



Ministry of Housing,
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Local Government

Local Taxation Division
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FOR THE ATTENTION OF FINANCE DIRECTORS

Dear Colleague.

Phasing of 2020-21 Collection Fund Deficits

The Local Authorities (Collection Fund: Surplus and Deficit) (Coronavirus) (England) Regulations 2020 were laid before Parliament today and are due to come into force on 1 December 2020. The Department is grateful for the assistance provided by a number of local authority working groups and practitioners during the preparation of the regulations, and for the technical support provided by CIPFA.

The regulations implement the announcement made by the Secretary of State on 2 July 2020 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.”¹

The regulations, which amend the requirements of the [Local Authorities \(Funds\) \(England\) Regulations 1992](#) and the [Non-Domestic Rating \(Rates Retention\) Regulations 2013](#), can be found at the following link
<https://www.legislation.gov.uk/ukxi/2020/1202/contents/made>

The key elements of the phasing scheme, which applies separately to each of the council tax and non-domestic rates collection fund balances, are set out in the attached note. The note includes information about special provisions to reflect the transfer of fire functions from the Isle of Wight Council to the new Hampshire and Isle of Wight Fire and Rescue Authority, and the need for further regulations to ensure the new North Northamptonshire and West Northamptonshire unitary authorities can continue to benefit from the deficit phasing of their predecessor authorities’ in years 2 and 3 of the scheme. The note also outlines the information which the Department will need to collect from billing authorities about collection fund deficit phasing early next year.

Should you have any queries about the contents of this letter, please do not hesitate to contact the Department at council.tax@communities.gov.uk

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

The Local Authorities (Collection Fund: Surplus and Deficit) (Coronavirus) (England) Regulations 2020 – Summary of Requirements

Purpose

1. This note summarises the requirements of the Local Authorities (Collection Fund: Surplus and Deficit) (Coronavirus) (England) Regulations 2020 which were laid before Parliament on 5 November 2020, and which will come into force on 1 December 2020. The regulations potentially affect the council tax and non-domestic rates estimated Collection Fund surpluses and deficits of all billing and major precepting authorities in financial years 2021-22, 2022-23 and 2023-24.
2. This note is not intended to offer definitive guidance or to interpret legislation. Authorities should seek legal advice as necessary.

Background

3. For the purposes of Collection Fund accounting, the treatment of council tax and non-domestic rates surpluses and deficits is essentially the same although the two taxes are administered entirely separately.
4. Prior to the beginning of the financial year, billing authorities calculate their council tax requirement (including precepts) and their estimated non-domestic rating income. Based on these calculations, payments from the Collection Fund to major precepting authorities and transfers from the Collection Fund to billing authorities' General Funds are fixed for the year.
5. Any surplus or deficit on the Collection Fund as a result of local tax income being greater or smaller than originally estimated, is shared between billing and major precepting authorities (and, in the case of non-domestic rates, with central government). The process of sharing surpluses and deficits is spread over two years. Before the end of the financial year in question (year 1), billing authorities are required to estimate what the surplus/deficit on the Collection Fund will be at the end of that financial year. The estimated amount is paid to authorities (in the case of a surplus), or by authorities (in the case of a deficit) over the course of the following year (year 2); and must be taken into account when authorities set their year 2 budgets.
6. When outturn figures for the financial year in question (year 1) are available (about midway through year 2), the difference between the actual year 1 surplus/deficit and the estimated surplus/deficit is payable by/to authorities during the course of year 3 and must be taken into account when authorities set their year 3 budgets. In practice, the difference between the actual year 1 surplus/deficit and the estimated year 1 surplus/deficit is automatically included in the estimated surplus/deficit calculation that authorities make in respect of year 2 (the so-called "prior-year" element of that calculation).
7. As a result of pressures associated with the Coronavirus pandemic, authorities are likely to estimate a larger-than-normal deficit on the 2020-21 Collection Fund in January 2021, creating a resource and budget pressure for 2021-22. Government has therefore amended secondary legislation to allow authorities to spread the estimated deficit on the 2020-21 Collection Fund over the three years 2021-22 to 2023-24. The provisions do not allow deficits in other financial years to be phased.

