EXPLANATORY MEMORANDUM TO

THE NON-DOMESTIC RATING (RATES RETENTION: MISCELLANEOUS AMENDMENTS) REGULATIONS 2024

Year No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of His Majesty

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Minister Hoare, Parliamentary Under Secretary of State for Local Government at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

2.2 Suzie Clarke, Deputy Director for Local Government Finance Stewardship, at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Emily Gascoigne at the Department for Levelling Up, Housing and Communities Telephone: 0303 44 42027 or email: emily.gascoigne@levellingup.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Instruments amends the administrative framework set out by regulations, on which the Business Rates Retention ("BRR") system is run, enacting wider policy changes. This is necessary to ensure that correct payments are made to, from, and between, local authorities.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 Business rates are a tax charged on non-domestic properties and collected by local authorities. The BRR system is a key part of the funding system for local government under which, with some exceptions, local councils retain 50 per cent of the business rates income they collect. This income is redistributed each year via "Top-up" and "Tariff" payments. The "Top-up" and "Tariff" payments were set up at the outset of the system, to ensure authorities' income met their assessed need via baseline funding levels ("BFLs").

5.2 Authorities can be eligible for a safety net payment if their annual share of business rates income falls below a minimum value – its "safety net threshold". Conversely, authorities may be required to make a levy payment on growth.

5.3 This Instrument amends two sets of regulations which underpin the administrational framework of the BRR system. Those regulations being: the Non-Domestic Rating (Rates Retention) Regulations 2013 (S.I. 2013/452) ("Rates Retention Regulations"); and the Non-Domestic Rating (Levy and Safety Net) Regulations 2013 (S.I. 2013/737) ("Levy and Safety Net Regulations").

5.4 These changes adjust the framework of the BRR system in response to wider policy changes to business rates as a tax. If such changes were not made, the BRR system would run on a basis which does not reflect the actual status of the tax and would result in arbitrary gains or losses for local authorities, depending on the impact of the policy changes in their area. This Instrument responds to several policy changes, primarily the 2023 revaluation of business rates and the Non-Domestic Rating Act 2023 ("the 2023 Act").

What was the previous policy, how is this different?

5.5 Changes to the BRR system implemented by this Instrument do not fundamentally alter any part of this system but amend the regulations to set out the correct figures and calculations on which to run the system. The key changes are highlighted below.

5.6 Top-ups and tariffs are adjusted at business rates revaluations to strip-out the effects of the revaluation on local authority income ("revaluation adjustment"). An initial adjustment was applied to authorities' top-ups and tariffs last year. As planned, the figure has been recalculated following data updates. This Instrument revises 2023-24 top-up and tariff figures, and updates the levy rate calculation, including setting out new business rates baseline ("BRB" – a measure of the income authorities have access to) figures to be used.

5.7 Following Royal Assent of the 2023 Act, the small-business rating multiplier and non-domestic rating multiplier can be uprated at different rates. It is therefore necessary to amend the BRR system, as the change in the small business multiplier (previously linked to the non-domestic rating multiplier) has been used to uprate figures in the BRR system until now. This Instrument implements a new formula[1] to uprate top-ups, tariffs, BFLs and the City of London Offset from 2024-25.

5.8 Administrative changes are made to the retained rates income calculation to ensure levy and safety net calculations are conducted on an accurate basis and changes ensure that major precepting authorities[2] are compensated by billing authorities[3] for

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[1] The consultation and the Government's response can be found at: https://www.gov.uk/government/consultations/technical-adjustments-to-the-business-rates-retention-system-in-response-to-the-non-domestic-rating-bill

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

[3] Section 1(2) of the Local Government Finance Act 1992 defines billing authorities (in relation to England) as a district council or London borough council, the Common Council or the Council of the Isles of Scilly.

their share of any relief awarded by Mayoral Development Corporations ("MDCs"), currently in place in Hartlepool[4] and Middlesbrough.[5]

6. Legislative and Legal Context

How has the law changed?

6.1 The Local Government Finance Act 2012 inserted Schedule 7B to the 1988 Local Government Finance Act which set up the legislative framework for the BRR system.

