

EXPLANATORY MEMORANDUM TO

THE NON-DOMESTIC RATING (RATES RETENTION AND LEVY AND SAFETY NET) (AMENDMENT) REGULATIONS 2018

2018 No. [XXXX]

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 Non-Domestic Rating (Rates Retention and Levy and Safety Net) (Amendment) Regulations 2018 (“the Amending Regulations”) amend provisions of the Non-Domestic Rating (Rates Retention) Regulations 2013 (“the Rates Retention Regulations”) and the Non-Domestic Rating (Levy and Safety Net) Regulations 2013 (“the Levy and Safety Net Regulations”) to provide for changes to the administration of the rates retention scheme, including the calculation of levy and safety net payments consequent upon the Government’s decision to create, from 1 April 2018, “pilot” areas in which authorities will retain 100% of locally raised business rates.
- 2.2 The Amending Regulations also make changes to the conditions for hereditaments in respect of qualifying relief for deductions from central share payments; and revise levy rates and the figures to be used in the calculation of levy and safety net payments for 2017-18 and 2018-19, to reflect changes to data as a consequence of the Revaluation of business rates.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 This entire instrument applies only to England only.
- 3.3 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.
- 3.4 The Department has reached this view because it considers that the primary purpose of the instrument relates to local government finance, which is within the devolved legislative competence of each of the three devolved legislatures. For example, the primary purpose of the subject matter of the instrument is not a reserved matter within Schedule 7A to the Government of Wales Act 2006, nor is it one of the general

restrictions within Schedule 7B or otherwise outside the legislative competence of the National assembly for Wales (See section 108A of that Act).

4. Legislative Context

- 4.1 The non-domestic rating system in England and Wales was established by the Local Government Finance Act 1988 (“the 1988 Act”). The Local Government Finance Act 2012 inserted a new Schedule 7B into the 1988 Act which provides for the local retention of non-domestic rates (“the business rates retention scheme”).
- 4.2 The Rates Retention Regulations and Levy and Safety Net Regulations are the principal statutory instruments that provide for the operation of the rates retention system. The system operates through a billing authority’s collection fund. A billing authority is required to keep a collection fund under Part 6 of the 1988 Act. Business rates income collected by the authority must be paid into this fund and payments due to central government and other local authorities as part of the business rates retention scheme, must be paid from this fund. Before the beginning of the year, the billing authority estimates the amount it will collect from non-domestic ratepayers during the course of the year. This amount is the authority’s non-domestic rating income for the year.
- 4.3 Currently, 50% of an authority’s non-domestic rating income is due to central government – the “central share”. The remaining 50% – the “local share” – is shared between a billing authority and its major precepting authorities (if any), as required by the Rates Retention Regulations. However, for the pilot areas of Cornwall, Greater Manchester, Liverpool City Region, the West of England and West Midlands (“the 2017 pilot areas”), a billing authority no longer has to pay the central share and instead, 100% of the authority’s non-domestic rating income is shared between the billing authority and its major precepting authorities.
- 4.4 As set out above, during the 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 (in line with the calculation made before the start of the year). By the end of the year, therefore, the collection fund will either be in deficit or surplus depending upon whether the non-domestic rating income collected from ratepayers is more or less than estimated before the beginning of the year. The Rates Retention Regulations provide for the calculation of this surplus or deficit and its distribution between central and local government.
- 4.5 The Levy and Safety Net Regulations provide that if an authority’s income from its share of business rates is less than a prescribed minimum (the authority’s “safety net threshold”) the authority will receive a “safety net” payment. The Regulations also prescribe an individual “levy rate” for each authority. Depending on an authority’s individual levy rate, if in any year its share of business rates income exceeds its “baseline funding level”, it is required to make a levy payment of a proportion of that excess income.
- 4.6 The Amending Regulations amend the Rates Retention Regulations and the Levy and Safety Net Regulations. Specifically, they amend the Rates Retention Regulations to provide that billing authorities in the pilot areas of Berkshire, Derbyshire, Devon, Gloucestershire, Kent, Leeds, Lincolnshire, London, Solent, Suffolk and Surrey, no longer have to pay the central share. Instead, together with their major precepting authorities, they retain 100% of local non-domestic rating income.

