EXPLANATORY MEMORANDUM TO THE NON-DOMESTIC RATING (LEVY AND SAFETY NET)(AMENDMENT) REGULATIONS 2015

2014 No. [XXXX]

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. This memorandum includes information for the Joint Committee on Statutory Instruments.

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 the Joint Committee on Statutory Instruments

3.1 None.

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.

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 paying safety net payments.

4.3 Paragraphs 22(2) and 25(2) of Schedule 7B provide that the regulations making provision as to whether an authority must make a levy payment or the Secretary of State must provide that a" safety net payment" for a year is 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.

4.4 The Non-Domestic Rating (Levy and Safety Net) Regulation 2013 (2013 No. 737), as amended by the Non-Domestic Rating (Levy and Safety Net) Regulations 2014 (2014 No. 822) establish the means of calculating the levy that is to be paid by those local authorities that see disproportionate benefit from increases in business rates; and the calculation of the safety net payments that are to be made to authorities that see their business rates income fall below their baseline funding level. The Regulations also establish the timing of any safety net payments made on account to authorities before final entitlement has been established.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 Kris Hopkins, Parliamentary Under Secretary of State at the Department for Communities and Local Government has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Non-Domestic Rating (Levy and Safety Net) (Amendment) Regulations 2015 are compatible with the Convention rights.

7. Policy background

7.1 These regulations form part of the scheme to allow local retention of non-domestic rates (the rates retention scheme). The scheme was introduced from April 2013 to give local authorities a direct share of local non-domestic rating income and provide them with an incentive to promote local economic growth. Under the scheme, authorities retain up to a 50% share of the business rates they collect and any growth on that share. Outside the scheme, some authorities also retain 100% of the rates they collect in specific designated areas – eg in designated Enterprise Zones.

7.2 In introducing the rates retention scheme, the Government recognised that, as well as the rewards of growth, the inherent volatility in local rates income could lead an authority in some years to collect significantly less in business rates income. 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". The safety net effectively guarantees an authority 92.5% of its baseline funding level each year (its baseline funding level is a figure calculated for each authority at the set-up of the rates retention scheme which reflected the amount of its start-up funding which was to be provided from business rates; the remainder of its start-up funding was provided by Revenue Support Grant). Baseline funding levels are uprated each year by the change in the business rates 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 will receive from very small increase 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. That income is worked out as an authority's share of the business rates that are collected, after making allowance for bad debt and provision against future losses on appeal (businesses can appeal against the "rateable value" of their properties and, if successful, that rateable value is reduced, thereby reducing the business's rates liability and the income available to authorities). The Government has permitted authorities to spread, over 5 years, the costs of the provision they made in 2013-14 for backdated appeal costs. Authorities that have chosen to do this, will, as a result, have slightly higher income in 2013-14 and lower income in each of the next four years. The regulations ensure that these changes to income are properly recognised in the calculation of levy and safety net payments, as always intended. They also ensure that any non-domestic rates income from designated areas (eg Enterprise Zones and the like) are excluded from the calculations as this income sits outside the rates retention scheme.

7.5 Separately, the Government announced at December 2013's Autumn Statement that business ratepayers would be permitted to pay their rates liability over 12, instead of 10, months. As a result we are changing the timing of payments between central Government and local authorities under the rates retention scheme, so that they mirror the timing of local authorities' receipts of business rates from ratepayers.

8. Consultation outcome

8.1 Government has consulted local authorities, the Local Government Association and 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 grop which comprises local government finance officers, the Chartered Institute of Public Finance and Accountancy (CIPFA), the Local Government Association (LGA) the Greater London Authority (GLA) 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 authorities.

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 nn-domestic rating bills are calculated.

12. Monitoring & review

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

13. Contact

Mark Barnett at the Department for Communities and Local Government Tel: 0303 444 4217 or email: mark.barnett@communities.gsi.gov.uk can answer any queries regarding the instrument.