

BUSINESS RATE SUPPLEMENTS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Liability to business rate supplements

Section 11: Liability of non-domestic ratepayers

28. *Subsections (1) and (2)* provide that any person who is liable to pay national non-domestic rates under section 43 or 45 of the Local Government Finance Act 1988 for a property is liable to pay a BRS levied by the levying authority in whose area that person's property is situated. However:
- a person liable to national non-domestic rates under section 45 of the Local Government Finance Act 1988 as the owner of an empty property is not liable for a BRS if their liability to rates is zero as a consequence of section 45A of that Act or if the levying authority has exempted the owners of empty property from the BRS (*subsection (3)*). These persons are referred to as "section 45 ratepayers" and the definition in subsection (3) applies for the purposes of the whole Act by virtue of section 30(2);
 - a person is not subject to a BRS if the rateable value condition is not met; that is if the property in respect of which the person pays rates has a rateable value on the day in question which does not exceed the amount prescribed in regulations made under section 12(1) (*subsection (5)(b)*).
29. Under *subsection (4)*, a person is subject to a daily charge for a BRS. BRS liability for a financial year is then determined by calculating the liability for each "chargeable day" and by adding up the total of the daily liabilities. *Subsection (5)* defines a "chargeable day". This is one falling within the financial year and the period for which the supplement is imposed ("the chargeable period"), and where the rateable value condition is met.
30. *Subsection (6)* defines "chargeable period" and provides that this cannot start before the supplement has been imposed. The practical effect of this is that BRS liability cannot accrue in respect of any day prior to the day the BRS is introduced. *Subsection (7)* limits the length of a chargeable period; unless the period is extended through a variation to a supplement (under section 10), the chargeable period must be no longer than that specified in the final prospectus.

Section 12: Rateable value condition

31. *Subsection (1)* provides that the rateable value condition is met where the rateable value of a hereditament exceeds the amount prescribed by regulations. This is subject to the exception provided for in *subsections (2) and (3)*.
32. *Subsection (2)* applies in relation to partially occupied non-domestic properties in situations where the owner of the property would not be liable to a BRS if it was completely empty. In these circumstances, the rateable value condition is only satisfied

if the rateable value of the occupied portion of the property exceeds the amount prescribed under *subsection (1) (subsection (3))*. For that purpose, *subsection (4)* enables the rateable value of a partially occupied property to be apportioned by a valuation officer between the occupied and unoccupied parts. *Subsection (5)* enables levying authorities to rely on apportionments previously made for the purposes of calculating the occupier's liability to national non-domestic rates. *Subsections (6) to (8)* allow the Secretary of State and, in Wales, the Welsh Ministers to make regulations that provide for a right to challenge apportionments for the purposes of BRS and for corrections to apportionments to have retrospective effect.

Sections 13 and 14: Chargeable amount

33. These sections set out the method for calculating the chargeable amount for a chargeable day. The method varies depending on whether one of the existing mandatory or discretionary reliefs from national non-domestic rates is available in respect of the property.
34. **Section 13(2)** prescribes the formula for calculating the daily chargeable amount for properties in respect of which no rate reliefs are available. This basic liability is calculated by applying the BRS multiplier to the rateable value of the property and dividing the result by the number of days in the financial year (section 14(2)-(4)). Where the rateable value has been apportioned under section 12(2) and (3), the multiplier is applied to the rateable value for the occupied portion of the property.
35. *Subsection (3)* prescribes the formula for calculating the daily chargeable amount for occupied properties in respect of which small business rate relief is granted.
36. *Subsection (4)* prescribes the formula for calculating the daily chargeable amount for occupied properties in respect of which mandatory rate relief for charities and community amateur sports clubs is granted.
37. *Subsection (5)* prescribes the formula for calculating the daily chargeable amount for occupied properties in respect of which mandatory rural rate relief is granted.
38. The operation of each of these formulae is adjusted by section 14(9) and (10) to reduce the liability of the occupiers of partially empty properties where the owners of empty properties are liable to the BRS. These subsections apply only where an order is in place under section 45(4A) of the Local Government Finance Act 1988 which reduces the liability to national non-domestic rates of the owners of empty properties to less than 100% of the basic liability. At all other times where the owners of empty properties are liable to the BRS, the liability of occupiers of partially empty properties is the same as the liability in respect of fully occupied properties.
39. *Subsection (6)* prescribes the formula for calculating the daily chargeable amount for empty properties. This subsection applies only where the Secretary of State or, in Wales, the Welsh Ministers have made an order under section 45(4A) of the Local Government Finance Act 1988 which reduces the liability to national non-domestic rates of the owners of empty properties to less than 100% of the basic liability.
40. *Subsections (7) and (8)* describe how the daily chargeable amount is calculated for properties in respect of which the rates billing authority has granted discretionary relief or hardship relief.
41. **Section 14(6)** places an upper limit on the multiplier for any single BRS imposed by a levying authority in a financial year of 0.02, or 2p per pound of rateable value. *Subsection (7)* places the same overall upper limit on all BRS imposed by a levying authority in a financial year.
42. *Subsection (8)* provides that, in addition to the limits imposed by *subsections (6) and (7)*, a BRS cannot increase above the amount specified in the final prospectus or in accordance with a variation under section 10.

Section 15: BRS relief

43. *Subsection (1)* enables levying authorities to grant relief in respect of the payment of a BRS.
44. *Subsection (2)* provides that, where relief applies in relation to a BRS, the chargeable amount must be calculated in accordance with the rules set by the levying authority for the application of the relief. Authorities could, for example, set a higher threshold for liability to the BRS than that prescribed under section 12; introduce a taper (for example applying a multiplier of 1p for properties with a rateable value of less than a set amount, and a 2p multiplier for properties with higher RVs); or phase in BRS over a number of years (for example a 0.5p multiplier for years 1-5, 1p for years 6-10, and 2p for subsequent years).
45. *Subsection (3)* sets out the conditions that must be met before relief may be applied. The relief can only be based on rateable value and must be applied uniformly to all types of hereditaments and owners or occupiers.

Section 16: Interaction with BID levy

46. This section enables levying authorities to offset the payment of BID levies under Part 4 of the Local Government Act 2003 against BRS liability. Where the levying authority decides to do this, the BRS chargeable amount is determined by deducting the amount of a ratepayer's liability for the BID levy from their potential liability for the BRS. *Subsection (4)* prevents BID levies being offset against BRS liability unless the authority's approach to offsetting has been set out in the final BRS prospectus or is in line with an agreed variation and requires that a consistent approach is taken to all BIDs in the levying authority's area. *Subsection (5)* applies *subsections (1) to (4)* to BRS-BIDs established under Schedule 2 to the Act.