
STATUTORY INSTRUMENTS

1995 No. 2889

The Local Government Changes for England (Collection Fund Surpluses and Deficits) Regulations 1995

PART II

Transitional provisions

Funds regulations

3.—(1) The Funds Regulations shall have effect in relation to payments to be made, on or after the reorganisation date, to or by a billing authority which is an abolished authority, as if they were to be made to or by the designated authority.

(2) For the purposes of the estimate under regulation 10 of the Funds Regulations by a billing authority in respect of which an estimated amount or audit adjustment is calculated under regulations 4, 5, 6 or 7—

- (a) where the estimate is for the initial year, no account shall be taken of the items in subparagraphs 2(3)(a), 2(3)(b)(iii), 2(4)(a) and 2(4)(b)(iii) of Part I of Schedule 2 to those Regulations, and
- (b) where the estimate is for the initial year or any subsequent year, no account shall be taken of any payments to or by the authority by or to any other authority, or of any transfers between an authority's collection fund and general fund, required to be made under these Regulations.

Relevant billing authority— estimated amount

4.—(1) This regulation applies in relation to an estimate where the relevant billing authority is an abolished or relinquishing authority and where this regulation applies sections 97(3) and (4) of the 1988 Act shall not apply to the relevant billing authority.

(2) For the purposes of this regulation and regulation 5, the “billing authority's estimated share” means that part of the estimate which in accordance with the Funds Regulations is to be its share in the surplus, or its part of the deficit, calculated by the relevant billing authority using the formula in paragraph 6(2) of Part II of Schedule 2 to the Funds Regulations.

(3) The relevant billing authority shall, within 7 days of the date on which it makes an estimate, calculate in relation to, and notify to, each transferee authority, its estimated amount, and, where it is a relinquishing authority, shall calculate its own estimated amount and for this purpose the estimated amount —

- (a) of a transferee authority, where the relevant billing authority is an abolished authority in respect of which there is a single successor authority, shall be the billing authority's estimated share, and
- (b) of any other transferee authority, or of a relinquishing authority, shall be a proportion of the billing authority's estimated share, and for the purpose of the calculation of the proportion paragraph (4) below shall apply.

- (4) In order to calculate the proportion referred to in paragraph (3)(b) above—
- (a) where the relevant billing authority is an abolished authority, all the successor authorities shall seek to agree together, and where the relevant billing authority is a relinquishing authority, it and all the acquiring authorities shall seek to agree together, the apportionment of the billing authority’s estimated share among them, and
 - (b) for the purposes of seeking the agreement referred to in paragraph (a) above the following conditions shall apply—
 - (i) no part of such share shall remain unapportioned,
 - (ii) the authorities may agree that one or more of them shall have a proportion which is nil, and
 - (iii) if agreement has not been reached by the date which is 5 days after the date on which the estimate is made, the apportionment shall be according to tax base, and for this purpose the relevant billing authority and each transferee authority shall seek to agree an estimate of the proportion which the tax base of the relevant area for the immediately preceding year bears to the tax base of the relevant billing authority for that year, and if no such agreement is reached by 1st January in the immediately preceding year the estimated proportion shall be determined, by the date which is 5 days after the date on which the estimate is made, by a person appointed by the relevant billing authority.
- (5) For the purposes of paragraph (4)(b)(iii) above—
- (a) “relevant area” means the area in respect of which the relevant billing authority exercised functions before the reorganisation date and the transferee authority, or the relinquishing authority, as the case may be, exercises functions immediately after that date,
 - (b) the tax base for an authority shall be item T for the purposes of and calculated in accordance with section 33 of the 1992 Act and Regulations made under that section, and
 - (c) section 31 of the Arbitration Act 1950(1) shall have effect for the purposes of a determination by an arbitrator under paragraph (4) above as if it were an arbitration under any other Act within the meaning of that section.
- (6) Where the estimated amount of an acquiring authority is a proportion of an estimated surplus in the collection fund of the relevant billing authority, the relevant billing authority shall pay that authority an amount equal to the estimated amount, and, where the estimated amount is a proportion of an estimated deficit, the acquiring authority shall pay the relevant billing authority such amount, in either case by instalments for the purposes of which regulations 3(7) and (8) and 12(2) and (3) of the Funds Regulations shall apply as if—
- (a) references to the amount “so calculated” included the estimated amount,
 - (b) references to “the financial year in question” were references to the immediately preceding year and references to “that financial year” were references to the year in which payment falls to be made as provided in regulation 8, and
 - (c) references to a relevant major precepting authority included references to the acquiring authority.
- (7) Subject to regulation 8, where the estimated amount of a transferee authority, or a relinquishing authority, is a proportion of an estimated surplus in the collection fund of the relevant billing authority, the transferee authority, or the relinquishing authority, as the case may be, shall transfer that amount from its collection fund to its general fund, and, where the estimated amount is a proportion of an estimated deficit, the transferee authority, or the relinquishing authority, shall transfer that amount to its collection fund from its general fund.

