

EXPLANATORY MEMORANDUM TO
THE NON-DOMESTIC RATING (TRANSITIONAL PROTECTION PAYMENTS
AND RATES RETENTION) (CORONA VIRUS) (AMENDMENT) REGULATIONS
2020

2020 No. 449

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

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”) in order to defer payments due to central Government by billing authorities under the business rates retention scheme for the 2020-21 financial year.
- 2.2 This instrument also amends the Rates Retention Regulations, and the Non-Domestic Rating (Transitional Protection Payments) Regulations 2013 (S.I. 2013/106) (“the TPP Regulations”) in order to delay the dates by which billing authorities must make and certify end-of-year calculations required for the business rates retention and transitional protection payments regimes in relation to the 2019-20 financial year. This instrument also brings forward the “normal” deadline for end-of-year calculations for the transitional protection payments regime in relation to the 2020-21 financial year onwards.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Regrettably, it was not possible for all of the provisions in these Regulations to comply with the 21-day rule according to which relevant instruments are laid before Parliament for at least 21 days before coming into force. This is emergency legislation designed to reduce financial and time pressures on local authorities in the short-term in relation to the spread of COVID-19. The onset of the implications of the COVID-19 pandemic on local authorities began to surface in late March. The timeframe required to investigate the options available to alleviate the effects on local authorities and draft the instrument and accompanying documentation could not, unfortunately, meet the timeline required for the 21 day period before parts of the instrument come into force on 29th April.
- 3.2 Under regulation 15(1) of the Rates Retention Regulations, billing authorities are required to make their first business rates “central share” payment on 30th April 2020 for the financial year beginning in 2020. Regulation 3(3) of these Regulations defers this date from 30th April 2020 to 19th July 2020. Regulation 3(3) therefore needs to be in force before 30th April; otherwise billing authorities would be legally obliged to

make their first central share payment on 30th April, before having collected or been compensated with the income required to do so and the policy objective of deferring financial and time pressures on billing authorities¹ would not be achieved.

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)

- 3.3 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 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 are the principal statutory instrument 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.
- 6.3 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 based on their liability as determined by non-domestic rating lists, the “multiplier”,² and any discounts, reliefs or exemptions. 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 authorities³ (if any), as required by the Rates Retention Regulations.
- 6.4 Quite separately, the 1988 Act provides for non-domestic hereditaments⁴ to be re-valued periodically. At a Revaluation, new non-domestic rating lists are compiled. In

¹ 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.

²The 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.

³Section 39(1) of the Local Government Finance Act 1992 provides a list of types of major precepting authorities.

⁴A 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.

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 their income is less as a result of the operation of the transitional arrangements; and require payments from authorities where their income is greater.

i. Deferral of central share payments

- 6.5 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). The Rates Retention Regulations provide for the administration by local authorities of the central share and other payments they are required to make. The Rates Retention Regulations require authorities to make the central share payment in twelve instalments during the course of the year, commencing on 30th April, followed by the 19th day of each subsequent month.
- 6.6 This instrument amends the Rates Retention Regulations in response to COVID-19, disapplying the schedule of instalments set out under regulation 15(1) and (3) in relation to the payment of the central share in 2020-21. This instrument provides a new schedule of instalments to be used for the central share in 2020-21.

ii. End-of-year calculations

- 6.7 The Rates Retention Regulations further provide for end-of-year 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 end-year calculations and those estimates made before the beginning of the year (see 6.3 above). Under the Rates Retention Regulations, end-of-year calculations are currently required by 31st July following the end of the financial year.
- 6.8 In the same way as for calculations under the Rates Retention Regulations, the TPP Regulations require authorities to calculate their Transitional Protection Payments twice – once before the beginning of the financial year, and again at year-end. Differences between the two calculations result in reconciliation payments between central Government and Local Authorities. Currently, end-of-year calculations are required to be made and certified by 30th September.
- 6.9 This instrument delays the date by which billing authorities must make and certify their end-of-year calculations for the purposes of both the Rates Retention Regulations and TPP Regulations, to 30th November 2020, in relation to the financial year beginning in 2019.
- 6.10 Additionally, this instrument amends the 'normal' deadline for end-of-year calculations in TPP Regulations from 30th September to 31st July. This will take effect from the financial year beginning in 2021 and ensures that end-of-year calculations set out in the TPP Regulations are brought into line with the accepted deadline of 31st July for end-of-year calculations, as set out in the Rates Retention Regulations.

