

**POLICY DEVELOPMENT: NOT A STATEMENT OF GOVERNMENT POLICY****Business Rates Retention Steering Group - 13 May 2016****Paper: BRRSG 02-05****Considering Legislative Changes Required for Full Business Rates Retention****Summary**

1. The implementation of 100 per cent business rates retention will require new legislation. This paper sets out the aspects of the 100 per cent retention policy which have already been announced, but are not within the scope of the existing legislation. It then outlines the existing legislative framework for the current 50 per cent rates retention system and considers whether each aspect of the existing legislation will be necessary under a 100 per cent rates retention system.

**Introduction**

2. At the first Steering Group meeting in April, DCLG indicated that it would be reasonable to expect a Bill for legislation on 100 per cent rates retention to be published by Government as soon as is practicable. At this stage it is envisaged that legislation will be similarly general and permissive as the primary legislation for 50 per cent business rates retention.
3. Until there is greater clarity about the design of the 100 per cent rates retention system, it is not possible to provide a full indication of the new legislation which will be required. Clearly, as is the case with the existing legislation, a balance will have to be struck between the provisions 'on the face of the Bill' (i.e. stipulated in primary legislation) and those contained within secondary legislation (i.e. regulations).

**Section 1: Potential New Legislative Provisions for Full Business Rates Retention**

4. The existing legislation was designed for 50 per cent rates retention. Whilst it may be possible to alter much of the arrangements through new secondary legislation, some aspects of 100 per cent rates retention will require completely new legislation. Based on the announcements made by Government so far, this section outlines some of the areas which are likely to need new legislation.

**New Responsibilities**

5. The Government has made a number of announcements about the potential responsibilities for local government which could be funded through the 100 per cent rates retention system. These responsibilities fall into two categories. The first category is those responsibilities already undertaken by local authorities, but which are currently funded by separate funding streams. The second category is new responsibilities which are currently funded by central government and are delivered either by central government or other public sector agencies.
6. If funding for existing responsibilities is no longer paid directly by grant from central government, it will be important to consider whether conditions and duties which are in some cases attached to grants remain necessary, once funded from full business rates retention. This may require legislative changes where such duties exist in legislation. For those responsibilities not currently delivered by local government, changes to legislation

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may also be necessary, especially if existing legislation determines the way in which the service is delivered.

7. Until there is greater clarity over the services to be funded from 100 per cent business rates retention, it is not possible to detail the possible legislative changes. As the list of services becomes clearer, it will be important for this issue to be considered in greater depth.

### **Multiplier Flexibilities**

8. The Government has stated that directly elected 'metro-mayors' will have the ability to propose increases in business rates, if they have the support of the business members of the Local Enterprise Partnership. Currently legislation only allows central government to set the non-domestic rates multiplier.
9. New legislation will therefore be required to enable this flexibility to be given to combined authorities. The legislation will also need to make clear the arrangements for all authorities to lower the multiplier and the way in which authorities can subsequently raise the multiplier back to the 'national' level.

### **Fair Funding Review**

10. In February 2016 the Secretary of State for Communities and Local Government announced a fundamental review of the needs assessment formulae that will be used to determine the 'starting point' for the 100 per cent business rates retention system. This review is likely to be a longer term area of work, which will go beyond the proposed summer 2016 consultation. It will need to reflect current and future local government responsibilities and, therefore, the final needs assessment will be dependent on any new legislative duties for local government. As such the needs assessment itself is unlikely to be within the scope of the legislation.

### **Appeals**

11. The arrangements for appeals in the existing rates retention scheme are widely agreed to be unsatisfactory. Government is in the process of reforming the existing appeals system. The transition to 100 per cent business rates retention presents an opportunity to address some of the problems in the design of the new system. However, until more work is undertaken on possible solutions to address the problem, it is not possible to propose what legislation may be necessary.

### **Reliefs**

12. Similarly, any changes to the existing system of mandatory and discretionary reliefs are also likely to require new legislation.

## **Section 2: Existing Legislative Provisions for Business Rates Retention**

13. The framework for the existing 50 per cent business rates retention arrangements is set out in the Local Government Finance Act 2012 and accompanying secondary legislation. The relevant part of the Act for business rates retention is Section 1, which gives effect to Schedule 7B. The following paragraphs refer to each part of the Schedule and consider how the existing legislation will link with a 100 per cent rates retention system.

**POLICY DEVELOPMENT: NOT A STATEMENT OF GOVERNMENT POLICY****Non-Domestic Rating Account**

14. Part 1 of Schedule 7B of the Act requires the Secretary of State (SoS) to keep a separate main non-domestic rating account and defines what should be credited and debited to and from this main account. The accounts for each financial year are published by DCLG.
15. Future arrangements for a separate national non-domestic rating account in a 100 per cent system will depend on whether central government maintains some kind of national system for redistribution. Furthermore, the Government currently collects rates income from the central list, therefore a national account may still be required.

**Central and Local Share**

16. Part 2 requires the SoS to annually determine the central and local share for the forthcoming year in the Local Government Finance Report. The Act does not stipulate that the split must be 50:50 and it would be possible for the SoS to change these proportions, by changing the percentages contained in the annual finance report.
17. As the intention is for local government to retain 100 per cent of business rates from local lists, a similar provision should not be required in the new legislation.

