



Department for
Communities and
Local Government

Business Rates Retention Draft Regulations

Consultation

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Consultation procedure

The consultation process and how to respond

Topic of this consultation:	Drafts of the regulations that will underpin the Business Rates Retention Scheme.
Scope of this consultation:	Comments on the draft regulations are invited, in particular whether they achieve the policy intention as drafted.
Geographical scope:	England.
Body responsible for the consultation:	Business Rates and Valuation Division Department for Communities and Local Government.
Duration:	This consultation lasts for 4 weeks until 23 November 2012.
Enquiries:	For enquiries, please contact: victoria.jones@communities.gsi.gov.uk 0303 444 2585
How to respond:	Please respond by email to: brtechnicalconsultation@communities.gsi.gov.uk Alternatively, please send postal responses to: Victoria Jones Department for Communities and Local Government Zone 5/D1, Eland House Bressenden Place London SW1E 5DU
Getting to this stage:	The Department consulted on the outline of the scheme in July 2011 and on the detail of the scheme in July 2012. http://www.communities.gov.uk/localgovernment/localgovernmentfinance/lgresourcereview/
Previous engagement:	Since January 2012 and throughout the passage of the Local Government Finance Bill, the Local Government Finance Working Group and its three sub-groups have considered a range of technical issues about establishing the business rates retention scheme in detail and those discussions have informed the contents of this consultation.

Introduction

1. These five sets of draft regulations have been prepared by the Department for Communities and Local Government under the new Schedule 7B to the Local Government Finance Act 1988 (to be inserted by Schedule 1 to the Local Government Finance Bill, subject to the will of Parliament).
2. The draft sets of regulations covered by this note are:
 - The Non-Domestic Rating (Rates Retention) Regulations 2012
 - The Non-Domestic Rating (Levy and Safety Net) Regulations 2012
 - The Non-Domestic Rating (Renewable Energy Projects) Regulations 2012
 - The Non-Domestic Rating (Designated Areas) Regulations 2012
 - The Non-Domestic Rating (Transitional Protection Payments) Regulations 2012
3. The regulations will apply to England only.

Background

4. In December 2011, the Government published its proposals for a business rates retention scheme at the same time as introducing the Local Government Finance Bill to Parliament in order to give effect to the proposals.
5. In July 2012, following extensive discussion with local government, the Government confirmed its intention to introduce the rates retention scheme with effect from 1 April 2013 and published a technical consultation paper setting out how it might implement the scheme, subject to the passage of the Local Government Finance Bill through Parliament
6. The Bill, which has just completed its passage through the second chamber, is expected to secure Royal Assent next month. It provides the Secretary of State with powers to make secondary legislation in connection with implementation.
7. To enable the rates retention scheme to be implemented for 1 April 2013, the Government intends to make the necessary secondary legislation early in the New Year subject to parliamentary approval.
8. This note sets out for each set of draft regulations:
 - the broad approach taken; and
 - highlights points that should be noted

The publication of these regulations in draft form is intended to give authorities and interested parties greater clarity about the implementation of the scheme, and also to give authorities the opportunity to make any comments or ask questions on the draft regulations, to help ensure the regulations work as intended and that billing authorities are able to implement the prescribed requirements smoothly.

9. We would welcome feedback or suggestions, which should be sent to brrtechnicalconsultation@communities.gsi.gov.uk with the heading 'BRR Draft Regulations' **by Friday 23 November**:

10. Enquiries should be addressed to: victoria.jones@communities.gsi.gov.uk

The Draft Non-Domestic Rating (Rates Retention) Regulations 2012

11. These regulations at Annex A provide for a number of major elements of the scheme. They set out the how billing authorities are to calculate their liability and make payments to:

- i. central government in respect of the central share of business rates;
- ii. major precepting authorities in respect of a share of the business rates collected.

12. They also give effect to the proposal that the central share and major precepting authority shares should be fixed at the outset of the year on the basis of a billing authority's estimate of its business rates income; and how any collection fund surpluses or deficits, created as a consequence, should be dealt with.

13. Finally, they require authorities to produce outturn figures following the year-end in order that these can be reconciled with initial estimates of sums to be retained outside the rates retention scheme – for example, in enterprise zones.

14. The regulations include major precepting authority share percentages and the timing of payments of the central share and major precepting authority shares. These were the subject of consultation during the summer and final decisions have yet to be made by Ministers. They are included in the draft regulations for illustrative purposes.

15. Schedule 2, Part 2 is currently blank but, in the final regulations, will set out the area cost factors which are to be used in the calculation of the allowance for the cost of collection and recovery.

The Non-Domestic Rating (Levy and Safety Net) Regulations 2012

16. These regulations at Annex B provide for the calculation of the levy and safety net after the end of the year on the basis of outturn figures for non-domestic rates income. They also set out the arrangements by which authorities will be able to secure safety net payments "on account" during the course of a year.

17. The draft regulations do not contain a figure for the safety net threshold, on which Ministers have yet to take final decisions. They are drafted on the basis of a 1:1 levy, as proposed by Government in the summer. However, this is for illustrative purposes, since final decisions have yet to be taken.
18. Schedule 2 of the regulations will set out tables of baseline funding levels and business rates baselines. The draft regulations do not contain these figures which will be provided in the draft local government finance report later this year.

The Non-Domestic Rating (Renewable Energy Projects) Regulations 2012

19. These regulations at Annex C provide for the calculation of the proportion of non-domestic rates income, in respect of renewable energy projects, which authorities will be entitled to disregard from calculations under the rates retention scheme. The regulations designate the classes of hereditaments in relation to which an amount may be disregarded. Any sums disregarded will be retained by authorities outside the scheme.
20. This consultation fulfils the requirements of paragraph 40(8) of new Schedule 7B to the Local Government Finance Act 1988 as inserted by Schedule 1 to the Local Government Finance Bill currently before Parliament.

The Non-Domestic Rating (Designated Areas) Regulations 2012

21. These regulations at Annex D provide for the calculation of the non-domestic rates income, in respect of designated areas, which authorities will be entitled to disregard from calculations under the rates retention scheme. Any sums disregarded will be retained by authorities outside the scheme. For the purposes of these regulations the Government intends to designate Enterprise Zone areas and new development deal areas.
22. The regulations also provide the means by which authorities will be reimbursed for qualifying rate relief given to ratepayers in Enterprise Zones, in accordance with the Government's previously stated intention.

The Non-Domestic Rating (Transitional Protection Payments) Regulations 2012

23. These regulations at Annex E provide for payments to and from authorities to adjust for the operation of transitional arrangements, under which changes to rate payers' bills are phased-in following a revaluation, as these amounts are to be excluded from the rates retention scheme, as previously set out by Government.

Next steps

24. Following consultation and the successful passage of the Local Government Finance Bill, the Government intends to lay regulations in Parliament with a view to them coming into force before the start of the 2013-14 financial year, subject to Parliamentary approval.

This is a draft of the Regulations prepared for the purposes of consultation.

DRAFT STATUTORY INSTRUMENTS

2012 No. xxxx

RATING AND VALUATION, ENGLAND

The Non-Domestic Rating (Rates Retention) Regulations 2012

Made - - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in the exercise of the powers conferred by sections 97(2A) and (2B), 99 and 143(1) and(2) of and paragraphs 6(3) to (5), 7 to 11, 40, 42 and 44 of Schedule 7B to the Local Government Finance Act 1988(a).

These Regulations are made with the consent of the Treasury in accordance with paragraph 39(13) of Schedule 7B to the Local Government Finance Act 1988.

In accordance with section 143(9D) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and application

1. These Regulations may be cited as the Non-Domestic Rating (Rates Retention) Regulations 2012 and come into force on the day after the day on which they are made.

Interpretation

2.—(1) In these Regulations—

“the 1988 Act” means the Local Government Finance Act 1988;

“billing authority” means a billing authority in England;

“certified non-domestic rating income” has the meaning given by regulation 10(4);

“preceding year” means the year immediately preceding the relevant year;

“proper practices” has the same meaning as in section 21(2) of the Local Government Act 2003(b);

(a) 1988 c.41. Sections 97(2A) and (2B) of the Local Government Finance Act 1988 (“the 1988 Act”) were inserted by paragraph 25(2) of Schedule 3 to the Local Government Finance Act 2012 (c.xx) (“the 2012 Act”). Section 99 of the 1988 Act was substituted by paragraph 24 of Schedule 10 to the Local Government Finance Act 1992(c.14) and amended by section 70 of the Local Government Act 2003 (c.26) and paragraph 26 of Schedule 3 to the 2012 Act. Schedule 7B was inserted into the 1988 Act by section 1 of the 2012 Act.

(b) 2003 c.26.

“relevant precepting authority” in relation to a billing authority means a major precepting authority other than a local policing body having a power to issue a precept to that billing authority;

“non-domestic rating income” has the meaning given by regulation 4;

“relevant year” means the year for which a calculation of non-domestic rating income or of a payment is being made;

“small business non-domestic rating multiplier” has the meaning given by Schedule 7 to the 1988 Act.

(2) In these Regulations any reference (however framed) to a billing authority’s collection fund income and expenditure account is a reference to a revenue account to which, in accordance with proper practices, are credited or charged, as the case may be, amounts in respect of the authority’s income and expenditure relating to sums paid or to be paid into or payments met or to be met from the authority’s collection fund.

PART 1

Payments by billing authorities to major precepting authorities and the Secretary of State

Payments by billing authorities to major precepting authorities

3.—(1) This regulation applies if a local government finance report for a year is approved by resolution of the House of Commons.

(2) Each billing authority must make a payment for the year to each of its relevant precepting authorities of the amount that is that authority’s share of the billing authority’s non-domestic rating income.

(3) The relevant precepting authority shares are—

- (a) 10% where the relevant precepting authority is a county council which is a fire and rescue authority;
- (b) 9% where the relevant precepting authority is a county council which is not a fire and rescue authority;
- (c) 20% where the relevant precepting authority is the Greater London Authority; and
- (d) 1% where the relevant precepting authority is a fire and rescue authority not falling within paragraph (a).

Meaning of non-domestic rating income

4. A billing authority’s non-domestic rating income for the purposes of paragraphs 6(3) and 9(5) of Schedule 7B to the 1988 Act and these Regulations shall be the estimate of the amount specified by paragraph 1 of Schedule 1 to these Regulations calculated and notified in accordance with regulation 5.

