

# LOCAL GOVERNMENT FINANCE ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *General*

#### *Section 19: Interpretation*

62. This provides that references to "the LGFA 1988" and "the LGFA 1992" mean the Local Government Finance Act 1988 and 1992 respectively.

#### *Section 20: Power to make transitional, consequential etc provision*

63. This section gives the Secretary of State the power to make provision relating to the coming into force of the provisions in the Act, so as to allow for the transition from one set of legislative provisions to another. The section also gives the Secretary of State the power to make consequential provision as the Secretary of State considers appropriate in connection with any provision of the Act and makes provision for the appropriate procedure.

#### *Section 21: Financial provisions*

64. This section makes financial provision for the Act.

#### *Section 22: Extent and short title*

65. This provides that the Act extends to England and Wales only, apart from section 17 which also extends to Scotland and sections 18 and 20 which extend to England and Wales, Scotland and Northern Ireland.
66. This section also provides that the Act may be called the Local Government Finance Act 2012.

#### *Schedule 1: Local retention of non-domestic rates*

67. [Section 1\(2\)](#) and Schedule 1 insert a new Schedule 7B to the LGFA 1988. Schedule 7B replaces the existing provision in Schedule 8 to the LGFA 1988 in respect of England and makes provision for the treatment of non-domestic rates collected by billing authorities.

#### **Part 1: Main non-domestic rating accounts**

68. [Paragraph 1](#) places a requirement on the Secretary of State, each year, to keep a main non-domestic rating account and sets the overarching administrative requirements for keeping the account.
69. [Paragraph 2](#) defines the credits and debits to the main rating account for the year. Credits to the account in the year comprise non-domestic rates from ratepayers liable for non-domestic rates under the central list; contributions in aid in respect of hereditaments exempt from local non-domestic rating; payments by billing authorities in respect

of any surplus on the collection fund in relation to non-domestic rates; payments in respect of the central share of non-domestic rates; payments by relevant authorities following a local government finance report and any amending report; transitional protection payments made to the Secretary of State and reconciliation payments with respect to amounts disregarded under paragraph 42. Debits to the account in the year comprise payments to billing authorities in respect of any deficit on the collection fund in relation to non-domestic rates; any reconciliation payments due in respect of the central share of non-domestic rates; payments to relevant authorities following a local government finance report and any amending report; transitional protection payments and reconciliation payments with respect to amounts disregarded under paragraph 42. Sub-paragraph (3) provides that a further amount may be debited following a local government finance report. This amount can only be used for the purposes of local government in England, which includes the making of payments to billing and precepting authorities and levying bodies as specified in sub-paragraph (5).

70. [Paragraph 3](#) requires the Secretary of State, as soon as reasonably practicable after the end of the year, to calculate the aggregate of items credited and debited to the main non-domestic rating account for the year. Any resulting credit or debit for that year is to be credited or debited as appropriate to the main non-domestic rating account for the next year. (For example, if the aggregate of credits to the account is greater than the aggregate of debits, the excess is debited from the main non-domestic rating account for that year to produce a nil balance, and credited to the main non-domestic rating account for the next year, and vice versa.)

## **Part 2: Determination of the central and local share**

71. This places a requirement on the Secretary of State for each year to determine the central and local share percentages for each billing authority. Paragraph 5 requires this determination to be set out in a local government finance report, which must be laid before the House of Commons, and sent to each relevant authority as soon as reasonably practicable thereafter. This requirement in respect of the local government finance report replaces the current provisions as to a local government finance report in section 78A of and Schedule 8 to the LGFA 1988, but makes similar provision in relation to the preparation and approval of the local government finance report.

## **Part 3: Payments to the Secretary of State in respect of the central share**

72. Following House of Commons approval of a local government finance report, paragraph 6 places a duty on billing authorities to make payment of the central share to the Secretary of State (which will be the percentage of the billing authority's non-domestic rating income set out in the local government finance report). The Secretary of State must define "non-domestic rating income" for these purposes in regulations. Paragraph 7 provides for the Secretary of State to make regulations about the administrative arrangements for making such payments, including the time and manner of payments and any necessary payments subsequently to reconcile payments made during the course of the year. Paragraph 8 gives the Secretary of State power by regulations to make provision for deductions from a billing authority's central share payment, in particular by reference to discretionary relief granted by that authority in accordance with section 47 of the LGFA 1988. This will allow the Secretary of State to give effect to the Government's commitment to fund certain discretionary rate relief in enterprise zones.

