

EXPLANATORY MEMORANDUM TO

THE NON-DOMESTIC RATING (DESIGNATED AREA) REGULATIONS 2021

2021 No. 404

1. Introduction

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

2. Purpose of the instrument

- 2.1 These Regulations form part of the scheme for local retention of non-domestic rates (“the rates retention scheme”). Their purpose is to designate an area in relation to which a proportion of the non-domestic rating income raised is to be retained in its entirety by the local authority in whose area the designated area falls; and shared by that authority with its Combined Authority.

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 The 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 and 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 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 Minister of State, Luke Hall MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Non-Domestic Rating (Designated Area) Regulations 2021 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 which provides for the local retention of non-domestic rates collected in England.

6.2 Part 10 of Schedule 7B enables the Secretary of State to make regulations designating areas and providing for the calculation of the non-domestic rating income in respect of the hereditaments¹ within a designated area to be disregarded for the purpose of various calculations required under the rates retention scheme.

6.3 The Non-Domestic Rating (Designated Areas) Regulations 2021 specify that the designation of the area has effect from 1 April 2021 providing the Secretary of State is satisfied that the local authority and combined authority have arrangements in place that ensure the amounts disregarded for the purpose of calculations under the rates retention scheme (see 6.2 above) will instead be used for the benefit of the designated area. The designation has effect for a period of 25 years. This means that paragraph 39(9) of Schedule 7B applies. Paragraph 39(9) provides that where the regulations specify the years for which the designation has effect, they may not be revoked during that period and amendments which have the effect of altering the boundaries of a designated area, providing for a reduction in the amount that may be disregarded or the reduction of the period of the designation may not be made to the regulations during that period.

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 was introduced on 1st April 2013 to give local government a direct share of local non-domestic rating income and thereby an incentive to promote local growth. This replaced the previous scheme whereby non-domestic rates were collected by local government, paid to central government and redistributed back to local government via the local government finance report.

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 has been set at 50:50.

¹ A hereditament is a unit of property which is subject to rating

- 7.3 As part of its policy to deliver growth, the Government has previously identified a number of geographical areas designed to help create jobs and create businesses in areas of economic opportunity. They will do this by giving businesses the right conditions for growth, creating public and private partnerships and encouraging competition to attract foreign inward investment. In these areas, the Government has allowed local authorities to retain 100% of the growth in non-domestic rates. This provides a powerful incentive for growth.
- 7.4 To deliver upon this commitment these Regulations provide that when calculating how much rates income in a local authority area is to be shared between local government and central government, it will disregard the growth in rating income in the designated area. This will then allow the growth in those designated areas to be retained 100% by the billing authority. These Regulations designate a further area in which the 100% disregard will apply and provide rules for calculating the amount to be disregarded.
- 7.5 The Regulations further provide that the disregarded amount retained by the local authority is to be shared 50:50 with the Mayoral Combined Authority, which jointly with the authority is responsible for developing the designated area. The local authority, mayoral combined authority and central Government are developing a memorandum of understanding which, once agreed and signed, will be the means by which the Secretary of State will satisfy himself that the disregarded sums are to be used for the benefit of the designated area, thereby allowing the designated area to come into force on 1 April 2021.
- 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 The Department does not intend to consolidate the relevant legislation.
- 10. Consultation outcome**
- 10.1 A general consultation for these Regulations has not been undertaken since they implement outcomes for a specific geographical area that have been the subject of negotiation between central Government and the area concerned.
- 11. Guidance**
- 11.1 The Department issues guidance to local authorities on the completion of associated data forms which are used to determine the amounts of non-domestic rating income due in designated areas and under rates retention arrangements generally.
- 12. Impact**
- 12.1 There is no impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is that, while the overall amount of non-domestic rates income retained by the public sector will be unaffected, the amounts retained respectively by central and local government will change depending on the amount of

growth generated in those areas and, as a result, local authorities will be incentivised to secure more growth than might otherwise have been the case.

12.3 An Impact Assessment for the rates retention scheme is available from:
https://www.gov.uk/government/uploads/attachment_data/file/8470/2054063.pdf.

12.4 A separate Impact Assessment has not been prepared for this instrument.

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 non-domestic rating system under review.

15. Contact

15.1 Mark Barnett at the Ministry for 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 Suzanne Clarke, Deputy Director for Local Government Finance Stewardship, at the Ministry for Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister Luke Hall at the Ministry for Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.