

EXPLANATORY MEMORANDUM TO

THE NON-DOMESTIC RATING (TRANSITIONAL PROTECTION PAYMENTS AND RATES RETENTION) (CORONAVIRUS) (AMENDMENT) REGULATIONS 2021

2021 No. 262

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 This instrument amends the Non-Domestic Rating (Rates Retention) Regulations 2013 (S.I. 2013/452) (“the Rates Retention Regulations”) and the Non-Domestic Rating (Transitional Protection Payments) Regulations 2013 (S.I. 2013/106) (“the TPP Regulations”). It amends the schedule of instalments for payments owed by major precepting authorities¹ for the 2021-22 year. It also amends the dates for end-year calculations prescribed by the Rates Retention Regulations and TPP Regulations for two years and ends the Tees Valley Additional Growth Pilot.

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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 England only.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

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

¹ Section 39(1) of the Local Government Finance Act 1992 provides a list of types of major precepting authorities.

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”²).

- 6.2 The Rates Retention Regulations is the principal statutory instrument that provides 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.
- 6.3 By 31st January preceding a relevant financial year, billing authorities must estimate the amount they will collect from non-domestic ratepayers during the course of the year based on their liability as determined by non-domestic rating lists, the “multiplier”,³ and any discounts, reliefs or exemptions. This amount is billing authorities’ non-domestic rating income (“NDRI”) 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.
- 6.4 Following the end of a year, billing authorities are required to calculate and certify, in accordance with the requirements of the scheme and their audited accounts, their final figures for the relevant year. The Rates Retention and TPP Regulations require that certified figures must be submitted to the Department by the 31st July following the end of the relevant year.
- 6.5 If, during the course of the year, credits to the collection fund are exceeded by debits⁴ from the account, this constitutes a deficit on the collection fund; should the credits to the fund exceed the debits, this leads to a surplus on the account. Billing authorities must estimate whether they will have a surplus or deficit on a relevant year’s collection fund, and the value of the surplus or deficit, in advance of the end of that year, in their forecasts for the following financial year. The actual surplus or deficit is not known until the end-year process for a relevant year. Therefore, any difference between the estimate and actual amount of a surplus or deficit is taken into account in the second financial year following the relevant year.
- 6.6 The Rates Retention Regulations set out the shares of a surplus or deficit that are to be paid to, or from, the billing authority’s precepting authorities, if any, and central Government (excepting authorities who are operating under 100% Business Rates Retention and therefore do not pay a central share). Each major precepting authority is due, or liable for, the payment of a surplus/deficit, from each of its billing authorities. For example, if there is a surplus on a collection fund under the 50% scheme and the billing authority has two major precepting authorities, the billing authority pays each party – including central Government - their share of the surplus, including its own share to its general fund. Conversely, if there is a deficit on the account, each party –

² More information on business rates as a tax can be found [here](#).

³The non-domestic rating multiplier is a value set at the Budget each year, which, when multiplied by the rateable value (RV) of a property, defines the liability in that year for that property (before any discounts, reliefs or exemptions are applied). The multiplier for businesses <51k RV (“small business non-domestic rates multiplier”) is 0.499, and for businesses with RV >51k, it is 0.512, in 2020/21.

⁴ Under the rates retention system, credits occur when the collection fund receives income from ratepayers, or from other authorities or central Government in respect of payments required from them under the system (for example paying back of a deficit on the collection fund or safety net payments). These do not include section 31 grant payments. Debits occur where the billing authority is required to make payments under the rates retention system – for example payment of the central share or major precepting authorities’ share of the business rates income.

including central Government – must pay their respective share of that deficit to the billing authority’s collection fund, including the billing authority itself from its general fund.

