EXPLANATORY MEMORANDUM TO

THE LOCAL AUTHORITIES (COLLECTION FUND: SURPLUS AND DEFICIT) (CORONAVIRUS) (ENGLAND) REGULATIONS 2020

2020 No. 1202

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Local Authorities (Collection Fund: Surplus and Deficit) (Coronavirus) (England) Regulations 2020 ("this instrument") amend provisions of the Local Authorities (Funds) (England) Regulations 1992 ("the Funds Regulations") and the Non-Domestic Rating (Rates Retention) Regulations 2013 ("the Rates Retention Regulations"). This instrument extends from one to three years the period over which local authorities can repay deficits in their local tax collection funds which have accrued during financial year 2020/21 as a result of the economic impact of the coronavirus pandemic.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As this instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

5.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Billing authorities are required by section 89 of the Local Government Finance Act 1988 to establish and maintain a collection fund for the purpose of collecting council tax and non-domestic rates. Billing authorities include shire district councils, London boroughs, unitary authorities, the Common Council of the City of London and the Council of the Isles of Scilly.

6.2 Council tax and non-domestic rates receipts are administered separately. The Funds Regulations make provision for how collection funds should be maintained in respect of council tax. All council tax must be paid into a billing authority's collection fund, and payments due to major precepting authorities are also made from that fund. Major precepting authorities include county councils, police and crime commissioners, fire and rescue authorities, mayoral combined authorities and the Greater London Authority.

6.3 The Rates Retention Regulations set out the processes which must be followed in respect of non-domestic rates. During the financial year a collection fund held by the billing authority receives all non-domestic rating income paid by ratepayers and pays out local and central shares to major precepting authorities and central Government in line with a calculation made prior to the start of the financial year.

6.4 By the end of the financial year the council tax and non-domestic rates collection funds will either be in deficit or surplus depending upon whether the local tax income is more or less than was expected at the start of the financial year. The Funds Regulations and the Rates Retention Regulations provide for the calculation of these surpluses or deficits, and for their apportionment.

6.5 This instrument amends the Funds Regulations and Rates Retention Regulations. It allows local authorities to spread the repayment of collection fund deficits accrued during financial year 2020/21 over the next three financial years.

7. Policy background

What is being done and why?

7.1 On 2 July 2020 the Secretary of State set out a further package of measures so that local government could continue to fulfil its essential role in the national response to the coronavirus pandemic[1]. These measures included an announcement that "the repayment of collection fund deficits arising in 2020-21, will be spread over the next three years rather than the usual period of a year, giving councils breathing space in setting budgets for next year." This instrument gives effect to that announcement.

7.2 Billing authorities are responsible for the administration of council tax and non-domestic rates including collecting the taxes, paying them into a collection fund and then making payments to themselves, major precepting authorities and – in the case of non-domestic rates – central government.

7.3 In January each year the billing authority must make an estimate of the likely surplus or deficit in each of the council tax and non-domestic rates collection funds and notify the major precepting authorities in its area of their respective shares. The surplus or deficit takes account of any tax income or liabilities outstanding from previous years ("the prior year balance") as well as tax receipts and payments in the current year. Each authority's share of the council tax surplus or deficit is determined by its relative share of the area's total council tax requirement for the year. Each authority's share of the non-domestic rates surplus or deficit is determined by reference to percentage shares set out in the Rates Retention Regulations.

7.4 Each billing and major precepting authority is required to incorporate their share of estimated collection fund surpluses or deficits into their budget and council tax setting

[1] Written Ministerial Statement HCWS333 – https://questions-statements.parliament.uk/written-statements/detail/2020-07-02/hcws333

for the following financial year. Where the collection funds are in deficit, billing and major precepting authorities experience a resource pressure and are required to discharge their liability by making payments into the collection funds. Conversely where there is a surplus in the collection fund, billing and major precepting authorities experience an uplift in their income and will receive the additional revenue by instalments.

7.5 In the event of any difference between the surplus or deficit estimated in January and the actual final position at the end of the financial year in March, this is incorporated into the next round of estimates made the following January.

7.6 In view of the expected shortfalls in council tax and non-domestic rates income during financial year 2020/21 as a result of the coronavirus pandemic, this instrument modifies the way that estimated council tax and non-domestic rates deficits accrued during 2020/21 must be apportioned and paid off.

7.7 For both the council tax and non-domestic rates collection funds this instrument draws a distinction between the prior year balance and the tax expected to be collected in 2020/21 (the 'exceptional balance'). The prior year balance – which relates to years prior to the pandemic - may not be phased and will be allocated to authorities in the usual way. If the exceptional balance is estimated to be in deficit in January 2021, then it must be phased in three equal tranches across the financial years 2021/22, 2022/23 and 2023/24. The phased liability of each billing and major precepting authority will be fixed and taken into account in the collection fund calculations made by billing authorities in each of those years.

7.8 If the exceptional balance is not estimated to be in deficit in January 2021 no phasing can take place.

7.9 This instrument makes special provision for the Hampshire and Isle of Wight Fire and Rescue Authority which will assume the fire functions currently carried out by the Isle of Wight Council on 1 April 2021. This instrument provides for the authority to be treated as if it had issued a precept to the Isle of Wight Council and received a share of non-domestic rates for financial year 2020/21, and to thereby take responsibility for a share of the Council's collection fund surpluses and deficits, including any phased deficits. This approach and the underpinning calculations have been agreed with the authorities concerned.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument amends existing provisions of the Funds Regulations and the Rates Retention Regulations. The Department does not intend to consolidate these regulations.

10. Consultation outcome

10.1 These are technical changes and have been developed in consultation with the Chartered Institute of Public Finance and Accountancy, and a number of Government-convened working groups whose membership includes representatives from billing and major precepting authorities and the Local Government Association. Those consulted are content with the instrument's detailed provisions and impact upon the mechanics of financial management.

10.2 Feedback on the purpose and merits of the changes has generally been positive on the basis that it will provide local authorities with additional flexibility when setting budgets. The Department received some representations that additional funding would be preferable to deficit phasing and that some authorities may prefer to deal with collection fund deficits in one year rather than three. On balance the Government is content that the approach set out in this instrument will be helpful to local authorities by providing flexibility in challenging circumstances.

11. Guidance

11.1 The Department will write to local authorities setting out the requirements of this instrument. The Department will also continue to issue guidance to the sector on the completion of associated data return forms. This will include how to estimate non-domestic rating income, and how to report council tax surpluses or deficits.

12. Impact

12.1 As this instrument makes technical changes to the timescales over which local authorities' tax income deficits in 2020/21 must be repaid, and does not affect the bills paid by ratepayers, there is no impact on business, charities or voluntary bodies.

12.2 The impact on the public sector is minimal. Billing authorities will be required to undertake additional calculations which will not be onerous. The instrument is fiscally neutral and spreads a liability over three years, thereby giving local authorities more flexibility in managing their finances.

12.3 A separate Impact Assessment has not been prepared for this instrument because it amends existing local tax regimes. Publication of a full impact assessment is not necessary for such legislation.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Government keeps the operation of the council tax and non-domestic rating systems and the underpinning legislation under regular review.

15. Contact

15.1 Nick Littlewood at the Ministry of Housing, Communities and Local Government, Telephone: 0303 44 42096 or email: nick.littlewood@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Chris Megainey, Deputy Director for Local Taxation at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Luke Hall MP, Minister of State at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.