EXPLANATORY MEMORANDUM TO

THE NON-DOMESTIC RATING (DESIGNATED AREAS) REGULATIONS 2013

2013 No. 107

THE NON-DOMESTIC RATING (RENEWABLE ENERGY PROJECTS) REGULATIONS 2013

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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. The purpose of the Non-Domestic Rating (Designated Areas) Regulations 2013 is to designate areas in relation to which a proportion of the non-domestic rating income (as calculated in accordance with the Regulations) is to be retained by the local authority all or part of whose area falls within the designated area. The Non-Domestic Rating (Renewable Energy Projects) Regulations 2013 designate classes of hereditaments[1] in relation to which a proportion of the non-domestic rating income (as calculated in accordance with the Regulations) is to be retained by the local authority.

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

3.1 This is the first exercise of the powers in Part 10 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 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.

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)

[1] A hereditament is the unit of property which is the subject of rating.

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 (Transitional Protection Payments) Regulations 2013
  These Regulations will provide for payments between the Secretary of State and local authorities to adjust for differences in non-domestic rates income caused by the operation of the scheme that phases in changes in non-domestic rates bills.

- The Local Government Finance Act 2012 (Consequential Amendments) Order 2013
  (laid before Parliament in draft on 10th January 2013)
  This Order will make certain consequential amendments to the Local Government Finance Act 1992 and the Greater London Authority Act 1998.

4.2 Part 10 of the Schedule enables the Secretary of State to make regulations designating areas and classes of hereditaments and providing for a calculation of the non-domestic rating income in respect of hereditaments within a designated area or a designated class to be disregarded for the purpose of various calculations required under the scheme.

4.3 The Non-Domestic Rating (Designated Areas) Regulations 2013 specify that the designations are to have effect for 25 years from 1st April 2013 meaning that paragraph 39(9) of the Schedule has effect. Paragraph 39(9) provides that where regulations specify the years for which a designation has effect, they may not be revoked during that period and amendments which have the effect of altering the boundaries of a designated area, providing for a reduction in the amount that may be disregarded or reducing the period of the designation may not be made to the regulations during that period.

5. Territorial Extent and Application

5.1 These instruments apply to England.

6. European Convention on Human Rights

As the instruments are subject to negative resolution procedure and do 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[2]

7.2 Under Schedule 7B to the 1988 Act, non-domestic rates are to be shared between central government and different parts of local government. The proportions at which rates are to be shared between central government and local government are to be set out in the local government finance report for the year and the Government has indicated that this will be initially set at 50:50.

The Non-Domestic Rating (Designated Areas) Regulations 2013

7.3 As part of its policy to deliver growth, the Government has identified several geographical areas designed to help create jobs and create businesses in areas of economic opportunity. They will do this by giving businesses the right conditions for growth, creating public and private partnerships and encouraging competition to attract foreign inward investment. For some of those areas (known as Enterprise Zones, Enterprise Areas and New Development Deal areas), the Government intends to allow local authorities to retain 100% of the growth in non-domestic rates. This will provide a powerful incentive for growth.

7.4 To deliver upon this commitment the Government will provide that when calculating how much rates income in a local authority area is to be shared between local government and central government, it will disregard the growth in rating income in designated areas. This will then allow the growth in those designated areas to be retained 100% by the billing authority. These Regulations designate the areas in which the 100% disregard will apply and provide rules for calculating the amount to be disregarded.

7.5 The areas are designated by regulation 3 using the numbered maps listed in schedule 1. The maps are available for inspection at the offices of the Secretary of State for Communities and Local Government and the offices of each local authority. Each designated area may comprise several non-contiguous sites and where possible those sites have been shown on a single map for the area. But in some cases it has not been possible to show all the sites in a designated area on a single map in which case they are shown on more than one map. To provide the necessary certainty to support investment, the designated areas have effect for 25 years from 1 April 2013 (regulation 4).

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[2] 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)

7.6 In any year, the amount of non-domestic rates income to be disregarded in a designated area is found under Part 1 of Schedule 2 by calculating the non-domestic rating income for the area for the year and deducting a figure representing the baseline income for the area.

7.7 The non-domestic rating income for the area is defined in Part 2 of Schedule 2. It is the amounts credited or charged to the authority's collection fund in respect of the area plus or minus any transitional protection payments made in respect of hereditaments in the area. This ensures that the calculation of the disregarded amount ignores the effects of the transitional arrangements scheme. The non-domestic rating income also excludes any amounts in respect of network hereditaments crossing more than 2 rating list areas (such as a telecom network) which might otherwise be treated as included in the income.