- 4.7 The Rates Retention Regulations are amended to make the consequential amendments needed to reflect the changes to pilot authorities' central and local shares. The percentage of the local share that a billing authority has to pay to its major precepting authority differs depending on the pilot area. These amendments also include changes to the distribution of surpluses and deficits in the Collection Fund, reflecting the new central and local shares in pilot authorities, and the need to deal with the fact that Collection Fund surpluses and deficits are effectively shared between central Government and local authorities over the two years following the year to which they relate.
- 4.8 The Amending Regulations also amend the provisions which allow local authorities to be compensated for the cost of the rates relief that they provide to ratepayers in Enterprise Zones. These changes extend the period over which authorities can be compensated for the business rates relief they give by reference to when the various Enterprise Zones were created.
- 4.9 The Rates Retention Regulations are also amended to align the date of the final certified National Non-domestic Returns (NNDR3) to new timescales. This reflects the fact that, from financial year 2017-18, authorities are required to have closed their accounts by 31 July rather than 30 September, following the accounting year end.
- 4.10 The Amending Regulations amend the Levy and Safety Net Regulations to ensure that individual pilot authorities have a levy rate of zero. Furthermore changes to the calculation of "retained rates income" in Schedule 1 for pilot authorities ensure that safety net payments for such authorities continue to be calculated as if the authorities were still operating under the 50% rates retention scheme.
- 4.11 The Levy and Safety Net Regulations are also amended to adjust how levy rates are to be calculated for years beginning on or after 1 April 2017 and certain values to be used in the calculation of levy and safety net payments. This takes account of changes to authorities' business rates baselines following the 2017 revaluation and changes to small business rates relief made in the 2016 Autumn Statement.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

- 6.1 The Parliamentary Under Secretary of State has made the following statement regarding Human Rights:

"In my view the provisions of the Non-Domestic Rating (Rates Retention and Levy and Safety Net) (Amendment) Regulations 2018 are compatible with the Convention rights."

7. Policy background

What is being done and why

- 7.1 The Amending Regulations do three things. Firstly they make changes to the operation of the rates retention scheme to reflect the creation of new pilot areas in

which authorities will be allowed to keep 100%, instead of 50%, of local business rates income.

- 7.2 Since 2013-14, local authorities have kept 50% of locally raised business rates. In the government's 2017 manifesto there was a commitment to continue to allow local government greater control over the money it raises. In September 2017, the Government published an invitation to local authorities in England to apply for 100% business rates retention pilot status in 2018 to 2019.
- 7.3 In December 2017, the government announced 10 successful pilot areas: Berkshire, Derbyshire, Devon, Gloucestershire, Kent, Leeds, Lincolnshire, Solent, Suffolk and Surrey. Separately, the government also announced a London pilot covering the GLA and the 33 London Boroughs, following negotiations with London government.
- 7.4 In each case, authorities in pilot areas will forego Revenue Support Grant and, where appropriate, Rural Services Delivery Grant in return for keeping 100% of their locally raised business rates. In each of the pilot areas, authorities will test different options for sharing business rates income under the rates retention scheme.
- 7.5 Secondly, the Amending Regulations make changes to the conditions for hereditaments in respect of deductions from central share payments. Under the rates retention scheme, billing authorities have the authority to grant business rates discounts to hereditaments within designated areas for a period of up to 5 years. To provide for this, one of the conditions for these hereditaments was that the ratepayer must have become the ratepayer on or before 31 March 2018. While this provided for a 5 year period for areas designated in 2013, other designations have been made in subsequent years. For those designations, the 31 March 2018 did not provide for a period of up to 5 years. The amendments ensure that a 5 year period is available for all designated areas regardless of when the area has been designated.
- 7.6 Finally, the Amending Regulations amend figures to be used in the calculation of levy and safety net payments for 2017-18 and 2018-19. This is to reflect adjustments made to tariffs and top-ups, as part of the 2018-19 Local Government Finance Settlement, which take account of the 2017 business rates revaluation; and changes made to small business rates relief thresholds with effect from 1 April 2017.

Consolidation

- 7.7 This instrument amends existing provisions of the Non-Domestic Rating (Rates Retention) Regulations 2013 and the Non-Domestic Rating (Levy and Safety Net) Regulations 2013. The Department does not intend to consolidate these Regulations.

8. Consultation outcome

- 8.1 These are technical changes which have been discussed with representatives of local government and the affected pilot authorities.

9. Guidance

- 9.1 The Department issues guidance to local government on the completion of associated information forms which describe how to estimate non-domestic rating income and levy and safety net payments.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies since the regulations do not alter the bills due from ratepayers.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment for the rates retention system is available from the DCLG website at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8470/2054063.pdf
- 10.4 A separate Impact Assessment has not been prepared for this instrument because it amends an existing local tax regime. Publication of a full impact assessment is not necessary for such legislation.

11. Regulating small business

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

12. Monitoring & review

- 12.1 The Government keeps the non-domestic rating system under regular review.

13. Contact

- 13.1 Mark Barnett at the Ministry of Housing, Communities and Local Government
Telephone: 0303 444 4217 or email: mark.barnett@communities.gsi.gov.uk can answer any queries regarding the instrument.