EXPLANATORY MEMORANDUM TO

THE NON-DOMESTIC RATING CONTRIBUTIONS (ENGLAND) (AMENDMENT) REGULATIONS 2011

2011 No. 2993

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**

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 This section explains why the Regulations come into force less than 21 days from the date of laying.

3.2 These Regulations contain figures derived from the provisional Local Government Finance Settlement for 2012 – 13, which was announced to Parliament on 8th December 2011. The figures are the cost factors for calculating an authority's share of the cost of collection allowance, confirmed by regulation 3(c) of these Regulations, which are derived from the provisional Local Government Finance Settlement.

3.3 However, under Part II of Schedule 8 to the Local Government Finance Act 1988, these amending Regulations must come into force before 1st January of the preceding financial year to the particular financial year to which the amendments apply or the regulations shall not be effective. It is therefore imperative for the Regulations to come into force on 31st December 2010, at the latest (subject to what is said in the paragraph below). On this occasion, because of the timing of the provisional Local Government Finance Settlement, laying the Regulations 21 days before the date that they are required to come into force would have pre-empted the announcement of the provisional Local Government Finance Settlement to Parliament. It was therefore considered necessary and appropriate, on this occasion, to lay the Regulations less than 21 days before they come into force.

3.4 Section 69(8) of the Localism Act 2011 disapplies the requirement that the amending Regulations must come into force before 1st January of the

preceding financial year to the particular financial year to which the amendments apply so far as they make provision related to the operation of section 47 of the Local Government Finance Act 1988, as amended by the Localism Act 2011 and for the financial year beginning in 2012 only. While amendments in relation to the general application of section 47 for the financial year 2012-13, as amended by the Localism Act 2011, are made in these Regulations (as described below in paragraph 4.5 and 7.6), it is intended that a further set of amending Regulations will be made and laid before Parliament in 2012, in relation to the application of section 47 in certain specific areas only to cater for the Government's new Enterprise Zones policy.

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 Contributions 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 financial years beginning on or after 1st April 2012. The amendment made by sub-paragraph 3(a) updates the "special authority offset" (see paragraph 7.3) and the amendment made by sub-

paragraph 3 (c) confirms the cost of collection allowance (see paragraph 7.5). These have effect only in relation to the financial year beginning on 1st April 2012.

4.5 The amendments made in sub-paragraph 3(b) relate to the new power given to billing authorities to grant discretionary rate relief in section 69 of the Localism Act 2011. They preserve the present position, so that Government will continue to part fund certain reliefs to the same extent as in previous years.

4.6 The "buoyancy factor" (see paragraph 7.9) and the anticipated percentage losses in the level of rates which local authorities will be able to collect (see paragraph 7.10) are amended by sub paragraphs 4 (a) and (b). 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 2012.

5. Territorial Extent and Application

This instrument applies to England only.

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 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.

7.3 These Regulations make the necessary annual updates to the Contributions Regulations for the forthcoming year, including amendments to take account of billing authorities' new powers to provide local discounts as contained in section 69 of the Localism Act 2011. It is intended that further amendments will be made to the Contributions Regulations to specifically ensure that billing authorities do not have to contribute the costs of providing certain local discounts in designated areas, in line with the Government's new Enterprise Zones policy.

Special authority offset (regulation 3(a))

7.4 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 effectively allow special authorities to retain a proportion of the rates they have collected to take account of special local circumstances (this is known as "the offset"). 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 only billing authority which meets these criteria is the Common Council of the City of London and the offset only applies, therefore, to the Common Council. Regulation 3(a) of these Regulations, which substitutes paragraph 1(4) of Schedule 1 to the Contributions Regulations, makes provision for the amount of the offset.

7.5 In deciding the amount of the offset for the financial year beginning on 1st April 2012, the Government has taken into consideration the extent to which the Common Council currently carries out 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 Common Council is prepared to make additional financial contributions to the future infrastructure for London. The Government has concluded that the appropriate level of extra support, to be provided through the offset, will be £10,271,000 for the financial year beginning on 1st April 2012.

Discretionary reliefs (regulation 3(b))

7.6 Section 69 of the Localism Act 2011 amends section 47 of the Local Government Finance Act and provides billing authorities with a new power to reduce the business rates of any local ratepayer. However, in line with the Government's announced policy intention, these Regulations preserve the position on existing discretionary reliefs by ensuring that central Government continues to part fund certain discretionary reliefs in the forthcoming year in the same circumstances and to the same degree as in previous years. Local authorities will be responsible for fully funding any other discounts granted under Section 69 and therefore no provision is being made in these Regulations for other discounts.

Costs of collection (regulation 3(c))

7.7 The legislation recognises that collecting non-domestic rates has cost implications for authorities and so the Contributions Regulations 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. For 2012/13, the national figure for the cost of collection will remain £84,000,000. Regulation 3(c) of these Regulations simply amends paragraph 4(4) of Schedule 1 to the Contributions Regulations to replace the reference to 2011 with a reference to 2012.

Buoyancy factor (regulation 4(a)

7.8 There will 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 buoyancy factor for all billing authorities is amended by regulation 4(a) of these Regulations so that for financial years beginning on or after 1st April 2012 it is 0.948. This is derived from the calculations used when estimating the national total of non-domestic rates available for redistribution to local authorities for 2012/13.

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 changes 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 No specific consultation was carried out, though local authorities are free to comment on what they know to be an annual amending process.

9. Guidance

9.1 No guidance on these Regulations will 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 and these are updated to reflect the annual changes to the Contributions Regulations.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies, as the Regulations do not affect business rates liability.

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 2012 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 2012 will reflect, so far as possible, current economic and financial circumstances. Any particular issues which come to the attention of the Department for Communities and Local Government will be considered.

13. Contact

13.1 David McDonald at the Department for Communities and Local Government (tel: 0303 444 2135 or email: David.McDonald@communities.gsi.gov.uk) can answer any queries regarding the instrument.