(1) 1950 c. 27; section 31 was amended by section 8(2) of the Arbitration Act 1975 (c. 3).

Relevant billing authority— audit adjustment

5.—(1) This regulation applies following the conclusion, in accordance with Part III of the Local Government Finance Act 1982(2), of the audit of the accounts for the immediately preceding year of a billing authority which is an abolished or relinquishing authority and in this regulation —

- (a) “billing authority’s audited share” means an amount calculated by applying to the final surplus or deficit the formula in paragraph 6(2) of Part II of Schedule 2 to the Funds Regulations, where items B, C and D are as stated in that paragraph and item A is the final surplus or deficit, and
- (b) “final surplus or deficit” means the surplus or deficit in the collection fund of the relevant billing authority for the immediately preceding year as shown in the final audited accounts of that authority for that year.

(2) This regulation shall not apply to the calculation of the audit amount or audit adjustment of a major precepting authority which is an abolished or relinquishing authority.

(3) The relevant billing authority shall, within one month of the conclusion of the audit referred to in paragraph (1) above, calculate the audit amount and the audit adjustment of—

- (a) each transferee authority,
- (b) each relevant major precepting authority which was such an authority in relation to the relevant billing authority for the immediately preceding year, and
- (c) where the relevant billing authority is a relinquishing authority, itself,

and shall notify to each transferee authority, and each such relevant major precepting authority, its audit adjustment.

(4) For the purpose of paragraph (3) above—

- (a) the audit amount—
 - (i) of a transferee or relinquishing authority, shall be a proportion of the billing authority’s audited share, which proportion shall, subject to paragraph (8) below, be the same as the proportion which the estimated amount of the transferee or relinquishing authority, as the case may be, calculated under regulation 4, bears to the billing authority’s estimated share, and
 - (ii) of a relevant major precepting authority referred to in paragraph (3)(b) above, shall be calculated by applying to the final surplus or deficit the formula in paragraph 6(4) of Part II of Schedule 2 to the Funds Regulations, where items B, C and D are as stated in that paragraph and item A is the final surplus or deficit, and

(b) subject to paragraphs (5) and (8) below, the audit adjustment —

- (i) of a transferee or relinquishing authority, shall be calculated by deducting from the audit amount of that authority its estimated amount calculated under regulation 4, and
- (ii) of a relevant major precepting authority referred to in paragraph (3)(b) above, shall be calculated by deducting from the audit amount of that authority its estimated amount, such amount being its share of any surplus, or part of any deficit, in relation to the estimate, and calculated by the relevant billing authority under the Funds Regulations in accordance with paragraph 6(4) of Part II of Schedule 2 to those Regulations.

(5) Each of the audit amounts and the estimated amounts referred to in paragraph (4)(b) above shall be expressed as a positive figure if a proportion of a surplus in the collection fund of the relevant

billing authority and a negative figure if a proportion of a deficit, and the audit adjustment may be a positive or negative figure.

(6) Where the audit adjustment in relation to an acquiring authority, or a relevant major precepting authority, is a positive amount, the relevant billing authority shall pay that amount to the acquiring authority, or the relevant major precepting authority, as the case may be, and where the audit adjustment is a negative amount, the acquiring or relevant major precepting authority shall pay the relevant billing authority such amount, in either case in the year in which payment falls to be made as provided in regulation 8 and in a manner agreed between the relevant authorities.

(7) Subject to regulation 8, where the audit adjustment of a transferee authority, or a relinquishing authority, is a positive amount, the transferee authority or the relinquishing authority, as the case may be, shall transfer that amount from its collection fund to its general fund, and where the audit adjustment is a negative amount, the transferee authority, or the relinquishing authority, shall transfer that amount from its general fund to its collection fund.

