**EXPLANATORY MEMORANDUM TO**

# THE NON-DOMESTIC RATING (RATES RETENTION, LEVY AND SAFETY NET AND LEVY ACCOUNT: BASIS OF DISTRIBUTION) (AMENDMENT) REGULATIONS 2020

**2020 No. [XXXX]**

## 1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing, 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 This instrument ("the Instrument") amends three sets of regulations underpinning the business rates retention system in order to provide for minor changes to the administration of the system, including amendments to the calculation of levy and safety net payments, and the adjustment of figures following the restructuring of Buckinghamshire councils.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 The procedure for free issue of the Instrument has been applied, due to minor omissions made in drafting the Non-Domestic Rating (Rates Retention and Levy and Safety Net) (Amendment) and (Levy Account: Basis of Distribution) Regulations 2019 ("the Basis of Distribution Regulations") which prevent the correct policy objective from being achieved.

***Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)***

3.2 This entire instrument applies to England only.

3.3 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, 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 is not a reserved matter within Schedule 7A to

the Government of Wales Act 2006, nor is it one of the general restrictions within Schedule 7B or otherwise outside the legislative competence of the National Assembly for Wales (see section 108A of that Act).

## 4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is set out in Section 3 under "Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)".

## 5. European Convention on Human Rights

5.1 The Minister of State, Luke Hall MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Non-Domestic Rating (Rates Retention, Levy and Safety Net and Levy Account: Basis of Distribution) (Amendment) Regulations 2020 are compatible with the Convention rights."

## 6. Legislative Context

6.1 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 ("the Schedule") into the 1988 Act which provides for the local retention of non-domestic rates (more commonly known as "business rates").

6.2 The Non-Domestic Rating (Rates Retention) Regulations 2013 ("the Rates Retention Regulations") and the Non-Domestic Rating (Levy and Safety Net) Regulations 2013 ("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.

6.3 Billing authorities[1] are required to keep a collection fund under Part 6 of the 1988 Act. The Rates Retention Regulations provide for the administration of the business rates system, including the calculation and reconciliation of non-domestic rating income, calculation of any surplus or deficit on the collection fund and its distribution between central and local government. The Rates Retention Regulations also set out the central and local shares of non-domestic rating income.

6.4 The Levy and Safety Net Regulations provide for the calculation and payment of levy and safety net payments; they also prescribe an individual "levy rate" for each authority. 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. Safety net payments are funded from the levy charged on growth in business rates income. 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 (which apply to England only) provide the basis upon which any levy surplus must be distributed.

[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.

6.5 Telecoms Relief was introduced by the Telecommunications Infrastructure (Relief from Non-Domestic Rates) Act 2018 ("Telecoms Act") and the Non-Domestic Rating (Telecommunications Infrastructure Relief) (England) Regulations 2018 ("the Telecoms Regulations"). Local authorities are compensated for Telecoms Relief given to eligible ratepayers via grant payments under section 31 of the Local Government Act 2003 ("s.31 grant").

## 7. Policy background

***What is being done and why?***

7.1 The business rates retention system operates through a billing authority's collection fund. Business rates income collected from, or due to ratepayers, central government, major precepting authorities[2] and the billing authority's general fund must be paid into or out of this fund.

7.2 Before the beginning of each financial year, the billing authority estimates the amount it will collect from non-domestic ratepayers during the year. This amount is the authority's non-domestic rating income for the year, which is shared between the billing authority, its major precepting authorities and central government. By the end of the year the billing authority's collection fund will either be in deficit or surplus depending upon whether the non-domestic rating income is more or less than originally estimated.

7.3 Currently, in most cases, 50 per cent of the amount of business rates income is due to central government – the "central share". The remaining 50 per cent - the "local share" – is shared between a billing authority and its major precepting authorities (if any). This is not the case in Cornwall, Greater Manchester, Liverpool City Region, the West of England and West Midlands as Devolution Deals were agreed, and so authorities have retained 100 per cent of their business rates since 2017-18 ("Devolution Deal authorities"), or authorities that piloted increased business rates retention of 100 per cent or 75 per cent in 2018-19 or 2019-20 respectively. Excepting pilot arrangements in 2018-19 and 2019-20, as a whole London (London Boroughs or the Common Council of the City of London, and the Greater London Authority (GLA)) retains 67 per cent of its business rates, following the devolution of some Transport for London grants to the GLA in 2017-18.

7.4 Payments are also made each year effecting the redistribution of non-domestic rating income between authorities ("Top-up" and "Tariff" payments). These amounts are calculated using an authority's "baseline funding level" [3] and "business rates baseline" – should their baseline funding level exceed their business rates baseline, the authority would receive a top-up payment equal to that amount, and vice versa. 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, which is approved by the House of Commons.