## **Part 4: Payments by billing authorities to major precepting authorities**

73. [Paragraph 9](#) provides for the Secretary of State to make regulations requiring billing authorities to pay a proportion of their non-domestic rating income to major precepting authorities. Payments for a year may not be made unless the local government finance report for the year has been approved by the House of Commons. Paragraph 10 enables regulations about the administrative arrangements in connection with such payments,

including certification of calculations and timing of payments. Paragraph 11 gives the Secretary of State power to make regulations to provide for a proportion of any amount deducted from the central share under paragraph 8 to be paid to major precepting authorities.

### **Part 5: Principal payments in connection with local retention of non-domestic rates**

74. [Paragraph 12](#) requires the local government finance report for a year to specify the basis on which the Secretary of State intends to calculate which relevant authorities will make payments to and which relevant authorities will receive payments from the Secretary of State and calculate the amounts of each payment to or from relevant authorities. Before making such a report, the Secretary of State must notify local government representatives of the general nature of the basis of calculation.
75. Following House of Commons approval of a local government finance report, paragraph 13 requires the Secretary of State to calculate the payments that are to be made and received by relevant authorities. Relevant authorities must be notified of the calculations as soon as practicable after they have been made. The Secretary of State may revise the calculations by making one further set of the calculations and may do this at any time before the end of the year following the year to which the report relates provided an amending report has not since been approved by the House of Commons.
76. [Paragraph 14](#) places a duty on relevant authorities and the Secretary of State to make payments required of them following the local government finance report and makes provision about how payments are to be made.
77. [Paragraph 15](#) provides for the Secretary of State to make reports amending the basis of calculation specified in the local government finance report for a year at any time before the end of the year following the year to which the report relates. Notification and laying arrangements are as for a local government finance report prepared under paragraph 5. Paragraph 16 provides for the Secretary of State, following approval of an amending report, to make the necessary calculations and for a revised set of calculations to be made if needed and to notify each relevant authority of the outcome. Paragraph 17 sets out the provision for the making of payments following an amending report. Any payments following an amending report must take place after the end of the year in which the amending report is made. Paragraph 18 has the effect of making the provisions in this Part subject to Parts 9 (pooling of authorities) and 10 (designation of areas and classes of hereditament) of the Schedule.

### **Part 6: Levy accounts**

78. [Paragraph 19](#) requires the Secretary of State, each year, to keep a levy account. Paragraph 20 defines the credits and debits to the levy account for the year. Credits to the account in the year comprise levy payments from relevant authorities, repayments of safety net payments on account and payments by the Secretary of State to guarantee safety net payments in the event of insufficient levy income. Debits to the account in the year comprise safety net payments and safety net payments on account to relevant authorities, and any distribution of the remaining balance to one or more relevant authorities.
79. [Paragraph 21](#) makes accounting provision for calculating, after the year end, the aggregate of items credited and debited to the levy account for the year. Any resulting credit or debit for that year is then credited or debited as appropriate to the levy account for the next year as an item of account.

