EXPLANATORY MEMORANDUM TO

THE NON-DOMESTIC RATING CONTRIBUTIONS (ENGLAND) (AMENDMENT) REGULATIONS 2008

2008 No. 3078

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 These Regulations amend the Non-Domestic Rating (Contributions) (England) Regulations 1992 (S.I. 1992/3082) ("the Contributions Regulations"). The Contributions Regulations make provision in relation to the amount that an English local authority must pay in each year into the national non-domestic rating pool ("the pool"), which is administered by the Secretary of State for Communities and Local Government. The Contributions Regulations are amended annually so that the amount local authorities must pay into the pool reflects relevant financial and economic factors.

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

3.1 None.

4. Legislative Context

4.1 The majority of businesses in England pay non-domestic rates to their local authority under Part 3 of the Local Government Finance Act 1988 ("the 1988 Act"), with some large businesses paying their rates directly to the Secretary of State. Local authorities and the Secretary of State pay the rates they collect into the pool and the receipts are redistributed to local authorities as part of the annual local government finance settlement process.

4.2 The Contributions Regulations govern how local authorities must calculate their annual contribution to the pool. Broadly speaking, the amount to be paid in is the amount which a local authority would have collected for the financial year under Part 3 of the 1988 Act if it had acted diligently. This is subject to adjustments which are necessary to take account of changes in relation to previous years – for example because of ratepayers' appeals against the rateable values of their properties – and various deductions. The permitted deductions take account of matters such as the discretionary

reliefs which local authorities grant to ratepayers in their area and the administrative cost of collecting rates on behalf of central government.

4.3 The calculation of local authorities' contributions to the pool is a three stage process. The purpose of the Regulations is to provide local authorities with the data required to make their calculations at each stage. Firstly, local authorities must estimate their contribution to the pool for the forthcoming year. A provisional contribution is therefore calculated before the financial year begins and this is paid into the pool in instalments throughout the year. If a local authority finds that its contribution should be less than that previously estimated, the provisional contribution and instalments may then be adjusted accordingly once per quarter in the financial year. After the end of the year, a final amount is calculated and any adjustments to the amount already paid are made.

4.4 The Contributions Regulations are amended annually so that the various calculations they contain reflect, so far as possible, current economic and financial circumstances. The present Regulations, which broadly follow the pattern set each year by earlier regulations, amend the Contributions Regulations in their application to the financial year which begins on 1st April 2009.

4.5 The "cost factors" (see paragraph 7.7 below) remain the same for local authorities that are not affected by local government restructuring under Part 1 of the Local Government and Public Involvement in Health Act 2007. Where pre-existing or newly created local authorities are taking over the functions under Part 3 of the 1988 Act of other authorities which are being wound up and dissolved with effect from 1st April 2009 as a result of restructuring, these regulations prescribe cost factors for the authorities taking responsibility for those functions.

4.6 The "buoyancy factor" (see paragraphs 7.8 and 7.9 below) and the anticipated percentage losses in the level of rates which local authorities will be able to collect (see paragraphs 7.10 and 7.11 below) are amended. These are relevant to calculating local authorities' provisional contributions and, therefore, the instalments they will pay during the financial year which begins on 1st April 2009. The total amount allowed to cover the administrative costs to local authorities of collecting rates is increased (see paragraphs 7.5 and 7.6 below).

4.7 These Regulations also update the Contributions Regulations to set the "Special Authority offset" (see paragraphs 7.3 and 7.4 below).

5. Territorial Extent and Application

5.1 This instrument applies to England only.

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 Around mid-February each year, authorities are required to inform the Secretary of State of their provisional contribution to the pool for the forthcoming financial year, calculated in accordance with the Contributions Regulations (as amended for that year).

7.2 The calculations made by authorities under the Contributions Regulations do not determine the amount of money available to individual authorities for the provision of local services. The money paid into the pool is redistributed to authorities as part of the separate local government finance settlement process.

Special authority offset (regulation 3(a))

7.3 Certain types of authority (known as special authorities) may have special provisions applied for the purposes of calculating their contribution to the pool. These special provisions – the offset – effectively allow special authorities to retain a higher proportion of the rates they have collected in light of local circumstances. A special authority is an authority which on 1st April 1986 had a population of less than 10,000 and a gross rateable value on that date divided by its population of more than £10,000. The offset has therefore applied only to the City of London.

7.4 For the financial year which begins on 1st April 2009, Ministers have considered the extent to which the City Corporation currently takes on a range of functions that have wider resonance for London and the country as a whole, and the fact that in addition to those functions, the Corporation is prepared to contribute financially to the future infrastructure for London. Following discussions with the City Corporation, Ministers have concluded that the appropriate level of extra support, to be provided through the City Offset, will be £ 9.8 million in 2009/10.

