EXPLANATORY MEMORANDUM TO

THE NON-DOMESTIC RATING (LEVY AND SAFETY NET) REGULATIONS 2013

2013 No. 737

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These regulations set out the operation and calculation of levy and safety net payments under the scheme for local retention of non-domestic rates.

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

3.1 This is the first exercise of the powers in Part 7 of Schedule 7B to the Local Government Finance Act 1988. This instrument supersedes the draft of the same title which was laid before Parliament and published on 8th January 2013 (ISBN 978-0-11-153297-3).

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 inserts a new Schedule 7B in to the 1988 Act ("the Schedule") which provides for the local retention of non-domestic rates collected.

4.2 Part 7 of the Schedule provides that the Secretary of State may make provision for imposing a levy on the non-domestic rates income of an authority and for paying safety net payments.

4.3 These Regulations form part of a group of statutory instruments that will establish the new scheme:

- The Non-Domestic Rating (Rates Retention) Regulations 2013 (S.I 2013/452)
  These Regulations establish the means of calculating the amounts of non-domestic rates that are to be paid to the Secretary of State, the amounts that are to be retained locally and how these are to be distributed.

- The Non-Domestic Rating (Transitional Protection Payments) Regulations 2013 (S.I. 2013/106)
  These Regulations provide for payments between the Secretary of State and local authorities to adjust for differences in non-domestic rates income caused by the operation of the scheme that phases in changes in non-domestic rates bills.

- The Non-Domestic Rating (Designated Areas) Regulations 2013 (S.I. 2013/107)
  These Regulations designate areas for which a proportion of the non-domestic rates income is to be disregarded for the purposes of certain calculations – meaning that the entire amount is retained locally.

- The Non-Domestic Rating (Renewable Energy Projects) Regulations 2013 (S.I. 2013/108)
  These Regulations designate classes of hereditament for which the non-domestic rates income or a proportion of it is to be disregarded for the purposes of certain calculations – meaning that the entire amount is retained locally.

- The Local Government Finance Act 2012 (Consequential Amendments) Order 2013 (S.I. 2013/733)
  This Order makes certain consequential amendments to the Local Government Finance Act 1992 and the Greater London Authority Act 1998.

5. Territorial Extent and Application

5.1 The Schedule and this instrument apply in England only. Schedule 8 of the 1988 Act, which provides for the current system of pooling and redistribution of non-domestic rates is amended by the Local Government Finance Act 2012 so that it continues to operate in Wales only.

6. European Convention on Human Rights

Brandon Lewis, 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 (Levy and Safety Net) Regulations 2013 are compatible with the Convention rights.

7. Policy background

7.1 These Regulations form part of the scheme to allow local retention of non-domestic rates (the rates retention scheme). The scheme is being introduced from April 2013 to give local government a direct share of local non-domestic rating income and thereby an incentive to promote local growth. This will replace the current scheme where-by non-domestic rates are collected by local government, paid to central government and redistributed back to local government via the local government finance report[1].

7.2 There is however inherent volatility in the rating system which means, in any year, some authorities can collect significantly less in non-domestic rates than in previous years as a result of physical changes and rating appeals being settled. In giving local authorities a direct share of local non-domestic rating income, local authorities will share in any reward if non-domestic rating income increases but they will also share the risks should income fall.

7.3 To help protect against this risk, the rates retention scheme provides support through a 'safety net' for authorities that in any year see their retained rates income fall beyond a set percentage below their baseline funding level.

7.4 The percentage set by the Government following consultation is 7.5% below an authority's baseline funding level, which effectively guarantees every authority will receive at least 92.5% of its baseline funding level each year under the rates retention scheme. The baseline funding level is a figure calculated for each authority at the set-up of the rates retention scheme which reflects the amount of its start up funding that will be provided by retained rates. (The remainder of start up funding is provided by Revenue Support Grant). It is up-rated in line with the small business non-domestic rating multiplier to ensure this support retains its real term value through the life of the scheme.

7.5 Safety net payments for a year will be calculated using authorities' outturn financial data following the end of that year. To avoid authorities having to wait up to 18 months to access safety net support, they will be able to apply to for a safety net payment on account on the basis of estimated income.

7.6 The safety net will be funded through a levy on the disproportionate benefit that some authorities will receive from very small increases in non-domestic rates income because of their high starting levels of non-domestic rates income in comparison to their baseline funding level. Where an authority's percentage increase in retained non-domestic rating revenue outweighs the percentage increase in its baseline funding level, that authority will be required to pay a share of that difference to the Government to fund the safety net.

7.7 The levy is set so that for each percentage point increase in its retained non-domestic rates income, an authority will see no more than the same percentage point increase against its baseline funding level, subject to a cap on the levy of 50 pence in the pound. Such an approach avoids thresholds, and supports the incentive effect by ensuring an authority will always be better off if its non-domestic rates grow. It also creates a transparent levy rate for each authority so that decision makers know the 'value' of the decision to the authority.

[1] For details see Schedule 8 to the Local Government Finance Act 1988 and the Non-domestic Rating Contributions (England) Regulations 1992 (S.I. 1992/3032).

7.8 Billing authorities have wide discretion to grant non-domestic rates discounts and reduce or remit liability (see sections 47 and 49 of the 1988 Act). As retained rates income – and so levy or safety net - is directly affected by the amount of discount etc granted, it is necessary in the interests of fairness to adjust the retained rates income of authorities. The Government has decided that certain discretionary discounts (relating to not for profit organisations, community sports and social clubs, rural properties and property in enterprise zones) and hardship relief will be included for the purpose of calculating retained rates income, but that other discretionary relief will be ignored.

7.9 Under the rates retention scheme, local authorities will be able to pool their non-domestic rates for the purpose of making certain calculations, giving them scope to generate additional growth through collaborative effort, and to smooth the impact of volatility in rates income across a wider area. For a pool to come into effect, the Secretary of State must make a pooling designation. Once designated, a pool will be treated as a single body for the purpose of calculating any levy or safety net payments.

8. Consultation outcome

8.1 Several consultations have been undertaken during development of the rates retention scheme detail, the outcomes of which have been reported and published on the DCLG website. The most recent policy consultation and outcome can be found at:
https://www.gov.uk/government/consultations/business-rates-retention-technical-details

https://www.gov.uk/government/publications/business-rates-retention-policy-statement

8.2 These Regulations have been developed in partnership with a working group including local government finance officers, the Chartered Institute of Public Finance Accountancy and the Local Government Association. Five sets of regulations on the rates retention scheme were published in draft in October 2012 for comments, including this set. We received 32 responses, with the vast majority seeking clarification on policy matters, or suggesting minor corrections or additions which have been taken on board.

9. Guidance

9.1 The Department will issue guidance to local government on the completion of associated information forms which describe how to estimate non-domestic rating income.

10. Impact

10.1 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

A separate Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The rates retention scheme will have no impact on the way in which non-domestic rating bills are calculated.

12. Monitoring & review

12.1 The Government keeps the non-domestic rating system 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.