EXPLANATORY MEMORANDUM (SUPPLEMENTARY) TO

THE NON-DOMESTIC RATING (LEVY AND SAFETY NET) (AMENDMENT) (NO. 2) REGULATIONS 2015

2015 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.

2. Purpose of the instrument

2.1 These Regulations make changes to the operation and calculation of levy and safety net payments under the scheme for local retention of non-domestic rates.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

Other matters of interest to the House of Commons

3.2 This entire instrument applies only to England.

3.3 The instrument applies only to England because it applies only to local authorities in England (see definition of "relevant authority" in paragraph 45 of Schedule 7B to the Local Government Finance Act 1988). The instrument does not have minor or consequential effects outside England.

3.4 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.

3.5 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 The non-domestic rating system in England and Wales is established by the Local Government Finance Act 1988. The Local Government Finance Act 2012 inserts a new Schedule 7B into the 1988 Act ("the Schedule"), which provides for the local retention of non-domestic rates collected by local government.

4.2 Part 7 of the Schedule provides that the Secretary of State may make provision for imposing a levy on the non-domestic rates income of an authority and for making safety net payments.

4.3 Paragraphs 22(2) and 25(2) of the Schedule provide that regulations that make provision for calculating whether an authority must make a levy payment, or the Secretary of State must make a safety net payment, for a financial year, must provide for those calculations to be made after the end of that year. Payments are made following the receipt of final outturn figures from local authorities, which are not available until 6-9 months after the end of the financial year. Therefore the calculations in respect of the financial year that commenced on 1st April 2014 have not yet been made.

4.4 The Non-Domestic Rating (Levy and Safety Net) Regulations 2013 (S.I. 2013/ 737) establish the means of calculating the levy that is to be paid by those local authorities that see disproportionate benefit from increases in non-domestic rates; and the calculation of the safety net payments that are to be made to authorities that see their non-domestic rates income fall below their baseline funding level.

5. Extent and Territorial Application

5.1 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 Minister for Local Government, Marcus Jones MP, has made the following statement regarding Human Rights:

In my view the provisions of the Non-Domestic Rating (Levy and Safety Net) (Amendment) (No. 2) Regulations 2015 are compatible with the Convention rights.

7. Policy background

7.1 These Regulations form part of the scheme to allow local authorities to retain a proportion of their non-domestic rates (the rates retention scheme). The scheme was introduced from April 2013 and gives local authorities an incentive to promote local economic growth, by allowing them to retain a 50% share of the non-domestic rates they collect and any growth on that share. Outside of the scheme, some authorities also retain 100% of the growth in the non-domestic rates they collect in specific designated areas e.g. in designated Enterprise Zones.

7.2 In introducing the rates retention scheme, the Government recognised that, as well as the rewards of growth, volatility in local rates income could lead to an authority collecting significantly less non-domestic rates in some years. To protect authorities against the risk that the loss of income could detrimentally affect local services, the rates retention scheme provides for a "safety net". This safety net guarantees an authority 92.5% of its baseline funding level each year (the baseline funding level is a

figure that was calculated for each authority at the set-up of the rates retention scheme, which represented the income from non-domestic rates that each authority needed to fund their services when the scheme was introduced). Baseline funding levels are uprated each year by the change in the small business multiplier to ensure that, broadly, the support available through the safety net is maintained in real terms.

7.3 The safety net is funded through a levy on the disproportionate benefit that some authorities receive from very small increases in non-domestic rates income because of their high starting levels of non-domestic rates income in comparison to their baseline funding levels.

7.4 Central to the determination of an authority's liability for levy, or entitlement to safety net payments, is the calculation of the authority's retained rates income for the year. The starting point for calculating that income is the authority's share of the non-domestic rates that are collected, after making allowance for bad debt and provision against future losses on appeal (businesses can appeal against the "rateable value"[1] of their properties and, if successful, that rateable value is reduced, thereby reducing the business's liability and the income available to authorities).

7.5 As part of the Autumn Statements in 2012, 2013 and 2014, the Government announced that it would double the amount of small business rate relief available to qualifying business in 2013-14, 2014-15 and 2015-16. This measure reduces the amount of non-domestic rates collected and, therefore, the amount of non-domestic rates retained by local government. The Government compensates local government for their share of the cost of this measure outside of the rates retention scheme via a grant under section 31 of the Local Government Act 2003. Authorities are compensated for the cost of the measure for the current financial year, as well changes to the cost in previous years back to 2013-14 (when the rates retention scheme was introduced).

7.6 As this measure reduces authorities' rates income, the calculation of retained rates income adds back the cost of the measure for the current financial year, so that its impact is ignored for the purposes of calculating the levy and safety net. Otherwise, authorities would be compensated for the measure twice – through both a section 31 grant and a reduced levy, or increased safety net payment. These Regulations ensure that changes to the cost of the measure in prior years since 2013-14 are also added back to the calculation of retained rates income so that the levy and safety net calculation is consistent with that of the section 31 grant.

7.7 The Regulations also amend the calculation of retained rates income so that authorities' costs for the doubling of small business rate relief are excluded from the calculation of the levy and safety net in 2015-16 i.e. the most recent year for which the measure has been announced and one where authorities will be compensated for the cost of the measure outside the rates retention scheme by grant payments made under section 31 of the Local Government Act 2003.

Consolidation

7.8 There is no present intention to consolidate the amendments that have been made to the 2013 Regulations.

[1] The rateable value (the measure of liability for rating) is the notional annual open market rent at which it is estimated the property might reasonably be expected to let.

8. Consultation outcome

8.1 The Department for Communities and Local Government has consulted local authorities, the Local Government Association and the Chartered Institute of Public Finance and Accountancy (CIPFA) on the changes in these Regulations, as part of its on-going discussion with local government through the Implementation Working Group.

8.2 The Regulations were developed in partnership with that working group, which comprises local government finance officers, CIPFA, the Local Government Association, the Greater London Authority and London Councils.

9. Guidance

9.1 The Department will issue guidance to local government on the calculation of levy and safety net payments due to/from local authorities. It will also issue a calculator to local authorities to the same effect.

10. Impact

10.1 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 These Regulations will have no impact on the way in which non-domestic rating bills are calculated.

12. Monitoring & review

12.1 The Government keeps non-domestic rating and the rates retention scheme under regular review.

12.2 The Regulations do not include a review provision under section 28 of the Small Business, Enterprise and Employment Act 2015 because the Regulations do not make any regulatory provision in relation to a qualifying activity carried on by business or voluntary and community bodies.

13. Contact

13.1 Farhad Chikhalia at the Department for Communities and Local Government Tel: 0303 444 2368 or email: farhad.chikhalia@communities.gsi.gov.uk can answer any queries regarding the instrument.