Calculation and notification of amounts

5.—(1) On or before 31st January in the preceding year, a billing authority must—

- (a) calculate its non-domestic rates income for the relevant year;
- (b) calculate the amount of the central share of its non-domestic rating income for the relevant year;
- (c) calculate the amount of each relevant precepting authority’s share of its non-domestic rating income for the relevant year; and
- (d) notify the Secretary of State and any relevant precepting authorities of the amounts calculated.

(2) If an authority fails to comply with paragraph (1) or if the Secretary of State believes the amounts notified are not likely to have been calculated in accordance with these Regulations he may make his own calculation of the amounts; and where he makes such a calculation he must inform the authority why he has done so and notify it and any relevant precepting authority of the amounts calculated.

Discharge of authority's liabilities with respect to central share

6.—(1) Subject to regulation 7, in relation to each relevant year a billing authority must discharge its liabilities under paragraph 6(2) of Schedule 7B to the 1988 Act (payments with respect to central share) in the course of the year by means of no more than 24 instalments such that—

- (a) the first instalment is payable no later than 15th May;
- (b) the final instalment is payable no later than 31st March;
- (c) there are an equal number of days between each instalment; and
- (d) the amount of each instalment is equal, save that all but the final instalment shall be rounded to a number of whole pounds.

(2) Any amount paid by a billing authority in respect of its liability under paragraph 6(2) of Schedule 7B to the 1988 Act for a year, whether or not paid or transferred in accordance with paragraph (1), is to be treated as discharging that liability to the extent of the payment.

Deductions from central share payments

7. A billing authority must deduct from its payments under regulation 6 the amount (if any) determined in accordance with regulation 6 of the Non-domestic Rating (Designated Areas) Regulations 2012.

Discharge of authority's liabilities with respect to major precepting authority shares

8.—(1) In relation to each relevant year a billing authority must discharge its liabilities under regulation 3 (payments to major precepting authorities) in the course of the relevant year by means of no more than 24 instalments such that—

- (a) the first instalment is payable no later than 15th May;
- (b) the final instalment is payable no later than 31st March;
- (c) there are an equal number of days between each instalment; and
- (d) the amount of each instalment is equal, save that all but the final instalment shall be rounded to a number of whole pounds.

(2) Any amount paid by a billing authority in respect of its liability under regulation 3 for a year, whether or not paid or transferred in accordance with paragraph (1), is to be treated as discharging that liability to the extent of the payment.

Transfer from collection fund to general fund

9.—(1) In relation to each relevant year a billing authority must transfer from its collection fund to its general fund the amount calculated in accordance with Schedule 2 to these Regulations.

(2) An authority must discharge its obligation with respect to paragraph (1) in the course of the relevant year by means of no more than 24 instalments such that—

- (a) the first instalment is payable no later than 15th May;
- (b) the final instalment is payable no later than 31st March;
- (c) there are an equal number of days between each instalment; and
- (d) the amount of each instalment is equal, save that all but the final instalment shall be rounded to a number of whole pounds.

PART 2

End of year calculations and reconciliation

End of year calculations

10.—(1) On or before 31st May in the year following the relevant year a billing authority must calculate the amount specified in paragraph 1 of Schedule 1.

(2) On or before 30th September in the year following the relevant year the billing authority must arrange for the calculation and amounts to be certified in accordance with such arrangements as the Secretary of State may direct.

(3) The arrangements must require that the person certifying the calculations and amounts send the certification to the Secretary of State and notify the billing authority and relevant precepting authorities of the amounts so certified.

(4) The amount specified by paragraph 1 of Schedule 1 to these Regulations and calculated and certified in accordance with this regulation is the authority's certified non-domestic rating income for the relevant year.

Reconciliation of certified amounts

11.—(1) Where an amount included in a calculation under regulation 10(1) as a bad debt which should be written off or a doubtful debt for which provision should be made is disallowed on certification under regulation 10(2) on the grounds that the billing authority failed to act diligently in relation to the collection of non-domestic rates the authority must transfer such an amount as is disallowed from its general to its collection fund.

(2) Where the amount certified under regulation 10(2) as an amount to be disregarded in accordance with regulations made under paragraph 37 or 38 of Schedule 7B to the 1988 Act is different to the amount notified as such an amount under regulation 5—

- (a) if the certified amount is less than the notified amount the billing authority must transfer an amount equal to the difference from its general fund to its collection fund; or
- (b) if the certified amount is more than the notified amount the billing authority must transfer an amount equal to the difference from its collection fund to its general fund.

(3) Where the amount certified under regulations [xx] of the Non-domestic Rating (designated areas) Regulations 2012 as the amount to be deducted from central share payments is different to the amount deducted under regulation 7—

- (a) if the certified amount is less than the amount deducted the billing authority must pay an amount equal to the difference from its general fund to the Secretary of State; or
- (b) if the certified amount is more than the amount deducted the Secretary of State must pay an amount equal to the difference to the billing authority.

PART 3

Calculation of surplus and deficit

Calculation and apportionment of surplus or deficit on collection fund for year

12.—For each relevant year beginning on or after 1st April 2014 a billing authority must estimate in accordance with paragraph 1 of Schedule 3 to these Regulations—

- (a) whether there is a surplus or deficit with respect to non-domestic rates in its collection fund for the preceding year; and
- (b) if so, the amount of the surplus or deficit.

(2) A billing authority must estimate the surplus or deficit under paragraph (1) on or before 15th January in the preceding year.

(3) Any surplus or deficit estimated by an authority under paragraph (1) shall belong to or be borne by that authority, the Secretary of State and any relevant precepting authorities in accordance with the shares set out in paragraph 2 of Schedule 3 to these Regulations.

Payments with respect to surplus

13.—(1) A billing authority must pay to the Secretary of State the Secretary of State's share and to any relevant precepting authority that authority's share of a surplus during the course of the relevant year by means of no more than 24 instalments such that—

- (a) the first instalment is payable no later than 15th May;
- (b) the final instalment is payable no later than 31st March;
- (c) there are an equal number of days between each instalment;
- (d) the amount of each instalment is equal, save that all but the final instalment must be rounded to a number of whole pounds.

(2) Any amount paid by an authority in respect of its liability for a year under regulation 12, whether or not paid or transferred in accordance with paragraph (1) and (2), is to be treated as discharging that liability to the extent of the payment.

Payments with respect to deficit

14.—(1) The Secretary of State and a relevant precepting authority must pay their share of a deficit to the billing authority during the course of the relevant year by means of no more than 24 instalments such that—

- (a) the first instalment is payable no later than 15th May;
- (b) the final instalment is payable no later than 31st March;
- (c) there are an equal number of days between each instalment;
- (d) the amount of each instalment is equal, save that all but the final instalment shall be rounded to a number of whole pounds.

(2) Any amount paid by the Secretary of State or a relevant precepting authority in respect of liability for a year under regulation 12, whether or not paid or transferred in accordance with paragraph (1) and (2), is to be treated as discharging that liability to the extent of the payment.

Transfers between funds

15.—(1) A transfer under section 97(3) or 97(4) of the 1988 Act of a billing authority's share of a surplus or deficit in respect of non-domestic rates must be made during the course of the relevant year by means of no more than 24 instalments such that—

- (a) the first instalment is payable no later than 15th May;
- (b) the final instalment is payable no later than 31st March;
- (c) there are an equal number of days between each instalment;
- (d) the amount of each instalment is equal, save that all but the final instalment must be rounded to a number of whole pounds.

Recovery

16. Where an amount has become payable by a billing authority or major precepting authority under any provision of these Regulations, and it has not been paid, it shall be recoverable in a court of competent jurisdiction.

SCHEDULES

SCHEDULE 1

Regulation 4

Non-Domestic Rating Income

PART 1

Calculation of non-domestic rating income

1.—(1) Subject to sub-paragraph (2) the amount specified in this paragraph is the amount calculated in accordance with the formula—

$$(A - B) + (C - D) - E - F$$

Where—

A is the total of amounts credited to the billing authority's collection fund income and expenditure account in the year in accordance with proper practices in respect of non-domestic rates payable under sections 43 or 45 of the 1988 Act;

B is the total of amounts charged to the billing authority's collection fund income and expenditure account in the year in accordance with proper practices in respect of non-domestic rates payable under sections 43 or 45 of the 1988 Act;

C is the amount of any transitional protection payments made to the billing authority in the year;

D is the amount of any transitional protection payment made by the billing authority in the year; and

E is the billing authority's allowance for its costs of collection and recovery for the year, calculated in accordance with paragraph 2;

F is the total of amounts calculated in accordance with regulations made under paragraph 37 or 38 of Schedule 7B to the 1988 Act in respect of the billing authority as an amount to be disregarded for the purpose of a calculation of non-domestic rating income for the year;

(2) For a special authority the amount specified by this paragraph shall be the amount calculated in accordance with sub-paragraph (1) as if the authority's non-domestic rating multipliers for a year were equal to the non-domestic rating multipliers for that year determined in accordance with Part 1 of Schedule 7 to the 1988 Act, less X, where the value of X for the financial year beginning 1st April 2013 is [£10,271,000 and for subsequent years is determined by the formula—

$$X_1 \times \frac{S_2}{S_1}$$

Where—

X₁ is the value of X for the preceding year;

S₂ is the small business non-domestic rating multiplier for the relevant year;

S_1 is the small business non-domestic rating multiplier for the preceding year.

Costs of collection and recovery

2.—(1) A billing authority's costs of collection and recovery are to be calculated in accordance with the formula—

$$\left(\frac{I \times K}{J}\right) + \left(\frac{L \times N}{M}\right) + O$$

where—

I is the number of hereditaments shown in the billing authority's local non-domestic rating list on 31st December in the preceding year, multiplied by the cost factor for the billing authority;

J is the total of I for all billing authorities;

K is 76 per cent of the amount allowed for the costs of collection and recovery;

L is the total of the rateable values shown in the billing authority's local non-domestic rating list on 31st December in the preceding year, multiplied by the cost factor for the billing authority;

M is the total of L for all authorities;

N is 24 per cent of the amount allowed for the costs of collection and recovery;

O is the total amount of the legal costs of the billing authority referred to in paragraph (5) below;

(2) For the purposes of sub-paragraph (1) above, where the year to which the relevant calculation relates is a year in which local non-domestic rating lists are compiled under section 41(1) of the 1988 Act, the hereditaments shown in an authority's local non-domestic rating list, and the rateable value of those hereditaments, shall be taken to be the hereditaments, and the rateable values, shown in the list which the valuation officer for the authority proposes to compile in that year and which he has sent to the authority under section 41(5) of the 1988 Act.