(8) Where for the immediately preceding year there is no estimated surplus or deficit in the collection fund of the relevant billing authority—

- (a) an authority's audit adjustment shall be its audit amount, and
- (b) for the purposes of paragraph (4)(a)(i) above the proportion to be used in the calculation of the audit amount of a transferee or relinquishing authority shall be calculated according to tax base in the same manner as the proportion of a billing authority's estimated share is calculated under regulations 4(4) and (5).

Major precepting authority— estimated amount

6.—(1) This regulation applies in relation to an estimate where, in accordance with regulation 11 of the Funds Regulations, in the case of a surplus it is to be shared by, or, in the case of a deficit, part of it is to be borne by, a relevant major precepting authority and that authority is an abolished or relinquishing authority.

(2) In this regulation and regulation 7—

- (a) the major precepting authority referred to in paragraph (1) is referred to as a “transferring major precepting authority”, and
- (b) “transferring major precepting authority's estimated share” means that part of the estimate which in accordance with the Funds Regulations is to be its share in the surplus, or its part of the deficit, calculated by the relevant billing authority using the formula in paragraph 6(4) of Part II of Schedule 2 to the Funds Regulations.

(3) The relevant billing authority shall, within 7 days of the date on which it makes an estimate, calculate in relation to, and notify to, each transferee authority of a transferring major precepting authority and, where such a major precepting authority is a relinquishing authority, that authority, its estimated amount, and for this purpose the estimated amount—

- (a) of a transferee authority, where the transferring major precepting authority is an abolished authority in respect of which there is a single successor authority, shall be the amount of the transferring major precepting authority's estimated share, and
- (b) of any other transferee authority, or of a relinquishing authority, shall be a proportion of the transferring major precepting authority's estimated share, and for the purpose of the calculation of the proportion paragraph (4) below shall apply.

(4) In order to calculate the proportion referred to in paragraph (3)(b) above—

- (a) where the transferring major precepting authority is an abolished authority, all the successor authorities shall seek to agree together, and where the transferring major precepting authority is a relinquishing authority, that authority and all the acquiring authorities shall seek to agree together, and inform the relevant billing authority, the

apportionment of the transferring major precepting authority's estimated share among them, and

(b) for the purposes of seeking the agreement referred to in paragraph (a) above the following conditions shall apply—

(i) no part of such share shall remain unapportioned,

(ii) the authorities may agree that one or more of them shall have a proportion which is nil, and

(iii) if such agreement has not been reached and the proportions notified to the relevant billing authority by a date which is 5 days after the date on which the relevant billing authority makes the estimate, the apportionment shall be according to proportions notified to the relevant billing authority by the transferring major precepting authority by that date and calculated according to tax base as provided in regulations 4(4) and (5), which regulations shall apply as if the references to "the relevant billing authority" were references to the transferring major precepting authority and as if in regulation 4(5) after paragraph (b) there were inserted—

“(ba) the tax base for an authority shall in the case of a major precepting authority be item T for the purposes of and calculated in accordance with section 44 of the 1992 Act and Regulations made under that section.”.

(5) Subject to paragraph (6) below, where the estimated amount of a transferee or relinquishing authority is a proportion of an estimated surplus in the collection fund of the relevant billing authority, the relevant billing authority shall pay that authority an amount equal to the estimated amount, and where the estimated amount is a proportion of an estimated deficit, that authority shall pay the relevant billing authority such amount, in either case by instalments for the purposes of which regulations 3(7) and (8) and 12(2) and (3) of the Funds Regulations shall apply as if—

(a) the reference to the amount “so calculated” included the estimated amount,

(b) references to “the financial year in question” were references to the immediately preceding year and references to “that financial year” were references to the year in which payment falls to be made as provided in regulation 8, and

(c) references to a relevant major precepting authority in those Regulations included references to the transferee authority.

(6) Paragraph (5) above shall not apply in relation to a transferee authority where that authority is the relevant billing authority.

(7) Subject to regulation 8, where a transferee authority is a billing authority it shall, where its estimated amount is a proportion of an estimated surplus in the collection fund of the relevant billing authority, transfer that amount from its collection fund to its general fund, and, where its estimated amount is a proportion of an estimated deficit, it shall transfer that amount from its general fund to its collection fund.

