EXPLANATORY MEMORANDUM TO

THE LOCAL AUTHORITIES (CAPITAL FINANCE AND ACCOUNTING) (ENGLAND) (AMENDMENT) REGULATIONS 2014

2014 No. 1375

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 amend the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146) ("the 2003 Regulations"). In connection with the commencement of the scheme for local retention of non-domestic rates authorities will be required to recognise in their accounts provision representing liabilities to non-domestic ratepayers for years before 1st April 2013. The amendment will allow authorities to temporarily offset the effect of that provision in their accounts.

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 1988 Act"). 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 in England.

4.2 Local authorities are required to prepare their accounts in accordance with proper practices, which is defined in section 21 of the Local Government Act 2003 as accounting practices which an authority is required to follow by virtue of any enactment or those contained in a code of practice identified for these purposes by the Secretary of State in regulations. Regulation 31(a) of the 2003 Regulations identifies the Code of Practice on Local Authority Accounting in the United Kingdom published by the Charted Institute of Public Finance and Accountancy (CIPFA). Where there is a conflict between the accounting practices set out in an enactment and the Code of Practice, those set out in the enactment prevail.

4.3 The Code of Practice requires local authorities to recognise in their accounts obligations arising out of past events that exist independently of their future actions. The effect of this for the first year of the scheme for local

retention of non-domestic rates would be to require billing authorities[1] and major precepting authorities[2] to recognise an amount in their revenue accounts representing the amount by which non-domestic rates payable to it for a year may be reduced by potential liabilities to ratepayers in respect of financial years before 1st April 2013, for example in the event of successful appeals made by ratepayers against their liability for non-domestic rates.

4.4 These Regulations insert a new regulation 30J into the 2003 Regulations which will allow a billing authority (other than one in relation to which paragraph 1A of Schedule 4 to the Non-Domestic Rating (Rates Retention) Regulations 2013 has effect) and a major precepting authority (other than a police and crime commissioner) in England to temporarily offset the effect of having to recognise this liability in its accounts, by allowing the authority to record a credit of 80% of the amount of the provision in its accounts for the financial year beginning on 1st April 2013. The effect of this is that the authority's accounts continue to show its potential liability to ratepayers for years prior to 1st April 2013, but the effect on the authority's budget calculations are mitigated. That credit must then be fully reversed in the authority's accounts by the financial year commencing on 1st April 2017.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The introduction of the rates retention scheme from 1st April 2013 created an obligation on local authorities to recognise in their 2013-14 accounts a provision in respect of sums to be repaid to ratepayers for years pre-dating the commencement of the scheme. In the case of some authorities this amount could have been substantial and would have had the effect of artificially reducing an authority's income from non-domestic rates in 2013-14 only for it to return to higher levels from 2014-15 onwards. Accordingly, the Government undertook to legislate to allow authorities to spread the cost of the provision over five years, thereby reducing its impact in 2013-14.

7.2 To achieve this, the Government made the Non-Domestic Rating (Rates Retention) (Amendment) Regulations 2014 (SI 2014/96), which provided that where billing authorities had chosen to spread the cost of their

[1] Defined in relation to England in section 1(2)(a) of the Local Government Finance Act 1992 as a district council, London borough council, the Common Council or the Council of the Isles of Scilly. Billing authorities are responsible for collecting non-domestic rates.
[2] Defined in section 39 of the Local Government Finance Act 1992.

appeal provision over 5 years, this would be reflected in the calculation of their collection fund surplus or deficit by means of a credit of a proportion of their backdated appeal costs. This ensured that the benefit of spreading the appeal provision would not be reversed through the calculation of a deficit on the Collection Fund,

7.3 These Regulations provide, by a different route, for authorities that were not covered by SI 2014/96 (in particular, non-billing authorities) to achieve the same end. They do so by allowing any authority that wishes to (other than one covered by SI 2014/96), to spread the cost of the provision over five years by crediting 80% of its value to its balances. The sum so credited is reversed out over the next four years, thereby reducing the authorities' balances by 20% of the value of the provision in each year.

- Consolidation

7.4 No consolidation is proposed at this time.

8. Consultation outcome

8.1 The Department consulted the local government sector extensively on the approach to these Regulations through a working group set up with local government and other interested parties to consider the implementation of the rates retention scheme and the approach adopted reflects the views of that group. The Government also consulted all authorities and others on the text of the Regulations. No substantive responses were received. A number of textural changes to the draft regulations were made in response to suggestions made by CIPFA.

9. Guidance

9.1 Guidance is available to authorities through CIPFA

10. Impact

10.1 There is no impact on business, charities or voluntary bodies. The Regulations affect the accounting treatment of non-domestic rates to be adopted by local authorities. They do not affect the liabilities of ratepayers.

10.2 The impact on the public sector is to provide local authorities with the ability to reduce the impact on their 2013-14 income of having to recognise a potentially large provision in their accounts as a result of the implementation of the rates retention scheme.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department will monitor the take-up of the option to spread costs through returns from local authorities.

13. Contact

Mark Barnett at the Department for Communities and Local Government, Tel: 0303 44 44217 or email: mark.barnett@communities.gsi.gov.uk, can answer any queries regarding the instrument.