

**EXPLANATORY MEMORANDUM TO  
THE NON-DOMESTIC RATING (TRANSITIONAL PROTECTION  
PAYMENTS) REGULATIONS 2013**

**2013 No. 106**

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 These Regulations form part of the scheme for local retention of non-domestic rates.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 This is the first exercise of the powers in Part 7 of Schedule 7B to the Local Government Finance Act 1988

4. **Legislative Context**

- 4.1 The non-domestic rating system in England and Wales is established by the Local Government Finance Act 1988 (“the 1988 Act”). The Local Government Finance Act 2012 inserts a new Schedule 7B into the 1988 Act (“the Schedule”) which provides for the local retention of non-domestic rates collected in England.

- 4.2 These Regulations form part of a group of instruments that will establish the new scheme:

- The Non-Domestic Rating (Rates Retention) Regulations 2013 (laid before Parliament in draft on 8th January 2013)  
These Regulations will establish the means of calculating the amounts of non-domestic rates that are to be paid to the Secretary of State, the amounts that are to be retained locally and how these are to be distributed.
- The Non-Domestic Rating (Levy and Safety Net) Regulations 2013  
These Regulations will provide for the calculation of the levy and safety net elements of the scheme for local retention of non-domestic rates.
- The Non-Domestic Rating (Designated Areas) Regulations 2013

These Regulations will designate areas for which the rates income is to be disregarded for the purposes of certain calculations – meaning that the entire amount is retained locally.

- The Non-Domestic Rating (Renewable Energy Projects) Regulations 2013

These Regulations will designate classes of hereditament for which rates income is to be disregarded for the purposes of certain calculations – meaning that the entire amount is retained locally.

- The Local Government Finance Act 2012 (Consequential Amendments) Order 2013 (laid before Parliament in draft on 10th January 2013)

These Regulations make certain consequential amendments to the Local Government Finance Act 1992 and the Greater London Authority Act 1999.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

7.1 These regulations form part of the scheme to allow local retention of non-domestic rates (the rates retention scheme). The scheme is being introduced from April 2013 to give local government a direct share of local non-domestic rating income and thereby an incentive to promote local growth. This will replace the current scheme where-by non-domestic rates are collected by local government, paid to central government and redistributed back to local government via the local government finance report<sup>1</sup>

7.2 These regulations deal with the transitional arrangements scheme, made under section 57A of the 1988 Act, which is put in place at each revaluation to phase in significant changes to individual non-domestic rates bills. The current arrangements are set out in the Non-domestic Rating (Chargeable Amounts) (England) Regulations 2009 (S.I 2009/3343). At individual authority level, the transitional arrangements can have a significant impact on the business rates payable to billing authorities. Some authorities collect more than would otherwise be the case, simply because of the transitional arrangements scheme, whereas some collect less.

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<sup>1</sup> For details see Schedule 8 to the Local Government Finance Act 1988 and the Non-domestic Rating Contributions (England) Regulations 1992 (S.I. 1992/3032)

7.3 The Government has been clear that individual authorities' non-domestic rates income under the rates retention scheme should not be affected by transitional arrangements. Therefore a payment will be made to adjust for the operation of the transitional arrangements. Authorities which are worse off because of the transitional arrangements will receive a payment from the Secretary of State to compensate. Authorities which are better off because of the transitional arrangements will pay that amount to the Secretary of State.

7.4 These regulations give effect to that commitment. The amount by which the authority is either better off or worse off due to the transitional arrangements is calculated by comparing the "deemed" rating income with the "actual" rating income. The deemed rating income is defined in regulation 2 and is the rating income (on a set of assumptions regarding other reliefs) had the transitional arrangements scheme not applied. The actual rating income is defined in regulation 3 and is the income (on the same assumptions as to other reliefs) with the transitional arrangements in place.

7.5 Comparing the deemed rating income to the actual rating income isolates the impact of the transitional arrangements on the rates income for the authority. If the deemed rates income is more than the actual rates income then a transitional protection payment is due from the Secretary of State to the authority and if the deemed rates income is less than the actual rates income then a transitional protection payment is due from the authority to the Secretary of State.

7.6 The regulations allow for transitional protection payments to be estimated before the start of the year (at regulation 4) and for payments on account to be set up for the year in question based on those estimates (regulation 5). The schedule for the payments on account is in line with other payment schedules between the Secretary of State and local authorities. Regulations 6 and 7 then provide for end of year calculations based upon certified calculations of deemed and actual rating income and the resulting payment of any reconciliation amount to or from the Secretary of State.

## **8. Consultation outcome**

8.1 Several consultations have been undertaken during development of the rates retention scheme detail, the outcomes of which have been reported and published on the DCLG website. The most recent policy consultation and outcome can be found at:

<https://www.gov.uk/government/consultations/business-rates-retention-technical-details>

<https://www.gov.uk/government/publications/business-rates-retention-policy-statement>

8.2 These regulations have been developed in partnership with a working group including local government finance officers, the Chartered Institute of Public Finance and Accountancy and the Local Government Association. Five sets of regulations on the rates retention scheme were published in draft in October 2012 for comments, including this set. We received 32 responses,

with the vast majority seeking clarification on policy matters, or suggesting minor corrections or additions which have been taken on board.

## **9. Guidance**

9.1 The Department will issue guidance to local government on the completion of associated information forms which describe how to estimate non-domestic rating income.

## **10. Impact**

10.1 An Impact Assessment for the rates retention scheme is available from the DCLG website at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/8470/2054063.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8470/2054063.pdf)

A separate Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

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

## **13. Contact**

**Nick Cooper** at the Department for Communities and Local Government Tel: 07795 367238 or email: [nick.cooper@communities.gsi.gov.uk](mailto:nick.cooper@communities.gsi.gov.uk) can answer any queries regarding these instruments.