- 6.7 The timing of payment of any such surplus or deficit through the course of the year following the relevant year is set out in the Rates Retention Regulations as the “Schedule of Instalments”. This requires payment in twelve instalments during the course of the year, commencing on 30th April, followed by the 19th day of each subsequent month. Local authorities can, however, vary the schedule with local agreement.
- 6.8 In response to the pandemic, for authorities with a deficit on the 2020-21 collection fund, this deficit will be ‘phased’ across three years. This way only a third of the amount would be paid in 2021-22, with the rest falling due in 2022-23 and 2023-24. The amount to be phased (the “exceptional balance”) is set out by the Local Authorities (Collection Fund: Surplus and Deficit) (Coronavirus) (England) Regulations 2020 (the “Phasing Regulations”) and is paid alongside the full amount of any prior year balance from 2019-20, and any non-phased proportion of a collection fund deficit from 2020-21.
- 6.9 Calculation of the exceptional balance excludes “relevant rates relief” as defined in the Phasing Regulations. The relevant rates relief proportion of the collection fund deficit is equal to the business rates reliefs announced post-NNDR1⁵ 2020-21, after authorities’ NDRI had been set for the year. It is excluded from the calculation of the exceptional balance because it is funded by central Government in full. Therefore, for authorities where a deficit exists on the collection fund for 2020-21, they will pay one third of the exceptional balance, plus the full amount of any deficit on the collection fund created by relevant rates relief, if any; any prior year balance (2019-20) is paid or received accordingly.
- 6.10 Quite separately, the 1988 Act provides for non-domestic hereditaments⁶ to be re-valued periodically. At a Revaluation, new non-domestic rating lists are compiled. In order to protect businesses from significant increases in bills at a Revaluation, transitional arrangements phase-in large increases in bills over several years. The cost of these arrangements is paid for by similarly phasing-in large reductions in bills caused by the Revaluation. In order to ensure that local authorities’ business rates income is not higher or lower as a result of the transitional arrangements, the rates retention system provides for Transitional Protection Payments. The TPP Regulations require payments to billing authorities where the authority’s income is less as a result of the operation of the transitional arrangements; and require payments from authorities where their income is greater.
- 6.11 The Rates Retention Regulations also set up any additional requirements to the rates retention system as required by changes to policy and special arrangements that are set up in particular areas. Schedule 2(C) set up the Tees Valley Additional Growth Pilot (AGP) from 2016-17 in accordance with the additional retention of business rates growth agreed as part of the Tees Valley Devolution Deal. Schedule 2(C) provides for the calculation of growth in respect of the AGP for Redcar & Cleveland, Middlesbrough, Hartlepool, Darlington and Stockton-on-Tees councils. The

⁵ The NNDR1 is a data collection form that billing authorities complete in advance of a financial year, giving its estimates for that year. The form automatically calculates the required information for the year, including NDRI.

⁶ A non-domestic hereditament is a unit of rating assessment comprised of a property or party of a property which is not classed as domestic or is not exempt.

authorities are required, as per the Rates Retention Regulations, to calculate the amounts they estimate they will retain in advance of a year, and outturn amounts, which are reconciled, following the end-year process.

7. Policy background

What is being done and why?

- 7.1 This instrument makes three amendments to the Rates Retention Regulations and one amendment to the TPP Regulations. These changes support major precepting authorities' cashflow position in response to the pandemic or update the framework for administration of the rates retention system, following policy changes.

Deferral of collection fund payments

- 7.2 In response to the pandemic, the Government announced additional rates reliefs⁷ ("relevant rates relief" - retail, hospitality and leisure discount [also known as the expanded retail discount], nursery discount and local newspaper discount, totalling approx. £10bn) in March 2020. As is usual for such reliefs the Government requires authorities to implement, authorities will be compensated in full for their loss of income as a result of awarding the relief.
- 7.3 However, as the reliefs were announced and awarded after authorities' NDRI for 2020-21 was set and due to the scale of the reliefs, this has created a substantial deficit on many billing authorities' collection funds. Billing authorities, central Government and major precepting authorities are required to pay their share of the deficit on the collection fund, if any (see paragraphs 6.8 and 6.9), over the course of 2021-22, in line with the Schedule of Instalments.
- 7.4 As billing authorities were required to make payments due under the rates retention system during 2020-21 based on NDRI figures which did not include the impact of these reliefs, they were given 100% of the compensation by the Government via grant under section 31 of the Local Government Act 2003⁸ ("s.31 grant"), on-account in 2020-21 to deal with what would otherwise have been an unsustainable cash flow position. Each local authority's final compensation in the form of s.31 grant for the relevant rates reliefs will be calculated and paid to them (in the case of major precepting authorities) or recovered from them (billing authorities) after final outturn figures for 2020-21 are available, in early 2022.
- 7.5 The Schedule of Instalments as set out in the Rates Retention Regulations requires authorities to pay their share of the collection fund deficit in twelve instalments across 2021-22, of which the first falls due on 30 April 2021. However, major precepting authorities will not receive the income for the relevant rates relief with which to make the payments, until early 2022. This timing of the payments and the scale of the relevant rates relief could cause serious cash issues for major precepting authorities, though the impact will depend on local circumstances.
- 7.6 This Instrument therefore creates an alternative Schedule of Instalments solely for major precepting authorities to pay their share of the proportion of the collection fund

⁷ The additional rates relief is defined as "relevant rates relief" by the Local Authorities (Collection Fund: Surplus and Deficit) (Coronavirus) (England) Regulations 2020. This is the retail, hospitality and leisure discount, the nursery discount and the local newspaper discount for 2020-21, less the amount of retail discount paid through the pre-year estimates in the NNDR1 2020-21.

⁸ <https://www.legislation.gov.uk/ukpga/2003/26/section/31>

deficit created by the relevant rates relief. Instead of twelve instalments, major precepting authorities will only be required to make one payment in respect of their share of any deficit relating to the deficit arising from relevant rates relief only, in full, to billing authorities in March 2022, by which time they will have received the s.31 grant with which to make the payment. The remainder of the amount to be paid, if any, will be paid in accordance with the normal Schedule of Instalments. The remainder will consist of any deficit on the 2019-20 collection fund, and or any deficit resulting from a negative 2020-21 exceptional balance, for which a third is due in 2021-22.

