EXPLANATORY MEMORANDUM TO THE NON-DOMESTIC RATING CONTRIBUTIONS (ENGLAND) (AMENDMENT) REGULATIONS 2012

2012 No. 664

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

These Regulations amend the Non-Domestic Rating (Contributions) (England) Regulations 1992 (S.I. 1992/3082) ("the Contributions Regulations"). The Contributions Regulations make provision in relation to the amount that an English local authority must pay in each year into the national non-domestic rating pool ("the pool"), which is administered by the Secretary of State for Communities and Local Government. The Contributions Regulations are normally amended annually so that the amount local authorities must pay into the pool reflects relevant financial and economic factors.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Under Part II of Schedule 8 to the Local Government Finance Act 1988, regulations containing rules for the calculation of contributions (including amendments to such regulations) must come into force before 1st January of the preceding financial year to the particular financial year to which the amendments apply.

3.2 Section 69(8) of the Localism Act 2011 disapplies this requirement so far as regulations make provision related to the operation of section 47 of the Local Government Finance Act 1988 (discretionary rate relief), as amended by the Localism Act 2011 and for the financial year beginning in 2012 only.

3.3 The Non-Domestic Rating Contributions (England) (Amendment) Regulations 2011 (S.I. 2011/2993) ("the 2011 Regulations") made amendments in relation to the general application of section 47 for the financial year 2012-13, as amended by the Localism Act 2011.

3.4 These Regulations make further amendments in relation to the application of section 47 in certain specific areas only to cater for the Government's new Enterprise Zones policy.

3.5 The Regulations also correct an error identified by the Joint Committee in the 2011 Regulations, as set out in their 40th Report. The free issue procedure is not being applied to the Regulations, as the users of the instrument are the finance directors of local authorities and their software suppliers, so are expert users. The users of the instrument have already been informed that the existing position in relation to deductions that they may make from their

contribution to the non-domestic rating pool for discretionary reliefs (including rural rate relief) is unchanged from previous years and is being preserved. No queries have been raised following the laying of the earlier amending instrument, nor does the error disadvantage any person.

4. Legislative Context

4.1 The majority of businesses in England pay non-domestic rates to their local authority under Part 3 of the Local Government Finance Act 1988 ("the 1988 Act"), with some large businesses paying their rates directly to the Secretary of State. Local authorities and the Secretary of State pay the rates they collect into the pool and the receipts are redistributed to local authorities as part of the annual local government finance settlement process.

4.2 The Contributions Regulations govern how local authorities must calculate their annual contribution to the pool. Broadly speaking, the amount to be paid in is the amount which a local authority would have collected for the financial year under Part 3 of the 1988 Act if it had acted diligently. This is subject to adjustments which are necessary to take account of changes in relation to previous years – for example because of ratepayers' appeals against the rateable values of their properties – and various deductions. The permitted deductions take account of matters such as certain reliefs which local authorities grant to ratepayers in their area and the administrative cost of collecting rates on behalf of central government.

4.3 Section 69 of the Localism Act 2011 amends section 47 of the 1988 Act and provides billing authorities with a new power to reduce the business rates of any local ratepayer. While such discounts are made at the discretion of the local authority concerned, the Government may provide for the funding of discounts by allowing deductions from the contributions to the pool.

5. Territorial Extent and Application

This instrument applies to England only.

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 In the 2011 Budget, the Government announced it would be establishing a series of new Enterprise Zones designed to boost growth.

7.2 One of the benefits of Enterprise Zones status is the potential for a business rate discount of up to100 per cent over a five year period (up to state aid de

minimis levels) for businesses that are located or that locate in enterprise zones before April 2015. The amendments made by regulation 3(b) and 3(c) are intended to deliver the Government's policy of centrally funding the costs of business rates discounts in enterprise zones.

7.3 Generally, where an authority uses its new discretionary relief powers it will fund the discount itself and therefore will still have to contribute the cost of the business rates it would have collected, but for the discount, to central government. However, for 2012/13, central Government will fund the costs of the enterprise zones discount by an amendment to the Contribution Regulations. This amendment will therefore ensure that authorities can offset the cost of providing the discount (up to state aid de minimis levels) against their contribution to the pool where they have granted the discount in a specified area.

7.4 The relevant areas are specified in maps which will be held by the Department for Communities and Local Government and the relevant billing authority. There are 80 maps in total covering sites within the areas of 33 billing authorities.

7.5 If the Government's business rate retention scheme, as set out in the Local Government Finance Bill, is approved by Parliament, these Regulations will only apply until the introduction of that scheme, at which time an alternative funding mechanism will be put in place.

7.6 The amendment made by regulation 3(1) corrects an error in paragraph 3 of Schedule 1 to the 1992 Regulations, as substituted by regulation 3(b) of the 2011 Regulations.

3. The provisions sets out the conditions that must be fulfilled by a hereditament in relation to rural rate relief for a billing authority to deduct 75% of the amount of relief granted to that hereditament from their contributions. These conditions refer to a rateable value limit as prescribed by the Secretary of State (under section 47(3A)(b) of the 1988 Act). However, as section 69 of the Localism Act 2011 will amend section 47 of the 1988 Act to remove the power in section 47(3A)(b), it is necessary to replace this reference with a specific rateable value limit. Regulation 3(1) makes this change by replacing the reference to a limit as prescribed by the Secretary of State with a limit of "£16,500".

Consolidation

7.12 The Contributions Regulations are amended annually but in large part remain unchanged. It is considered convenient for the users of the Contributions Regulations for the annual changes to be clearly identifiable in an amending instrument. For these reasons, the Department does not intend to consolidate the Contributions Regulations.

8. Consultation outcome

8.1 The Enterprise Zone policy was a Budget measure. These are technical changes which give effect to the Budget announcement.

9. Guidance

9.1 When local authorities calculate their contributions to the pool, returns are made to the Department for Communities and Local Government. Guidance notes on completing the returns are issued each year and these are updated to reflect the annual changes to the Contributions Regulations.

10. Impact

10.1 This instrument provides a potential benefit to ratepayers in the specified area by allowing authorities to provide certain central government funded discounts.

11. Regulating small business

11.1 The legislation provides a potential benefit to small business.

12. Monitoring & review

12.1 Subject to the successful passage of the Local Government Finance Bill, it is likely that these Regulations will only apply for the 2012-13 financial year.

13. Contact

13.1 David McDonald at the Department for Communities and Local Government (tel: 0303 444 2135 or email: David.McDonald@communities.gsi.gov.uk) can answer any queries regarding the instrument.DEPARTMENT FOR COMMUNITIES AND