EXPLANATORY MEMORANDUM TO

THE NON-DOMESTIC RATING (RATES RETENTION: MISCELLANEOUS AMENDMENTS) REGULATIONS 2023

2023 No. 268

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. Purpose of the Instrument

2.1 Changes are required to the Non-Domestic Rating (Rates Retention) Regulations 2013 (S.I. 2013/452) ("Rates Retention Regulations"), the Non-Domestic Rating (Transitional Protection Payments) Regulations 2013 (S.I. 2013/106) ("TPP Regulations"), the Non-Domestic Rating (Levy and Safety Net) Regulations 2013 (S.I. 2013/737) ("Levy and Safety Net Regulations") and the Non-Domestic Rating (Rates Retention and Levy and Safety Net) (Amendment) and (Levy Account: Basis of Distribution) Regulations 2019 (S.I. 2019/709) ("Basis of Distribution Regulations") which underpin the Business Rates Retention ("BRR") system, to bring these up to date with the technical requirements for the system. These amendments make changes to reflect the correct administrational basis for ongoing or new policy intention.

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 (except for regulation 10(2)(b) and (e), which comes into effect from 1st April 2023). 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 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 Parliamentary Under Secretary of State, Lee Rowley MP has made the following statement regarding Human Rights:

"In my view the provisions of the Non-Domestic Rating (Rates Retention: Miscellaneous Amendments) Regulations 2023 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"). The Local Government Finance Act 2012 inserted Schedule 7B ("the Schedule") into the 1988 Act which provides for the local retention of non-domestic rates.

6.2 The Rates Retention Regulations and the Levy and Safety Net Regulations (which apply to England only) are the principal statutory instruments that provide for the operation of the rates retention system. The Rates Retention Regulations provide for the administration of the business rates system, including the calculation and reconciliation of non-domestic rating income. The Levy and Safety Net Regulations provide for the calculation and payment of levy and safety net payments under the BRR system.

6.3 The TPP regulations provide for a system of payments to ensure that local authority income is not more, or less, than it would have been, as a result of transitional arrangements following a business rates revaluation.

6.4 Part 6 of the Schedule provides that the Secretary of State must, for each year, keep a "levy account", to which the Secretary of State must credit and debit all levy and safety net payments. At the end of a year, the Secretary of State must calculate whether there is a surplus ("levy surplus") on the account and, if so, can determine that some, or all, of that surplus is to be distributed to local authorities. The Basis of Distribution Regulations provide the basis upon which any levy surplus must be distributed.

7. Policy background

What is being done and why?

7.1 Before the beginning of each financial year, billing authorities[1] estimate the amount they will collect from ratepayers during the year. This amount is the authority's "non-domestic rating income" for the year and it is shared between the billing authority, its major precepting authorities[2] and central government.

7.2 Generally, 50 per cent of this income is due to central government ("central share") with the remaining 50 per cent ("local share") remaining in the local area. Five areas, however, have retained 100 per cent of their business rates income since 2017-18: Cornwall, Greater Manchester, Liverpool City Region, the West of England and West

[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.

Midlands, and the Greater London Authority retains a total of 37 per cent in exchange for the rolling in of Transport for London (TfL) grant.

7.3 Income is redistributed around the system each year in accordance with assessed need via "Top-up" and "Tariff" payments. The basis on which these payments are to be calculated for a year must be set out in that year's Local Government Finance Report ("LGFR"), which is subject to approval by the House of Commons.

7.4 Under the BRR system, 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. Safety net payments are funded from the levy charged on growth in business rates income. If the levy account is in surplus following the end of a year, the Secretary of State may distribute all, or part of a surplus to local authorities on the basis of relative need, as defined by their "Settlement Funding Assessment."

7.5 This Instrument makes amendments to four sets of regulations which underpin the BRR system (see paragraph 2.1), as set out below. These changes implement new figures and update the administration of the BRR system where required. The changes are administrational by nature and provide the correct framework for the BRR system based on wider policy decisions.