Major precepting authority— audit adjustment

7.—(1) This regulation applies following the conclusion, in accordance with Part III of the Local Government Finance Act 1982, of the audit of the accounts for the immediately preceding year of a relevant billing authority in relation to which a transferring major precepting authority is an abolished or relinquishing authority and for the purposes of this regulation —

(a) “final surplus or deficit” shall have the same meaning as in regulation 5(1), and

(b) “transferring major precepting authority's audited share” means an amount calculated by applying to the final surplus or deficit the formula in paragraph 6(4) of Part II of Schedule 2 to the Funds Regulations to the final surplus or deficit, where items B, C and D are as stated in that paragraph and item A is the final surplus or deficit.

(2) This regulation shall not apply to the calculation of the audit amount or audit adjustment of a relevant billing authority which is an abolished or relinquishing authority.

(3) The relevant billing authority shall, within one month of the conclusion of the audit referred to in paragraph (1) above, calculate the audit amount and the audit adjustment of—

- (a) each transferee authority of a transferring major precepting authority, except where the transferee is a sole successor authority in which case the relevant billing authority shall calculate its audit adjustment only,
- (b) a relinquishing major precepting authority,
- (c) each relevant major precepting authority which was such an authority in relation to the relevant billing authority for the immediately preceding year and which is not subject to a section 17 order, and
- (d) itself,

and notify to each transferee authority, and each such relevant major precepting authority, its audit adjustment.

(4) For the purpose of paragraph (3) above—

- (a) the audit amount—
 - (i) of a transferee authority, or of a relinquishing authority, shall be a proportion of the transferring major precepting authority's audited share, which proportion shall, subject to paragraph (9) below, be the same proportion which the estimated amount of the transferee or relinquishing authority, as the case may be, calculated under regulation 6, bears to the transferring major precepting authority's estimated share,
 - (ii) of any other relevant major precepting authority referred to in paragraph (3)(c) above, shall be calculated by applying to the final surplus or deficit the formula in paragraph 6(4) of Part II of Schedule 2 to the Funds Regulations, where items B, C, and D are as stated in that paragraph and item A is the final surplus or deficit, and
 - (iii) of the relevant billing authority, shall be calculated by applying to the final surplus or deficit the formula in paragraph 6(2) of Part II of Schedule 2 to the Funds Regulations, where items B, C and D are as stated in that paragraph and item A is the final surplus or deficit, and
- (b) subject to paragraphs (5) and (9) below, the audit adjustment —
 - (i) of a transferee authority where the transferring major precepting authority is an abolished authority in respect of which there is a single successor authority, shall be calculated by deducting from the amount of the transferring major precepting authority's audited share, the amount of that authority's estimated share,
 - (ii) of any other transferee authority, or a relinquishing major precepting authority, shall be calculated by deducting its estimated amount from its audit amount,
 - (iii) of any other relevant major precepting authority referred to in paragraph (3)(c) above, shall be calculated by deducting from the audit amount of that authority its estimated amount, such amount being its share of any surplus or part of any deficit, in relation to the estimate, and calculated by the relevant billing authority in accordance with paragraph 6(4) of Part II of Schedule 2 to those Regulations, and
 - (iv) of a relevant billing authority, shall be calculated by deducting from its audit amount its estimated amount, such amount being its share in any surplus, or part of any deficit, in relation to the estimate, and calculated by it under the Funds Regulations using the formula in paragraph 6(2) of Part II of Schedule 2 to those Regulations.

(5) Each of the audit amounts and the estimated amounts referred to in paragraph (4)(b) above shall be expressed as a positive figure if a proportion of a surplus in the collection fund of the relevant

billing authority and a negative figure if a proportion of a deficit, and the audit adjustment may be a positive or negative figure.

(6) Subject to paragraph (7) below, where the audit adjustment of a transferee authority, or a major precepting authority, is a positive amount, the relevant billing authority shall pay that authority an amount equal to such amount, and where such amount is a negative amount, that authority shall pay the relevant billing authority such amount, in either case in the year in which payment falls to be made in accordance with regulation 8 and in a manner agreed between the relevant authorities.

(7) Paragraph (6) above shall not apply in relation to a transferee authority where that authority is the relevant billing authority.

(8) Subject to regulation 8, where a transferee authority is a billing authority it shall, where the audit adjustment is a positive amount, transfer that amount from its collection fund to its general fund, and where its audit adjustment is a negative amount it shall transfer that amount from its general fund to its collection fund.

