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STATUTORY INSTRUMENTS

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**2013 No. 452**

**RATING AND VALUATION, ENGLAND**

**The Non-Domestic Rating (Rates Retention) Regulations 2013**

*Made - - - - 28th February 2013*

*Coming into force in accordance with regulation 1*

The Secretary of State makes the following Regulations in the exercise of the powers conferred by sections 97(2A) and (2B), 99 and 143(1) and (2) of and paragraphs 6(3) to (5), 7 to 11, 39 to 42 and 44 of Schedule 7B to the Local Government Finance Act 1988<sup>(1)</sup>.

These Regulations are made with the consent of the Treasury in accordance with paragraphs 8(3), 39(13) and 40 (10) of Schedule 7B to the Local Government Finance Act 1988.

In accordance with section 143(9D) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

**PART 1**

**General**

**Citation and commencement**

1. These Regulations may be cited as the Non-Domestic Rating (Rates Retention) Regulations 2013 and come into force on the day after the day on which they are made.

**Interpretation**

2.—(1) In these Regulations—

“the 1988 Act” means the Local Government Finance Act 1988;

“authority” means a billing authority or a major precepting authority;

“billing authority” means a billing authority in England;

“certified non-domestic rating income” has the meaning given by regulation 9(4);

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(1) 1988 c.41. Sections 97(2A) and (2B) of the Local Government Finance Act 1988 (“the 1988 Act”) were inserted by paragraph 25(2) of Schedule 3 to the Local Government Finance Act 2012 (c.17) (“the 2012 Act”). Section 99 of the 1988 Act was substituted by paragraph 24 of Schedule 10 to the Local Government Finance Act 1992(c.14) and amended by section 70 of the Local Government Act 2003 (c.26) and paragraph 26 of Schedule 3 to the 2012 Act. Schedule 7B was inserted into the 1988 Act by section 1 of the 2012 Act.

“non-domestic rating income” has the meaning given by regulation 3(3);

“preceding year” means the year immediately preceding the relevant year;

“relevant precepting authority” in relation to a billing authority means a major precepting authority other than a police and crime commissioner, having a power to issue a precept to that billing authority;

“relevant year” means the year for which a calculation of non-domestic rating income or of a payment is being made;

“schedule of instalments” has the meaning given by regulation 15;

“small business non-domestic rating multiplier” in relation to a year means the small business non-domestic rating multiplier for the year determined under Part 1 of Schedule 7 to the 1988 Act(2).

(2) In these Regulations any reference to a billing authority’s general fund shall be construed in relation to the Common Council of the City of London as a reference to the City fund(3).

(3) In these Regulations any reference to a billing authority’s collection fund income and expenditure account is a reference to a revenue account to which, in accordance with proper practices, are credited or charged, as the case may be, amounts in respect of the authority’s income and expenditure relating to sums paid or to be paid into or payments met or to be met from the authority’s collection fund.

## PART 2

### Calculations and in-year payments

#### **Calculation and notification of non-domestic rating income and other amounts**

3.—(1) For each year a billing authority must calculate—

- (a) the amount of the central share of its non-domestic rating income;
- (b) the amount of each relevant precepting authority’s share of its non-domestic rating income in accordance with regulation 5;
- (c) the amount (if any) to be deducted from the central share payment in accordance with regulation 4(1);
- (d) the amount of each relevant precepting authority’s share of any amount to be deducted from the central share payment in accordance with regulation 4(1);
- (e) the amount (if any) specified by regulation 7(2);

(2) The billing authority must notify the Secretary of State and any relevant precepting authorities of the amounts that have been calculated—

- (a) for the year commencing on 1st April 2013 on or before 15th March 2013;
- (b) for a year commencing on or after 1st April 2014 on or before 31st January in the preceding year.

(3) A billing authority’s non-domestic rating income for the purposes of paragraph (1) is the billing authority’s estimate for the relevant year of the amount specified by paragraph 1 of Schedule 1.

(4) If an authority fails to comply with paragraph (2) the Secretary of State may make a calculation of the amount or amounts; and in such cases—

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(2) Relevant amendments were made to Schedule 7 by section 62 of the Local Government Act 2003.

(3) See section 93 of the 1988 Act.

- (a) the Secretary of State must notify the authority and any relevant precepting authority of the amount or amounts calculated; and
- (b) these Regulations take effect as if the amount or amounts calculated by the Secretary of State were calculated in accordance with paragraph (1).