Summary of required approach

8. The Local Authorities (Collection Fund: Surplus and Deficit) (Coronavirus) (England) Regulations 2020 [“the regulations”] amend the Local Authorities (Funds) (England) Regulations 1992 and the Non-Domestic Rating (Rates Retention) Regulations 2013 which govern the calculation and apportionment of Collection Fund surpluses and deficits for council tax and non-domestic rates respectively.

Identifying and fixing the amounts to be spread

9. In January 2021 billing authorities must separately estimate their collection fund surpluses and deficits for each of council tax and non-domestic rates in the usual way.
10. Alongside this, billing authorities must also estimate an ‘exceptional balance’ for each of council tax and non-domestic rates. This is the estimated overall surplus or deficit net of any ‘prior year’ elements (the prior year element is the difference between the estimated and actual surplus/deficits for 2019-20 and is calculated as the difference between the ‘opening balance’ on the Collection Fund at 1 April 2020 and the sums paid to/from the Collection Fund during the course of 2020-21 in respect of the estimated surplus/deficit calculated by authorities in January 2020).
11. For non-domestic rates the exceptional balance must also exclude amounts in respect of amended and expanded business rates reliefs which were not included in NNDR1 forms returned to the Department prior to the start of financial year 2020-21, and for which authorities will be compensated through s31 grants². The Department is aware that the amount of additional relief authorities have awarded will not be known until after the 2020-21 NNDR3 forms are returned in mid-2021. Consequently, authorities will be asked to make an estimate of the relief they have awarded at the same time as they estimate their Collection Fund surpluses and deficits in January 2021.
12. Where the exceptional balance is in deficit, the deficit phasing provisions are triggered and this amount must be spread in three equal portions across the three financial years 2021-22 to 2023-24. In the interests of reducing potential complication as far as possible, the exceptional balance may not be adjusted should the end of year calculation of actual surplus or deficit for 2020-21 produce a different amount.
13. There is no provision in the regulations to allow authorities to opt out of the deficit phasing, or to adopt a different payment profile. This reflects the nature of the primary legislation which only permits the Secretary of State to prescribe an approach which authorities must follow, rather than offering them discretion.
14. There is no de minimis threshold for the deficit phasing. The ‘prior year’ elements of the surplus or deficit estimated in January 2021 may not be phased, and where the exceptional balance is in surplus, this may not be phased.

Apportionment

Council tax collection fund balances

² Following the submission of 2020-21 NNDR1s, the Government announced the expansion of the retail relief scheme, the introduction of nursery relief and the extension of local newspaper relief. Because these reliefs will not have been recognised in NNDR1s, the amounts awarded to ratepayers will automatically produce a deficit on the Collection Fund. However, authorities will be directly compensated through a s.31 grant for the relief they give, and hence, will have the resource they need to fund this element of any Collection Fund deficit.

15. The Local Authorities (Funds) (England) Regulations 1992 require collection fund surpluses and deficits to be apportioned on the basis of each billing authority³ and major preceptor's share of the aggregate council tax requirement for the billing authority's area for the 'preceding year'.⁴ Authorities' shares of the aggregate area council tax requirement can vary from year to year, creating a risk that their shares of the phased exceptional balance could change during the lifetime of the scheme. To prevent this, the regulations require the exceptional balance to be apportioned each year according to the authorities' council tax requirements in 2020-21. All other estimated surpluses or deficits will continue to be apportioned according to the council tax requirements of authorities at the time of the estimate.

