EXPLANATORY MEMORANDUM TO

THE NON-DOMESTIC RATING (CHARGEABLE AMOUNTS) (ENGLAND) REGULATIONS 2016

2016 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for 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 The Non-Domestic Rating (Chargeable Amounts) (England) Regulations 2016 ("the Regulations") make provision in relation to the transitional arrangements for phasing in increases and reductions in non-domestic rate liabilities over 5 years following the revaluation of non-domestic hereditaments shown in the non-domestic rating lists compiled on 1st April 2017.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The instrument is subject to the affirmative procedure in both Houses and must come into force on or before 31st December 2016. This is because regulations made under section 57A of the Local Government Finance Act 1988 ("the 1988 Act") in relation to a particular financial year (in this case 2017-18) are not effective unless they come into force before 1st January immediately preceding the year.

Other matters of interest to the House of Commons

3.2 This entire instrument applies only to England.

3.3 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.4 The Department has reached this view because it considers that the primary purpose of the instrument relates to local government finance, which is within the devolved legislative competence of each of the three devolved legislatures. For example, the primary purpose of the subject matter of the instrument is within paragraph 12 of Schedule 7 to the Government of Wales Act 2006 and is not within one of the exceptions listed in that paragraph, nor is it otherwise outside the legislative competence of the National Assembly for Wales (see section 108 of that Act).

4. Legislative Context

4.1 Section 57A of the 1988 Act, which was inserted by section 65 of the Local Government Act 2003, places a duty on the Secretary of State to make Regulations which provide for a transitional relief scheme in respect of a relevant period. A relevant period is a period of five years beginning on 1st April 2005 or on any 1st April after that date on which non-domestic rating lists must be compiled. These Regulations apply to the relevant period beginning on 1st April 2017.

4.2 Where these Regulations apply, the ratepayer's liability to non-domestic rates (known as the chargeable amount) is determined in accordance with the relevant provisions of these Regulations rather than under sections 43 (occupied hereditaments: liability), 45 (unoccupied hereditaments: liability) and 54 (central rating: liability) of the 1988 Act.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State has made the following statement regarding Human Rights:

In my view the provisions of the Non-Domestic Rating (Chargeable Amounts) (England) Regulations 2016 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 Properties subject to non-domestic rates are subject to regular revaluations and this can result in large increases or reductions in rate bills for some ratepayers. Transitional arrangements to phase in the increases were put in place for the 1990, 1995, 2000, 2005 and 2010 revaluations. Section 65 of the Local Government Act 2003 inserted a new provision (section 57A) into the 1988 Act which requires a self - financing transitional scheme to be introduced in connection with each revaluation.

7.2 These Regulations bring the transitional scheme for the 2017 revaluation into effect. The 2017 transition scheme will phase in increases and reductions in rate bills. The scheme will be self-financing within each year (i.e. the cost of limiting increases in bills matches the revenue from limiting reductions) and will run for five years.

7.3 The scheme for 2017 is similar to that for the 2010 revaluation. As with the 2010 scheme, these Regulations ensure that the small business rate relief is applied after the transitional arrangements have been applied but the associated supplement[1] is outside the transitional scheme. This ensures that:

a) qualifying ratepayers[2] subject to the transitional arrangements receive their small business rate relief, and

[1] The supplement is the amount of the difference between the national non-domestic rating multiplier and the small business non-domestic multiplier. The supplement is levied on those ratepayers who do not meet the eligibility conditions for small business rate relief and is used to fund the relief.
[2] Ratepayers who satisfy the eligibility conditions for small business rate relief.

b) non-qualifying ratepayers[3] subject to the transitional arrangements pay a little extra in order to pay for the small business rate relief.

7.4 These Regulations apply to properties on both local rating lists and to properties on the central rating list maintained by the Secretary of State. The central list is concerned with large network style properties such as gas, water, electricity, railways and telecommunications. The transitional scheme applies equally, in most cases, as regards ratepayers on the central list and those on local rating lists.

