EXPLANATORY MEMORANDUM TO

THE NON-DOMESTIC RATING (RATES RETENTION) REGULATIONS 2013

2013 No. 452

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 implement the core elements of the scheme for local retention of non-domestic rates. In particular, they provide for the definition of non-domestic rating income for the purpose of calculating the billing authority's (the authority which collects the rates) payments under the scheme to the Secretary of State and certain other relevant authorities. They also set out the billing authority's liabilities towards other authorities, and make provision for the administration of the scheme generally.

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

3.1 These Regulations are made under a combination of powers, some of which are subject to the affirmative parliamentary procedure and others which are subject to the negative procedure. Section 143(9D) allows Regulations made under provisions of Schedule 7B to the 1988 Act which are subject to the affirmative procedure to include provisions which are subject to the negative procedure. Regulations 5 to 7 are subject to the affirmative procedure, as are regulations 11, 15 to 17 and Schedule 1 in their application to payments from billing authorities to major precepting authorities. The provisions have been combined to produce a coherent system relating to the calculation and administration of payments to and from authorities in respect of their non-domestic rating income.

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 in to the 1988 Act ("the Schedule") which provides for the local retention of non-domestic rates collected.

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

- The Non-Domestic Rating (Levy and Safety Net) Regulations 2013 (laid before Parliament in draft on 14th February 2013)
  These Regulations 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 (S.I. 2013/106)
  These Regulations 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 Non-Domestic Rating (Designated Areas) Regulations 2013 (S.I. 2013/107)
  These Regulations 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 (S.I. 2013/108)
  These Regulations 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)
  This Order makes certain consequential amendments to the Local Government Finance Act 1992 and the Greater London Authority Act 1998.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

Brandon Lewis, Parliamentary Under-Secretary of State at the Department for Communities and Local Government has made the following statement regarding Human Rights:

In my view the provisions of the Non-Domestic Rating (Rates Retention) Regulations 2013 are compatible with the Convention rights.

7. Policy background

- What is being done and why

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[1].

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 50% share gives billing authorities and major precepting authorities a direct interest in non-domestic rates whilst ensuring the government's deficit reduction programme is not put at risk. These Regulations define non-domestic rating income for the purpose of calculating the amount that is to be paid by the billing authority, which collects the rates, to central government and to other parts of local government.

7.3 Non-domestic rating income is calculated ignoring the effects of the transitional arrangements scheme. The transitional arrangements phase in changes in rates bills arising from the regular revaluations. They allow the ratepayer time to adjust to their new bills.

7.4 The Regulations also exclude from the meaning of non-domestic rating income certain amounts due in designated areas (enterprise zones and new development deal areas) and on renewable energy projects, as well as certain costs associated with the collection of non-domestic rates. These amounts are 100% retained by the billing authority or, in the case of renewable energy projects where planning responsibility falls to the county council, the county council (see the Non-Domestic Rating (Renewable Energy Projects) Regulations 2013). This ensures that authorities are fully rewarded for growth in these priority areas and sectors so as to incentivise growth and that billing authorities are compensated for the cost of collecting the non-domestic rates.

7.5 The Regulations provide that the 50% local share of non-domestic rating income is shared amongst billing authorities and major precepting authorities as follows:

For billing authorities:

> 50% for unitary and metropolitan authorities which are also fire authorities,
> 49% for unitary and metropolitan authorities which are not fire authorities,
> 40% for district councils, and
> 30% for London boroughs.

For major precepting authorities

[1] 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)

10% for county councils which are fire authorities,
9% for county councils which are not fire authorities,
1% for separate fire authorities,
20% for the Greater London Authority

7.6 The Regulations provide for the operation of the rates retention system through the billing authority's collection fund. A billing authority is required to keep a collection fund under Part 6 of the 1988 Act and certain payments to and from the authority must be paid into or out of this fund. Under this approach the billing authority estimates the amount due to it in respect of non-domestic rating for the coming financial year. This amount is the authorities non-domestic rating income for the year and determines the payments of local and central shares throughout the year. These payments do not change during the year even if actual income changes.

7.7 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). The collection fund approach provides certainty for major precepting authorities as it ensures they will, during the year, receive their share of the non-domestic rating income as calculated at the start of the year irrespective of changes in income during the year. The collection fund approach is currently used for council tax and has been requested by local government.

7.8 By the end of the year the collection fund will be in either deficit or surplus depending upon whether the non-domestic income is more or less than expected. This surplus or deficit is distributed with central and local shares in the following years.

- Consolidation

7.9 This is the first exercise of the enabling powers in section 97(2A) and (2B) of, and Schedule 7B to, the 1988 Act.

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 has issued draft guidance associated with the information forms sent to local government 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 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 rates system under regular review.

13. Contact

Mark Barnett at the Department of Communities and Local Government Tel: 0303 444 4217 or email: mark.barnett@communities.gsi.gov.uk can answer any queries regarding the instrument.