(3) The cost factor for a billing authority is the cost factor shown for that authority in Part 2 of this Schedule.

(4) The amount allowed for the costs of collection and recovery is £84,000,000.

(5) The legal costs referred to in this paragraph are the reasonable costs of another party to proceedings brought or defended by the billing authority and paid in the preceding year where the following conditions are satisfied—

- (a) the proceedings were brought or defended by the authority to clarify the law as respects liability for, or the authority's powers to enforce, non-domestic rates;
- (b) before bringing or defending proceedings the authority obtained advice in writing by counsel—
 - (i) that the point of law concerned had not already been determined in previous proceedings;
 - (ii) that a decision by the authority to bring or defend the proceedings, or to continue to do so, would be a reasonable decision;
- (c) the action was unsuccessful on that point of law and costs were awarded against the authority, or the authority withdrew from the proceedings as respects that point on the advice of counsel and payment by the authority of the other party's reasonable costs was made by that party a condition of consenting to withdrawal.

(6) For the purposes of paragraph (5)—

- (a) references to proceedings are to proceedings in a court of law including the Upper Tribunal;
- (b) any appeal from a decision of a court or the Upper Tribunal shall be regarded as separate proceedings.

PART 2
Cost Factors

[table of cost factors]

SCHEDULE 2

Regulation 9(1)

Transfer from collection fund to general fund

1. The amount to be transferred is the amount calculated in accordance with the formula:

$$(F \times G) + H + I + J$$

Where—

F is the billing authority's non-domestic rating income for the year

G is —

- (a) 50% where the billing authority is a county council, or is a district council in an area for which there is no county council, and the authority is a fire and rescue authority;
- (b) 49% where the billing authority is a county council, or is a district council in an area for which there is no county council, and the authority is not a fire and rescue authority;
- (c) 40% where the billing authority is a district council in an area for which there is a county council; and
- (d) 30% where the billing authority is a London borough council.

H is the billing authority's allowance for its costs of collection and recovery for the year, calculated in accordance with paragraph 2 of Schedule 1.

I is the total of amounts calculated in accordance with regulations made under paragraph 37 or 38 of Schedule 7B to the 1988 Act in respect of the billing authority as an amount to be disregarded for the purpose of a calculation of non-domestic rating income for the year;

J is the amount of any deduction from the central share payment made in accordance with regulation 7.

SCHEDULE 3

Regulation 12

Rules for estimation and apportionment of surplus and deficit

Calculation of surplus or deficit

1.—(1) A billing authority must estimate whether there is a surplus or deficit with respect to non-domestic rates in its collection fund for the preceding year, and if so, the amount of the surplus or deficit by calculating the difference between the amount referred to in sub-paragraph (3) and the amount referred to in sub-paragraph (4).

- (2) Where the amount referred to in sub-paragraph (3) is—
 - (a) more than the amount referred to in sub-paragraph (4), there is a surplus, the amount of which is the difference;
 - (b) less than the amount referred to in sub-paragraph (4), there is a deficit, the amount of which is the difference;
 - (c) the same as the amount referred to in sub-paragraph (4), there is no surplus or deficit.
- (3) The amount referred to in this sub-paragraph is the total of—

- (a) the amount of any opening surplus on the income and expenditure account of the billing authority's collection fund with respect to non-domestic rating which was brought forward from the relevant prior year and was shown in the billing authority's accounts for the relevant prior year as the collection fund income and expenditure account surplus.;
 - (b) the billing authority's estimate of the total of amounts credited or to be credited to the authority's collection fund income and expenditures account in accordance with proper practices in respect of non-domestic rates payable under sections 43 and 45 in the preceding year;
 - (c) transitional protection payments received or to be received by the billing authority;
 - (d) transfers to the billing authority's collection fund made or to be made under regulation 10;
 - (e) transfers to the collection fund and any payments by relevant precepting authorities or the Secretary of State under regulation 14 made or to be made in respect of an estimated deficit with respect to non-domestic rating in the billing authority's collection fund for the relevant prior year;
 - (f) [interest].
- (4) The amount referred to in this sub-paragraph is the total of—
- (a) the amount of any opening deficit on the income and expenditure account of the billing authority's collection fund with respect to non-domestic rating which was brought forward from the relevant prior year and was shown in the billing authority's accounts for the relevant prior year as the collection fund income and expenditure account deficit;
 - (b) the billing authority's estimate of the total of amounts charged or to be charged to the authority's collection fund income and expenditure account in accordance with proper practices in respect of non-domestic rates payable under sections 43 and 45 in the preceding year;
 - (c) transitional protection payments made or to be made by the billing authority;
 - (d) payments to the Secretary of State made or to be made under paragraph 6(1) of Schedule 7B to the 1988 Act;
 - (e) payments to relevant precepting authorities made or to be made under regulations made under paragraph 8 of schedule 7B to the 1988 Act;
 - (f) transfers to the billing authority's general fund made or to be made under regulations 8 or 10;
 - (g) transfers to the billing authority's general fund and payments to relevant precepting authorities and the Secretary of State under regulation 13 in respect of an estimated surplus with respect to non-domestic rating in the billing authority's collection fund for the relevant prior year,
 - (h) [interest].
- (5) The amounts referred to in paragraphs 1(3)(a) and 1(4)(a) shall be zero for the relevant year beginning 1st April 2014.
- (6) In this paragraph, a reference to the relevant prior year is a reference to the year beginning two years before the beginning of the relevant year.

Apportionment of surplus and deficit

2.—(1) The Secretary of State's share of any surplus or of any deficit for a relevant year is 50% of the surplus or deficit for that year.

(2) A relevant precepting authority's share of any surplus or of any deficit for a relevant year is the amount of the surplus or deficit for that year multiplied by the relevant precepting authority share set out in regulation 3.

(3) The billing authority's share of any surplus or of any deficit for a relevant year is—

- (a) 50% where the billing authority is a county council, or is a district council in an area for which there is no county council, and the authority is a fire and rescue authority;

- (b) 49% where the billing authority is a county council, or is a district council in an area for which there is no county council, and the authority is not a fire and rescue authority;
- (c) 40% where the billing authority is a district council in an area for which there is a county council;
- (d) 30% where the billing authority is a London borough council.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Under paragraph 6 of Schedule 7B of the Local Government Finance Act 1988 (“the 1988 Act”), billing authorities are required to pay a proportion of their non-domestic rating income to the Secretary of State (“the central share”). The proportion that is to be the central share is set out in the Local Government Finance Report for each year.

Under paragraph 9 of Schedule 7B to the 1988 Act the Secretary of State may require billing authorities to make payments to major precepting authorities. Regulation 3 provides that such payments are to be made to county councils, fire and rescue authorities and the Greater London Authority in whose area the billing authority is. Regulation 3 also provides the amount of the payments by reference to a proportion of the authority’s non-domestic rating income.

“Non-domestic rating income” is defined for the purposes of paragraph 6 of Schedule 7B and these Regulations in regulation 4 and Schedule 1. The starting point is an estimate of the aggregate of amounts charged and credited to the authority’s income and expenditure account with respect to non-domestic rates in the year accordance with proper accounting practices. This equates to the amounts payable by businesses to the authority under section 45 and 47 of the 1988 Act in the year, and automatically includes adjustments for previous years.

This figure is subject to a number of adjustments – for transitional protection payments made or received by the authority under Part 8 of Schedule 7B to the 1988 Act, for the authority’s costs of collection, and for amounts disregarded under provision made by regulations made under Part 10 of Schedule 7B to the 1988 Act (“disregarded amounts”).

Regulations 5, 6 and 8 make provision for the distribution of the central and precepting authority shares of the non-domestic rating income in the year in accordance with specified schedules of payments. Regulation 9 provides for the transfer of the authority’s share of its income, plus an amount for the costs of collection and the disregarded amounts to the authority’s General Fund. Regulation 7 provides for a deduction of an amount specified in regulations made under paragraph 8 of Schedule 7B to the 1988 Act from the central share payments.

After the end of the year the authority is required to carry out further calculations and have these certificated. Provision is made for the reconciliation of certain amounts because these amounts will be dealt with outside the provisions of Part 3 of the Regulations. If an authority has made provision for bad or doubtful debt that is disallowed by the auditor that carries out the certification, the authority is required to make adjustment so that it carried this cost, rather than it being shared with the Secretary of State and the major precepting authorities.

Part 3 of the Regulations provide for the calculation of the surplus or deficit on the billing authority collection fund income and expenditure account. The amount is to be estimated before the end of the year. It is apportioned between the billing authority, the Secretary of State, and the major precepting authorities in the same proportions as the income was shared. Rules for the calculation of the surplus and deficit estimate are set out in Schedule 3.

This a draft of the Regulations published for the purpose of consultation.

STATUTORY INSTRUMENTS

2012 No. xxxx

RATING AND VALUATION, ENGLAND

**The Non-Domestic Rating (Levy and Safety Net) Regulations
2012**

Made - - - - *****

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 143(1) and (2) of and paragraphs 22, 25, 28, 37(1) and (2) of Schedule 7B to the Local Government Finance Act 1988(a).

In accordance with section 143(9D)(b) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Non-Domestic Rating (Levy and Safety Net) Regulations 2012 and come into force on the day after the day on which they are made.

Interpretation

2.—(1) In these Regulations—

“the 1988 Act” means the Local Government Finance Act 1988;

“billing authority” means a billing authority in England;

“authority” means a relevant authority other than a local policing body;

“baseline funding level” means the amount calculated with respect to an authority in accordance with regulation 5;

“business rates baseline” means the amount specified with respect to an authority by regulation 5 and Schedule 2;

“certified non-domestic rates income” has the same meaning as in the Non-Domestic Rating (Rates Retention) Regulations 2012;

“retained rates income” has the meaning given in regulation 4;

“preceding year” means the year preceding the relevant year;

(a) 1988 c. 41. Schedule 7B was inserted into the Local Government Finance Act 1988 by section 1 of and Schedule 1 to, the Local Government Finance Act 2012 (c.xx).

(b) Section 143(9D) was inserted by section 1 of the Local Government Finance Act 2012.

“proper practices” has the same meaning as in section 21(2) of the Local Government Act 2003(a);

“relevant year” means the financial year for which a calculation of a levy or safety net payment is being made;

“safety net threshold” has the meaning given in regulation 8(2);

“small business non-domestic rating multiplier” has the meaning given by Schedule 7 to the 1988 Act.

