns must be certified by the billing authority's chief finance officer.

10.3 Where BRS is levied from the start of the financial year, billing authorities' administrative expenses are met from the BRS levied by the levying authority, and the levying authority is required to notify billing authorities of its estimate of the amount it expects to raise through BRS for the year and the number of ratepayers liable for BRS for that year. Where BRS is levied after the start of the financial year, the administrative expenses of billing authorities are met by the levying authority.

10.4 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 2nd July 2009).

13. Contact

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