EXPLANATORY MEMORANDUM TO

THE NON-DOMESTIC RATING (RATES RETENTION) AND (LEVY AND SAFETY NET) (AMENDMENT) REGULATIONS 2017

2017 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 The Non-Domestic Rating (Rates Retention) and (Levy and Safety Net) (Amendment) Regulations 2017 ("the Amending Regulations") amend provisions of the Non-Domestic Rating (Rates Retention) Regulations 2013 ("the Rates Retention Regulations") and the Non-Domestic Rating (Levy and Safety Net) Regulations 2013 ("the L&SN Regulations) to provide a) for changes to the calculation of the levy rate for all authorities following the 2017 Revaluation and b) for changes to the administration of the rates retention scheme, including the calculation of levy and safety net payments consequent upon the Government's decision to create, from 1 April 2017, "pilot" areas in which authorities will retain 100% of locally raised business 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 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 The non-domestic rating system in England and Wales is established by the Local Government Finance Act 1988 ("the 1988 Act"). The Local Government Finance Act 2012 inserted a new Schedule 7B into the 1988 Act ("the Schedule") which provides for the local retention of non-domestic rates.

4.2 The Rates Retention Regulations and L&SN Regulations are the principal statutory instruments that provide for the operation of the rates retention system. The system operates through a billing authority's collection fund. A billing authority is required to keep a collection fund under Part 6 of the 1988 Act and business rates income collected by the authority must be paid into or out of this fund. Before the beginning of the year, the billing authority estimates the amount it will collect from non-domestic ratepayers during the course of the year. This amount is the authority's non-domestic rating income for the year. Currently, 50% of the amount is due to central government – the "central share". The remaining 50% - the "local share" – is shared between a billing authority and its major precepting authorities (if any), as required by the Rates Retention Regulations.

4.3 During the year a collection fund held by the billing authority receives all non-domestic rating income paid by ratepayers and pays out local and central shares (in line with the calculation made before the start of the year). By the end of the year the collection fund will either be in deficit or surplus depending upon whether the non-domestic rating income is more or less than expected. The Rates Retention Regulations provide for the calculation of this surplus or deficit and its distribution between central and local government.

4.4 The L&SN Regulations provide that if an authority's income from its share of business rates 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. Depending on an authority's individual levy rate, if in any year its share of business rates income exceeds its "baseline funding level", it is required to make a levy payment of a proportion of that excess income.

4.5 The Amending Regulations amend the Rates Retention Regulations and the L&SN Regulations. Specifically, they amend the Rates Retention Regulations to provide that in the pilot areas in Cornwall, Greater Manchester, Liverpool City Region, the West of England and West Midlands, a billing authority no longer has to pay the central share. Instead, together with its major precepting authorities, it retains 100% of local non-domestic rating income. The Rates Retention Regulations are also amended to increase the Greater London Authority's (GLA) share of business rates income; and make a corresponding reduction in the central share.

4.6 The Rates Retention Regulations are amended to make the consequential amendments needed to reflect the changes to pilot authorities' central and local shares, as described above. Most importantly, those amendments include changes to the distribution of surpluses and deficits in the Collection Fund, reflecting the new central and local shares in pilot authorities, and the need to deal with the fact that Collection Fund surpluses and deficits are effectively shared between central Government and local authorities over the two years following the year to which they relate.

4.7 The Amending Regulations amend the L&SN Regulations for all local authorities for the impact of the Rating Revaluation that comes into force on 1 April 2017. The

Revaluation affects the rating income of local authorities. An authority's share of rating income was originally used to set "business rates baselines", which themselves are used in the calculations under regulations 5 and 6 to establish an authority's individual levy rate and, therefore, its liability to make levy payments. The amendments to regulations 5 and 6 and Schedule 1, taken together, ensure that a) levy rates and an authority's liability to make levy payments reflect the authority's post-Revaluation income and b) individual pilot authorities have a levy rate of zero as agreed with those authorities as part of their pilot agreements.