#### **Payment to the Secretary of State in respect of the central share**

4.—(1) In relation to each year a billing authority must deduct from the payment under paragraph 6(2) of Schedule 7B to the 1988 Act (payment in respect of the central share) the amount it has estimated as the total of the amounts (if any) for the relevant year of qualifying relief specified by paragraphs 2 and 3 of Schedule 2 .

(2) The payment in respect of the central share must be made in the course of the relevant year in accordance with the schedule of instalments.

#### **Payments by billing authorities to major precepting authorities in respect of share of income**

5.—(1) This regulation applies if a local government finance report for a year is approved by resolution of the House of Commons.

(2) Each billing authority must make a payment for the year to each of its relevant precepting authorities of the amount that is that authority's share of the billing authority's non-domestic rating income.

(3) The relevant precepting authority shares are—

- (a) 10% where the relevant precepting authority is a county council which is a fire and rescue authority;
- (b) 9% where the relevant precepting authority is a county council which is not a fire and rescue authority;
- (c) 20% where the relevant precepting authority is the Greater London Authority; and
- (d) 1% where the relevant precepting authority is a fire and rescue authority not falling within sub-paragraph (a).

(4) The payment must be made in the course of the relevant year in accordance with the schedule of instalments.

#### **Payments to major precepting authorities in respect of deductions from central share payments**

6.—(1) This regulation applies where an amount has been deducted from the central share payment for a year under regulation 4(1) in respect of an amount of qualifying relief specified by paragraph 3 of Schedule 2 (case B hereditaments).

(2) The billing authority must pay to each relevant precepting authority that authority's share of the specified amount.

(3) The relevant precepting authority shares are—

- (a) 20% where the relevant precepting authority is a county council which is a fire and rescue authority;
- (b) 18% where the relevant precepting authority is a county council which is not a fire and rescue authority;
- (c) 40% where the relevant precepting authority is the Greater London Authority; and
- (d) 2% where the relevant precepting authority is a fire and rescue authority not falling within sub-paragraph (a).

(4) The payment must be made in the course of the relevant year in accordance with the schedule of instalments.

#### **Payments with respect to county matters**

7.—(1) This regulation applies where the billing authority is a district council in an area for which there is a county council.

(2) The amount specified by this regulation is the amount to be disregarded in respect of a hereditament for the relevant year calculated in accordance with the Non-Domestic Rating (Renewable Energy Projects) Regulations 2013<sup>(4)</sup> where—

- (a) the hereditament falls within a class designated by those Regulations; and
- (b) the local planning authority responsible for determining the application for planning permission in respect of development which led to the hereditament falling within the designated class was a county council.

(3) The billing authority must make a payment for the year to the relevant county council equal to the amount estimated (if any) in accordance with regulation 3 as the amount specified by this regulation.

(4) The payment must be made in the course of the relevant year in accordance with the schedule of instalments.

(5) In this regulation, “planning permission” means permission under Part 3 of the Town and Country Planning Act 1990<sup>(5)</sup>.

#### **Transfer from collection fund to general fund**

8.—(1) In relation to each relevant year a billing authority must transfer from its collection fund to its general fund the amount calculated in accordance with Schedule 3.

(2) The transfer must be made in the course of the relevant year in accordance with the schedule of instalments.

## **PART 3**

### **End of year calculations and reconciliation**

#### **End of year calculations**

9.—(1) On or before 30th September in the year following the relevant year a billing authority must—

- (a) calculate the amount specified by paragraph 1 of Schedule 1 for the relevant year;
- (b) calculate the amounts (if any) specified by paragraphs 2 and 3 of Schedule 2 for the relevant year;
- (c) calculate the amount (if any) specified by regulation 7(2) for the relevant year; and
- (d) notify the Secretary of State and any relevant precepting authorities of the amounts calculated.

(2) The billing authority must arrange for the calculations and amounts to be certified in accordance with such arrangements as the Secretary of State may direct.

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(4) S.I. 2013/

(5) 1990 c.8.

(3) The person certifying the calculations and amounts must send the certification to the Secretary of State and notify the billing authority and relevant precepting authorities of the amounts so certified.

(4) The amount specified by paragraph 1 of Schedule 1 to these Regulations and calculated and certified in accordance with this regulation is the authority's certified non-domestic rating income for the relevant year.