(9) Where for the immediately preceding year there is no estimated surplus or deficit in the collection fund of the relevant billing authority—

- (a) an authority's audit adjustment shall be its audit amount, and
- (b) for the purposes of paragraph (4)(a)(i) above the proportion to be used in the calculation of the audit amount of a transferee or relinquishing authority shall be calculated according to tax base in the same manner as the proportion of a transferring major precepting authority's estimated share is calculated under regulation 6(4).

Payments and transfers under regulations 4 to 7

8.—(1) Where an authority is required by regulation 4(6) or 6(5) to make a payment to another authority, or a billing authority is required by regulation 4(7) or 6(7) to make a transfer to or from its collection fund, such payment or transfer shall be made in the initial year.

(2) Where an authority is required by regulation 5(6) or 7(6) to make a payment to another authority, or a billing authority is required by regulation 5(7) or 7(8) to make a transfer to or from its collection fund, such payment or transfer shall be made —

- (a) if the audit adjustment is calculated or notified by or to an authority after the date on which that authority has made its calculations for the following financial year, in the financial year beginning two years after the beginning of the financial year in which the audit adjustment is calculated or notified; and for the purposes of this paragraph "calculations" means calculations made, in the case of a billing authority, in accordance with sections 32 and 33 of the 1992 Act, and in the case of a major precepting authority, in accordance with sections 43 and 44 of that Act, or
- (b) in any other case, in the financial year immediately following the year in which the authority calculates its audit adjustment, or its audit adjustment is notified to it, as the case may be.

Payments between successor authorities

9.—(1) Where under the Funds Regulations, as modified by these Regulations, or under these Regulations—

- (a) a designated authority in relation to a billing authority is entitled to receive a payment from a major precepting authority, or a payment in respect of a major precepting authority's share in a deficit in the collection fund of the abolished billing authority, then the designated authority shall be required to make a payment to each of the other successor authorities in relation to the abolished authority, or

- (b) a designated authority in relation to a billing authority is required to make a payment to a major precepting authority, or a payment in respect of a major precepting authority's share in a surplus in the collection fund of the abolished billing authority, then the designated authority shall be entitled to receive a payment from each of the other successor authorities in relation to the abolished authority,

and such payments to or by the designated authority shall be calculated and paid in accordance with this regulation.

(2) A payment to or by a designated authority by or to a successor authority referred to in paragraph (1) above shall be —

- (a) calculated as a proportion of the payment which the designated authority is entitled to receive, or required to make, which proportion all the successor authorities in relation to the abolished authority shall seek to agree, and if no such agreement is reached before the first amount becomes payable to or by the designated authority, then the proportion shall be determined by that authority as a proportion which is generally the same as the proportion which the estimated amount of each successor authority, calculated under regulation 4, bears to the abolished billing authority's estimated share as defined in regulation 4, or, where for the immediately preceding year there is no estimated surplus or deficit in the collection fund of the relevant billing authority, the proportion shall be calculated according to tax base in the same manner as the proportion of a billing authority's estimated share is calculated under regulations 4(4) and (5), and
- (b) made at such time and in such manner as the designated authority and the relevant successor authority may agree, and if no such agreement is reached before the first amount becomes payable to or by the designated authority the time and manner of payment shall be determined by the designated authority.

Payments between relinquishing and acquiring authorities

10.—(1) This regulation applies where a billing authority which is an acquiring authority is required by directions made under sections 98(4) or (5) of the 1988 Act to make a transfer between its collection fund and its general fund of a proportion of a community charge difference and for the purposes of this regulation a “community charge difference” means either —

- (a) an estimate of the difference between amounts credited and amounts charged to the income and expenditure account in the collection fund of the relinquishing authority in respect of community charges for the immediately preceding year, or
- (b) the difference between amounts so credited and so charged as shown in the final audited accounts of that authority for that year.

(2) Where a community charge difference is a positive amount, each acquiring authority shall be entitled to receive a payment from the relinquishing authority, and where it is a negative amount, each acquiring authority shall be required to make a payment to the relinquishing authority, which payment shall be —

- (a) of an amount equal to the amount which the acquiring authority is required to transfer under the relevant direction in respect of the community charge difference, and
- (b) made at such time and in such manner as the relinquishing authority and the relevant acquiring authority may agree, and if no such agreement is reached by the date which is 5 days after the date on which the first such difference has been calculated, the time and manner of payment shall be determined by the relinquishing authority.