(2) In these Regulations any reference (however framed) to a billing authority’s collection fund income and expenditure account is a reference to a revenue account to which, in accordance with proper practices, are credited or charged, as the case may be, amounts in respect of the authority’s income and expenditure relating to sums paid or to be paid into or payments met or to be met from the authority’s collection fund.

Pools of authorities

3. A pool of authorities designated under paragraph 34 of Schedule 7B to the 1988 Act is to be treated as a relevant authority for the purpose of these Regulations.

Meaning of retained rates income for purposes of levy and safety net calculations

4.—(1) Where the authority is a billing authority, its retained rates income for a year is the amount calculated in accordance with paragraph 1 of Schedule 1 to these Regulations.

(2) Where the authority is a major precepting authority its retained rates income for a year is the amount calculated in accordance with paragraph 2 of Schedule 1 to these Regulations.

(3) Where the authority is a pool of authorities, its retained rates income for a year is the amount calculated in accordance with paragraph 3 of Schedule 1 to these Regulations.

Business rates baseline and baseline funding level

5.—(1) The business rates baseline of an authority is the amount specified with respect to that authority in column B of the table in Schedule 2 to these Regulations.

(2) The baseline funding level for an authority for the year commencing on 1st April 2013 is the amount specified with respect to that authority in column C of the table in Schedule 2 to these Regulations.

(3) The baseline funding level for an authority for a year commencing on or after 1st April 2014 is the amount calculated in accordance with the formula—

$$A \times \frac{B_2}{B_1}$$

Where—

A is the baseline funding level for the year immediately preceding the relevant year;

B₂ is the small business non-domestic rating multiplier for the relevant year; and

B₁ is the small business non-domestic rating multiplier for the preceding year.

Requirement to make levy payment

6.—(1) An authority must make a levy payment to the Secretary of State in respect of a year where the following conditions are met—

(a) 2003 c.26.

- (a) the authority's individual levy rate calculated in accordance with paragraph (2) is a positive number greater than zero; and
- (b) the authority's retained rates income for the relevant year is greater than its baseline funding level for that year.

(2) An authority's individual levy rate is the amount calculated in accordance with the formula—

$$1 - \frac{C}{D}$$

Where—

C is the authority's baseline funding level for the year commencing on 1st April 2013;

D is the authority's business rates baseline.

Amount of levy payment

7. Where an authority is required to make a levy payment to the Secretary of State for a year the amount of that payment is the amount calculated in accordance with the formula—

$$E(F - G)$$

Where—

E is the authority's individual levy rate calculated in accordance with regulation 5(2);

F is the authority's retained rates income for the relevant year;

G is the authority's baseline funding level for the relevant year.

Requirement to make a safety net payment

8.—(1) The Secretary of State must make a safety net payment to an authority in respect of a year where its retained rates income for the relevant year is less than its safety net threshold for that year.

(2) An authority's safety net threshold for a year is [xx] per cent of its baseline funding level for that year.

Amount of safety net payment

9.—(1) Where the Secretary of State is required to make a safety net payment to an authority for a year the amount of that payment is the difference between the authority's retained rates income for the relevant year and its safety net threshold for that year.

(2) Where a payment on account has been made in respect of the relevant year this must be deducted from the amount payable under paragraph (1).

(3) Where the payment on account exceeds the amount calculated under paragraph (1) the authority must pay the difference between the two amounts to the Secretary of State.

Request for payment of safety net on account

10.—(1) Before the end of a year an authority may request the Secretary of State calculate whether the Secretary of State is likely to be required to make a safety net payment to the authority in respect of that year.

(2) A request must be made on or before 31st January in the preceding year and be accompanied by the authority's estimate of its retained rates income for the year.

Payments on account

11.—(1) Where the Secretary of State has received a request in accordance with regulation 10, the Secretary of State must make a payment on account to the authority of the amount that is the difference between the authority's estimate of its retained rates income for the relevant year and its safety net threshold for that year.

(2) A payment on account shall be made in the course of the relevant year by means of no more than 24 instalments such that—

- (a) the first instalment is payable no later than 15th May;
- (b) the final instalment is payable no later than 31st March;
- (c) there are an equal number of days between each instalment;
- (d) the amount of each instalment is equal, save that all but the final instalment shall be rounded to a number of whole pounds.

Signed by authority of the Secretary of State for Communities and Local Government

Date _____
Parliamentary Under Secretary of State
Department for Communities and Local Government
Name

SCHEDULE 1

Regulation 4

Calculation of retained rates income

Calculation for billing authorities

1.—(1) The retained rates income of an authority that is a billing authority is the amount calculated in accordance with the formula—

$$KL + (N - M - O) + (P - Q)$$

Where—

K is —

- (a) 50% where the billing authority is a county council, or is a district council in an area for which there is no county council, and the authority is a fire and rescue authority;
- (b) 49% where the billing authority is a county council, or is a district council in an area for which there is no county council, and the authority is not a fire and rescue authority;
- (c) 40% where the billing authority is a district council in an area for which there is a county council; and
- (d) 30% where the billing authority is a London borough council.

L is the authority's certified non-domestic rates income for the relevant year;

M is the amount calculated in accordance with sub-paragraph 2 below;

N is the amount calculated in accordance with sub-paragraph 3 below;

O is the amount calculated in accordance with sub-paragraph 4 below;

P is the amount paid to the authority by the Secretary of State for the relevant year in accordance with Part 5 of Schedule 7B to the 1988 Act (principal payments in connection with local retention of non-domestic rates); and

Q is the amount paid by the authority to the Secretary of State for the year in accordance with Part 5 of Schedule 7B to the 1988 Act.

(2) The amount calculated in accordance with this sub-paragraph is the amount which is the total of—

- (a) amounts credited to the authority's collection fund in the year in accordance with proper practices in respect of non-domestic rates payable under sections 43 or 45 of the 1988 Act; less
- (b) amounts charged to the authority's collection fund in the year in accordance with proper practices in respect of non-domestic rates payable under sections 43 or 45 of the 1988 Act.

(3) The amount calculated in accordance with this sub-paragraph is the amount that would have been calculated in accordance with sub-paragraph (2) if, in respect of any day in the relevant year or any day in a preceding year, any determination under section 47 or reduction or remission under section 49 of the 1988 Act had not been made.

(4) The amount calculated in accordance with this sub-paragraph is the amount which is the total of—

- (a) 25 per cent of the difference between the amount calculated in accordance with sub-paragraph (3) and the amount which would be so calculated were a determination under section 47 of the 1988 Act where one or more of the following applies in relation to the hereditament to which the determination relates taken into account—
 - (i) the ratepayer is a charity or trustees for a charity, and the hereditament is wholly or mainly used for charitable purposes (whether of that charity or of that and other charities); or
 - (ii) the ratepayer is a registered club for the purposes of Chapter 9 of Part 13 of the Corporation Tax Act 2010 (community amateur sports clubs) and the hereditament is not an excepted hereditament and is wholly or mainly used—
 - (aa) for the purposes of that club; or
 - (bb) for the purposes of that club and of other such registered clubs;
- (b) 75 per cent of the difference between the amount calculated in accordance with sub-paragraph (2) and the amount which would be so calculated were a determination under section 47 of the 1988 Act where one or more of the following applies in relation to the hereditament to which the determination relates taken into account—
 - (i) the hereditament is not an excepted hereditament, and all or part of it is occupied for the purposes of one or more institutions or other organisations none of which is established or conducted for profit and each of whose main objects are charitable or are otherwise philanthropic or religious or concerned with education, social welfare, science, literature or the fine arts;
 - (ii) the hereditament is not an excepted hereditament, it is wholly or mainly used for purposes of recreation, and all or part of it is occupied for the purposes of a club, society or other organisation not established or conducted for profit;
 - (iii) the hereditament meets the following conditions—
 - (aa) that the hereditament is within a settlement identified in the billing authority's rural settlement list for the relevant year; and
 - (bb) that the rateable value of the hereditament shown in the local non-domestic rating list at the beginning of the relevant year is not more than £16,500;
- (c) 75 per cent of the difference between the amount calculated in accordance with sub-paragraph 2 above and the amount which would be so calculated if, in respect of any relevant day or any day in a preceding year, any reduction or remission by the authority under section 49 of the Act were taken into account; and
- (d) the amount of any relief calculated for the purpose of regulations made under paragraph 8 of Schedule 7B to the 1988 Act (deductions from central share payments).

Calculation for major precepting authorities

2. The retained rates income of an authority that is a major precepting authority is the amount calculated in accordance with the formula—

$$RS(P - Q)$$

Where—

R is the sum of the certified non-domestic rates income of all billing authorities required to make payments to the major precepting authority for the relevant year under Part 4 of Schedule 7B to the 1988 Act (payments by billing authorities to major precepting authorities).

S is—

- (a) 10% where the relevant authority is a county council which is a fire and rescue authority;
- (b) 9% where the relevant authority is a county council which is not a fire and rescue authority;
- (c) 20% where the relevant authority is the Greater London Authority;
- (d) 1% where the relevant authority is a fire and rescue authority not falling within paragraph (a).

P is the amount paid to the authority by the Secretary of State for the relevant year in accordance with Part 5 of Schedule 7B to the Act (principal payments in connection with local retention of non-domestic rates).

Q is the amount paid by the authority to the Secretary of State for the year in accordance with Part 5 of Schedule 7B to the Act.

Calculation for pools

3. The retained rates income of a relevant authority that is a pool of authorities is the sum of the retained rates income of all the authorities in the pool.

SCHEDULE 2

Regulation 5

[Table of authorities, baseline funding and business rates baselines]

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations are part of the system of local retention of non-domestic rates, established by Schedule 7B of the Local Government Finance Act 1988 (“the 1988 Act”). They make provision for calculating whether an authority is required to make a levy payment to the Secretary of State for a year and if so the amount of that payment. They also provide for calculating whether the Secretary of State is required to make safety net payments to an authority and the amount of such a payments. For the purposes of these Regulations a pool of authorities is treated as a single authority.

Regulation 4 and Schedule 1 provide for the calculations of each authority’s “retained rates income”. This is broadly the income that the authority has received from non-domestic rates, plus or minus any top up received or tariff payment made under Part 5 of Schedule 7B to the Act. For billing authorities an adjustment is made for certain discretionary relief, reductions and remissions.

Regulation 5 and Schedule 2 define “business rates baseline” and “baseline funding level” for the calculation of the levy and safety net payments. An authority’s business rates baseline is fixed,

whilst it's baseline funding level is adjusted annually in line with the change to the small business non-domestic rating multiplier.