### **Reconciliation of disregarded amounts**

**10.** Where the amount included in the calculation of the certified non-domestic rating income as an amount to be disregarded in accordance with regulations made under paragraph 39 or 40 of Schedule 7B to the 1988 Act is different to the amount estimated for the purposes of regulation 3 ("the estimated amount")—

- (a) where the difference relates to a hereditament within the description in regulation 7(2) (county matters)—
  - (i) if the certified amount is less than the amount paid to the county council, the county council must pay an amount equal to the difference to the billing authority; or
  - (ii) if the certified amount is more than the amount paid to the county council, the billing authority must pay an amount equal to the difference to the county council;
- (b) where the difference relates to any other hereditament—
  - (i) if the certified amount is less than the estimated amount, the billing authority must transfer an amount equal to the difference from its general fund to its collection fund; or
  - (ii) if the certified amount is more than the estimated amount, the billing authority must transfer an amount equal to the difference from its collection fund to its general fund.

### **Reconciliation of amount deducted from central share payment**

**11.** Where the amount certified under regulation 9 as the total of the amount of qualifying relief specified by paragraph 2 and 3 of Schedule 2 is different to the amount deducted from the central share payments under regulation 4(1)—

- (a) if the certified amount is less than the deducted amount, the billing authority must pay an amount equal to the difference to the Secretary of State; or
- (b) if the certified amount is more than the deducted amount, the Secretary of State must pay an amount equal to the difference to the billing authority.

### **Reconciliation of amounts where authority has failed to act diligently**

**12.** Where an amount included in a calculation under regulation 9(1) as a bad debt which should be written off or a doubtful debt for which provision should be made is disallowed on certification under regulation 9(2) on the grounds that the billing authority has failed to act diligently in relation to the collection of non-domestic rates, the authority must transfer such an amount as is disallowed from its general fund to its collection fund.

## PART 4

### Calculation of surplus and deficit

#### Calculation and apportionment of surplus or deficit on collection fund for year

13.—(1) For each relevant year beginning on or after 1st April 2014 a billing authority must estimate in accordance with paragraph 1 of Schedule 4 on or before 31st January in the preceding year —

- (a) whether there is a surplus or deficit with respect to non-domestic rates in its collection fund for the preceding year; and
- (b) if so, the amount of the surplus or deficit.

(2) Any surplus or deficit estimated by an authority under paragraph (1) shall belong to or be borne by that authority, the Secretary of State and any relevant precepting authorities in accordance with the shares set out in paragraph 2 of Schedule 4.

#### Payments and transfers with respect to surplus and deficit

14.—(1) A billing authority must pay to the Secretary of State the Secretary of State's share and to any relevant precepting authority that authority's share of a surplus during the course of the relevant year in accordance with the schedule of instalments.

(2) The Secretary of State and a relevant precepting authority must pay their respective shares of a deficit to the billing authority during the course of the relevant year in accordance with the schedule of instalments.

(3) A transfer under section 97(3) or 97(4) of the 1988 Act of a billing authority's share of a surplus or deficit in respect of non-domestic rates must be made during the course of the relevant year in accordance with the schedule of instalments.

## PART 5

### Discharge of liabilities

#### Schedule of instalments

15.—(1) Where a payment under these Regulations is to be paid according to the schedule of instalments it is to be paid in 10 instalments such that—

- (a) the first instalment is payable on 30th April; and
- (b) the subsequent instalments are payable on the 19th day of each of the following 9 months starting in May.

(2) Where an instalment falls to be paid on a Friday or a day that is not a working day, it shall instead be payable on the first working day that is not a Friday following that day.

(3) The first and last instalments are each to be of 8 per cent of the amount payable, and each other instalment is to be 10.5 per cent of the amount payable.

(4) A billing authority and a major precepting authority may by agreement vary the schedule of instalments with regard to payments between them.

(5) Any amount paid or transferred in respect of a liability under paragraph 6 of Schedule 7B to the 1988 Act or these Regulations for a year, whether or not paid in accordance with paragraph (1) is to be treated as discharging that liability to the extent of the payment.

(6) For the purpose of this regulation “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England under the Banking and Financial Dealings Act 1971(6).

### **Interest on amount of instalments**

**16.**—(1) An authority shall pay interest to another authority in respect of any amount which—

- (a) has become payable to that authority in accordance with the schedule of instalments, but
- (b) has not been so paid.

(2) Interest shall be payable on the amount outstanding for every day of the period beginning with the day on which the amount was due to be paid and ending on the day before the day on which it is paid.

(3) Interest shall be calculated at the rate which is 2 per cent above the highest base rate quoted by any of the reference banks at anytime in the period for which that interest is payable.

(4) The interest shall be paid at the same time as the amount outstanding is paid.