## **Part 7: Levy payments, safety net payments and distribution of remaining balance**

80. [Paragraph 22](#) gives the Secretary of State the power to make regulations about the calculation of levy payments. Such calculations may only be made for a year after the end of that year – so calculations for the financial year 2014-15, for example, may only be made after the end of that financial year (i.e. after March 2015). [Paragraph 23](#) requires the Secretary of State to calculate the levy payments required from relevant authorities for a year and to notify relevant authorities as soon as practicable after doing so. [Paragraph 24](#) places a requirement on relevant authorities to make levy payments as determined by the Secretary of State.
81. [Paragraph 25](#) allows the Secretary of State to make regulations about calculating whether a safety net payment should be made to a relevant authority for a year and, if so, the amount of the safety net payment. As with levy payments, such calculations may only be made for a year after the end of that year. [Paragraph 26](#) requires the Secretary of State to make the safety net payment calculations and to notify relevant authorities as soon as practicable after doing so. The Secretary of State must make safety net payments in instalments of such amounts and at such times as the Secretary of State determines with the Treasury’s consent ([paragraph 27](#)).
82. [Paragraph 28](#) enables the Secretary of State to provide for a relevant authority to request that the Secretary of State calculates before the end of the financial year whether the Secretary of State is likely to be required to make a safety net payment to it for that year. Regulations may specify the time and manner in which requests may be made, the circumstances in which the Secretary of State may or must make a calculation in response to a request and about the calculation of a payment on account in addition to provisions about the timing of such calculations and making of such payments.
83. [Paragraph 29](#) requires the Secretary of State to calculate each year whether there is a remaining balance on the levy account and sets out how that calculation must be made. [Paragraph 30](#) provides that the Secretary of State may distribute the whole or part of any remaining balance for a year among one or more relevant authorities. Where the Secretary of State decides to do so, the basis of calculation for distribution will be as set out in regulations, and the Secretary of State must distribute any such payments in accordance with the [paragraph](#) and in any event within that financial year.
84. [Paragraph 31](#) has the effect of making the provisions in this Part subject to [Parts 9](#) (pooling of authorities) and [10](#) (designation of areas and hereditaments) of the Schedule.

## **Part 8: Transitional protection payments**

85. [Section 57A](#) of the LGFA 1988 requires the Secretary of State to put in place a transitional relief scheme to protect ratepayers from large increases in their rates bills as a result of revaluation. [Paragraphs 32](#) and [33](#) enable the effects of this transitional relief scheme to be taken account of in the rates retention scheme through separate financial adjustments in regulations under [paragraphs 32](#) and [33](#).
86. [Paragraph 32](#) therefore enables the Secretary of State to make regulations about the calculation of the amounts that would be payable to billing authorities were a transitional relief scheme not in place. The making of any transitional protection payment by the Secretary of State to a billing authority, or by a billing authority to the Secretary of State as appropriate following calculations under [paragraph 32](#) may be set out in regulations under [paragraph 33](#).

## **Part 9: Pooling of authorities**

87. [Paragraph 34](#) enables the Secretary of State to designate two or more relevant authorities as a pool of authorities. Designations may not be made unless each authority covered by the designation agrees to it. A designation generally only has effect for a year

if it is made before the Secretary of State gives notification under paragraph 12(2) (notification of general basis of calculation to be specified in local government finance report for the year). Once made, a designation continues to have effect unless it is revoked by the Secretary of State. The Secretary of State must revoke a designation if requested to do so by one of the authorities within the pool. A designation must include conditions about the administration of the pool, including a requirement for the appointment of a lead authority and steps that are to be taken if the designation is revoked (paragraph 35). Designations may be varied by the Secretary of State following consultation with the members of the pool.

88. [Paragraph 36](#) provides that a pool of authorities is to be treated as a relevant authority for the purposes of Part 5 of the Schedule ( principal payments in connection with local retention of non-domestic rates). This does not prevent a local government finance report from also making provision in relation to the individual authorities within the pool. Paragraph 37 makes similar provision in respect of regulations about levy payments and safety net payments.
89. [Paragraph 38](#) makes further provision about the effect of designation. It provides that notification requirements apply to individual authorities within a pool. As to payments and receipts, it provides that authorities within a pool are jointly and severally liable to make payments and that payments from the Secretary of State under Part 5 or Part 7 shall be made to the lead authority.