Regulation 6 and 7 set out the circumstances in which a levy payment is required, and how the amount of that payment is to be calculated.

Regulations 8 and 9 set out the circumstances in which a safety net payment is required, and how the amount of that payment is calculated. Regulations 10 and 11 provide for safety net payments on account. An authority can request such a payment before the beginning of the year if it thinks its retained rates income for the year will be below its safety net threshold.

DRAFT

This is a draft of the Regulations, published for the purposes of consultation.

S T A T U T O R Y I N S T R U M E N T S

2012 No.

RATNG AND VALUATION, ENGLAND

**The Non-Domestic Rating (Renewable Energy Projects)
Regulations 2012**

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

The Secretary of State for Communities and Local Government, in exercise of the powers conferred by paragraphs 40 and 41 of Schedule 7B to the Local Government Finance Act 1988(a), makes the following Regulations:

Before making these Regulations, the Secretary of State for Communities and Local Government has consulted (***) and such other persons as he thinks fit in accordance with paragraph 40(8) of Schedule 7B.

These Regulations are made with the consent of the Treasury in accordance with paragraph 40(10) of Schedule 7B.

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Non-Domestic Rating (Renewable Energy Projects) Regulations 2012 and come into force on ***.

(2) The designations made by these Regulations take effect on 1st April 2013.

Interpretation

2. In these Regulations—

“the 1988 Act” means the Local Government Finance Act 1988;

(a) 1988 c.41. Schedule 7B was inserted into the Local Government Finance Act 1988 by Section 1 of, and Schedule 1 to, the Local Government Finance Act 2012.

“altered hereditament” has the meaning given by paragraph 1 of Schedule 1 to these Regulations;

“authority” means a billing authority in England whose area includes a hereditament within a designated class;

“biomass” is to be construed in accordance with article 4 of the Renewables Obligation Order 2009(a);

“designated class” means a class of hereditaments designated by Part 2 of these Regulations;

“generating plant” means—

(a) in relation to a hereditament falling within class A to E, plant in or on the hereditament which is used or available for use for the purposes of generating electricity;

(b) in relation to a hereditament falling within class F, plant which is used or available for use for the purposes of generating electricity;

“new hereditament” has the meaning given by paragraph 1 of Schedule 2 to these Regulations;

“non-domestic rating income” in relation to a hereditament has the meaning given by regulation 13;

“proper practices” has the same meaning as in section 21(2) of the Local Government Act 2003(b);

“rateable plant and machinery” means plant and machinery specified in the Valuation for Rating (Plant and Machinery) (England) Regulations 2000(c);

“relevant valuation officer” means the valuation officer for an authority whose area includes a hereditament within a designated class;

“relevant year” means the year for which a calculation under Schedule 7B is being made; and

“renewable power station” has the meaning given by regulation 5.

Certificates: general

3.—(1) The relevant valuation officer must certify the values which fall to be certified under these Regulations and issue the authority with a certificate containing the details of the certification as soon as reasonably practicable after the authority has requested certification.

(2) A certificate issued under these Regulations has effect for each day beginning with the date that the circumstances which require a certificate to be issued first arise, unless paragraph (4) applies.

(3) A certificate issued under these Regulations must specify the date on which the certificate takes effect in accordance with paragraph (2) or (4), as the case may be.

(4) Where the relevant valuation officer forms the opinion that a certificate under these Regulations is inaccurate, the relevant valuation officer must certify the value which in that officer’s opinion should be substituted for that originally certified.

(5) A certificate under paragraph (4) has effect in place of the previous certificate.

(6) The relevant valuation officer certifying a value in pursuance of these Regulations must send a copy of the certificate to the authority concerned.

(7) A certificate issued under these Regulations must be retained by the relevant valuation officer who issued it.

(a) S.I. 2009/785.
(b) 2003 c.26.
(c) S.I. 2000/540.

PART 2

Designation of classes of hereditaments

Designated classes of hereditaments

4. The classes of hereditaments described in this Part are designated for the purposes of calculating an amount to be disregarded in accordance with Part 3.

Renewable power stations

5.—(1) In these Regulations, a hereditament is a renewable power station if—

- (a) the hereditament comprises land, plant or buildings used or available for use for the purpose of generating electricity (other than by means of the burning of waste, unless the waste is biomass), where such use is the sole or primary function of the hereditament; and
- (b) the generating plant in or on the hereditament uses as its primary source of energy—
 - (i) wind power;
 - (ii) water power;
 - (iii) solar power;
 - (iv) the burning of biomass;
 - (v) the burning of gas from biomass; or
 - (vi) the burning of gas from a landfill site.

(2) In determining whether the primary function of a hereditament is for the purpose of generating electricity, no account shall be taken of so much of any heat produced in or on the hereditament as is produced other than for the purpose of the generation of electricity.

Class A: new renewable power stations

6.—(1) Class A consists of any hereditament in relation to which the conditions in paragraph (2) are fulfilled.

(2) The conditions mentioned in paragraph (1) are that—

- (a) the hereditament is a renewable power station;
- (b) the hereditament is first entered onto a local non-domestic rating list for the area of a billing authority in England on or after 1st April 2013; and
- (c) neither Schedule 1 or 2 applies.

Class B: existing renewable power stations

7.—(1) Class B consists of any hereditament in relation to which the conditions in paragraph (2) are fulfilled.

(2) The conditions mentioned in paragraph (1) are that—

- (a) the hereditament is a renewable power station;
- (b) the hereditament was first entered onto a local non-domestic rating list for the area of a billing authority in England before 1st April 2013; and
- (c) the rateable value for the hereditament for a day is greater than the rateable value of that hereditament on 1st April 2013.

Class C: renewable power stations created from class B hereditaments

8.—(1) Class C consists of any hereditament in relation to which the conditions in paragraph (2) are fulfilled.

- (2) The conditions mentioned in paragraph (1) are that—
- (a) the hereditament is a renewable power station;
 - (b) the hereditament is first entered onto a local non-domestic rating list for the area of a billing authority in England on or after 1st April 2013;
 - (c) the rateable value for the hereditament for a day is greater than the notional 1st April 2013 rateable value^(a) of that hereditament; and
 - (d) the hereditament is an altered hereditament or a new hereditament to which Schedule 1 or 2 applies.

Class D: energy from waste plants

9.—(1) Class D consists of any hereditament in relation to which the conditions in paragraph (2) are fulfilled.

- (2) The conditions mentioned in paragraph (1) are that—
- (a) the hereditament is first entered onto a local non-domestic rating list for the area of a billing authority in England on or after 1st April 2013;
 - (b) the hereditament comprises land, plant or buildings of which the sole or primary function is either—
 - (i) generating electricity where the primary source of power for that purpose is the burning of waste; or
 - (ii) burning waste, where the hereditament is also used for generating electricity and the primary source of power for that purpose is the burning of waste.

Class E: other hereditaments used for the purpose of generating electricity

10.—(1) Class E consists of any hereditament in relation to which the conditions in paragraph (2) are fulfilled.

- (2) The conditions mentioned in paragraph (1) are that—
- (a) the hereditament includes separately identifiable rateable plant and machinery used or available for use for the purpose of generating electricity;
 - (b) that rateable plant and machinery started to be used or became available for use for the purpose of generating electricity on or after 1st April 2013; and
 - (c) the generating plant in relation to that rateable plant and machinery uses as its primary source of energy—
 - (i) wind power;
 - (ii) water power;
 - (iii) solar power;
 - (iv) the burning of biomass;
 - (v) the burning of gas from biomass; or
 - (vi) the burning of gas from a landfill site.

Class F: cables and sub-stations associated with off shore generating plants

11.—(1) Class F consists of any hereditament in relation to which the conditions in paragraph (2) are fulfilled.

- (2) The conditions mentioned in paragraph (1) are that—

(a) Where Schedule 1 applies the notional 1st April 2013 is defined in paragraph 3 of that Schedule. Where Schedule 2 applies the notional 1st April 2013 is to be calculated in accordance with paragraph 2 of that Schedule.

- (a) the hereditament is first entered onto a local non-domestic rating list for the area of a billing authority in England on or after 1st April 2013;
 - (b) that hereditament is used wholly or mainly for the purposes of the transformation or transmission of electrical power;
 - (c) the generating plant for the hereditament is situated in offshore waters; and
 - (d) that generating plant for the hereditament uses as its primary source of energy—
 - (i) wind;
 - (ii) waves;
 - (iii) ocean currents; or
 - (iv) tidal flows.
- (3) In this regulation—
- “offshore waters” means—
- (a) waters in or adjacent to the United Kingdom which are between the mean low water mark and the seaward limits of the territorial sea; and
 - (b) waters within an area designated under section 1(7) of the Continental Shelf Act 1964^(a);
- “waves” means electricity generated from the capture of the energy created from the motion of naturally occurring waves on water.

PART 3

Rules for the calculation of an amount to be disregarded

Amount to be disregarded for the purpose of certain calculations

12.—(1) The amounts calculated in accordance with this Part are to be disregarded each year for the purpose of the following calculations under Schedule 7B to the 1988 Act—

- (a) paragraph 6 (payments in respect of the central share);
- (b) regulations under paragraph 7 (administrative arrangements for payments in respect of the central share);
- (c) regulations under paragraph 9 (payments by billing authorities to major precepting authorities);
- (d) regulations under paragraph 10 (administrative arrangements for payments by billing authorities to major precepting authorities);
- (e) paragraph 13 (calculations following local government finance report);
- (f) paragraph 16 (calculations following amending report);
- (g) paragraph 23 (calculations of levy payments);
- (h) paragraph 26 (calculations of safety net payments);
- (i) regulations under paragraph 28 (calculations of payments on account); and
- (j) paragraph 30 (calculations relating to distribution of remaining balance).

Non-domestic rating income

13.—(1) The non-domestic rating income in respect of a hereditament within a designated class for a day is the amount calculated in accordance with the formula—

$$(A - B) + (C - D)$$

(a) 1964 c.29.

where—

A is the total of amounts credited to the authority's collection fund income and expenditure account on a day in accordance with proper practices in respect of non-domestic rates payable under sections 43 or 45 of the 1988 Act in respect of that hereditament;

B is the total of amounts charged to the authority's collection fund income and expenditure account on a day in accordance with proper practices in respect of non-domestic rates payable under sections 43 or 45 of the 1988 Act in respect of that hereditament;

C is the amount of any transitional protection payments made to the authority on a day in respect of that hereditament;

D is the amount of any transitional protection payments made by the authority on a day in respect of that hereditament;

(2) In this paragraph, references to an authority's collection fund income and expenditure account is a reference to a revenue account to which, in accordance with proper practices, are credited and charged, as the case may be, amounts in respect of the authority's income and expenditure relating to sums paid or to be paid into or payments met or to be met from the authority's collection fund.