(5) For the purposes of paragraph (3), the reference banks are the seven largest persons for the time being who—

- (a) have permission under Part 4 of the Financial Services and Markets Act 2000(7) to accept deposits;
- (b) are incorporated in the United Kingdom and carrying on there a regulated activity of accepting deposits; and
- (c) quote a base rate in sterling.

(6) For the purposes of paragraph (5), the size of a person is to be determined by reference to the total consolidated gross assets of that person denominated in sterling, as shown in the audited end-year accounts last published before the period for which interest is payable begins.

(7) In this regulation the “consolidated gross assets” of a person is a reference to the gross assets of that person together with any subsidiary (within the meaning of section 1159 of the Companies Act 2006(8)).

(8) Paragraph (5) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.

### **Recovery**

**17.** Where an amount has become payable by a billing authority or major precepting authority under any provision of these Regulations, and it has not been paid, it shall be recoverable in a court of competent jurisdiction.

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(6) 1971 c.80.  
(7) 2000 c.8  
(8) 2006 c.46

We consent to the making of these Regulations

27th February 2013

*Stephen Crabb*  
*Desmond Swayne*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

Signed by authority of the Secretary of State for Communities and Local Government

28th February 2013

*Brandon Lewis*  
Parliamentary Under Secretary of State  
Department for Communities and Local  
Government



SCHEDULE 1

Regulation 3

Non-Domestic Rating Income

PART 1

**Calculation of non-domestic rating income**

1.—(1) Subject to sub-paragraph (2) the amount specified in this paragraph is the amount calculated in accordance with the formula—

$$(A - B) + (C - D) - E - F$$

Where—

A is the total of the amounts credited to the billing authority's collection fund income and expenditure account in the year in accordance with proper practices in respect of non-domestic rates payable under sections 43 and 45 of the 1988 Act;

B is the total of the amounts charged to the billing authority's collection fund income and expenditure account in the year in accordance with proper practices in respect of non-domestic rates payable under sections 43 and 45 of the 1988 Act;

C is the amount of any transitional protection payments under paragraph 33(1) of Schedule 7B to the 1988 Act made to the billing authority in the year;

D is the amount of any transitional protection payments under paragraph 33(1) of Schedule 7B to the 1988 Act made by the billing authority in the year;

E is the billing authority's allowance for costs of collection and recovery for the year, calculated in accordance with paragraph 2; and

F is the total of amounts calculated in accordance with regulations made under paragraph 39 or 40 of Schedule 7B to the 1988 Act in respect of the billing authority as an amount to be disregarded for the purpose of a calculation of non-domestic rating income for the year.

(2) For a special authority the amount specified by this paragraph shall be the amount calculated in accordance with sub-paragraph (1)—

(a) as if the authority's non-domestic rating multipliers for a year were equal to the non-domestic rating multipliers for that year determined in accordance with Part 1 of Schedule 7 to the 1988 Act; less

(b) X, where the value of X for the financial year beginning 1st April 2013 is £10,538,000 and for subsequent years is determined by the formula—

$$X_1 \times \frac{S_2}{S_1}$$

Where—

X<sub>1</sub> is the value of X for the preceding year;

S<sub>2</sub> is the small business non-domestic rating multiplier for the relevant year;

S<sub>1</sub> is the small business non-domestic rating multiplier for the preceding year.

**Costs of collection and recovery**

2.—(1) A billing authority's allowance for costs of collection and recovery are to be calculated in accordance with the formula—

*Status: This is the original version (as it was originally made).*

$$\left(\frac{G \times J}{H}\right) + \left(\frac{K \times M}{L}\right) + N$$

Where—

G is the number of hereditaments shown in the billing authority's local non-domestic rating list on 30th September in the preceding year, multiplied by the cost factor for the billing authority;

H is the total of G for all billing authorities;

J is 76 per cent of the amount allowed for the costs of collection and recovery;

K is the total of the rateable values shown in the billing authority's local non-domestic rating list on 30th September in the preceding year, multiplied by the cost factor for the billing authority;

L is the total of K for all authorities;

M is 24 per cent of the amount allowed for the costs of collection and recovery;

N is the total amount of the legal costs of the billing authority referred to in sub-paragraph (5) below.

(2) For the purposes of sub-paragraph (1), where the year to which the relevant calculation relates is a year in which local non-domestic rating lists are compiled under section 41(1) of the 1988 Act, the hereditaments shown in an authority's local non-domestic rating list, and the rateable value of those hereditaments, shall be taken to be the hereditaments, and the rateable values, shown in the list which the valuation officer for the authority proposes to compile in that year and which has been sent to the authority under section 41(5) of the 1988 Act.