Amendments to the Levy and Safety Net Regulations

7.6 Changes are required to the Levy and Safety Net Regulations to ensure that authorities are paid (if any) the correct amount of safety net, in 2023-24. This requires alteration of safety net thresholds, via the uprating of baseline funding levels (BFLs) by approximately 3.7 per cent in line with the value given in the LGFR 2023-24. BFLs are usually uprated by the change in the multiplier, however in the revaluation year, the multiplier has been adjusted for the effect of the revaluation and appeals adjustment. The resulting multiplier is lower than the frozen value of 49.9p, and an amount of inflation remains in the multiplier to increase the value to 49.9p for 2023-24. BFLs are therefore increased by the residual inflationary uplift (approx. 3.7%).

7.7 Additionally, changes are required to retained rates income, the value against which safety net or levy payments are calculated. Firstly, adjustments are made to top-up and tariff figures for 100 per cent BRR authorities, as their figures must be calculated under the 50 per cent system for the purposes of these regulations. Other authorities' top-up and tariff values are automatically taken from the LGFR, however as the LGFR sets out values for 100 per cent BRR authorities at 100 per cent retention levels, we must set out alternative top-ups and tariff figures for them, using figures adjusted for the 2023 revaluation. Top-ups and tariffs will be recalculated later in 2023, once revised top-up and tariff values have been calculated, following data updates, and all top-up and tariff values will be amended ahead of the end-year calculations for 2023-24.

7.8 Secondly, this Instrument also amends the calculation of authorities' retained rates income to add back the value of certain reliefs announced by Government since 2013-14. Authorities are compensated for their share of lost rating income from such relief schemes, so adding back this compensation ensures it doesn't create an artificial drop in retained rates income, which could trigger a subsequent safety net payment (or increase it) or result in a reduction in levy payment. Changes are made to add back public lavatories relief going forward for all authorities, following the enactment of

Non-Domestic Rating (Public Lavatories) Act 2021[3], and certain larger scale funded discretionary reliefs for major precepting authorities only, in respect of the 2022-23 and 2023-24 financial years.

7.9 Thirdly, we codify new core BRR values for authorities restructuring from 2023-24, Somerset, Cumbria and North Yorkshire, to provide for their administration under the BRR system.

Amendment to the Rates Retention Regulations

7.10 This Instrument makes one amendment to the rates retention regulations to update the City of London Offset (the "Offset") for 2023-24. In this revaluation year, the Offset is not uprated by the change in the multiplier, but by a specific inflationary amount in line with the uprating of BFLs, as detailed in paragraph 7.6.

Amendments to the TPP Regulations

7.11 This Instrument will make a small amendment to the TPP regulations to ensure that where transitional relief is applied following a revaluation, the transitional relief is calculated before the application of public lavatories relief. This follows the approach taken to other reliefs and an update is required ahead of the new transitional relief scheme announced at Autumn Statement 2022, due to the recent implementation of the public lavatories relief.

Amendments to the Basis of Distribution Regulations

7.12 This Instrument amends the Settlement Funding Assessment values used to calculate allocations for the distribution of any levy surplus, for the authorities who restructured from 2021-22 and for Cumbrian authorities restructuring from 1st April 2023. Changes to the figures are only required where simple aggregation of the values does not work. In this case, changes are required where the county has split – as for Cumbria in 2023-24 and Northamptonshire in 2021-22; or where a function or part of an authority is carved out – such as the transferral of the fire function from Isle of Wight to Hampshire Fire and Rescue Authority, from 2021-22. These amendments ensure the correct allocations are in place for the new authorities going forward, should any distribution take place.

8. European Union Withdrawal and Future Relationship

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 intends to consolidate the rates retention and levy and safety net regulations in the near future.

10. Consultation outcome

10.1 The changes made in this Instrument are administrational by nature and provide the correct framework for the BRR system based on wider policy decisions. Consultation on the changes to top-ups and tariffs as a result of the 2023 revaluation was conducted

[3] The Non-domestic Rating (Public Lavatories) Act 2021 can be found at: https://www.legislation.gov.uk/ukpga/2021/13/enacted

in September 2022, with a highly positive reception, and the response is published online.[4]

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.[5]

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 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 rates retention scheme in 2013-14.[6]

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.

15. Contact

15.1 Emily Gascoigne at the Department for Levelling Up, Housing and Communities, email: Emily.Gascoigne@Levellingup.gov.uk can be contacted with any queries regarding the instrument.

15.2 Suzanne Clarke, Deputy Director for Local Government Finance (LGF) Stewardship, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lee Rowley MP, The Parliamentary Under Secretary of State for Local Government and Building Safety at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

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

[5] 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

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