4.8 The amendment to regulation 5 also makes changes to the way in which an authority's "baseline funding level" is calculated for 2017-18 and subsequent years. This will ensure that the values for "baseline funding levels" are correct and, since "baseline funding levels" are used to calculate safety net payments, that an authority's safety net entitlement in 2017-18 and subsequent years is also correct. Finally, by making changes to the calculation of "retained rates income" in Schedule 1 for pilot authorities, the Amending Regulations ensure that safety net payments for such authorities continue to be calculated as if the authorities were still operating under the 50% rates retention scheme (as agreed with the authorities as part of their pilot agreements).

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 (Rates Retention) and (Levy and Safety Net) (Amendment) Regulations 2017 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 These Regulations do two things. Firstly they deal with the consequences for local authority funding of the Revaluation of non-domestic rating property that comes into effect on 1April 2017. At a Revaluation all 1.8 million rateable non-domestic properties are revalued to reflect updated rental evidence of their worth. Each property will be ascribed a new "rateable value" which multiplied by the nationally set "business rates multiplier" will determine its rates bill for a year. At a Revaluation the Government adjusts the "business rates multiplier" to ensure that we do not raise any more or less tax as a result of the Revaluation. For 2017-18, the multiplier has been reduced, reflecting the fact that the Revaluation has resulted in an increase in aggregate rateable value.

7.2 But notwithstanding the effect of the Revaluation overall, at individual local authority level the impact on local authorities' income can be significant. Unless Regulations governing the rates retention scheme are amended to reflect the changes to authorities' business rates income following the Revaluation, payments of levy and

safety net would be mis-stated. These Regulations make no change to businesses' bills or the operation of business rates as a tax.

7.3 Secondly, the Amending Regulations make changes to the operation of the scheme to reflect the creation of "pilot" areas, in which authorities will be allowed to keep 100%, instead of 50%, of local business rates income.

7.4 Since 2013-14, local authorities have kept 50% of locally raised business rates. In October 2015, the Government announced that, by the end of the Parliament, it intended to allow local authorities to keep 100% of their business rates.

7.5 In March 2016, the Government announced that it wanted to pilot 100% business rates retention in Greater Manchester and Liverpool City Region from as early as 2017-18 and it would be prepared to discuss 100% pilots with other areas that wanted them. It also announced that it would allow the GLA to keep a greater share of business rates from 1 April 2017 in return for the GLA assuming responsibility for funding TfL's investment grant.

7.6 Since March 2016, the Government has worked with Greater Manchester, Liverpool City Region and latterly, West of England, Cornwall and West Midlands to work out the terms of such pilots. In each case, the authorities in 100% pilot areas will forego Revenue Support Grant and, variously, other funding streams in return for keeping 100% of their locally raised business rates.

7.7 The authorities will also test other possible changes to the rates retention scheme, including the scrapping of the levy and different safety net arrangements; the latter, however will be delivered outside the framework of the rates retention scheme and, if called upon, will be funded through a separate grant payment under s.31 of the Local Government Act 2003.

Consolidation

7.8 This instrument amends existing provisions of the Non-Domestic Rating (Rates Retention) Regulations 2013 and the Non-Domestic Rating (Levy and Safety Net) Regulations 2013. The Department does not intend to consolidate these Regulations.

8. Consultation outcome

8.1 These are technical changes and have been developed in consultation with representatives of local government and the affected pilot authorities.

9. Guidance

9.1 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.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies since the regulations do not alter the bills due from ratepayers.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment for the rates retention scheme is available from the DCLG website at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8470/2054063.pdf

10.4 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 legislation.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The Government keeps the non-domestic rating system under regular review.

13. Contact

13.1 Mark Barnett at the Department for Communities and Local Government Tel: 0303 4444217 or email: mark.barnett@communities.gsi.gov.uk can answer any queries regarding the instrument.