- 7.7 It is possible that a surplus exists in either or both the prior year collection fund balance or the exceptional balance for a year; in this case the surplus reduces the overall amount of deficit to pay in 2021-22. In such a case, the intention is that this surplus amount reduces the deficit created by the additional reliefs to be paid in March 2022. This results in the ‘remainder’ of the 2021-22 deficit payment, if any, falling due in full across the year as intended, except in any case where a surplus exceeds the value of the additional reliefs. The amount of additional relief to be attributed to payment in March 2022 is calculated by the regulations as the major precepting authority’s share of a billing authority’s additional relief, minus the major precepting authority’s share of any prior year surplus (2019-20) and any exceptional balance surplus (2020-21).
- 7.8 It is intended that this amendment of the Schedule of Instalments for precepting authorities would solve their cashflow problem, though billing authorities would not receive the income until March 2022. Billing authorities will, however, hold the full on-account payments up-front until reconciliation in early 2022.
- 7.9 The schedule of instalments for billing authorities and central Government in relation to the relevant rates relief will remain unchanged. Additionally, the Schedule of Instalments for major precepting authorities of any collection fund deficit relating to either the 2019-20 deficit or the 2020-21 exceptional balance, remains unaffected.

End-of-year calculations

- 7.10 The Redmond Review⁹ recommended that the deadline for publishing final audited local authority accounts be revisited with a view to extending it from 31 July to 30 September. The Government’s response¹⁰ partially accepted this recommendation, agreeing to amend the publication deadline for principal authorities from 31 July to 30 September, for the 2020-21 and 2021-22 financial years, subject to review of any improvement in completion rate of audits following this initial period.
- 7.11 The Rates Retention Regulations and TPP Regulations provide for end-year business rates calculations to be made, after the end of a financial year and the completion of local authority accounts, and for certain adjusting payments to be made, reflecting the differences between those estimates made before the beginning of the year those end-year calculations. Currently, under both sets of regulations, certified end-year calculations must be submitted by 31 July following the end of the financial year.
- 7.12 This instrument amends the deadline by which billing authorities must make and certify their end-year calculations for the rates retention scheme, to 30 September for

⁹ The Redmond Review is an independent review by Sir Tony Redmond into the effectiveness of external audit and transparency of financial reporting in local authorities. More information and the final report is found [here](#).

¹⁰ The Government’s response can be found [here](#).

two years, in line with the changes to the Audit deadlines under the Accounts and Audit Regulations. These extended deadlines will therefore apply to the end-year figures for the financial years beginning in 2020 and 2021.

Ending of the Tees Valley Additional Growth Pilot (AGP)

- 7.13 The Tees Valley Devolution Deal created an Additional Growth Pilot (AGP) from 2016-17 in which Tees Valley authorities would retain additional growth above a second baseline which would usually be returned as the central share to central Government. The AGP applies to Redcar & Cleveland, Middlesbrough, Hartlepool, Darlington and Stockton-on-Tees councils. The AGP was created for an initial period of five years and will end as of the 2021-22 financial year.
- 7.14 The Rates Retention Regulations provide for the calculation and retention of additional growth for the Tees Valley authorities. This instrument brings to an end the AGP by disapplying the AGP from 1 April 2021 onwards.

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 (Transitional Protection Payments) Regulations 2013. The Department does not intend to consolidate these Regulations.

10. Consultation outcome

- 10.1 The Department has discussed its intention to alter the Schedule of Instalments for major precepting authorities with senior sector representatives. It has not received any objections to the proposal, and has received 9 responses indicating agreement with, or support for, the proposal.
- 10.2 The Tees Valley authorities were notified of our intention to end the AGP after the initial five-year period and raised no objections.
- 10.3 Throughout the COVID-19 crisis MHCLG has had regular engagement with the local government sector on finance matters. This has included discussion of measures to support local authorities and help them manage financial pressures. We continue to maintain this dialogue and take any required action as appropriate.

11. Guidance

- 11.1 We will notify local authorities of the amendments herein, but no further guidance is necessary.

12. Impact

- 12.1 There is no impact on business, charities or voluntary bodies.
- 12.2 There is a positive impact on the major precepting authorities, whose cashflow position will be improved by deferring the payment of their share of the relevant rates

relief proportion of the collection fund deficit for 2020-21 until they have received the s.31 grant with which to make these payments.

- 12.3 An Impact Assessment for the rates retention scheme is available from the Department's website at:

https://assets.publishing.service.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 Emily Gascoigne at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 2027 or email: emily.gascoigne@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 Minister of State for Regional Growth and Local Government, Luke Hall MP, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.