(3) The cost factor for a billing authority is the cost factor shown for that authority in Part 2 of this Schedule.

(4) The amount allowed for the costs of collection and recovery is £84,000,000.

(5) The legal costs referred to in this paragraph are the reasonable costs of another party to proceedings brought or defended by the billing authority and paid in the preceding year where the following conditions are satisfied—

(a) the proceedings were brought or defended by the authority to clarify the law as respects liability for, or the authority's powers to enforce, non-domestic rates;

(b) before bringing or defending proceedings the authority obtained advice in writing by counsel—

(i) that the point of law concerned had not already been determined in previous proceedings; and

(ii) that a decision by the authority to bring or defend the proceedings, or to continue to do so, would be a reasonable decision; and

(c) the authority lost on that point of law and costs were awarded against the authority, or the authority withdrew from the proceedings as respects that point on the advice of counsel and payment by the authority of the other party's reasonable costs was made by that party a condition of consenting to withdrawal.

(6) For the purposes of sub-paragraph (5)—

(a) references to proceedings are to proceedings in a court of law including the Upper Tribunal;

(b) any appeal from a decision of a court shall be regarded as separate proceedings.

## PART 2

### Cost Factors

<i>Area</i>	<i>Name or description of authority</i>	<i>Cost factor</i>
	The Council of the Isles of Scilly	1.5
	The Common Council of the City of London	1.4059
Inner London	The councils of the boroughs of Camden, Greenwich, Hackney, Hammersmith and Fulham, Islington, Kensington and Chelsea, Lambeth, Lewisham, Southwark, Tower Hamlets, Wandsworth and Westminster	1.2208
West outer London	The councils of the boroughs of Barnet, Brent, Ealing, Harrow, Hillingdon, Hounslow, Kingston upon Thames, Merton, Richmond upon Thames and Sutton	1.1113
Rest of outer London	The councils of the boroughs of Barking and Dagenham, Bexley, Bromley, Croydon, Enfield, Haringey, Havering, Newham, Redbridge and Waltham Forest	1.076
Avon	The councils of the districts of Bath & North East Somerset, Bristol, South Gloucestershire and North Somerset	1.0378
Bedfordshire & Hertfordshire non-fringe	The councils of the districts of Bedford, Central Bedfordshire, Luton, North Hertfordshire and Stevenage	1.0383
Berkshire non-fringe	The councils of the districts of Reading, West Berkshire and Wokingham	1.0806
Berkshire, Surrey & West Sussex fringe	The councils of the districts of Bracknell Forest, Crawley, Elmbridge, Epsom and Ewell, Guildford, Mole Valley, Reigate and Banstead, Runnymede, Slough, Spelthorne, Surrey Heath, Tandridge, Waverley, Windsor and Maidenhead and Woking	1.1039
Buckinghamshire non-fringe	The councils of the districts of Aylesbury Vale, Milton Keynes and Wycombe	1.0675
Cambridgeshire	The councils of the districts of Cambridge, East Cambridgeshire, Fenland, Huntingdonshire, Peterborough and South Cambridgeshire	1.0339
Cheshire	The councils of the districts of Cheshire East, Cheshire West and Chester, Halton and Warrington	1.0130
Essex non-fringe	The councils of the districts of Braintree, Castle Point, Chelmsford, Colchester, Maldon, Rochford, Southend-on-Sea, Tendring and Uttlesford	1.0130
Gloucestershire	The councils of the districts of Cheltenham, Cotswold, Forest of Dean, Gloucester, Stroud and Tewkesbury	1.0197
Greater Manchester	The councils of the metropolitan districts of Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Stockport, Tameside, Trafford and Wigan	1.0169