7. Policy background

What is being done and why?

- 7.1 This instrument makes a set of amendments to the Rates Retention and TPP Regulations. These are designed to support local authorities during financial year 2020-21, which is affected by the COVID-19 pandemic.
- 7.2 Currently, the Rates Retention Regulations, regulation 15(1) and (3) provide that billing authorities must pay the central share in 12 instalments, beginning on the 30th April, followed by the 19th of each subsequent month, with the first four payments of 9% each of the annual liability, and the following eight payments of 8% each of this amount.
- 7.3 Usually, billing authorities would estimate their business rates income in January, and would collect this throughout the year, using this income to make the required payments. The COVID-19 pandemic means billing authorities are in some cases unable to raise enough income to meet all the payments they are required to make. Further to this, whilst the Government will be compensating local authorities for their share of approximately £10bn worth of lost income for its announced rates ‘holiday’ to support ratepayers at this time, payment of this grant cannot be made before the first central share payment is due on 30th April.
- 7.4 This instrument will ease financial pressures during this unprecedented period. It will improve billing authorities’ cashflow position by providing for deferral of the first three months’ central share payments until later in the year, in order that billing authorities are not put in a position in which they do not have sufficient income with which to make statutory payments under the Business Rates Retention System. The instrument does this by making amendments to the Rates Retention Regulations, disapplying the current schedule of instalments set out under regulation 15(1) and (3). The Regulations provide for a new schedule of instalments to be used, starting on 19th July 2020, to be paid in 9 instalments, starting with one instalment of 9%, followed by two instalments of 8% each and 6 instalments of 12.5% each. Payments from billing authorities to major precepting authorities will not be affected by this deferral.
- 7.5 In addition, in order to further reduce the pressure on local authorities during COVID-19, the Government has decided to delay the deadline by which certified end of year business rates calculations (also known as certified “NNDR3” returns) for the 2019/20 financial year are required.
- 7.6 In line with changes to local authority audit deadlines within the Accounts and Audit (Coronavirus) (Amendment) Regulations 2020 (the “Accounts and Audit Regulations”), the deadline for submission of certified end of year business rates retention returns for the year 2019/20 will be moved, exceptionally, for one year only. The Regulations therefore amend regulation 9(1) of the Rates Retention Regulations and regulation 6(1) of the TPP Regulations to adjust the deadline from 31st July and 30th September respectively to 30th November 2020, in line with the Accounts and Audit Regulations deadlines, for this year.
- 7.7 For future years the deadline for submission of the certified end-of-year calculations under the Rates Retention Regulations will revert to 31st July. We are taking the opportunity to make further amendments to the TPP Regulations to bring future end-of-year calculations of transitional protection payments into line with 31st July deadline for the calculations under the Rates Retention Regulations. This, in any

case, simply mirrors the practice of local authorities who make the two sets of calculations at the same time, by 31st July, rather than the 30th September deadline enshrined in the TPP Regulations. This will not affect local authorities' calculations in this year, but will apply from 2021, for which end-of-year calculations for the year 2020-21 will be due on 31st July.

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 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.

10.2 The Government publicly announced its intention to defer the first three months' payment of the central share of business rates on 16th April 2020, and this has been welcomed by the sector.

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 billing authorities, whose cashflow position will be improved by deferring the payment of the central share until they have sufficient business rates income to do so.

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, Simon Clarke MP, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.