

**EXPLANATORY MEMORANDUM TO
THE NON-DOMESTIC RATING (RATES RETENTION) (AMENDMENT)
REGULATIONS 2014**

2014 No. 96

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 amend the Non-Domestic Rating (Rates Retention) Regulations 2013 (“the 2013 Regulations”) which form part of the scheme for local retention of non-domestic rates. These Regulations amend the calculation of the surplus or deficit on the collection fund, to be carried out by authorities in respect of non-domestic rates.

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

3.1 Regulation 13(1) of, and Schedule 4 to, the 2013 Regulations require Billing Authorities to calculate by 31 January the amount of the surplus or deficit on the collection fund for that year for the purposes of sums to be paid in the following financial year. These Regulations will lead to that calculation being amended. The calculation that authorities are to make by the 31 January 2014 will be the first such calculation that is required under the Regulations. To ensure that the amendment has effect for the purposes of calculating the surplus or deficit on the collection fund for the purposes of the sums to be paid in 2014/15, they must come into force before 31 January 2014. To achieve this we have had to lay the Regulations before Parliament with less than 21 days before they come into force.

3.2 The amendments which we are making to the calculation have to be consistent with proper accounting practice, as well as giving effect to the Government's policy intentions (see paragraph 7 below). It has taken us longer than expected to formulate an appropriate amendment in consultation with local government and the Chartered Institute of Public Finance and Accountancy (CIPFA). The Department has alerted all local authority Chief Finance Officers to the proposed changes.

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 inserted 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 The 2013 Regulations provide for the calculation of payments between Billing Authorities, who are responsible for collecting non-domestic rates on local rating lists, and Major Precepting Authorities and the Secretary of State who both have a share in locally collected non-domestic rates. They also provide for the transfer of income into the Billing Authority’s own General Fund.

4.3 The 2013 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 authority’s 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.

4.4 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 the collection fund will either be in deficit or surplus depending upon whether the non-domestic income is more or less than expected. The 2013 Regulations provide for the calculation of this surplus or deficit and its distribution with central and local shares in the following years.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 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).

7.2 The 2013 Regulations provide that Billing Authorities should calculate income from non-domestic rates in accordance with “proper accounting practice”. In doing so, Billing Authorities should make an accounting provision to set aside a proportion of the income they are collecting to repay successful appeals by ratepayers. Under the system that applies before 1 April 2013 authorities were not required to make a provision for appeals. Therefore,

from 1 April 2013 Billing Authorities are required to make a provision both for appeals and backdated appeal costs.

7.3 2013/14 is the first year of operation of the rates retention system. Normal accounting practice would require Billing Authorities to make the full provision for all outstanding rating appeals (which may result in refunds backdated for several years) from the income collected in 2013/14. However, in some cases this would have meant significant provisions being taken from the 2013/14 income alone. In such cases the income from non-domestic rates would have been artificially low in 2013/14 only and then return to higher levels in 2014/15 onwards. Therefore, in January 2013 the Government announced that authorities would have the discretion to spread the cost of their provision for appeals over five years.

7.4 Regulation 2(4) ensures that where an authority has chosen to spread the cost of their appeal provision over 5 years then this is reflected in the calculation of their collection fund surplus or deficit by including a credit, which declines over time, for a proportion of the backdated appeal costs. This ensures the benefit of spreading the appeal provision is not reversed by creating a deficit (which would need to be repaid by the Major Precepting Authorities, the Secretary of State and their own General Fund).

7.5 Regulation 2(2) and (3) corrects minor drafting errors in the 2013 regulations.

8. Consultation outcome

8.1 These are technical changes and have been developed in consultation with representatives of local government.

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.

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 rating system under regular review.

13. Contact

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answer any queries regarding the instrument.