

BUSINESS RATE SUPPLEMENTS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Power to impose business rate supplements

Sections 1 and 2: Power to impose a BRS and levying authorities

12. **Section 1** confers on levying authorities (which are defined in section 2(1)) a new power to levy a BRS on national non-domestic ratepayers for the purpose of raising money for expenditure on projects intended to support the economic development of the authority's area (*subsection (2)*). For the purposes of the Act, non-domestic ratepayers are those persons liable to pay national non-domestic rates under sections 43 and 45 of the Local Government Finance Act 1988.
13. **Section 2(2)** and **(3)** makes provision for two or more levying authorities to levy a BRS jointly. This provision could be used by authorities who are undertaking a joint project to promote economic development in their local areas, possibly as part of a Multi Area Agreement (where local authorities work in partnership with local agencies, for example to support economic growth). The majority of functions connected with a BRS will be exercisable jointly, although levying authorities will individually be responsible for publishing the BRS prospectus under section 5 and maintaining their own BRS revenue account under Schedule 3.

Section 3: Use of money raised by a BRS

14. This section limits how the revenue collected from a BRS can be spent. In particular:
 - *subsection (1)* provides that BRS revenues (i) can only be spent – whether directly or in the form of loan repayments (*subsection (2)*) – on the project the BRS was set up to fund, and (ii) cannot be used for expenditure the authority would have incurred if it had not established the BRS; and
 - *subsection (3)* provides that BRS revenues can never be used to fund certain services that levying authorities have existing obligations to provide.
15. *Subsection (5)* make provision for the GLA to enter into arrangements with any of its functional bodies (Transport for London, the London Development Agency, the Metropolitan Police Authority and the London Fire and Emergency Planning Authority) so that revenue collected from a BRS by the GLA may be used by the functional body on a project to which the BRS relates. *Subsections (9)* and *(11)* govern how the other provisions in section 3 are to operate where such arrangements are in place.
16. *Subsections (6), (7)* and *(10)* provide that the revenue collected from a BRS shall include voluntary financial contributions made for the purpose of enabling the project to which the BRS relates to be carried out. These subsections apply for the purposes of the whole Act as a result of section 30(2).
17. *Subsections (6) and (7)* cover voluntary financial contributions made both to levying authorities and lower-tier authorities. “Lower-tier authority” is defined in *subsection (8)*

and, by virtue of section 30(2), the definition applies for the purposes of the whole Act. The practical effect of the definition is that in areas where there are two tiers of local government, a lower-tier authority is the billing authority for the purposes of national non-domestic rates under Part 3 of the Local Government Finance Act 1988. In an area where there is only a single tier of local government, the billing authority and the levying authority will be one and the same.

Involvement of ratepayers, etc.

Sections 4 to 9: Conditions for imposing a BRS

18. This group of sections sets out the actions a levying authority must undertake before a BRS can be introduced.
19. Under section 5, for every BRS an initial and final prospectus must be published setting out the information listed in Schedule 1 to the Act. The initial prospectus will be the basis for the levying authority's consultation – and, where it is required, ballot – on its proposal to introduce the BRS. The information required is intended to assist consultees in understanding the practical arrangements for the BRS – in particular its level and duration – and the arrangements for the project it will fund. The final prospectus will be produced after consultation (and, where necessary, a ballot) and will contain the details of the BRS which will actually be imposed and the project it will fund. Outside London, it will be the responsibility of the whole levying authority to approve the final prospectus. In London, it will be the Mayor's responsibility.
20. **Section 6(1)** sets out who levying authorities must consult about their proposals to introduce a BRS including, in particular, those persons who will be liable to pay the BRS. **Subsections (2) to (4)** will assist levying authorities in determining how to meet that requirement by providing that, for the purposes of consultation, the persons liable to a BRS are:
 - those the authority thinks will be liable to pay the BRS on its first day;
 - those the authority thinks would be liable to pay the BRS on its first day if they were not receiving 100% relief from the BRS under section 13(7) or (8) as a consequence of receiving 100% relief from non-domestic rates; and
 - those the authority thinks would be liable to pay the BRS on its first day if they were not exempt because of the operation of a BRS relief under section 15 or because their BID levy liability has been offset against their BRS liability under section 16, but will pay the BRS levy before it comes to an end.
21. **Subsection (5)** requires the levying authority to consider whether to consult persons who they think might become liable to pay the BRS before it comes to an end. This could include, for example, those who may be brought into liability in the future because they occupy a non-domestic property with a rateable value just under the threshold for liability to a BRS.
22. In cases where the amount a levying authority expects to raise from a BRS is more than one third of the total cost of the project it is being levied to fund, a ballot will be required in accordance with sections 7 to 9. The levying authority may also choose to hold a ballot in other circumstances.
23. **Section 7(3)** specifies the wording of the question to be asked in a ballot on a supplement. Under **subsection (4)**, those eligible to vote are those persons the authority thinks will be liable to pay the BRS (within the meaning given by section 6(2) to (4)).
24. A ballot approving the imposition of a supplement is one where there is a simple majority of non-domestic properties, both by number and by rateable value, in favour of the proposal (section 8(1)). A majority by rateable value is determined by comparing the total rateable value of those non-domestic properties in respect of which there has been