#### **Part 10: Designation of areas and classes of hereditament**

90. [Paragraph 39](#) enables the Secretary of State to make regulations to designate one or more areas in which a proportion of non-domestic rates are to be disregarded from any calculations under paragraph 6, 7, 9, 10, 13, 16, 23, 26, 28 or 30 of the Schedule for a specified period. Paragraph 40 provides equivalent provision for the Secretary of State to make regulations designating one or more classes of hereditament, for which a proportion of non-domestic rates are to be disregarded from any calculations under paragraph 6, 7, 8, 9, 10, 13, 16, 23, 26, 28 or 30 of the Schedule for a specified time. Regulations made under paragraph 39 or 40 may make provision for payments to major precepting authorities to take account of the designated area or class of hereditament. Paragraph 41 enables regulations under paragraph 39 or 40 to include provision requiring a billing authority to make a payment out of the proportion disregarded to a relevant authority. Paragraph 42 allows regulations to make provision for the estimate of amounts to be disregarded and for their reconciliation.

#### **Part 11: Supplementary**

91. [Paragraph 43](#) provides that the Secretary of State may direct a relevant authority to make calculations or supply information to the Secretary of State and for the certification of such calculations and information. The Secretary of State may make his own calculations or assumptions where an authority fails to comply and must notify the authority where this is the case.
92. [Paragraph 44](#) gives the Secretary of State power to make by regulations the same provisions as can be made by direction under paragraph 43 of the Schedule. This allows the regulations that will be made to implement the rates retention system to make provision for calculations and the supply of information, rather than having separate directions. Paragraph 45 defines key terms in the Schedule.

#### ***Schedule 2: Amendments of provisions about revenue support grant in England***

93. [Schedule 2](#) makes amendments to provisions in the LGFA 1988 about payment of revenue support grant, and the local government finance report, which are consequential on the introduction of a scheme for local retention of non-domestic rates. The effect is to replace the Secretary of State's duty to pay grant with a power to do so.

### ***Schedule 3: Further amendments relating to non-domestic rating***

#### **Part 1: Amendments to Schedule 8 to the LGFA 1988**

94. **Part 1** of Schedule 3 amends Schedule 8 to the LGFA 1988 so that in future it will apply to Wales only, thus retaining the current system of pooling and redistribution of non-domestic rates in Wales, and makes consequential amendments to other legislation.

#### **Part 2: Other amendments**

95. **Part 2** contains amendments to Part 6 of the LGFA 1998 (funds) to make provision for the operation of the rates retention scheme, and other minor amendments consequential to the introduction of the scheme.

### ***Schedule 4: Amendments relating to council tax reduction schemes***

96. **Part 1** of Schedule 4 to the Act inserts new Schedules 1A and 1B into the LGFA 1992. The new Schedule 1A concerns council tax reductions schemes in England; the new Schedule 1B concerns council tax reduction schemes in Wales. Part 2 of Schedule 4 to the Act makes amendments which are consequential on the introduction of council tax reduction schemes.

97. Paragraph 2 of the new Schedule 1A provides, in particular, that a scheme must-

- state the classes of person entitled to a reduction (paragraph 2(1) and (2));
- state the reductions which are to apply to those classes (paragraph 2(3) and (4)); and,
- state the procedure by which a person may apply for a reduction under the scheme (paragraph 2(5)).

98. Paragraph 2(8) of new Schedule 1A provides that the Secretary of State may prescribe other requirements for schemes. The Secretary of State may make regulations prescribing classes of persons which must be included in a scheme and the reductions which must apply to those classes (paragraph 2(9) of new Schedule 1A). The Secretary of State intends to use this power to ensure that reductions are provided for pensioners.

99. Paragraph 2(10) of new Schedule 1A provides that regulations made under paragraph 2(8) may in particular set out provision to be included in a scheme that is equivalent to a provision made by (or capable of being made under) specified sections of the Social Security Contributions and Benefits Act 1992, the Social Security Administration Act 1992 and the Welfare Reform Act 2007, with modifications. Paragraph 2(11) makes the same provision in relation to provisions that a billing authority may include in its scheme. This power ensures that regulations of the Secretary of State, and local schemes, can incorporate certain provisions that currently apply to the entitlement to, and calculation and administration of, council tax benefit, for example, in the treatment of income and capital.

