

EXPLANATORY MEMORANDUM TO
THE NON-DOMESTIC RATING (RATES RETENTION AND LEVY AND SAFETY NET) (AMENDMENT) AND (LEVY ACCOUNT: BASIS OF DISTRIBUTION) REGULATIONS 2019

2019 No. 709

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Non-Domestic Rating (Rates Retention and Levy and Safety Net) (Amendment) and (Levy Account: Basis of Distribution) Regulations 2019 (“the Regulations”) amend the Non-Domestic Rating (Rates Retention) Regulations 2013 (“the Rates Retention Regulations”) and the Non-Domestic Rating (Levy and Safety Net) Regulations 2013 (“the L&SN Regulations”) to provide for changes to the administration of the business rates retention scheme, including the calculation of levy and safety net payments. The changes are consequent upon the Government’s decision to create “pilot areas” in which local authorities will retain 75% of the business rates they raise in 2019-20. The Regulations also provide for the basis on which, in future, the Government will distribute to local authorities any surplus on the “levy account”. Finally, the Regulations make changes to the administration of the rates retention scheme to ensure that authorities are properly compensated for the loss of income arising from changes made to the rates liability of small businesses; and to ensure that the principal payments made to the Council of the Isles of Scilly under the Local Government Finance Act 1988 reflect Local Government Finance Reports approved by Parliament.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 This entire instrument applies to England only.
- 3.3 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter, the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

- 3.4 The Department has reached this view because it considers that the primary purpose of the instrument relates to local government finance, which is within the devolved legislative competence of each of the three devolved legislatures. For example, the primary purpose of the subject matter of the instrument is not a reserved matter within Schedule 7A to the Government of Wales Act 2006, nor is it one of the general restrictions within Schedule 7B or otherwise outside the legislative competence of the National Assembly for Wales (see section 108A of that Act).

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is set out in Section 3 under “Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)”.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State has made the following statement regarding Human Rights:

“In my view the provisions of the Non-Domestic Rating (Rates Retention and Levy and Safety Net) (Amendment) and (Levy Account: Basis of Distribution) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 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 inserted a new Schedule 7B into the 1988 Act (“the Schedule”) which provides for the local retention of non-domestic rates (known as “business rates”).
- 6.2 The Rates Retention Regulations and L&SN Regulations are the principal statutory instruments that provide for the operation of the rates retention system. The system operates through a billing authority’s collection fund. A billing authority is required to keep a collection fund under Part 6 of the 1988 Act and business rates income collected by the authority must be paid into or out of this fund. Before the beginning of the year, the billing authority estimates the amount it will collect from non-domestic ratepayers during the course of the year. This amount is the authority’s non-domestic rating income for the year. Currently, in most cases, 50% of the amount is due to central government – the “central share”. The remaining 50% - the “local share” – is shared between a billing authority and its major precepting authorities (if any), as required by the Rates Retention Regulations.
- 6.3 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 rating income is more or less than originally estimated. The Rates Retention Regulations provide for the calculation of this surplus or deficit and its distribution between central and local government.
- 6.4 The L&SN Regulations provide that if an authority’s income from its share of business rates is less than a prescribed minimum (the authority’s “safety net threshold”) the authority will receive a “safety net” payment. The Regulations also

prescribe an individual “levy rate” for each authority. Depending on an authority’s individual levy rate, if in any year its share of business rates income exceeds its “baseline funding level”, it is required to make a levy payment to central government of a proportion of that excess income.

- 6.5 The Regulations amend the Rates Retention Regulations and the L&SN Regulations. Specifically, they amend the Rates Retention Regulations to provide that in Berkshire, Buckinghamshire, East Sussex, Hertfordshire, Lancashire, Leicester and Leicestershire, London, Norfolk, Northamptonshire, North and West Yorkshire, North of Tyne, Staffordshire and Stoke-on-Trent, Solent, Somerset, West Sussex and Worcestershire, named billing authorities will only have to pay a central share of 25%; the remaining 75% being retained by the billing authorities and their major precepting authorities.
- 6.6 The Rates Retention Regulations are amended to make the consequential amendments needed to reflect the changes to pilot authorities’ central and local shares, as described above. Most importantly, those amendments include changes to the distribution of surpluses and deficits in the Collection Fund, reflecting the new central and local shares in pilot authorities, and the need to deal with the fact that Collection Fund surpluses and deficits are effectively shared between central Government and local authorities over the two years following the year to which they relate.
- 6.7 The Regulations also make consequential amendments to the L&SN Regulations for changes being made to the structure of local government in Dorset, Northamptonshire, Somerset, and Suffolk with effect from 1 April 2019.
- 6.8 Part 5 of the Schedule provides for payments to be made by, or to, authorities as part of the rates retention scheme. The payments effect the redistribution of some non-domestic rating income between authorities. The basis on which payments are to be calculated for a year must be set out in that year’s Local Government Finance Report, which is approved by the House of Commons. The payments are taken into account when calculating the levy and safety net payments to be made by, or to, authorities and are referenced in the L&SN Regulations. The Regulations make changes to the L&SN Regulations to ensure that the levy and safety net calculations for 2018-19 and 2019-20 reflect the payments to be made to the Council of the Isles of Scilly as approved by the House of Commons in Local Government Finance Reports in 2018 and 2019.
- 6.9 The Schedule also provides (in Part 6) that the Secretary of State must, for each year, keep a “levy account”, to which it must credit and debit all levy and safety net payments. At the end of a year, the Secretary of State must calculate whether there is a surplus on the account and, if so, can determine that some, or all, of that surplus is to be distributed to local authorities. The basis on which any surplus is to be distributed must be set out in regulations made under paragraph 30 of the Schedule. Regulation 19 provides for the basis on which any surplus is to be distributed.