*Status: This is the original version (as it was originally made).*

<i>Area</i>	<i>Name or description of authority</i>	<i>Cost factor</i>
Hampshire & Isle of Wight	The councils of the districts of Basingstoke and Deane, East Hampshire, Eastleigh, Fareham, Gosport, Hart, Havant, New Forest, Portsmouth, Rushmoor, Southampton, Test Valley and Winchester; and Isle of Wight council	1.0360
Hertfordshire & Buckinghamshire fringe	The councils of the districts of Broxbourne, Chiltern, Dacorum, East Hertfordshire, Hertsmere, South Bucks, St Albans, Three Rivers, Watford and Welwyn Hatfield	1.0816
Kent & Essex fringe	The councils of the districts of Basildon, Brentwood, Dartford, Epping Forest, Harlow, Sevenoaks and Thurrock	1.0618
Kent non-fringe	The councils of the districts of Ashford, Canterbury, Dover, Gravesham, Maidstone, Medway, Shepway, Swale, Thanet, Tonbridge and Malling and Tunbridge Wells	1.0068
Merseyside	The councils of the metropolitan districts of Knowsley, Liverpool, St Helens, Sefton and Wirral	1.0075
Northamptonshire	The councils of the districts of Corby, Daventry, East Northamptonshire, Kettering, Northampton, South Northamptonshire and Wellingborough	1.0132
Nottinghamshire	The councils of the districts of Ashfield, Bassetlaw, Broxtowe, Gedling, Mansfield, Newark and Sherwood, Nottingham and Rushcliffe	1.0121
Oxfordshire	The councils of the districts of Cherwell, Oxford, South Oxfordshire, Vale of White Horse and West Oxfordshire	1.0534
Warwickshire	The councils of the districts of North Warwickshire, Nuneaton and Bedworth, Rugby, Stratford-on-Avon and Warwick	1.0213
West Midlands	The councils of the metropolitan districts of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton	1.0134
West Yorkshire	The councils of the metropolitan districts of Bradford, Calderdale, Kirklees, Leeds and Wakefield	1.0055
Wiltshire	The councils of the district of Swindon and the County of Wiltshire	1.0216
Other authorities	A billing authority not named, or not falling within a description given, above	1

## SCHEDULE 2

Regulation 4(1)

Qualifying relief for deduction from central share

### Case A and Case B hereditaments

1.—(1) In this Schedule—

“case A hereditament” means a hereditament which is situated in both a blue area and a red area and meets the conditions in sub-paragraph (2);

“case B hereditament” means a hereditament which is situated in a red area only and meets the conditions in sub-paragraph (2);

“blue area” means an area designated by regulations made under paragraph 39 of Schedule 7B to the 1988 Act;

“red area” means an area bounded externally by the outer edge of a red line on one of the maps numbered 1 to 85 and entitled “Maps referred to in the Non-Domestic Rating (Rates Retention) Regulations 2013” of which prints, signed by a member of the Senior Civil Service in the Department for Communities and Local Government, are deposited and available for inspection at the offices of the Secretary of State and, in relation to each map, the billing authority concerned.

(2) The conditions are that—

(a) a determination under section 47(1)(a) of the 1988 Act has had effect in respect of the ratepayer in relation to the hereditament for 5 years or less, disregarding any period before 1st April 2012; and

(b) the ratepayer in respect of the hereditament became the ratepayer on or before 31st March 2015.

(3) In these Regulations where part of a hereditament is situated within a blue or red area, references to a hereditament are to be read as meaning the whole of the hereditament.

#### **Case A hereditament: calculation of qualifying relief**

2.—(1) The amount specified by this paragraph is the amount which is the total of the difference between—

(a) the amount calculated for the year in accordance with sub-paragraph (2); and

(b) the amount that would have been calculated in accordance with sub-paragraph (2) had a determination under section 47(1)(a) of the 1988 Act as regards a case A hereditament not been made, but disregarding any amount by which the amount of a determination would exceed the limit on the total de minimis aid that may be granted in accordance with [Commission Regulation \(EC\) No 1998/2006](#)<sup>(9)</sup> in respect of any particular undertaking.

(2) The amount calculated in accordance with this sub-paragraph is the amount which is the total of—

(a) amounts credited to the authority’s collection fund income and expenditure account in accordance with proper practices in respect of non-domestic rates payable under sections 43 and 45 of the 1988 Act in respect of a case A hereditament; less

(b) amounts charged to the authority’s collection fund income and expenditure account in accordance with proper practices in respect of non-domestic rates payable under sections 43 and 45 of the 1988 Act in respect of that hereditament.

#### **Case B hereditament: calculation of qualifying relief**

3.—(1) The amount specified by this paragraph is the amount that is 50 per cent of the difference between—

(a) the amount calculated for the year in accordance with sub-paragraph (2); and

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(9) [Commission Regulation \(EC\) No 1998/2006](#) of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid., Official Journal L 379, 28/12/2006 P. 0005-0010.

