EXPLANATORY MEMORANDUM TO THE NON-DOMESTIC RATING (SHALE OIL AND GAS AND MISCELLANEOUS AMENDMENTS) REGULATIONS 2015

2015 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.

2. Purpose of the instrument

2.1 These Regulations form part of the scheme for local retention of non-domestic rates (otherwise known as business rates). The purpose of the Regulations is to designate classes of hereditaments (property liable to business rates) in relation to which the business rates income (as calculated in accordance with the Regulations) is to be wholly retained by local authorities.

2.2 The Regulations also make various minor changes to the scheme for local retention of business 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 inserted a new Schedule 7B into the 1988 Act ("the Schedule) which provides for the local retention of business rates collected.

4.2 Part 10 of the Schedule enables the Secretary of State to make regulations designating classes of hereditament and providing for a calculation of the business rates income in respect of a hereditament within a designated class to be disregarded for the purpose of various calculations required under the scheme. Regulations have previously been made under these powers to designate certain hereditaments used for certain renewable energy projects.

4.3 Regulations made under the Schedule, principally, the Non-Domestic Rating (Rates Retention) Regulations 2013 (SI 2013/452), as amended by the Non-Domestic Rating (Rates Retention) (Amendment) Regulations 2014 (SI 2014/96) provide for the administration by local authorities of the local retention of business rates.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

In my view the provisions of the Non-Domestic Rating (Shale Oil and Gas and Miscellaneous Amendments) 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 business rates. The scheme was introduced from April 2013 to give local authorities a direct share of local business rates 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 – for example, in designated Enterprise Zones.

7.2 The government supports the development of our own indigenous energy sources in a safe and sustainable manner. Shale oil and gas may hold potential for adding to the UK's energy sources, helping to improve energy security, create jobs and meet carbon targets. The government therefore supports the development of shale oil and gas sites and in January 2014, the Prime Minister announced that local authorities will be able to retain 100% of business rates from them. This will ensure that local councils and people will benefit from the economic opportunities and benefits of shale oil and gas. To deliver this commitment these Regulations provide that when calculating how much rates income in a local authority area is to be shared between local and central government, the rating income from shale oil and gas projects will be disregarded. This will allow all the income from such projects to be retained by local government.

7.3 Parts 2 and 3 of these Regulations define the hereditaments in relation to which local government will retain the business rates income and how the amount of rates income to be retained by local authorities is to be calculated. The designations will have effect from 1st April 2015.

7.4 There are two classes of hereditament that qualify for the disregard. The first (Class A), are hereditaments that are wholly or mainly used for shale oil or gas extraction by means of hydraulic fracturing. All of the income from a Class A hereditament is retained by local government. The second (Class B),

are hereditaments which, although not used wholly or mainly for shale oil and gas extraction, do involve some shale oil and gas extraction. For such hereditaments, the Valuation Officer is to determine the proportion of the hereditament which is so used and the rateable value[1] to be attributed to it. The rates payable on that proportion of the rateable value are then retained by local government. This ensures that only the income from the part of the hereditament that is actually used for shale oil and gas extraction is retained by local government

7.5 Part 4 of the Regulations sets out the way in which the retained business rates income is to be divided between different tiers of local government. The 100% retention for shale oil and gas will mean that an extra 50% of business rates revenue from sites falling within the classes designated by the Regulations will be available to share amongst those authorities. The government considers that in two tier areas and London the extra 50% should go to the county council and the London Boroughs. This is because for shale oil and gas those authorities have significant levers to promote development and have responsibility for minerals planning decisions. For the same reason, in other areas the extra 50% will be retained by the Unitary or Metropolitan Authority.

7.6 As well as providing for the retention of rates income from shale oil and gas sites, Parts 5 and 6 of these Regulations make various changes to the secondary legislation that governs the administration of the rates retention scheme.

7.7 As part of that scheme, before the beginning of a financial year, billing authorities make an initial calculation of the amount of business rates income they will collect. This is used to determine how much business rates income they should retain during the year, and how much they should pay to central government or to their precepting authorities. At the end of the financial year, the initial calculations are reconciled against final outturn figures and, in certain cases, payments between authorities and central government are required to reflect differences in initial calculations and final outturn figures. The Regulations ensure that precepting authorities bear their share of any payments due.

7.8 The Regulations also make changes to the timing of payments under the rates retention scheme. From the financial year 2015-16, payments to, or from, central government, or between billing and precepting authorities will be made in 12 instalments over the financial year rather than 10. This mirrors the timing of business rates receipts received by billing authorities, following change made last year by the government to allow ratepayers to pay their business rates in 12 instalments. Bringing rates retention scheme payments into line with business rates receipts ensures that there are no adverse cash flow consequences for billing authorities.

[1] The rateable value of a hereditament is the notional annual rent at which it is estimated the hereditament might reasonably be expected to let.

7.9 The Regulations also update "Area Cost Factors", which are used to calculate how much business rates income billing authorities can retain to meet the cost of billing ratepayers and collecting business rates; and updates the provisions which allow local authorities to be compensated for the cost of the rates relief that they provide to ratepayers in Enterprise Zones. As announced at the Autumn Statement, the changes extend by three years the period over which authorities can be compensated for the business rates relief they give and extends such compensation to the new Enterprise Zone that is to be created in Derby. Enterprise Zones are a key part of the government's strategy for enabling growth in local areas and these measures provide further support, allowing Enterprise Zones to create even more new jobs and attract private investment to local areas.

8. Consultation outcome

8.1 The Regulations have been prepared following discussions with experts in the business rates sector and the shale gas industry. In addition, and as required by paragraph 40(8) of the 1988 Act, a draft of Parts 2 to 4 of these Regulations were the subject of a consultation in the Autumn of 2014. The summary of responses to the consultation and the government's response can be found at:

https://www.gov.uk/government/consultations/business-rates-retention-and-shale-oil-and-gas-technical-consultation

8.2 The consultation ran from 24th October 2014 to 5th December 2014 and the Department received 25 responses from representatives of local government, individual members of the public and private sector organisations. The consultation invited comments on the proposed arrangements for rates retention on shale oil and gas hereditaments and included a draft of Parts 2 to 4 of the Regulations. Those who disagreed with the proposals were concerned about shale oil and gas developments in general and thought that the policy might risk adversely affecting independent planning decisions. Other responses from the local government sector proposed various different allocations of the retained amount. Responses from the energy sector suggested that the policy be extended to other aspects of energy source extraction.

8.3 Having considered the responses to the consultation, the government has decided to proceed with its proposals to designate shale oil and gas hereditaments for the purpose of local retention of business rates. The government believes that these Regulations will ensure that local areas will benefit from the economic opportunities presented by shale oil and gas and that local authorities will continue to make planning decisions in a way that is best for their local communities. The government considers that the allocation of the retained business rates income strikes the correct balance of funding between the various parts of local government and does not consider it would be appropriate to extend the policy to other oil and gas extraction technologies.

8.4 The changes to the timing of payments under the scheme were developed in partnership with a working group comprising the Local Government Association (LGA), the Chartered Institute of Public Finance and Accountancy (CIPFA), London Councils and representatives of local authorities.

9. Guidance

9.1 The changes in these Regulations affect, in some way or another, the calculations of business rates income made by local authorities, which in turn determine how much income from business rates local government can retain to spend on local services. The Department issues guidance to local government on those calculations at the times of the year that the calculations need to be made.

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 business rates bills are calculated. As such, the legislation does not apply to small business.

12. Monitoring & review

12.1 The government keeps business 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.