Cost of collection (regulation 3(b))

7.5 The Contributions Regulations recognise that collecting non-domestic rates has cost implications for authorities and so enable authorities to

calculate an allowance for their individual costs of collection. The resulting figure is deducted from authorities' contributions to the pool. The formula in the Contributions Regulations contains the estimated figure for the cost of collection nationally and authorities calculate their own share of the national figure by applying to the formula details such as the number of properties in the local non-domestic rating list and the total rateable values on a given date.

7.6 For 2009/10, the national figure for the cost of collection is estimated at £84,442,000, increased from £83,606,000 for the period 2005/06-2008/09. The 2007 Comprehensive Spending Review process reviewed whether an increase was justified given that the amount had remained the same for some time. It was concluded that a 1% increase from 2009/10 was reasonable. Regulation 3(b) of these Regulations has the effect that authorities should use this increased national figure when calculating their individual costs of collection for 2009/10.

Cost factors (regulation 3(c))

7.7 As mentioned above, the Contributions Regulations allow authorities to retain a proportion of the business rates they collect to reflect their costs of collection. The formula for calculating an authority's cost of collection requires the input of a cost factor for that authority. The cost factors reflect differences between areas in costs, and are derived on the same basis used for other purposes in the local government finance settlement. For most authorities, the cost factors are unchanged from 2008/09. The list of cost factors has, however, been substituted so that it reflects the outcome of local government restructuring under the Local Government and Public Involvement in Health Act 2007 and a cost factor is prescribed for the authorities taking over functions under Part 3 of the 1988 Act from authorities being wound up and dissolved.

Buoyancy factor (regulation 4(a))

7.8 Local authorities' contributions to the pool are based on rateable values as at 31st December in the preceding financial year. There will, however, be movements in the property market during the financial year for which provisional contributions have been calculated, as well as additions to, and removals from, the non-domestic rating list. Also, appeals that are determined during the year will impact on the overall rateable value of properties on an authority's non-domestic rating list. The calculation of provisional contributions therefore takes account of these anticipated changes during the course of the forthcoming financial year, through the 'buoyancy factor'.

7.9 The factor for all billing authorities is increased by regulation 4(a) of these Regulations from 0.990 for 2008/09 to 0.991 for 2009/10. This is derived from the calculations used when estimating the national total of non-domestic rates available for redistribution to local authorities for 2009/10. This means that – all else being equal – billing authorities will need to contribute a greater amount to the national pool for 2009/10 than for 2008/09.

Losses in collection (regulation 4(b))

7.10 The Contributions Regulations reflect the fact that authorities will not be able to collect 100% of the business rates due for a financial year. Regulation 4(b) of these Regulations increases for most authorities the proportion of business rates income that is assumed to be lost, e.g. due to bad debts, and which is therefore deducted from the local authorities' provisional contributions to the pool. An increase in the proportion of rate income that is assumed lost feeds directly into the additional amount that a billing authority is permitted to retain, and vice versa.

7.11 Losses in collection percentages are applied to groups of authorities and are based on historic information. The percentages are changed in the light of up-to-date information on collection rates.

- ***Consolidation***

7.12 The Contributions Regulations are amended annually (see paragraph 4.4 above) but in large part remain unchanged. It is considered convenient for the users of the Contributions Regulations for the annual changes to be clearly identifiable in an amending instrument. For these reasons, the Department does not intend to consolidate the Contributions Regulations.

8. Consultation outcome

8.1 The annual making of regulations to update the Contributions Regulations generally provokes little in the way of response. Local authorities do, however, ask the Department for Communities and Local Government to let them know when amending regulations have been laid before Parliament so that they can begin the process of calculating their provisional contributions to the pool.

9. Guidance

9.1 Guidance on these Regulations specifically will not be issued. When local authorities calculate their contributions to the pool, returns are made to the Department for Communities and Local Government. Guidance notes on completing the returns are issued each year to reflect the annual changes to the Contributions Regulations.

10. Impact

10.1 It is not considered that there will be any impact on business, charities or voluntary bodies as a result of these Regulations as they do not affect liability to non-domestic rates.

10.2 The impact on the public sector is minimal. Local authorities are required by Schedule 8 to the 1988 Act to calculate their contribution to the pool for each financial year. These Regulations ensure that the contributions for the financial year which begins on 1st April 2009 will reflect, so far as possible, current economic and financial circumstances.

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

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 These Regulations ensure that local authorities' contributions to the pool for the financial year which begins on 1st April 2009 will reflect, so far as possible, current economic and financial circumstances. It is not intended that there will be a specific review of the outcome of these Regulations. Any particular issues which come to the attention of the Department for Communities and Local Government will be considered alongside any further revisions required in respect of the financial year beginning on 1st April 2010.

13. Contact

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