*Status: This is the original version (as it was originally made).*

- (b) the amount that would have been calculated in accordance with sub-paragraph (2) had a determination under section 47(1)(a) of the 1988 Act as regards a case B hereditament not been made, but disregarding any amount by which the amount of a determination would exceed the limit on the total de minimis aid that may be granted in accordance with [Commission Regulation \(EC\) No 1998/2006](#) in respect of any particular undertaking.
- (2) The amount calculated in accordance with this sub-paragraph is the amount which is the total of—
- (a) amounts credited to the authority’s collection fund income and expenditure account in accordance with proper practices in respect of non-domestic rates payable under sections 43 and 45 of the 1988 Act in respect of a case B hereditament; less
- (b) amounts charged to the authority’s collection fund income and expenditure account in accordance with proper practices in respect of non-domestic rates payable under sections 43 and 45 of the 1988 Act in respect of that hereditament.

### SCHEDULE 3

Regulation 8(1)

#### Transfer from collection fund to general fund

The amount to be transferred is the amount calculated in accordance with the formula:

$$PQ + R + (S - T) + (U - V)$$

Where—

P is the billing authority’s non-domestic rating income for the year

Q is —

- (a) 50% where the billing authority is a county council, or is a district council in an area for which there is no county council, and the authority is a fire and rescue authority;
- (b) 49% where the billing authority is a county council, or is a district council in an area for which there is no county council, and the authority is not a fire and rescue authority;
- (c) 40% where the billing authority is a district council in an area for which there is a county council; and
- (d) 30% where the billing authority is a London borough council or the Common Council of the City of London;

R is the billing authority’s allowance for costs of collection and recovery for the year, calculated in accordance with paragraph 2(1) of Schedule 1;

S is the total of amounts calculated in accordance with regulations made under paragraph 39 or 40 of Schedule 7B to the 1988 Act in respect of the billing authority as an amount to be disregarded for the purpose of a calculation of non-domestic rating income for the year;

T is the amount of any payment made to a county council in accordance with regulation 7 (payments with respect to county matters);

U is the amount of a deduction from the central share payment made in accordance with regulation 4(1);

V is the total of any amounts paid to major precepting authorities in accordance with regulation 6.

## SCHEDULE 4

Regulation 13

### Rules for estimation and apportionment of surplus and deficit

#### Calculation of surplus or deficit

1.—(1) A billing authority must estimate whether there is a surplus or deficit with respect to non-domestic rates in its collection fund for the preceding year, and if so, the amount of the surplus or deficit by calculating the difference between the amount referred to in sub-paragraph (3) and the amount referred to in sub-paragraph (4).

(2) Where the amount referred to in sub-paragraph (3) is—

- (a) more than the amount referred to in sub-paragraph (4), there is a surplus, the amount of which is the difference;
- (b) less than the amount referred to in sub-paragraph (4), there is a deficit, the amount of which is the difference;
- (c) the same as the amount referred to in sub-paragraph (4), there is no surplus or deficit.

(3) The amount referred to in this sub-paragraph is the total of—

- (a) the amount of any opening surplus with respect to non-domestic rating on the billing authority's collection fund income and expenditure account which was brought forward from the relevant prior year and was shown in the billing authority's accounts for the relevant prior year as such a surplus.;
- (b) the billing authority's estimate of the total of amounts credited or to be credited to the authority's collection fund income and expenditure account in accordance with proper practices in respect of non-domestic rates payable under sections 43 and 45 of the 1988 Act in the preceding year;
- (c) transitional protection payments received or to be received by the billing authority under paragraph 33(1) of Schedule 7B to the 1988 Act;
- (d) transfers to the billing authority's collection fund made or to be made under Part 3 of these Regulations (end of year reconciliations);
- (e) transfers to the collection fund and any payments by relevant precepting authorities or the Secretary of State under regulation 14 made or to be made in respect of an estimated deficit with respect to non-domestic rating in the billing authority's collection fund for the relevant prior year.

(4) The amount referred to in this sub-paragraph is the total of—

- (a) the amount of any opening deficit with respect to non-domestic rating on the billing authority's collection fund income and expenditure account which was brought forward from the relevant prior year and was shown in the billing authority's accounts for the relevant prior year as such a deficit;
- (b) the billing authority's estimate of the total of amounts charged or to be charged to the authority's collection fund income and expenditure account in accordance with proper practices in respect of non-domestic rates payable under sections 43 and 45 of the 1988 Act in the preceding year;
- (c) transitional protection payments made or to be made by the billing authority under paragraph 33(1) of Schedule 7B to the 1988 Act;
- (d) payments to the Secretary of State made or to be made under paragraph 6(1) of Schedule 7B to the 1988 Act;
- (e) payments to relevant precepting authorities made or to be made under regulations made under paragraph 9 of Schedule 7B to the 1988 Act;

*Status: This is the original version (as it was originally made).*

- (f) transfers to the billing authority's general fund made or to be made under Part 3 of these Regulations;
  - (g) transfers to the billing authority's general fund and payments to relevant precepting authorities and the Secretary of State under regulation 14 in respect of an estimated surplus with respect to non-domestic rating in the billing authority's collection fund for the relevant prior year.
- (5) For the relevant year beginning 1st April 2014 the amounts referred to in sub-paragraphs (3) (a) and (4)(a) are to be zero.
- (6) In this paragraph, a reference to the relevant prior year is a reference to the year beginning two years before the beginning of the relevant year.