7.5 The general principle applied by the scheme is that ratepayers should receive the benefit of transition, or contribute towards transition even when their property changes, but that the transitional calculation remains based on the rateable value of the original property as at 1st April 2017. The value of any later new additions to the property are excluded from transition and rates are payable in full on the amount of the increase in rateable value. However, alterations which reduce the rateable value of the property below the rateable value at 1st April 2017 reduce the amount of transition in proportion to the reduction in rateable value.

7.6 Part 1 of the Regulations sets out the definitions of technical terms, sets the scheme for five years, defines the hereditaments (properties) which are subject to transition and makes provision for special authorities.

7.7 Under regulation 5, hereditaments can be subject to transition where they are shown on the list for 31st March 2017 with a rateable value greater than zero, and also appear for 1st April 2017 and continuously thereafter with a rateable value greater than zero.

7.8 Under regulation 6, in the case of a special authority (City of London), where the multiplier set by the authority is different from the national multiplier, transition is calculated as if the national multiplier applied, but an adjustment is then made for any premium or discount on the multiplier. In effect, any supplement or discount in the City is outside the transitional scheme.

7.9 Part 2 of the Regulations deals with calculation of the chargeable amounts, rateable value changes and the effect of part-occupied relief.

7.10 Under regulation 7 the notional chargeable amount is defined as the rateable value at 1st April 2017 multiplied by the small business multiplier for the relevant year. This is the rate bill (ignoring reliefs, the contribution to small business rate relief and subsequent rateable value changes) that the ratepayer would have paid for the relevant year had there been no transitional scheme (notional bill). The small business non-domestic multiplier (D) is used here because the difference between this and the standard multiplier is the supplement paid by ratepayers who do not qualify for small business relief. This supplement is outside transition to ensure that all businesses contribute towards small business relief in proportion to their rateable values.

7.11 The base liability is the ratepayer's starting point under the transitional arrangements and is their rate bill before reliefs for 2016/17 based on the circumstances existing on 31st March 2017. Regulation 8 defines the base liability as the rateable value at 31st March 2017, times the small business non-domestic multiplier for 2016/17. Regulation 9 defines a subsequent year's base liability as the previous base liability times the previous year's appropriate fraction (i.e. the full transitional bill for the previous year).

[3] From 1st April 2017, this includes properties whose rateable value is above £51,000.

7.12 The appropriate fraction is the annual limit on increases or reductions. Regulation 10 defines the appropriate fraction as the transitional limit multiplied by an inflation factor and divided by 100. This gives a percentage increase or reduction, adjusted for inflation. For the 2017 scheme there are different transitional limits for three bands of hereditaments covering:

a) hereditaments with a rateable value less than or equal to £20,000 (£28,000 in London),

b) hereditaments with a rateable value more than £20,000 (£28,000 in London) but less than or equal to £100,000, and

c) hereditaments with a rateable value of more than £100,000.

7.13 Regulation 11 determines whether a hereditament is subject to transition. If the ratepayer is moving to a higher bill and their notional chargeable amount (the target bill) is more than their base liability multiplied by the appropriate fraction (the transitional bill), then the transitional bill applies. If the ratepayer is moving to a lower bill and their notional chargeable amount (the target bill) is less than their base liability multiplied by the appropriate fraction (the transitional bill), then the transitional bill also applies.

7.14 Regulation 12 determines the chargeable amount for a property that has been identified as being in transition under regulation 11. The transitional bill is the base liability multiplied by the appropriate fraction. To the transitional bill is added the supplement (U) paid by ratepayers who do not qualify for small business relief (for those that do qualify, U is deducted at regulation 12(6))[4]. All other reliefs, such as charitable rate relief and unoccupied property relief, are then applied to the transitional bill.