7. Policy background

What is being done and why?

- 7.1 These Regulations do a number of things. Firstly, they make changes to the operation of the business rates retention scheme. Since 2013-14, under the retention scheme, local authorities have kept 50% of locally raised business rates. Since 2017-18, the Government has in each year created “pilot” areas in which local authorities have

been allowed to keep a higher percentage of locally raised business rates. For 2019-20, the Government is creating further “pilot” areas in Berkshire, Buckinghamshire, East Sussex, Hertfordshire, Lancashire, Leicester and Leicestershire, London, Norfolk, Northamptonshire, North and West Yorkshire, North of Tyne, Staffordshire and Stoke-on-Trent, Solent, Somerset, West Sussex and Worcestershire, in which authorities will be allowed to keep 75%, instead of 50%, of local business rates income. By means of the pilot programme, the Government will have been able to test changes to the rates retention scheme, including giving authorities greater control over their local business rates, before it rolls-out changes to the business rates retention scheme more generally.

- 7.2 Secondly, the Regulations provide the basis on which the Secretary of State will distribute any “levy account” surplus. The levy account is kept by the Secretary of State under Part 6 of the Schedule. Safety net payments to authorities and levy payments from authorities are debited or credited to the account. Since 2013-14 the Government has also top-sliced an amount from revenue support grant (an integral part of the annual Local Government Finance Settlement) and credited that amount to the levy account, in order to ensure that, together with the levy payments credited to the account, there is enough money from which to make safety net payments. At the end of 2017-18, for the first time, there was a small surplus on the account. The surplus was larger at the end of 2018-19; in the region of £195m. The 1988 Act requires that any surplus is either carried forward to the following year, or distributed to local authorities. The Government has already indicated that it is minded to distribute £180 million of the surplus at the end of 2018-19. The basis of distribution set out in regulation 19 recognises that because amounts have been top-sliced from the Settlement since 2013-14, less revenue has been available to all authorities. It distributes the surplus on the basis of the Settlement distribution at the time the business rates retention scheme was set-up in 2013-14 (see the figures in Schedule 5). The Government has consulted local government on this proposal and 93% of respondents agreed with this basis of distribution.
- 7.3 To cater for local government reorganisation taking effect on 1 April 2019, Schedule 5 to the Regulations is amended by regulation 20 with effect from that date (see commencement provision in regulation 1(2) and (3)) to alter or insert entries for the altered areas, and remove entries relating to authorities which are abolished on 1 April 2019.
- 7.4 Thirdly, the Regulations amend the basis of calculation for levy and safety net payments to reflect changes made to the compensation that Government provides to local authorities through grants made under section 31 of the Local Government Act 2003. Those changes increase the section 31 payments to authorities to compensate them for their loss of income as a result of changes made to the small business rates relief scheme from 1 April 2017. Unless the calculation of levy and safety net payments is amended through these Regulations, authorities would stand to be compensated twice for the changes to small business rates retention; once through section 31 payments and again via levy and safety net payments.
- 7.5 Fourthly, the Regulations make changes to the calculation of levy and safety net payments to ensure that the Isles of Scilly’s baseline funding level, which is used in those calculations, properly reflects decisions taken by the House of Commons in approving the Local Government Finance Report in each of 2018 and 2019. Without those changes, if the Council of the Isles of Scilly were to require a safety net

payment in relation to either 2018-19 or 2019-20, they would receive less money than intended by the House of Commons when approving the Local Government Finance Reports.

- 7.6 Finally, the Regulations make minor amendments to the Levy and Safety Net Regulations as a result of changes to the structure of local authorities in Dorset, Northamptonshire, Somerset and Suffolk from 1 April 2019.

Consolidation

- 7.7 This instrument amends existing provisions of the Non-Domestic Rating (Rates Retention) Regulations 2013 and the Non-Domestic Rating (Levy and Safety Net) Regulations 2013. The Department does not intend to consolidate these Regulations.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument amends existing provisions of the Non-Domestic Rating (Rates Retention) Regulations 2013 and the Non-Domestic Rating (Levy and Safety Net) Regulations 2013. The Department does not intend to consolidate these Regulations.

10. Consultation outcome

- 10.1 The changes giving effect to the 2019-20 pilots are largely technical and have been developed in consultation with the affected local authorities.
- 10.2 The basis of distribution of the levy account was subject to full consultation as part of the provisional local government finance settlement. Of the 144 responses to the relevant consultation question, 134 (93%) agreed with the proposed basis of distribution.

11. Guidance

- 11.1 The Department issues guidance to local government on the completion of associated information forms which describe how to estimate non-domestic rating income and levy and safety net payments.

12. Impact

- 12.1 There is no impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment for the rates retention scheme is available from the Department's website at
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8470/2054063.pdf
- 12.4 A separate impact assessment has not been produced for this instrument because it amends an existing local tax regime. Publication of a full impact assessment is not necessary for such legislation.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Government keeps the business rates retention scheme under regular review.

14.2 The regulation does not include a statutory review clause.

15. Contact

15.1 Mark Barnett at the Ministry of Housing, Communities and Local Government
Telephone: 0303 444 4217 or email: mark.barnett@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Suzie Clarke, Deputy Director for Local Government Finance Reform and Pensions, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under Secretary of State at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.