### **Apportionment of surplus and deficit**

2.—(1) The Secretary of State's share of any surplus or of any deficit for a relevant year is 50% of the surplus or deficit for that year.

(2) A relevant precepting authority's share of any surplus or of any deficit for a relevant year is the amount of the surplus or deficit for that year multiplied by the relevant precepting authority share set out in regulation 5(3).

(3) The billing authority's share of any surplus or of any deficit for a relevant year is—

- (a) 50% where the billing authority is a county council, or is a district council in an area for which there is no county council, and the authority is a fire and rescue authority;
- (b) 49% where the billing authority is a county council, or is a district council in an area for which there is no county council, and the authority is not a fire and rescue authority;
- (c) 40% where the billing authority is a district council in an area for which there is a county council;
- (d) 30% where the billing authority is a London borough council or the Common Council of the City of London.

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### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Under paragraph 6 of Schedule 7B to the Local Government Finance Act 1988 ("the 1988 Act"), billing authorities are required to pay a proportion of their non-domestic rating income to the Secretary of State ("the central share"). The proportion that is to be the central share is set out in the Local Government Finance Report for each year.

"Non-domestic rating income" is defined in regulation 3 and Schedule 1. It is an estimate of the aggregate of amounts that will be charged and credited to the authority's income and expenditure account with respect to non-domestic rates in the year accordance with proper accounting practices. This equates to the amounts payable by businesses to the authority under sections 43 and 45 of the 1988 Act in the year, and automatically includes adjustments for previous years.

This figure is subject to a number of adjustments – for transitional protection payments made or received by the authority under Part 8 of Schedule 7B to the 1988 Act, for the authority's costs of



collection, and for amounts disregarded with respect to areas or classes of hereditament designated under Part 10 of Schedule 7B to the 1988 Act.

Regulation 4 provides for the payment of the central share to the Secretary of State, Regulation 4, with Schedule 2, also provides for an amount to be deducted from the central share payment where rates relief under section 47(1) of the 1988 Act has been granted in a prescribed area. Regulation 6 provides for this deduction to be shared with major precepting authorities if the area is not also designated for the purposes of Part 10 of Schedule 7B (in such a case the billing authority retains the full amount).

Under paragraph 9 of Schedule 7B to the 1988 Act the Secretary of State may require billing authorities to make payments to major precepting authorities of a proportion of their non-domestic rating income. Regulation 5 provides that such payments are to be made to county councils, fire and rescue authorities in whose area the billing authority is and, for London authorities, the Greater London Authority.

Regulation 7 provides that a county council receives the amount that has been disregarded in respect of a hereditament because it falls within a class designated under part 10 of Schedule 7B to the 1988 Act if it was the planning authority for the purposes of determining the application that led to the hereditament falling within that class.

Regulation 8 and Schedule 3 provide for the transfer of the authority's share of its income, plus an amount for its costs of collection and the disregarded and deducted amounts, to the authority's General Fund.

Regulation 9 requires the authority to carry out further calculations at the end of the year and have these certificated. If an authority has made provision for bad or doubtful debt that is disallowed by the auditor that carries out the certification, the authority is required by regulation 12 to make adjustment so that it carries this cost, rather than it being shared with the Secretary of State and the major precepting authorities.

Differences between the amounts notified at the start of the year and the certified amounts will result in a surplus or deficit on the billing authority's collection fund income and expenditure account. Provision is made for the reconciliation of certain amounts by regulation 10 and 11 because these amounts will be dealt with outside the provisions of Part 4 of the Regulations.

Part 4 provides for the calculation of the surplus or deficit. The amount is to be estimated before the end of the year. It is apportioned between the billing authority, the Secretary of State and the major precepting authorities in the same proportions as the income was shared. Rules for the calculation of the surplus and deficit estimate are set out in Schedule 4.

Part 5 sets out when payments due under the Regulations are to be made and the consequences of late payment.

No separate impact assessment has been prepared for these Regulations, but the impact assessment prepared for the Local Government Finance Act 2012 is relevant:

[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)