Calculation of the amount to be disregarded: classes A and F

14. The amount to be disregarded for a relevant year in respect of a hereditament within class A or F is the total non-domestic rating income in respect of that hereditament for each day of the year.

Calculation of the amount to be disregarded: class B

15. The amount to be disregarded for a relevant year in respect of a hereditament within class B is the total of the amounts calculated for each day of the year in accordance with the formula—

$$E \times \left(\frac{F - G}{F} \right)$$

where—

E is the non-domestic rating income in respect of that hereditament;

F is the rateable value shown for the hereditament in a local non-domestic rating list for the day; and

G is the rateable value shown for the hereditament for 1st April 2013 in the local non-domestic rating list.

Calculation of the amount to be disregarded: class C

16. The amount to be disregarded for a relevant year in respect of a hereditament within class C is the total of the amounts calculated for each day of the year in accordance with the formula—

$$E \times \left(\frac{H - I}{H} \right)$$

where—

E is the non-domestic rating income in respect of that hereditament;

H is the rateable value shown for the hereditament in a local non-domestic rating list for the day;
and

I is the notional 1st April 2013 rateable value in respect of the hereditament as determined in accordance with Schedule 1 or 2, as the case may be.

Calculation of the amount to be disregarded: class D

17.—(1) The amount to be disregarded for a relevant year in respect of a hereditament within class D is the total of the amounts calculated for each day of the year in accordance with the formula—

$$E \times \left(\frac{J}{K} \right)$$

where—

E is the non-domestic rating income in respect of that hereditament;

J is the proportion of rateable value shown for the hereditament in a local non-domestic rating list that is certified by the relevant valuation officer in accordance with paragraph (2);

K is the rateable value shown for the hereditament in a local non-domestic rating list for the day.

(2) The relevant valuation officer must, on request by the authority, certify the proportion of rateable value shown for the hereditament in a local non-domestic rating list which appears to that officer to be attributable to any part of the hereditament which—

- (a) is used or is intended to be used wholly or mainly in connection with the generation of electricity; and
- (b) has been in such use or intended for such use since on or after 1st April 2013.

Calculation of the amount to be disregarded: class E

18.—(1) The amount to be disregarded for a relevant year in respect of a hereditament within class E is the total of the amounts calculated for each day of the year in accordance with the formula—

$$E \times \left(\frac{L}{M} \right)$$

where—

E is the non-domestic rating income in respect of that hereditament;

L is the proportion of rateable value shown in a local non-domestic rating list that is certified by the relevant valuation officer in accordance with paragraph (2);

M is the rateable value shown for the hereditament in a local non-domestic rating list for the day.

(2) The relevant valuation officer must, on request by the authority, certify the proportion of rateable value shown for the hereditament in a local non-domestic rating list which appears to that officer to be the separately identifiable impact on the rateable value attributable to—

- (a) the rateable plant and machinery that meets the conditions in regulation 10(2); and
- (b) any associated land and buildings.

Signed by the authority of the Secretary of State for Communities and Local Government

Date

Name
Parliamentary Under Secretary of State
Department for Communities and Local Government

SCHEDULE 1

Regulations 6 and 8

Altered hereditaments

1.—(1) In this Schedule—

“altered hereditament” means a hereditament comprising, wholly or mainly, any property which was the whole or part of—

- (a) a hereditament shown in a local non-domestic rating list at any time; and
- (b) a hereditament which was at any time previously capable of falling within class B; and

“original hereditament” means the hereditament of which the altered hereditament is so comprised.

(2) For the purposes of paragraph 1(1)(b) a hereditament is to be treated as capable of falling within class B whether or not the condition in regulation 7(2)(c) is met.

2. This Schedule applies to an altered hereditament if—

- (a) the original hereditament was deleted from a local non-domestic rating list with effect from any day as a result of a structural alteration to that hereditament; and
- (b) for a day on or after 1st April 2013 the altered hereditament is shown for the first time in a local non-domestic rating list following the alteration.

3. Where this Schedule applies, the notional 1st April 2013 rateable value for the altered hereditament is the rateable value shown for the original hereditament on 1st April 2013.

SCHEDULE 2

Regulations 6 and 8

Splits, mergers and reorganisations

1.—(1) This Schedule applies where—

(a) on a day (“the creation day”) falling on or after 1st April 2013, a hereditament (“new hereditament”) comes into existence because—

- (i) property previously rated as a single hereditament becomes liable to be rated in parts;
- (ii) property previously rated in parts becomes liable to be rated as a single hereditament; or
- (iii) a hereditament or any part of a hereditament becomes part of a different hereditament; and

(b) immediately before the creation day a hereditament from which the new hereditament was formed in whole or in part (“old hereditament”) was capable of falling within class B.

(2) For the purposes of paragraph 1(1)(b), a hereditament is to be treated as capable of falling within class B whether or not the condition in regulation 7(2)(c) is met

2. Where this Schedule applies, the notional 1st April 2013 rateable value is the amount calculated in accordance with the formula—

$$(N + O - P) \times \left(\frac{Q}{R} \right)$$

where—

N is the total rateable value of any old hereditament which was capable of meeting the conditions in regulation 7(2)(a) and (b) shown in a local non-domestic rating list for 1st April 2013;

O is the total rateable value of any old hereditament which was not capable of meeting the conditions in regulation 7(2)(a) and (b) shown in a local non-domestic rating list for the day immediately preceding the creation day;

P is the amount certified by a relevant valuation officer under these Regulations in respect of any old hereditament for the day immediately preceding the creation day;

Q is the rateable value of the new hereditament shown in a local non-domestic rating list for the creation day;

R is the total rateable value of all new hereditaments created from the old hereditament shown for the creation day.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations designate particular classes of hereditaments in relation to which a billing authority may disregard an amount of non-domestic rating income for the purpose of certain calculations under Schedule 7B to the Local Government Act 1988 (local retention of non-domestic rates).

Part 1 provides for preliminary matters including, in regulation 3, general provisions applicable to certificates issued by valuation officers under these Regulations.

Part 2 sets out the designated classes of hereditaments in relation to which a proportion of non-domestic rating income is to be disregarded. Regulation 4 gives effect to the designations as of 1st April 2013. Regulation 5 defines a renewable power station for the purposes of this Part. Regulations 6, 7 and 8 define the circumstances in which a hereditament which is a renewable power station falls within a designated class. Splits, mergers, reorganisations and altered hereditaments (within the meaning of Schedules 1 and 2) formed from existing renewable power stations will fall within the definition of existing renewable power stations. Regulation 9 designates post 1st April 2013 energy from waste plants. Regulation 10 designates hereditaments which generate electricity, but are primarily used for other purposes, and therefore will not fall within the definition of renewable power station. Regulation 11 designates cables and sub-stations associated with offshore generating plants.

Part 3 makes provision for the calculations to be made of the amount to be disregarded for the purpose of calculations under the rates retention scheme. Calculations are to be made on a daily basis and collated to produce a yearly amount. Regulation 12 sets out the calculations under Schedule 7B of the Local Government Finance Act 1988, in respect of which the amounts are to be disregarded.

Regulation 13 defines non-domestic rating income. Regulation 14 provides that the amount to be disregarded in respect of new renewable power stations and cables and sub-stations associated with offshore generating plants is the total amount of non-domestic rating income in respect of such a hereditament.

Regulation 15 provides for the calculation of a proportion of non-domestic rating income attributable to the increase in income for an existing renewable power station.

Regulation 16 provides for the calculation of a proportion of non-domestic rating income in respect of a renewable power station created from a split, merger, reorganisation or alteration of an

existing renewable power station. The increase in income is calculated on the basis of a notional 1st April 2013 rateable value as calculated in accordance with Schedule 1 or 2.

Regulation 17 provides for the calculation of the proportion of non-domestic rating income to be disregarded in respect of energy from waste plants.

Regulation 18 provides for the calculation of the proportion of non-domestic rating income to be disregarded in respect of hereditaments used primarily for other purposes, but which include rateable plant and machinery used or available for the generation of electricity.

DRAFT

This is a draft of the Regulations, published for the purposes of consultation..

S T A T U T O R Y I N S T R U M E N T S

2012 No.

RATING AND VALUATION, ENGLAND

The Non-Domestic Rating (Designated Areas) Regulations 2012

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

The Secretary of State for Communities and Local Government in exercise of the powers conferred by paragraphs 8 and 39 of Schedule 7B to, the Local Government Finance Act 1988(a), makes the following Regulations:

These Regulations are made with the consent of the Treasury in accordance with paragraphs 39(13) and 8(3) of Schedule 7B to the Local Government Finance Act 1988.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Non-Domestic Rating (Designated Areas) Regulations 2012 and come into force on ***.

Interpretation

2. In these Regulations—

“the 1988 Act” means the Local Government Finance Act 1988;

“designated area” means an area designated by regulation 3 and Schedule 1;

“local list” means a list compiled and maintained in accordance with section 41 of the 1988 Act;

“non-domestic rating income” has the meaning given by Schedule 2 to these Regulations;

“preceding year” means the year immediately preceding the year for which a calculation under these Regulations is being made;

(a) 1988 c.41. Schedule 7B was inserted into the Local Government Finance Act 1988 by section 1 of, and Schedule 1 to, the Local Government Finance Act 2012.

“proper practices” has the meaning given in section 21(2) of the Local Government Act 2003(a);

“relevant billing authority” means a billing authority in England all or part of whose area falls within a designated area;

“specified year” means a year falling within the period specified in regulation 4; and

“small business non-domestic rating multiplier” has the meaning given by Schedule 7 to the 1988 Act.

PART 2

Local retention of non-domestic rates

Designation of areas

3. The areas referred to Schedule 1 to these Regulations are designated for the purpose of these Regulations.

Period of designation

4. The designations made by regulation 3 of, and Schedule 1 to, these Regulations take effect on 1st April 2013 and remain in effect for a period of 25 years beginning with that date.

Calculation of the proportion of non-domestic rating income to be disregarded

5.—(1) The rules for the calculation of the proportion of non-domestic rating income that is to be disregarded in relation to a relevant billing authority in respect of each designated area are the rules contained in Schedule 2 to these Regulations.

(2) Schedule 3 has effect for the purpose of specifying the figure representing item H in paragraph 3(2) of Schedule 2 to these Regulations.