a vote in favour against the total rateable value of those properties in respect of which there has been a vote against the proposal (*subsection (2)*). *Subsection (3)* provides that, for the purposes of determining whether there has been a majority in favour of the proposal to impose a BRS, rateable values are those on the day of the ballot.

25. *Section 9* empowers the Secretary of State and, in Wales, the Welsh Ministers to make regulations about the procedure for ballots on imposing supplements. By virtue of *subsection (3)*, such regulations could, in particular, include provision allowing levying authorities to delegate the function of holding a ballot and counting the votes to a billing authority.

Section 10: Variations

26. *Subsection (1)* allows a levying authority to vary a BRS provided the variation is in accordance with the final prospectus, and provided that the variation will not increase the number of persons liable to pay the BRS (*subsection (12)*).
27. If a variation is not foreshadowed in the final prospectus, *subsections (2) to (11)* set out the requirements which must be satisfied by a levying authority before it can make the variation. These largely mirror the requirements for imposing a BRS set out in sections 4 to 9, so that, in particular, those who will be affected by the variation are consulted and, where appropriate, given the chance to vote in a ballot.

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.

Administration of business rate supplements

Sections 18 to 20: Notice to billing authorities and calculations for financial year

47. **Section 20** sets out which authority is responsible for calculating the amount to be paid by each person liable to pay a BRS in a year. Where the levying authority is a billing authority for the purposes of national non-domestic rates, **subsection (1)** requires it to calculate the chargeable amount.
48. However, where the levying authority is not a billing authority, the calculation will be the responsibility of the billing authority for the area that the person's non-domestic property is situated in (**subsections (2) and (3)**). To enable the calculation to be made, section 18(1) requires levying authorities intending to impose a BRS to give written notice to each billing authority in their area containing the information specified in **subsection (2)**. In particular, levying authorities must notify billing authorities of the BRS multiplier and their policy on reliefs.
49. If the BRS is to be payable with effect from the beginning of a financial year, section 18(3) specifies that the notice must be given before 1st March in the preceding financial year. If notice is not given by that time, the BRS is to commence in its first

year other than on 1st April, or a variation is to take effect other than on 1st April, notice must instead be given under section 19.

50. If notice is not served on a billing authority under section 18 or section 19, it need not make any calculations under section 20(2). Where notice is given of a variation to the BRS, new calculations are required only to the extent necessary to give effect to the variation (section 20(4)).

Sections 21 and 22: Collection and enforcement and administrative expenses

51. **Section 21(1)** empowers the Secretary of State and, in Wales, the Welsh Ministers to make regulations dealing with the collection and enforcement of BRS. These may be made as standalone regulations relating specifically to the collection and enforcement of BRS or by way of applying or amending the existing regulations governing the collection and enforcement of non-domestic rates. These regulations will deal with the practicalities of collection and enforcement and the form and contents of BRS bills.
52. Under section 22(1), the regulations may also contain provision allowing billing authorities to retain a prescribed proportion of BRS revenues to cover their costs incurred in collecting and enforcing payment of BRS. However, if costs are incurred as a result of the levying authority serving notice on the billing authority under section 19, introducing a BRS mid-way through a financial year or making a variation to the BRS which takes effect mid-way through a financial year, they cannot be covered by the BRS revenues. In those circumstances, they must be met by the levying authority (*subsections (3)-(6)*).
53. **Section 21(3)** provides that collection and enforcement may continue after the BRS has come to an end to the extent that sums fell due before that time. *Subsection (4)* provides that regulations may deal with when collection and enforcement must stop as a result of the project being funded by the BRS being abandoned.

Intervention by appropriate national authority

Section 24: Power to cancel a BRS

54. This section enables the Secretary of State or, in Wales, the Welsh Ministers to cancel a BRS and order the revenue received to be refunded, or take other appropriate steps, if it is considered that a levying authority has acted in a way that is inconsistent with the final prospectus for a BRS, the information set out for the consultation and, in relevant cases, the ballot on a proposal to impose a BRS or information provided in relation to a variation to the BRS.
55. *Subsection (5)* enables the Secretary of State or, in Wales, the Welsh Ministers to obtain information from levying or billing authorities for the purposes of deciding whether to take action under this section.
56. *Subsection (7)* prevents billing authorities from collecting or recovering unpaid sums where the imposition of a BRS comes to an end as a result of it being cancelled under this section.