6.2 A core set of regulations implemented in 2013 set up the running of the BRR system, in particular the Rates Retention Regulations and the Levy and Safety Net Regulations (which apply to England only), which are the principal statutory instruments that provide for the operation of the BRR system. These sets of regulations are amended where changes are required, often each year, and are amended by this Instrument.

6.3 The Rates Retention Regulations provide for the general administration of the BRR system, and the Levy and Safety Net Regulations provide for the calculation and payment of levy and safety net payments under the BRR system.

6.4 The 2023 Act made several key changes to business rates tax policy which affect the BRR system, most notably the de-linking of the small-business rating and the non-domestic rating multipliers. This Instrument provides for several administrative changes required to the BRR system given the impact of the 2023 Act.

Why was this approach taken to change the law?

6.5 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Government conducted a 4-week public consultation on the revaluation adjustment in 2022, with a highly positive reception. A further public consultation on the proposed new uprating methodology was conducted in September 2023 for 5 weeks, with the majority of respondents agreeing with the proposals for a new uprating methodology. The consultations and responses are published online.[1,6]

8. Applicable Guidance

8.1 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.7

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[4] The Hartlepool Functions Order can be found at: https://www.legislation.gov.uk/uksi/2023/446/contents/made

[5] The Middlesbrough Functions Order can be found at: https://www.legislation.gov.uk/uksi/2023/447/contents/made

[6] The consultation document and response can be found at: https://www.gov.uk/government/consultations/technical-adjustment-to-the-business-rates-retention-system-consultation

[7] Guidance for estimates of non-domestic rating income (NNDR1) and for calculation of end-of-year non-domestic rating income (NNDR3) can be found at: https://www.gov.uk/government/publications/national-non-domestic-rates-return

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the SI relates to maintenance of existing regulatory standards, and no, or no significant, impact on the private, voluntary or public sector is foreseen. An Impact Assessment was published at the outset of the 50 per cent business rates retention scheme in 2013-14.[8]

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument does not make changes which affect them.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, foreseen impact on the public sector because this instrument relates to the maintenance of existing regulatory standards. This Instrument adjusts the administrative framework where necessary to neutralise the impact of changes to business rates tax policy to minimise the impacts on local authorities as far as is practicable.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to adjust the original regulations to which these regulations make amendments, when and where necessary.

10.2 The instrument does not include a statutory review clause as it does not have an impact on business.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This affirmative statutory instrument is due to come into force on the day after the day on which it is made. The Department considers that this is reasonable and that a period of 21 days following the making of the instrument for it to come into force is not necessary in this case. This is on the basis that this instrument does not impose any new or more onerous duties on external parties or require them to adopt different patterns of behaviour. It only imposes a duty on the Secretary of State who must make calculations under Schedule 7B of the Local Government Finance Act 1988 ("the 1988 Act").

11.2 This Instrument replaces the original Non-Domestic Rating (Rates Retention: Miscellaneous Amendments) Regulations 2024 which have been withdrawn. This was required due to an error in the original Instrument, namely the misplacement of a closing bracket within two formulas which set out the calculation of retained rates income for billing authorities and for major precepting authorities. The correct policy intention is for factor 'Z1' to be outside of the closing brackets in both instances, so

[8] This is available on gov.uk at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/8470/2054063.pdf

that it is not multiplied by an authority's percentage share. The figures of Z1 set out in Schedules 6A and 7 of the Instrument should be included in the formula at their stated values, as expected by local authorities according to the table of values published in the 2024-25 Local Government Finance Settlement.[9]

11.3 The procedure for free issue of the Instrument has been applied, as this Instrument replaces the original Non-Domestic Rating (Rates Retention: Miscellaneous Amendments) Regulations 2024, which have been withdrawn.

12. European Convention on Human Rights

12.1 The Parliamentary Under Secretary of State for Local Government, Simon Hoare MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Non-Domestic Rating (Rates retention: Miscellaneous Amendments) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").

[9] The allocations were published alongside the 2024-25 Local Government Finance Settlement and can be found here: https://www.gov.uk/government/publications/business-rates-green-plant-and-machinery-exemption-compensation-allocations-2022-to-2023-and-2023-to-2024-onwards