

**EXPLANATORY MEMORANDUM TO**  
**THE NON-DOMESTIC RATING AND BUSINESS RATE SUPPLEMENTS**  
**(ENGLAND) (AMENDMENT) REGULATIONS 2011**

**2011 No. 255**

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 purpose of the instrument is to amend the Non-Domestic Rating (Payment of Interest) Regulations 1990 (“the 1990 Regulations”). The 1990 Regulations entitle ratepayers to an additional amount by way of interest on any repayment of national non-domestic rates (“NNDR”) to a ratepayer, where a ratepayer has overpaid rates. Interest is only due where the overpayment is a consequence of the alteration of a rating list. This instrument amends the 1990 Regulations so that ratepayers will be entitled to the payment of interest by a billing authority on any repayment of business rate supplements (“BRS”), where a ratepayer has overpaid, but again only where the overpayment of the BRS is a consequence of the alteration of a rating list.

2.2 The instrument also makes a technical amendment to the Business Rate Supplement (Transfers to Revenue Accounts) (England) Regulations 2009 (“the 2009 Regulations”). This instrument amends the 2009 Regulations to ensure that billing authorities calculate correctly the amount of BRS revenues that they have collected and to be declared in their final returns to the levying authority.

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

3.1 None.

4. **Legislative Context**

4.1 In England, the Business Rate Supplements Act 2009 (“the BRS 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 NNDR, with effect from 1st April 2010.

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 The regime for the collection of the business rate supplement mirrors the NNDR regime. The chargeable amount is derived partly from the entry related to a hereditament on the rating list. Where the chargeable amount that a ratepayer is due to pay by way of NNDR alters as a consequence of an alteration to the entry related to a hereditament on the rating list, the ratepayer will be due a refund of the overpayment from the billing authority. Interest is paid on such an overpayment. These Regulations extend that requirement to an overpayment of BRS where the overpayment is due to an alteration of the rating list.

4.4 The technical amendment to the 2009 Regulations relates to the scenario that, where there are two tiers of local government, the billing authority is required to transfer the BRS revenues collected to the levying authority in instalments during a financial year. At the end of the financial year a final return is calculated to show the amount collected, the amount transferred and the difference. These regulations make an amendment to ensure that billing authorities use the formula set out in the 2009 Regulations to calculate the amount of BRS revenues collected (not the amount transferred).

## **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 The BRS Act provides a new discretionary power for county councils, unitary district councils and, in London, the Greater London Authority to levy a supplement on the business rate. Levying authorities will be able to retain the proceeds to fund additional projects to promote the economic development of their local area.

7.2 In practical terms, the BRS is demanded from ratepayers as part of the NNDR demand notice, which, once issued, creates a liability for a ratepayer. Where that liability is later adjusted due to an alteration to the entry of a hereditament in the ratings list, which results in the ratepayer being entitled to a repayment of NNDR, the ratepayer is entitled in certain circumstances to an additional amount of interest.

7.3 However, currently only that portion of the repayment that is as a consequence of being liable for NNDR can have the additional interest payment. The principle behind the BRS is that it mirrors the NNDR system, and

therefore it is considered that where a ratepayer who is also liable for a BRS is entitled to a repayment with interest on overpaid NNDR, they should also receive an additional payment of interest in respect to the overpaid BRS.

7.4 In relation to the amendment to the 2009 Regulations, at the end of a financial year in which a BRS has been levied, the billing authority, in a two tier area, is required to provide a final return to the levying authority showing the amount of BRS collected and the amount of revenues transferred in instalments during the year and the difference between the two calculations. The purpose is to determine whether any further payment should be made from the billing authority to the levying authority, or whether a refund should be given to the billing authority. The definition for the formula for the amount of BRS revenues collected does not give the certainty to the billing authorities to be able to calculate their final returns. The amendment brings the clarity required to ensure the formula applies to the amount collected, so that final returns can be calculated.

- Consolidation

7.5 There is no consolidation required.

## **8. Consultation outcome**

8.1 No formal consultation has taken place, although informal views supporting the purpose of the instrument have been received from the Greater London Authority and representatives of London Councils (London being the only area where a BRS is currently operational).

## **9. Guidance**

9.1 It is not necessary to provide guidance for these regulations, as the regulation makes a minor amendment to the existing NNDR system that is understood by local authorities and that has been in place since 1990.

## **10. Impact**

10.1 The impact on businesses and other ratepayers is that they will receive interest on overpaid BRS where a repayment of BRS is required, as a result of certain alterations to the ratings list. There is no impact on businesses in respect of the amendment to the Transfer of Revenue Regulations.

10.2 The impact on the public sector is to ensure that, where a ratepayer has overpaid BRS as a result of certain alterations to the ratings list, interest is paid back to the ratepayer on that overpaid BRS. The impact of the amendment to the Transfer of Revenue Regulations provides clarity for the final return calculation for billing authorities.

10.3 An Impact Assessment has not been prepared for this instrument as this is an alteration to a tax that has minimal associated costs or savings.

**11. Regulating small business**

11.1 Where this legislation applies to businesses, the legislation applies equally to any small business that may be also liable for a BRS.

**12. Monitoring & review**

12.1 There are no plans to monitor or review this amendment.

**13. Contact**

Marie Hazzard at the Department for Communities and Local Government (tel: 0303 444 3608 or email: [marie.hazzard@communities.gsi.gov.uk](mailto:marie.hazzard@communities.gsi.gov.uk)) can answer any queries regarding the instrument.