Non-domestic rates collection fund balances

16. The Non-Domestic Rating (Rates Retention) Regulations 2013 require collection fund balances to be apportioned on the basis of percentages specified in regulations. These percentages have changed from time to time – for example, as a result of the creation of 75% and 100% pilots in the years between 2017-18 and 2019-20. The amendments to the 2013 Regulations made by the Local Authorities (Collection Fund: Surplus and Deficit) (Coronavirus) (England) Regulations 2020 ensure that authorities' share of the exceptional balance will be shared each year on the basis of 2020-21 shares and that in-year and prior-year surplus/deficits reflect the shares due to authorities in respect of the years in question.

Actions required each year

2021-22

17. In January 2021, for each of council tax and non-domestic rates, billing authorities will
- estimate the Collection Fund surplus or deficit in the usual way
 - estimate the exceptional balance by deducting prior year elements from the overall surplus or deficit. In the case of non-domestic rates they must also deduct an amount equivalent to s31 grants to be received in respect of business rates reliefs not accounted for in the NNDR1 form returned to MHCLG prior to the start of financial year 2020-21.
18. If the exceptional balance is in deficit then the phasing provisions are triggered, in which case billing authorities must
- credit two-thirds of the exceptional balance to the estimated surplus or deficit for the year. This has the effect of removing 2/3 of the exceptional balance deficit from the surplus or deficit to be apportioned, leaving 2/3 still to be dealt with in 2022-23 and 2023-24. Applying the credit will make a deficit smaller and a surplus larger.
 - apportion the resulting adjusted council tax surplus/deficit according to authorities' relative shares of the aggregate council tax requirement for the area for 2020-21.
 - apportion the resulting adjusted non-domestic rates surplus/ deficit to authorities according to the 2019-20 (prior year) and 2020-21 percentage shares set out in the Non-Domestic Rating (Rates Retention) Regulations 2013 (as amended).
19. If the exceptional balance is not in deficit then the phasing provisions are not triggered and billing authorities must apportion surpluses and deficits in the usual way.
20. For non-domestic rates, all the necessary calculations for working out the exceptional balance, the credit to be made to the estimated surplus/deficit calculation and the

³ For Collection Fund purposes a billing authority's council tax requirement includes local precepts.

⁴ So for the council tax surplus or deficit estimated on 15 January 2021, apportionment will be based on the council tax requirements of billing and major precepting authorities for financial year 2020-21.

apportionment of the estimated surplus/deficit between authorities will be set out and automatically calculated in the NNDR1 for 2021-22 that will be released to authorities in mid-December.

2022-23

21. In January 2022 for each of council tax and non-domestic rates, billing authorities will
- a) estimate the Collection Fund surplus or deficit in the usual way
 - b) credit one-third of the exceptional balance estimated in January 2021 to the overall surplus or deficit for the year. This will make a deficit smaller and a surplus larger. Doing this has the effect of removing 1/3 of the exceptional balance deficit from the surplus/deficit to be apportioned, leaving 1/3 still to be dealt with in 2023-24.
 - c) The billing authority must then apportion the resulting adjusted surplus/ deficit. For council tax it must treat the exceptional balance and the remainder of the overall surplus/ deficit for the year separately. To do this, it must undertake the following steps.
 - i. deduct an amount equivalent to 1/3 of the exceptional balance from the adjusted surplus/ deficit.
 - ii. apportion the exceptional balance according to authorities' council tax requirements in 2020-21.
 - iii. apportion the remainder of the adjusted surplus/ deficit by reference to authorities' council tax requirements in 2021-22.

For non-domestic rates the adjusted surplus/ deficit must be apportioned according to shares applying in 2021-22, as set out in Regulations.

22. For non-domestic rates, all the necessary calculations for working out the exceptional balance, the credit to be made to the estimated surplus/deficit calculation and the apportionment of the estimated surplus/deficit between authorities will be set out and automatically calculated in the NNDR1 for 2022-23 that will be released to authorities in mid-December 2021.