100. Before it makes a scheme a billing authority must consult its major precepting authorities and other persons it considers are likely to have an interest in the scheme (paragraph 3(1) of new Schedule 1A). Provision is made recognising any step undertaken in accordance with paragraph 3 which takes place prior to commencement (paragraph 3(2)). Once a scheme is made the billing authority must publish it (paragraph 3(3)). The Secretary of State may make regulations about the procedure for preparing a scheme, including requiring the authority to produce documents in connection with the preparation of a scheme and setting out requirements for publication (paragraph 3(4) and (5)).

101. The Secretary of State is required to make regulations prescribing a default scheme (paragraph 4(1)). The default scheme must relate to the financial year 2013-14

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and it must comply with the requirements in paragraph 2(1) to (7) and regulations under paragraph 2(8) (paragraph 4(3)). Paragraph 4(4) provides a comparable power in relation to default schemes to that provided by paragraph 2(10) in relation to requirements for schemes prescribed under paragraph 2(8) – that is that regulations setting out a default scheme may include provision that is equivalent to a provision made by (or capable of being made under) specified sections of the Social Security Contributions and Benefits Act 1992, the Social Security Administration Act 1992, and the Welfare Reform Act 2007, with modifications.

102. The default scheme will apply to a billing authority's area if it fails to make a scheme on or before 31 January 2013 (paragraph 4(6)) or such other date as is specified in section 10(4) of the Act. Where a default scheme applies, new Schedule 1A applies as if the scheme had been made by the authority (paragraph 4(7)). In particular, this means that a billing authority must publish the default scheme in accordance with paragraph 3(3).
103. Each financial year a billing authority must consider whether to revise or replace its scheme (paragraph 5(1) of new Schedule 1A). The procedure for making a scheme also applies if a scheme is revised or replaced (paragraph 5(5) and (6)). If a reduction is reduced or removed the billing authority must make such transitional provision as it thinks fit (paragraph 5(4)).
104. A billing authority and major precepting authorities with a power to issue precepts to that billing authority may enter into arrangements which have effect if there is, or if the billing authority estimates that there will be, a deficit on the collection fund for that year (paragraph 6(1) and (2)). These arrangements can include the making of payments by one authority to another, or the variation of payments required to be made in regulations made under section 99 of the LGFA 1988 in relation to council tax (paragraph 6(3)).
105. The Secretary of State may by notice require a billing authority to supply information for the purpose of deciding whether to exercise any functions relating to schemes (paragraph 7(1) of new Schedule 1A). If an authority fails to comply the Secretary of State may exercise those functions on the basis of such assumptions and estimates as he thinks fit (paragraph 7(3)).
106. The Secretary of State may issue guidance to which billing authorities must have regard and may also make regulations setting out transitional provision relating to the commencement of schemes (paragraphs 8 and 9 of new Schedule 1A).
107. New schedule 1B provides for matters to be included in regulations to be made by Welsh Ministers under new section 13A(4). These powers largely mirror those provided by new schedule 1A in relation to England. New schedule 1B provides that regulations may:
  - Prescribe the dwellings to which each scheme is to apply or require each scheme to state the dwellings to which it is to apply (paragraph 2(1));
  - Prescribe by when a scheme is to be made, and the first year to which it is to relate (paragraph 2(2));
  - Prescribe classes of persons who must, or must not, receive a reduction under a scheme (paragraph 3(1));
  - Allow authorities to determine classes of person who are to be entitled to reductions under schemes or provide that authorities may not determine such classes (paragraph 3(2));
  - Prescribe reductions to which persons in each class are to be entitled (paragraph 4(1));

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- Allow authorities to determine reductions to which persons in each class are to be entitled or provide that authorities may not determine such reductions (paragraph 4(2));
  - Provide for a default scheme (paragraph 6(1)).
108. **Part 2** of Schedule 4 makes further amendments relating to council tax reduction schemes. Paragraph 2 amends Schedule 11 to the LGFA 1988 so as to enable First-tier Tribunal members to sit as members of the Valuation Tribunal for England. This is so that their expertise can be used when deciding appeals against decisions made in relation to council tax reduction schemes.