7.15 Regulation 13 deals with changes in rateable value after 1st April 2017 for hereditaments in transition. This follows the general principle that the transitional calculation is based on the rateable value of the original property as at 1st April 2017. Where the value exceeds the value on 1st April 2017, rates will be payable in full on the amount of the increase in rateable value, in addition to the transitional liability based on the rateable value at 1st April 2017. Where the value is below the value on 1st April 2017, the amount of transition and the rate bill are reduced in proportion to the reduction in rateable value.

7.16 Regulation 14 enables the Valuation Officer to issue a certificated value for 1st April 2017 where the hereditament is altered on that day, to enable a transitional liability to be calculated for 1st April 2017 on the unaltered property. This can then be modified to take account of the alteration on the same basis as alterations effective from later than 1st April 2017.

7.17 Regulation 15 allows the chargeable amount for a property in transition to be apportioned where relief is granted under section 44A of the Local Government Finance Act 1988 (part-occupied relief).

7.18 Part 3 deals with miscellaneous matters such as when a Valuation Officer is required to issue certificates of rateable value in various circumstances, and appeals against such certificates. It also brings to an end the power to issue certificates for the 2005

[4] From 1st April 2017 this includes properties with a rateable value up to £51,000 which do not attract a percentage reduction for small business rate relief but in respect of which rates are calculated using the small business multiplier.

list. Certificates are required in various circumstances, including where backdating of amendments is limited, to enable transition to work on a basis which is fair to everyone.

7.19 Regulation 16 deals with the situation where the rateable value on 1st April 2017 is incorrect and the Valuation Officer is prevented from backdating the alteration of the list to 1st April 2017. In this case the Valuation Officer will amend the list from a later date but under regulation 14, the ratepayer will pay in full on that increase. Such ratepayers may, therefore, be worse off than if the increase had taken effect from 1st April 2017 as the change in value would then have been taken into account in the transitional scheme. Under regulation 16, the Valuation Officer is required to certify the correct value at 1st April 2017, and the bill will then be calculated as if that value had been shown in the list on 1st April 2017.

7.20 Regulation 17 deals with the situation where the rateable value on 31st March 2017 is incorrect and the Valuation Officer is prevented from backdating the alteration to the 2010 list. As such, the base liability in the transitional scheme would be wrong. The Valuation Officer is required to certify the correct value at 31st March 2017. In the case of a reduction, this will reduce the liability from 1st April 2017. In the case of an increase to the base liability, the transitional bill will only increase from, in effect, the date on which the error was discovered.

7.21 Regulation 18 deals with the situation where a hereditament is split or merged with another before 1st April 2017 and the Valuation Officer is able to amend the 2017 list for 1st April 2017 but not the 2010 list for 31st March 2017. To ensure a "like for like" comparison, the Valuation Officer is required to issue a certificate of the rateable value on 31st March 2017. The transitional liability will be calculated as if the property had actually been split or merged on 31st March 2017, giving a correct transitional base liability.

7.22 Regulation 19 requires the Valuation Officer to certify the rateable value of each individual hereditament where more than one hereditament is shown against a ratepayer in the central list.

7.23 Regulation 20 requires the Valuation Officer to issue certificates as soon as practicable after the circumstances come to his attention. Where the certificate is inaccurate, the Valuation Officer can issue a substituted certificate.

7.24 Regulation 21 provides for appeals against certificated values to be referred to the Valuation Tribunal for England if the person(s) interested and the Valuation Officer cannot reach agreement.

7.25 Regulation 22 revokes regulations 18 and 19 of the Non-Domestic Rating (Chargeable Amounts) (England) Regulations 2004, which enable a Valuation Officer to issue certificates of rateable value relevant to the 2000 valuation list.

7.26 Schedule 1 deals with an altered hereditament which was shown in the local list at any time between 1st April 2010 and 31st March 2017 and which was deleted from the list following structural alterations, subsequently reappearing in the list on or after 1st April 2017. This allows the Valuation Officer to issue a certificate of the rateable value for 31st March 2017, which enables transition to be calculated. This Schedule only applies where the notional chargeable amount for 2017/18 is less than the base liability and less than the base liability multiplied by the appropriate fraction. It ensures that large ratepayers cannot escape the limits on reductions in bills by merely refurbishing their property during a period which includes the revaluation.