7.8 The starting figures for the baseline calculations have been provided by local authorities representing a snap shot of rates due in each designated area using the 2012/13 multiplier[3] (i.e. in 2012/13 terms). These figures are shown in the table in Schedule 1. For 2013/14, the baseline figure is then increased in line with the change in the small business multiplier[4] for that year (paragraph 3(2)). This ensures that the baseline is restated in 2013/14 terms and that the local authority do not benefit from growth in rates income on the baseline merely from the increase in the multiplier. For subsequent years (other than in a revaluation year) the resulting figure is again increased in line with the change in the small business multiplier (paragraph 3(3)) for the same reason.

7.9 In a revaluation year the income in the designated area changes because of the general shifts in rates liabilities between sectors and locations. The Regulations provide that the baseline figures are adjusted to reflect the movement of gross rates income in the designated area in the revaluation year (paragraph 4). This ensures that local authorities do not benefit or are not penalised for changes to the income in respect of the baseline due to the revaluation.

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

7.10 The Coalition Agreement included a commitment to "allow communities that host renewable energy projects to keep the additional business rates they generate.". To deliver upon this commitment the Government will provide that when calculating how much rates income in a local authority area is to be shared between local government and central government, it will disregard the rating income from new renewable energy projects. This will then allow the income from such projects to be retained 100% by local government.

[3] The non-domestic rating multiplier is the rate in the pound by which the rateable value is multiplied to produce the annual rates bill for a property.
[4] The small business non-domestic rating multiplier for a financial year is determined by the Secretary of State in accordance with the provisions contained in Schedule 7 to the 1988 Act.

7.11 These Regulations define which hereditaments should qualify for the 100% disregard (Part 2) and provide for the calculation of the amount of rates income from those hereditaments which should be disregarded for the purpose of calculations under the rates retention scheme (Part 3). Non-domestic rating income is defined as the difference between amounts paid from ratepayers and amounts refunded to ratepayers plus any transitional protection payments paid to the authority but deducting any such payments made to the Secretary of State in respect of qualifying hereditaments.

7.12 There are 6 classes of hereditaments which qualify for the disregard. The first 3 classes (A to C) are all renewable power stations covering those which are either new since 1 April 2013 or existing renewable power stations whose rateable value[5] has grown since 31 March 2013. All of the rates income at new renewable power stations is disregarded from the sharing of income. For existing renewable power stations, a proportion of the rates income is disregarded calculated by comparing the rateable value on the day concerned to the rateable value for 31 March 2013. This ensures that only the rates income in respect of new growth of renewable energy projects is 100% retained locally.

7.13 The Regulations ensure at Schedules 1 and 2 that a hereditament is not treated as new (and therefore falling under Class A) merely because it has been created from the alteration or reorganisation (such as a split or merger) of an existing renewable power station. The Schedules provide for the calculation of a notional rateable value for 31 March 2013 for these hereditaments. This allows the Regulations to ensure, through Class C, that such hereditaments can still benefit from the 100% local retention if they then grow their rateable value beyond that notional 31 March 2013 level.

7.14 Class D concerns energy from waste plants which, whilst not primarily power stations, include a significant element of renewable energy. The valuation officer certifies how much of the rateable value at the energy from waste hereditament is attributable to electricity generation which has been in use, or intended for such use, since 1 April 2013. A proportion of the rates income at the energy from waste hereditament is then disregarded. The proportion is found from the value of the certificate and the rateable value for the hereditament for the day. This ensures that only the new renewable energy part of the project is disregarded for the purpose of the rates retention scheme.

7.15 Class E concerns any other hereditaments which host separately identifiable renewable energy plant and machinery which started to be used since 1 April 2013. The valuation officer certifies the separately identifiable impact on the rateable value of the new renewable energy rateable plant and machinery and associated land and buildings. A proportion of the rates income at the hereditament is then disregarded. The proportion is found from the value of the certificate and the rateable value for the hereditament for the day. This ensures that only the new renewable energy part of the project is disregarded for the purpose of the rates retention scheme.

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[5] The rateable value of a hereditament is the notional annual rent at which it is estimated the hereditament might reasonably be expected to let.

7.16 Class F concerns cables and sub stations supporting off-shore renewable projects such as wind farms. For such developments the generating equipment itself is outside the parish boundary and, therefore, not part of the hereditament. As such it is not caught by the other classes. However, the Government wishes to ensure local authorities still benefit from any rates income associated with such schemes. Therefore, all the rates income from these hereditaments is disregarded for the purpose of the rates retention scheme.

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 both of these sets. 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

A separate Impact Assessment has not been prepared for these instruments.

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 can answer any queries regarding these instruments.