(3) The amounts calculated in accordance with Part 1 of Schedule 2 are to be disregarded each year for the purpose of calculations under the following provisions of Schedule 7B to the 1988 Act—

- (a) paragraph 6 (payments in respect of the central share);
- (b) regulations under paragraph 7 (administrative arrangements for payments in respect of the central share);
- (c) regulations under paragraph 9 (payments by billing authorities to major precepting authorities);
- (d) regulations under paragraph 10 (administrative arrangements for payments by billing authorities to major precepting authorities);
- (e) paragraph 13 (calculations following local government finance report);
- (f) paragraph 16 (calculations following amending report);
- (g) paragraph 23 (calculations of levy payments);
- (h) paragraph 26 (calculations of safety net payments);
- (i) regulations under paragraph 28 (calculations of payments on account);
- (j) paragraph 30 (calculations relating to distribution of remaining balance).

(a) 2003 c.26.

PART 3

Deductions from payment of central share

Amount to be deducted from central share payment

6.—(1) The amount to be deducted from a billing authority's payment to the Secretary of State under paragraph 6 of Schedule 7B to the 1988 Act is the total of the amounts calculated in accordance with paragraph (3) for a year.

(2) The amount calculated in accordance with this paragraph is the amount which is the total of—

- (a) amounts credited to the authority's collection fund on a day in accordance with proper practices in respect of non-domestic rates payable under sections 43 or 45 of the 1988 Act in respect of a hereditament that is situated within an area shown on one of the maps and meets the conditions in paragraph (4); less
- (b) amounts charged to the authority's collection fund on a day in accordance with proper practices in respect of non-domestic rates payable under sections 43 or 45 of the 1988 Act in respect of that hereditament.

(3) The amount calculated in this paragraph is the amount which is the total of—

- (a) the difference between—
 - (i) the amount calculated in accordance with paragraph (2); and
 - (ii) the amount that would have been calculated in accordance with paragraph (2) had a determination under section 47(1)(a) of the 1988 Act as regards a hereditament that is situated within both a designated area and an area shown on one of the maps and which meets the conditions in paragraph (4) not been made, but disregarding any amount by which the amount of a determination would exceed the limit on the total de minimis aid that may be granted in accordance with Commission Regulation (EC) No 1998/2006(a) in respect of any particular undertaking; and
- (b) the amount that is the local share of the difference between—
 - (i) the amount calculated in accordance with paragraph (2); and
 - (ii) the amount that would have been calculated in accordance with paragraph (2) had a determination under section 47(1)(a) of the 1988 Act as regards a hereditament that is situated within an area shown on one of the maps, but is not within a designated area, and which meets the conditions in paragraph (4) not been made, but disregarding any amount by which the amount of a determination would exceed the limit on the total de minimis aid that may be granted in accordance with Commission Regulation (EC) No 1998/2006 in respect of any particular undertaking.

(4) The conditions are that—

- (a) the determination under section 47(1)(a) has had effect in respect of the ratepayer in relation to the hereditament for 5 years or less, disregarding any period before 1st April 2012; and
- (b) the ratepayer in respect of the hereditament became the ratepayer on or before 31st March 2015.

(5) In this regulation—

- (a) "area" in relation to a map means the area bounded externally by the outer edge of a red line;
- (b) "the maps" means the maps numbered *** and entitled "Maps referred to in Part 3 of the Non-Domestic Rating (Designated Areas) Regulations 2013" of which prints, signed by a member of the Senior Civil Service in the Department for Communities and Local

(a) Official Journal L 379, 28/12/2006 P. 0005-0010.

Government, are deposited and available for inspection at the offices of the Secretary of State and, in relation to each map, the billing authority concerned.

- (c) where part of a hereditament is situated within an area shown on one of the maps, references to a hereditament are to be read as meaning the whole of a hereditament.

Signed by authority of the Secretary of State for Communities and Local Government

Date

Name
Parliamentary Under Secretary of State
Department for Communities and Local Government

SCHEDULE 1

Regulation 3

Local retention of non-domestic rates: designation of areas

1. The areas listed in column 1 of the table in this Schedule are designated by reference to the numbered map or maps specified in column 2 of the table.
2. In relation to the maps specified in column 2 of the table, the designated area means the area or areas bounded externally by the outer edge of the blue line.
3. In this Schedule, “map” means the maps numbered *** and entitled “Maps referred to in Schedule 1 to the Non-Domestic Rating (Designated Areas) Regulations 2012”, of which prints, signed by a member of the Senior Civil Service in the Department for Communities and Local Government, are deposited and available for inspection at the offices of the Secretary of State for Communities and Local Government and in relation to each map, at the offices of the relevant billing authority.
4. For the purposes of determining the designated area, where part only of a hereditament is situated within an area shown on a map the whole of the hereditament is taken to be included within that designated area.

Designated area
(Column 1)

Numbered map
(Column 2)

Rules for calculation of the amount to be disregarded

PART 1

Calculation of the proportion of non-domestic rating income to be disregarded for the purpose of calculations under Schedule 7B to the 1988 Act

1.—(1) Subject to paragraph (2), the proportion of non-domestic rating income to be disregarded from calculations under Schedule 7B to the 1988 Act is the difference between the amount calculated in accordance with Part 2 and the amount calculated in accordance with Part 3.

(2) Where the amount calculated in accordance with Part 3 is greater than or equal to the amount calculated in accordance with Part 2, the proportion to be disregarded from calculations under Schedule 7B to the 1988 Act is zero.

PART 2

Calculation of non-domestic rating income

2.—(1) A relevant billing authority's non-domestic rating income in respect of a designated area for a specified year is the amount calculated in accordance with the formula—

$$(A - B) + (C - D) - E + F - G$$

where—

A is the total of amounts credited to the authority's collection fund income and expenditure account in the year in accordance with proper practices in respect of non-domestic rates payable under sections 43 or 45 of the 1988 Act in respect of hereditaments situated in the designated area;

B is the total of amounts charged to the authority's collection fund income and expenditure account in the year in accordance with proper practices in respect of non-domestic rates payable under sections 43 or 45 of the 1988 Act in respect of hereditaments situated in the designated area;

C is the amount of any transitional protection payments made to the authority in the year in respect of hereditaments situated in the designated area;

D is the amount of any transitional protection payments made by the authority in the year in respect of the hereditaments situated in the designated area;

E is the total of amounts credited to the authority's collection fund income and expenditure account in the year in respect of a hereditament situated in the designated area to which sub-paragraph (2) applies;

F is the amount of transitional protection payment made by the authority in the year in respect of a hereditament situated in the designated area to which sub-paragraph (2) applies;

G is the amount of transitional protection payment made to the authority in the year in respect of a hereditament situated in the designated area to which sub-paragraph (2) applies.

(2) This sub-paragraph applies to a hereditament which—

- (a) is to be treated as one hereditament by virtue of regulations under section 64(3)(b) of the 1988 Act; and
- (b) would have constituted three or more separate hereditaments had regulations under section 64(3)(b) not been made.

(3) In this paragraph, references to an authority's collection fund income and expenditure account is a reference to a revenue account to which, in accordance with proper practices, are

credited and charged, as the case may be, amounts in respect of the authority's income and expenditure relating to sums paid or to be paid into or payments met or to be met from the authority's collection fund.

PART 3

Calculation of the amount deducted from non-domestic rating income

3.—(1) In relation to each relevant billing authority in respect of each designated area there shall be calculated for a specified year which is not a year in which local lists must be compiled the amount described in sub-paragraph (2) or (3) as the case may be.

(2) For the year beginning on 1st April 2013, the amount calculated in accordance with the formula—

$$H \times \frac{I_2}{I_1}$$

where—

H is the figure provided in column 2 of the table in Schedule 3 in relation to each authority in respect of each designated area concerned;

I₂ is the small business non-domestic rating multiplier for the year beginning on 1st April 2013; and

I₁ is the small business non-domestic rating multiplier for the year beginning on 1st April 2012.

(3) For the year beginning on 1st April 2014 and for a subsequent specified year which is not a year in which local lists must be compiled, the amount calculated in accordance with the formula—

$$J \times \frac{K_2}{K_1}$$

where—

J is the amount calculated in accordance with paragraph 3(2), 3(3) or 4(2), as the case may be, for the preceding year;

K₂ is the small business non-domestic rating multiplier for the specified year concerned; and

K₁ is the small business non-domestic rating multiplier for the preceding year.

4.—(1) In relation to each relevant billing authority in respect of each designated area there shall be calculated for a specified year which is a year in which local lists must be compiled (“the revaluation year”) the amount described in sub-paragraph (2).

(2) The amount calculated in accordance with the formula—

$$L \times \left(\frac{M}{N} \times O \right)$$

where—

L is the amount calculated in accordance with paragraph 3(2) or 3(3), as the case may be, for the preceding year;

M is the aggregate rateable value of all hereditaments falling within the designated area and shown in the relevant billing authority's local list for 1st April in the revaluation year concerned;

N is the aggregate rateable value of all hereditaments falling within the designated area and shown in the relevant billing authority's local list for 31st March in the preceding year;

O is calculated in accordance with the formula—

$$\frac{P_2}{P_1}$$

where—

P₂ is the small business non-domestic rating multiplier for the revaluation year concerned;

P₁ is the small business non-domestic rating multiplier for the preceding year.

(3) In this paragraph, the rateable value of a hereditament is the rateable value for the day that would have been shown in the local list had the circumstances been as they existed on 1st April in the revaluation year.

SCHEDULE 3

Regulation 5(2)

Baseline figure for each designated area

1. For the purposes of paragraph 3(2) of Schedule 2 the figure referred to in H for the designated area referred to in column 1 is the number specified in column 2.

<i>Designated area</i> <i>(Column 1)</i>	<i>Baseline figure</i> <i>(Column 2)</i>
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EXPLANATORY NOTE

(This note is not part of the Regulations)

The purpose of these Regulations is to designate particular areas within which a proportion of the non-domestic rating income is to be calculated in accordance with the Regulations. Such proportions are to be disregarded by each billing authority all or part of whose area falls within the designated area for the purpose of particular calculations made under Schedule 7B to the Local Government Finance Act 1988 ("the 1988 Act") (local retention of non-domestic rates).

Regulation 3 and Schedule 1 designate the areas in relation to which a proportion of the non-domestic rating income is to be disregarded from certain calculations. The designations are made by reference to maps which are available for inspection at the office of the Secretary of State for Communities and Local Government.