7.27 Schedule 2 deals with splits and mergers of hereditaments. Paragraphs 2 to 5 deal separately with splits and mergers on and after 1st April 2017. In all cases the total liability of the old hereditament(s) (R) is multiplied by the rateable value of the new hereditament (J) and divided by the total of the rateable value(s) of the old hereditament(s) (S). This keeps the transitional liability of the new property in proportion to the liability of the properties from which it was formed.

7.28 Paragraph 6 of Schedule 2 deals with increases or reductions in rateable value subsequent to a split or merger but within the same financial year. Where the value increases following the split or merger, rates will be payable in full on the excess. Where the value falls following the split or merger, the rate bill is reduced in proportion to the reduction in rateable value. These are the same principles that apply to other hereditaments under regulation 13.

7.29 Paragraphs 7 to 10 of Schedule 2 contain the rules for ascertaining notional chargeable amount, base liability and appropriate fraction for a property created by a split or merger and ensure that the property is dealt with on the same basis as any other hereditament in transition, but based on the rateable value at the day it was created rather than 1st April 2017.

8. Consultation outcome

8.1 The Government consulted on the possible arrangements for the transitional scheme between 28 September and 26 October 2016. The consultation paper set out 2 options both with annual caps on increases and reductions over five years:

a) option 1 provides more protection for large businesses facing increases (compared to option 2) but has less generous caps on reductions for medium businesses,

b) option 2 allows more reductions to flow through for medium businesses seeing reductions (compared to option 1) but provides less protection from increases for large businesses.

8.2 In the consultation paper, the Government set out its preferred option. This was in response to discussions with stakeholders which suggested that ratepayers would find it helpful if the Government indicated its preferred option as this would assist with business planning. The Government set out that, based on consideration at that time, it preferred option 2. However, the Government made clear that this would be reviewed in light of the consultation responses.

8.3 The Government received 173 responses to the consultation. 16% of respondents were from sector bodies, 8% from rating agents, 23% from local government, 51% from ratepayers and 2% from professional bodies. Overall 10% of respondents favoured option 1 and 24% favoured option 2. Having regard to the responses, the government has decided to proceed with an amended version of option 2 which provides a little more support to large businesses than offered at consultation. A full analysis of the consultation and the government's response is available on the DCLG website[5].

[5] https://www.gov.uk/government/consultations/business-rates-revaluation-2017

9. Guidance

9.1 The transitional arrangements are implemented by experienced staff working in billing authorities. The Department does not intend to issue formal guidance on the transitional arrangements scheme.

10. Impact

10.1 The impact on business, charities or voluntary bodies is that rate bills will be determined using the rules in these Regulations. The consultation paper and supporting tables on the Department's web site illustrated the impact of the transitional arrangements on ratepayers[6].

10.2 The impact on the public sector is that rate bills will be determined using the rules in these Regulations.

10.3 An 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.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is that the Department and the Valuation Office Agency developed an on-line business rates calculator to allow small businesses to calculate their rates bill. Rates bills are calculated by billing authorities.

11.3 The final scheme provides more assistance to small businesses. Small businesses facing bill rises see the most generous relief by capping increases in bills at 5% in 2017/18 and for those small businesses seeing reductions the final scheme will ensure most will move quickly to their lower bill. Also, from 1st April 2017 the Small Business Rate Relief Scheme will ensure that 600,000 small businesses will pay no rates at all.

12. Monitoring & review

12.1 The Department's annual national non-domestic rating returns from billing authorities monitor the adjustments made to bills by the transitional arrangements. The transitional arrangements are reviewed at each revaluation exercise.

13. Contact

13.1 Nick Cooper at the Department for Communities and Local Government Tel: 07795 367238 or email: nick.cooper@communities.gsi.gov.uk can answer any queries regarding the instrument.

[6] https://www.gov.uk/government/consultations/business-rates-revaluation-2017