7.5 Under the business rates retention system, billing or major precepting authorities can be eligible for a safety net payment if their annual share of business rates income falls below a prescribed minimum (the authority's "safety net threshold"). Conversely, local authorities may be obliged to make a levy payment to the Secretary of State, if

[2] Section 39(1) of the Local Government Finance Act 1992 provides a list of types of major precepting authorities.

[3] An authority's baseline funding level is its share of the local share of business rates as determined by a needs assessment.

their income in a year exceeds their baseline funding level, of a proportion of that excess income. 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."

7.6 This Instrument makes several amendments necessary for the administration of the business rates retention system. Firstly, minor changes are made to the Levy and Safety Net Regulations to provide the correct basis upon which authorities' income is to be calculated for the 2019-20 end-of-year process and beyond, reflecting the values required to account for changes to the system, for example business rates pilots calculations. These amendments do not change the original policy intention but rather ensure that the regulations provide the required framework to make the calculations as planned.

7.7 Secondly, the Instrument makes changes to the Levy and Safety Net Regulations to ensure that the levy and safety net calculations for 2020-21 reflect the correct values for 100 per cent business rates retention (Devolution Deal) authorities as approved by the House of Commons in the 2020 Local Government Finance Report. Further to this, the Instrument adjusts the levy rate of London authorities (for the 75 per cent London pilot in 2019-20) in the Levy and Safety Net Regulations, to zero for 2019-20. The Instrument also amends the Rates Retention Regulations to adjust the apportionment of the collection fund surplus/deficit for the 75 per cent Worcestershire pilot for 2019-20 to be paid in 2021-22. This ensures that the correct share of collection fund surplus/deficit is apportioned to Worcestershire billing authorities in 2021-22.

7.8 Thirdly, minor changes are also necessary to account for the unitarisation of Buckinghamshire from 1 April 2020, from the prior Buckinghamshire County Council and its constituent districts South Bucks, Chiltern, Wycombe and Aylesbury Vale. Under the Local Government (Structural Changes) (Transitional Arrangements) (No 2) Regulations 2008 ("the Structural Changes Regulations"), a reference to a predecessor authority is to be read on or after the reorganisation date, as a reference to the new authority. This provides that where the county and four districts' values can be aggregated to give the new unitary council's values, they are to be read as such. However, there are two instances where this aggregation does not provide the correct values – for the "cost factor" as detailed in Schedule 1 of the Rates Retention Regulations, and the value of "A" for the calculation of small business rates relief as provided by Schedule 1 of the Levy and Safety Net Regulations. These are amended accordingly.

7.9 Further to this, an amendment is made to the values of revenue support grant in the Basis of Distribution Regulations for Bournemouth, Christchurch, Poole and Dorset councils. This follows a change in the agreed split in revenue support grant provided by the two new authorities following reorganisation in 2019.

7.10 Finally, an adjustment is also required to the calculation of "retained rates income", a figure used to compare the actual business rates income local authorities receive with their baseline funding level in the levy and safety net calculations. This adjustment

will take account of any Telecoms Relief[4] granted by a billing authority as a result of the Telecoms Act and subsequent Telecoms Regulations, and the impact of this relief on its, or its major preceptors' income in the retained rates calculation. This will ensure that this relief, for which they are compensated in full via s.31 grant, does not artificially deflate their retained rates income, and result in them being paid more safety net than they are entitled to, or them paying less levy than they are required to pay.

## 8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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 does not consider it necessary to consolidate these Regulations at this time.

## 10. Consultation outcome

10.1 Consultation is not required by law. Local authorities have been made aware that these amendments are required via a local government working group which focuses on the business rates retention system and reforms, and provides an opportunity for local government representatives to discuss these changes.

## 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 impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment was published at the outset of the 50 per cent rates retention scheme in 2013-14. This is available on gov.uk at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/8470/2054063.pdf

12.4 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.

[4] In 2016, 100 per cent Business Rates relief for new fibre infrastructure was announced at the Autumn Statement for five years from 1st April 2017. Telecoms relief is a mandatory relief that local authorities must apply to eligible businesses, for which they are compensated in full.

[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

## 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 The Regulation does not include a statutory review clause as it does not have an impact on business.

## 15. Contact

15.1 Emily Gascoigne at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 2027 or email: emily.gascoigne@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Suzie Clarke, Deputy Director for Local Government Finance Stewardship at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Luke Hall MP, Minister for Regional Growth and Local Government at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.