Supplementary

Section 25: Provision of information

57. *Subsection (1)* enables levying authorities to obtain certain information from billing authorities for the purposes of setting a BRS and drawing up a prospectus, including the addresses and rateable values of non-domestic properties in its area. *Subsection (4)* limits the use of such information to that required for the purposes of the Act and disclosure by the levying authority of the information.

Section 26: Guidance

58. This section requires levying authorities to have regard to guidance issued by the Secretary of State or, in Wales, the Welsh Ministers about a range of matters connected to BRS including, in particular, the kinds of projects which may be regarded as appropriate to be funded through a BRS and how the levying authority will demonstrate that it would not have incurred the expenditure if it had not imposed the BRS.

Section 27: Special introductory provision

59. This section makes provision in relation to BRS in the period immediately after Royal Assent of the Act. In particular, *subsection (1)* provides that no BRS may be levied before 1st April 2010.
60. *Subsection (2)* provides that, in England, a BRS may be levied on or before 1st April 2012 for the purpose of supporting a project which begins before the power in section 1 to levy a BRS is commenced. After 1st April 2012, it will not be possible for BRS to be levied in respect of such pre-existing projects.
61. *Subsections (3) and (4)* provide that any guidance issued by the Secretary of State prior to Royal Assent is to be treated as guidance issued under section 26 and may be relied on by levying authorities for the purposes of levying a BRS on or before 1st April 2012. *Subsection (5)* provides that steps taken by a levying authority in line with such “pre-commencement” guidance are to be treated as having been carried out in accordance with the Act.
62. *Subsection (6)* relates to any BRS established by the GLA in reliance on *subsection (2)* on or before 1st April 2011. In those circumstances, it provides that the requirements of sections 3(1)(b) (that BRS revenues must be used to fund expenditure the levying authority would not have incurred had it not imposed the BRS) and 7(1) and 10(7) (that there must be a ballot where the BRS will fund more than one third of project costs) do not apply.
63. *Subsection (7)* enables the Secretary of State to make other provision in regulations on the establishment and operation of BRS in London in the period up to 1st April 2012. In particular, these may modify the operation of the Act in relation to a BRS levied by the GLA in that period.

Schedule 1: Information to be included in a prospectus for a BRS

64. **Schedule 1** prescribes the information that is to be included in initial and final prospectuses for BRS. In particular, prospectuses must set out a description of the project to which the BRS relates and a description of the expenditure for which the sums received from the BRS will be used; the authority’s economic assessment of the BRS; the practical arrangements for the BRS, including its level, duration and any reliefs which will apply; and, in those cases where the supplement is expected to fund less than one third of the total projected cost of the project, whether or not the levying authority intends to hold a ballot and an explanation for its intended course of action.

Schedule 2: BRS-BID arrangements

65. **Schedule 2** gives certain local authorities power to make arrangements for a new type of Business Improvement District (“BID”) levy, to be known as “BRS-BID” levy. The levy could be imposed in areas where both a BID and BRS exist and would allow for the owners of properties to be involved in the BRS-BID. Under the Local Government Act 2003, property owners can have no formal involvement in BIDs unless their property is empty and not let, although they may choose to make voluntary contributions to the BID.
66. The proceeds from the new BRS-BID levy could either fund the same project as the BID – by providing additional revenues or offsetting the contributions of ratepayers

who are liable to both the BID and the BRS – or fund a different project. As for BIDs, a BRS-BID could not be established unless there were a successful ballot on the BRS-BID proposals.

Schedule 3: Accounting

67. **Paragraph 1** of Schedule 3 requires levying authorities that impose a BRS to set up and keep a BRS revenue account for that BRS and ensure that sums received in respect of it are credited to the BRS revenue account. Paragraph 1 also provides that if two or more levying authorities are acting jointly they must have their own BRS revenue accounts. Where the GLA levies a BRS, any functional body which receives any of the BRS receipts, including voluntary financial contributions, must also maintain a BRS revenue account.
68. **Paragraph 2** makes provision for regulations to deal with how BRS receipts are transferred into the levying authority's BRS revenue account. Paragraph 3 gives the Secretary of State and, in Wales, the Welsh Ministers the power to make regulations providing for refunds if a BRS comes to an end and for regulations to set out how refunds or credits are given.