EXPLANATORY MEMORANDUM TO

THE NON-DOMESTIC RATING (LEVY AND SAFETY NET) (AMENDMENT) REGULATIONS 2022

2022 No. 189

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 Her Majesty.

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

2. Purpose of the instrument

2.1 This instrument ("the Instrument") amends the Non-Domestic Rating (Levy and Safety Net) Regulations 2013 (S.I. 2013/737). It makes changes to the administration of the Business Rates Retention system by making amendments to the calculation of levy and safety net payments, as a consequence of changes to business rates retention pilots, the restructuring of certain local government areas, and the payment by central Government of specific grants to local authorities.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 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 as this instrument does not impose any new or more onerous duties on external parties or require them to adopt different patterns of behaviour, but 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"). The instrument calculates liability for levy and safety net payments, allowing the instrument to come into effect earlier than 21 days after the instrument is made will benefit local authorities by giving them earlier notification of their financial entitlements and liabilities.

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.

5. European Convention on Human Rights

5.1 The Minister of State, Kemi Badenoch MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Non-Domestic Rating (Levy and Safety Net) (Amendment) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 National non-domestic rates (more commonly known as “business rates”) were established in England and Wales by the Local Government Finance Act 1988. The 1988 Act provides that most business rates are collected locally by local authorities. The Local Government Finance Act 2012 inserted a new Schedule 7B (“the Schedule”) into the 1988 Act. This provides for the retention of some of the business rates collected by the local authorities. The provisions of the Schedule are usually referred to as the “business rates retention system”.

6.2 The Non-Domestic Rating (Levy and Safety Net) Regulations 2013 (“the Levy and Safety Net Regulations”), which apply to England only, are one of the principal statutory instruments that provide for the operation of the business rates retention system.

6.3 The Levy and Safety Net Regulations provide that if an authority’s annual income from the business rates retention system is less than a prescribed minimum (the authority’s “safety net threshold”) the authority will receive a “safety net” payment. The Regulations also prescribe an individual “levy rate” for each authority, of between 0 per cent and 50 per cent. Depending on an authority’s individual levy rate, if in any year its income from the business rates retention system is more than its “baseline funding level”, it is required to make a levy payment. This is calculated by multiplying its levy rate by the amount its income exceeds its baseline funding level.

7. Policy background

What is being done and why?

7.1 The 50 per cent business rates retention system was set up in 2013-14 with local authorities retaining 50 per cent of the income they receive at the local level, subject to redistribution (see paragraph 7.4).

7.2 Before the beginning of each financial year, a billing authority[1] estimates the amount it will collect from non-domestic ratepayers during the year. This amount is the authority’s non-domestic rating income for the year. In most cases, 50 per cent of the amount of business rates income is due to central government – the “central share”. The remaining 50 per cent - the “local share” – is shared between a billing authority and its major precepting authorities[2] (if any).

7.3 Arrangements are a little different in Cornwall, Greater Manchester, Liverpool City Region, the West of England and West Midlands, where Devolution Deals agreed with the authorities have meant that local Government in those areas have retained 100 per cent of their business rates since 2017-18. It has also been different in authorities that piloted increased business rates retention in 2018-19 or 2019-20, where in those years only, authorities retained respectively 100 per cent and 75 per cent of their business rates. Other than in 2018-19 and 2019-20, when pilot arrangements applied, as a whole London (London Boroughs or the Common Council of the City of London, and the Greater London Authority (GLA)) retains 67 per cent of its business rates, following the devolution of some Transport for London grants to the GLA in 2017-18.

---

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

7.4 Payments are made each year to effect the redistribution of some business rates income between authorities. So called “Top-up” and “Tariff” payments are made annually to, or from authorities in accordance with a basis of calculation set out in that year’s Local Government Finance Report, which is approved by the House of Commons.

7.5 As set out in paragraph 6.3 above, billing and major precepting authorities can be eligible for a safety net payment if their annual share of business rates income falls below a prescribed minimum. Conversely, they may be obliged to make a levy payment to the Secretary of State, if their income in a year exceeds their baseline funding level. Levy and safety net payments are calculated after the end of a financial year based on outturn data for the business rates collected by local authorities.

7.6 This Instrument makes several amendments necessary for the proper administration of the business rates retention system.

7.7 Firstly, changes are being made to the Levy and Safety Net Regulations to ensure that for 100 per cent business rates retention authorities, the value that is included in the levy and safety net calculation as a proxy for top-up and tariff payments applies to the calculations made for 2021-22 and 2022-23. The Instrument also adjusts the levy rate of Greater Manchester authorities to zero from 2021-22 onwards. This is necessary because pooling arrangements, which previously resulted in a higher levy rate, were discontinued by those authorities in 2021-22.

7.8 Secondly, the instrument inserts placeholders to direct the reader to a new table in which the new or aggregated values for restructured authorities are set out, as and when restructuring takes place in any relevant year (Schedule 6 of this Instrument). For 2021-22, this reflects three main restructures; the formation of unitary authorities for North Northamptonshire and West Northamptonshire from their predecessor billing authorities and Northamptonshire County Council, and the transfer of the fire functions from Isle of Wight Council to the New Hampshire and Isle of Wight Fire and Rescue Authority.

7.9 Thirdly, an adjustment is required to the calculation of “retained rates income”, a figure which is used in the calculation of levy and safety net payments and which is compared to baseline funding levels and safety net thresholds to determine the payments due. This adjustment will take account of additional rates reliefs granted by billing authorities, for which they and major precepting authorities are being fully compensated by central Government via grants under section 31 of the Local Government Act 2003. Unless “retained rates income” was increased by the sum of these reliefs, the loss of income – for which authorities are being fully compensated via s.31 grants – could generate additional safety net payments, or reduce levy payments, effectively compensating authorities twice for the same relief.

7.10 Fourthly, the instrument inserts new Schedule 1B into the Levy and Safety Net Regulations. This recognises that, exceptionally, losses of income in 2020-21, which would potentially generate a safety net payment, will be met by Central Government through a one-off Tax Income Guarantee (“TIG”) Scheme. The TIG scheme was announced at the Spending Review 2020 on 25 November. In recognition of the unique circumstances caused by Covid-19 in 2020-21, TIG will compensate billing and major precepting authorities for 75 per cent of their loss of business rates income.

7.11 In the same way as for the additional reliefs discussed in paragraph 7.10 above, unless the TIG compensation is added to “retained rates income”, the losses for which authorities are being partially compensated via TIG could additionally generate higher safety net payments, or lower levy payments; effectively compensating authorities twice for the same loss.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 The Department does not consider it necessary to consolidate these Regulations at this time.

10. Consultation outcome

10.1 Consultation is not required by law, however the draft Instrument has been shared with the Chartered Institute of Public Finance and Accountancy in order to check the accuracy of the technical background to the calculations for the Tax Income Guarantee.

11. Guidance

11.1 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.[3]

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 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 regulations. An Impact Assessment was published at the outset of the 50 per cent rates retention scheme in 2013-14. This is available on gov.uk at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/8470/2054063.pdf.

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 These Regulations do not include a statutory review clause as they do not have an impact on business.

[3] 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

15. Contact

15.1 Emily Gascoigne at the Department for Levelling Up, Housing and Communities 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 Stewardship at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kemi Badenoch MP, Minister for Levelling Up Communities at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.