2023-24

23. In January 2023 for each of council tax and non-domestic rates, billing authorities will estimate the Collection Fund surplus or deficit in the usual way. No credit needs to be made in respect of the exceptional balance.⁵
24. The billing authority must then apportion the surplus/ deficit. For council tax, it must treat the exceptional balance and the remainder of the overall surplus/ deficit for the year separately. To do this it must undertake the following steps
- a) deduct an amount equivalent to 1/3 of the exceptional balance from the surplus/ deficit.
 - b) apportion the exceptional balance according to authorities' council tax requirements in 2020-21.
 - c) apportion the remainder of the surplus/ deficit by reference to authorities' council tax requirements in 2022-23.

⁵ The credits applied in 2021-22 and 2022-23 were required to prevent authorities from having to take account of a portion of the exceptional balance. Without the application of the credits the outstanding exceptional balance would have had to be treated as a Collection Fund deficit to be paid off in full. For 2023-24, only one third of the exceptional balance remains to be paid (feeding through to the estimate of surplus and deficit made in January 2023 as part of the 'opening balance'), and this needs to be paid off in full, so no mitigating credit is required.

For non-domestic rates the adjusted surplus/ deficit will be apportioned according to shares applying in 2022-23, as set out in Regulations.

25. For non-domestic rates, all the necessary calculations for working out the exceptional balance and the apportionment of the estimated surplus/deficit between authorities will be set out and automatically calculated in the NNDR1 for 2023-24 that will be released to authorities in mid-December 2022

26. When calculating and apportioning the spread exceptional balance each year care should be taken to note the regulations' requirements to treat different figures as positive or negative amounts in different circumstances.

Restructuring authorities.

Isle of Wight Council and Hampshire and Isle of Wight FRA.

27. Following agreement with the two authorities, the regulations make special provision to reflect the transfer of the Isle of Wight Council's fire functions to the new Hampshire and Isle of Wight Fire and Rescue Authority (HloW FRA) on 1 April 2020. The regulations specify that for the purposes of the estimation and apportionment of collection fund surpluses and deficits in January 2021 and the spreading of any exceptional balance, HloW FRA is to be treated as if it was a major precepting authority which had issued a precept of £3,347,939.09 to the Isle of Wight Council and had received a 1% share of non-domestic rates for the financial year beginning on 1st April 2020. This measure will allow HloW FRA to be apportioned a share of any collection fund surplus, deficit and exceptional amount, while reducing the Isle of Wight Council's share by a commensurate amount.

Northamptonshire unitarisation

28. Modifications made by the [Local Government \(Structural Changes\) \(Further Financial Provisions and Amendment\) Regulations 2009](#) to the Local Authorities (Funds) (England) Regulations 1992 require the two new unitary councils in Northamptonshire to be responsible for the collection fund surpluses/deficits of their predecessor authorities, with the final split of the predecessor county council's share to be determined by local agreement. The phasing regulations allow the predecessor billing authorities to calculate an exceptional balance and – if it is in deficit – the new unitary councils and their major precepting authorities will only be required to pay off one third of it during 2021-22. However, further regulations will be required during the course of 2021-22 to ensure that the two new authorities are able to benefit from the second and third year of deficit phasing in a way which reflects the locally agreed split of the surpluses/ deficits of their predecessor councils. The Department will write to North Northamptonshire and West Northamptonshire councils about this in due course.

Calculations and reporting

29. The Department intends to provide materials to assist billing authorities in making the necessary council tax calculations in all three years of the scheme, and will ask them to report the amounts of deficit which have been spread in the interests of transparency. Further information will be provided to authorities about these matters in due course.

30. Part 4 of the 2021-22 NNDR1 form will provide for the calculation of the estimated non-domestic rates surplus/deficit on the Collection Fund for the previous year (2020-21). In each of 2021-22 and 2022-23, the NNDR1 will automatically calculate the exceptional balance and the sum (if any) to be credited to the estimated surplus/deficit calculation in Part 4 of the form, using the data that authorities will, as a matter of course, provide elsewhere on the form. In these and future years, the NNDR1 form will (as it does now) calculate the

apportionment of the estimated surplus/deficit between the Department, billing authorities and major precepting authorities.

Contacts for further information

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