Regulation 4 specifies that the designations take effect as of the 1st April 2013, and have effect for a period of 25 years. The effect of specifying the years is to trigger paragraph 37(9) of Schedule 7B to the 1988 Act, which restricts the type of amendments that may be made to the Regulations and prevents the revocation of the Regulations until after the end of the 25 year period.

Regulation 5 and Schedules 2 and 3 provide for the calculation of the proportion of non-domestic rating income that is to be disregarded. The starting point is the definition of non-domestic rating income which is essentially the amounts payable to the authority under section 43 or 45 of the 1988 Act in respect of hereditaments situated in the designated area, subject to a number of adjustments. The non-domestic rating income is then compared to a baseline figure representing existing non-domestic rating income in the area, which is to be uplifted each year, to produce an amount representing growth in income in the area. The calculation is to be made separately for each billing authority in respect of each of its designated areas.

Regulation 6 provides for the calculation of an amount to be deducted from a billing authority's central share payment. The deduction relates to the authority's determination under section 47 of the 1988 Act in respect of a hereditament situated in a particular area.

DRAFT

This is a draft of the Regulations, published for the purpose of consultation

S T A T U T O R Y I N S T R U M E N T S

2012 No. xxxx

RATING AND VALUATION, ENGLAND

**The Non-Domestic Rating (Transitional Protection Payments)
Regulations 2012**

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

The Secretary of State, in exercise of the powers conferred by section 143(1) and (2) of and paragraphs 32(1) to (3) and 33 of Schedule 7B to the Local Government Finance Act 1988(a), makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Non-Domestic Rating (Transitional Protection Payments) Regulations 2012 and come in to force on [coming into force date].

(2) In these Regulations—

“the 1988 Act” means the Local Government Finance Act 1988;

“billing authority” means a billing authority in England;

“preceding year” means the year immediately preceding the relevant year;

“proper practices” has the same meaning as in section 21(2) of the Local Government Act 2003(b);

“relevant year” means the year for which a calculation of non-domestic rating income or of a payment is being made; and

“relevant hereditament” means a hereditament shown in a local non-domestic rating list.

(3) In these Regulations any reference (however framed) to a billing authority’s collection fund income and expenditure account is a reference to a revenue account to which, in accordance with proper practices, are credited or charged, as the case may be, amounts in respect of the authority’s income and expenditure relating to sums paid or to be paid into or payments met or to be met from the authority’s collection fund.

(a) 1988 c. 41. Schedule 7B was inserted into the Local Government Finance Act 1988 by section 1 of and Schedule 1 to the Local Government Finance Act 2012 (c.xx).

(b) 2003 c.26.

Rules for calculation of deemed rating income

2.—(1) A billing authority's deemed rating income for a year is the amount calculated in accordance with the formula—

$$A - B$$

Where—

A is the total of the amount that would be credited to the billing authority's collection fund income and expenditure account in the year in accordance with proper practices in respect of non-domestic rates payable under sections 43 or 45 of the 1988 Act if no regulations under section 57A of the 1988 Act (transitional relief following compilation of local rating list) were in force for the relevant year or any earlier year and the circumstances set out in paragraph (2) applied;

B is the total of amounts that would be charged to the billing authority's collection fund income and expenditure account in the year in accordance with proper practices in respect of non-domestic rates payable under sections 43 or 45 of the 1988 Act if no regulations under section 57A of the 1988 Act were in force for the relevant year or any earlier years and the circumstances set out in paragraph (2) applied.

(2) For the purposes of paragraph (1) the circumstances are that in relation to all relevant hereditaments and all days in the relevant year and all previous years—

- (a) the hereditament is wholly occupied;
- (b) the conditions in section 43(4B) (small business rate relief) are fulfilled and the value of E in section 43(4A) of the 1988 Act(a) is 1;
- (c) that the conditions in section 43(6) (charities or registered community amateur sports clubs)(b) and 43(6B) of the 1988 Act (rural rate relief)(c) are not fulfilled;
- (d) that no determination under section 47 (discretionary relief) or reduction or remission under section 49 of the 1988 Act (reduction or remission in the case of hardship) has been made.

Rules for calculation of actual rating income

3.—(1) An authority's actual rating income for a year is the amount calculated in accordance with the formula—

$$D - E$$

Where—

D is the total of the amount that would be credited to the billing authority's collection fund income and expenditure account in the year in accordance with proper practices in respect of non-domestic rates payable under sections 43 or 45 of the 1988 Act if the circumstances set out in paragraph (2) applied; and

E is the total of amounts that would be charged to the billing authority's collection fund income and expenditure account in the year in accordance with proper practices in respect of non-domestic rates payable under sections 43 or 45 of the 1988 Act if the circumstances set out in paragraph (2) applied.

-
- (a) Section 43(4A) and (4B) were inserted into the 1988 Act by section 61(3) of the Local Government Act 2003 (c.26). Section 43(4B) was amended by section 70 of the Localism Act 2011 (c.20).
 - (b) Section 43(6) of the 1988 Act was amended by section 64(1) of the Local Government Act 2003 and by paragraphs 206 and 207 of Schedule 1 to the Corporation Tax Act 2010 (c.4)
 - (c) Section 43(6B) was inserted into the 1988 Act by paragraph 2(b) of Schedule 1 to the Local Government and Rating Act 1997 (c.29) and amended by section 3(2) of the Rating (Former Agricultural Premises and Rural Shops) Act 2001 (c.14) and section 63(2) of the Local Government Act 2003.

(2) For the purposes of paragraph (1) the circumstances are that in relation to all relevant hereditaments and all days in the relevant years and all previous years—

- (a) the hereditament is wholly occupied;
- (b) the conditions prescribed for the purposes of section 43(4B) (small business rate relief) are fulfilled and the value of E in section 43(4A) of the 1988 Act is 1;
- (c) that the conditions in section 43(6)(a) (charities or registered community amateur sports clubs) and 43(6B) of the 1988 Act (rural rate relief) are not fulfilled;
- (d) that no determination under section 47 (discretionary relief) or reduction or remission under section 49 of the 1988 Act (reduction or remission in the case of hardship) has been made.

Calculation of payments on account

4.—(1) On or before 31st January in the preceding year, an authority must—

- (a) estimate the amount of its deemed rating income for the relevant year;
- (b) estimate the amount of its actual rating income for the relevant year; and
- (c) notify the Secretary of State of the estimated amounts.

(2) If the authority fails to comply with paragraph (1) above or if the Secretary of State believes the amounts notified are not likely to have been calculated in accordance with these Regulations, the Secretary of State may make a calculation of the amounts; and where he makes such a calculation he must inform the authority why he has done so and notify it of the amounts calculated.

Payments on account

5.—(1) If an authority's deemed rating income for a year estimated in accordance with regulation 4 exceeds its actual rating income for the year estimated in accordance with that regulation, the Secretary of State must pay to the authority an amount equal to the excess.

(2) If the amount of an authority's actual rating income for a year estimated in accordance with regulation 4 exceeds its deemed rating income for the year estimated in accordance with that regulation, the authority must pay to the Secretary of State an amount equal to the excess.

(3) Amounts payable under this regulation shall be paid during the course of the relevant year by means of no more than 24 instalments such that—

- (a) the first instalment is payable no later than 15th May;
- (b) the final instalment is payable no later than 31st March;
- (c) there are an equal number of days between each instalment;
- (d) the amount of each instalment is equal, save that all but the final instalment shall be rounded to a number of whole pounds.

End of year calculations

6.—(1) On or before 30th September in the year following a relevant year a billing authority must—

- (a) calculate the amount of its deemed rating income for the relevant year;
- (b) calculate the amount of its actual rating income for the relevant year; and
- (c) arrange for the calculations and amounts to be certified in accordance with such arrangements as the Secretary of State may direct.

(a)

(2) The person certifying the calculations and amounts must send the certification to the Secretary of State and notify the billing authority of the amounts certified.

End of year payments

7.—(1) The end of year payment (if any) due shall be calculated according to the formula—

$$F - G - H + K$$

Where—

F is the authority's deemed rating income for the relevant year certified in accordance with regulation 6;

G is the authority's actual rating income for the relevant year certified in accordance with regulation 6;

H is the amount of any payments on account made by the Secretary of State to the authority;

K is the amount of any payments on account made by the authority to the Secretary of State.

(2) If the amount calculated in accordance with paragraph (1) is a positive figure, the Secretary of State must pay that amount to the authority;

(3) If the amount calculated in accordance with paragraph (1) is a negative figure, the authority must pay that amount to the Secretary of State;

(4) If the amount calculated in accordance with paragraph (1) is zero, no payment is due.

(5) A payment under this regulation is to be made as soon as reasonably practicable following the receipt by the Secretary of State of the certification sent to him in accordance with regulation 7(2).

Recovery

8. Where an amount has become payable by an authority under any provision of these Regulations, and it has not been paid, it shall be recoverable in a court of competent jurisdiction.

Signed by authority of the Secretary of State for Communities and Local Government

Date _____
Name
Parliamentary Under Secretary of State
Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Order)

The Local Government Finance Act 1988 ("the Act") provides for non-domestic hereditaments to be re-valued every five years. On a revaluation new non-domestic rating lists are compiled.

Regulations made under section 57A of the Act set out the rules for a transitional relief scheme to protect ratepayers from large increases in their rates bills following revaluation. The scheme operates to assist ratepayers whose bills would have increased above a certain amount by phasing in these increases gradually over up to five years. It is also phases in the reduction in bills of some ratepayers who would otherwise have seen their rates bills decrease immediately. The phasing in of the reductions funds the phasing in of the increases.

The effect of transitional arrangements is that in any given year a local authority may have more or less rates income than it would otherwise have. If no adjustment is made for such amounts, then under the rates retention scheme put in place by the Act, an authority's income will vary for reasons unrelated to underlying changes in business rates income.

These regulations make provision for payments to local authorities where their income is less as a result of the operation of the transitional arrangements; and for payments by authorities where their income is greater.

Regulation 2 provides for the calculation of the authority's deemed rating income. This is essentially the income the authority would have received had transitional arrangements not been in place. Regulation 3 provides for the calculation of the authority's actual rating income – the amount it has received net of transitional protection. All other relief and discounts are ignored for the purposes of calculating the transitional protection payment (see regulations 2(2) and 3(2)).

Regulation 4 and 5 provided that payments on account of the transitional protection payment are to be made in the course of the year to which they relate on the basis of estimated figures. At the end of the year a reconciliation payment will be required if the estimated figures differ from final amounts that are certified (regulations 6 and 7).

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