**Payments to the SoS in respect of the central share**

18. Part 3 requires billing authorities to pay the SoS an amount equal to the central share of the billing authority's 'non-domestic rating income' for the year. Non-domestic rating income is defined separately in regulations made by the SoS. These regulations set out the formula for calculating non-domestic rating income. This calculation forms the basis of the payments made to central government, and precepting authorities, by the billing authority from its Collection Fund.
19. Assuming 100 per cent retention of rates by local authorities, these provisions should not be required in the new legislation. In the existing secondary legislation the SoS has the power to deduct an amount from the central share payable by billing authorities, for example, amounts relating to discretionary relief.

**Payments by billing authorities to major precepting authorities**

20. Part 4 gives the SoS power to make regulations requiring billing authorities to make payments of non-domestic rating income to major precepting authorities. This is the mechanism by which relevant upper-tier authorities and fire authorities receive a proportion of the local share. As noted above, regulations define 'non-domestic rating income', the way it is to be calculated, the timing of payments and the reconciliation of estimates and outturn figures.
21. These provisions enable the proportions of the local share payable to major precepting authorities to be altered through regulations and for a proportion of the central share to be paid to precepting authorities, rather than central government.
22. As only billing authorities collect non-domestic rates, it is likely that there will continue to be payments between billing authorities and major precepting authorities under 100 per cent rates retention. The extent to which such arrangements should be detailed on the face of the Bill is open to discussion.

**POLICY DEVELOPMENT: NOT A STATEMENT OF GOVERNMENT POLICY****Principal payments in connection with local retention of non-domestic rates**

23. Part 5 sets out the requirement on the SoS to calculate the payments to be made to and from billing authorities and places a duty on relevant authorities and the SoS to make the payments set out. This essentially enables tariffs and top-up payments to be made, in order to facilitate redistribution between authorities.
24. As the Government has made clear, there will still be some form of redistribution between authorities to determine a 'starting point' in a 100 per cent rates retention system. Consequently, the legislation will need to make provision for payments and set out arrangements for scrutiny. However, as noted above, the details of the needs assessment formula is unlikely to be contained in legislation.

**Levy accounts**

25. Part 6 requires the SoS to keep a 'levy account', similar to the requirement to keep a separate main non-domestic rating account. Levy payments and safety net payments to and from authorities are required to be credited and debited to the account. The accounts for each financial year are published by DCLG.
26. The Government has committed to removing the levy in 100 per cent business rates retention system. Therefore, a separate levy account in its current format would not be needed. However, some sort of national mechanism may be required for the administration of a safety net.

**Levy payments, safety net payments and distribution of remaining balance**

27. Part 7 gives the SoS powers to make regulations on the calculation and timing of levy and safety net payments, provided that these calculations are made for the relevant year only after the year has ended. It also allows for safety net payments to be made on account in-year to authorities which are likely to require a safety net payment for that year.
28. Although in a 100 per cent business rates system there will be no levy, the Government still envisages a safety net mechanism. It seems likely, therefore, that arrangements for a safety net will have to be made in legislation. In order to enable changes to be made to the system, in light of experience, it seems probable the details will be set out in regulations, rather than primary legislation.

**Transitional protection payments**

29. Part 8 enables the transitional protection scheme to be taken into account in the operation of business rates retention. Transitional arrangements function to manage the impact of a revaluation for individual rate payers; protection payments allow the effect on authorities to be managed, so business rate income is not altered as a result of the transitional arrangements.
30. If the current revaluation process remains, there is likely to be a desire from business rates bill payers for changes to bills, caused by revaluation, to be phased in over several years. In order to ensure that authorities are not exposed to the full effects of the transitional arrangements, in line with central government's statutory responsibility to provide a transitional scheme, protection payments will continue to be required. Once again, the degree to which arrangements are specified in the primary legislation is a matter for debate.

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### **Pooling of authorities**

31. Part 9 gives the SoS power to designate authorities as a 'pool' for those authorities which have agreed to this. The designation must be revoked by the SoS if any authority covered by the pool requests so. Whilst the authorities in a pool are treated as if they were a single body for the purposes of payments made to and from central government, the local government finance report can make provision in relation to the individual authorities in the pool.
32. The future of pooling arrangements in a 100 per cent system is unclear at this stage. Given that the impetus for pooling in the current system has, in some cases, been driven by a desire to reduce levy payments, the removal of the levy may mean pools no longer serve this purpose. As more details of the new system become clearer, any future role for pools, and thus relevant new legislation, will be easier to determine.

### **Designation of areas and classes of hereditament**

33. Part 10 allows the SoS to make regulations enabling certain areas and classes of hereditaments to be disregarded for the purposes of calculating business rate income and payments to be made between billing authorities and central government or precepting authorities. As a result, under these provisions local areas are currently able to retain, for example, 100 per cent of income from Enterprise Zones, as well as renewable energy projects.
34. The government intends that Enterprise Zones and other designated areas will continue to operate as is the case currently and, therefore, will be guaranteed 100 per cent of business rates growth for 25 years. As such, provision for these arrangements will need to be made in the new legislation, if the existing legislation cannot be used.

### **Revenue Support Grant**

35. Schedule 2 of the Local Government Finance Act 2012 states that the Secretary of State 'may pay a grant (to be called revenue support grant [RSG])...for a chargeable financial year'. Since 2013/14 there has no longer been an obligation for the Government to pay RSG each year.
36. The Government has previously stated that RSG will be phased out in a 100 per rates retention system. Decisions will need to be taken on the legislative framework for future support from central government to local government, including existing powers to pay grants under section 31 of the Local Government Finance Act 2003.

### **Central List**

37. Under sections 52 to 54 of the Local Government Finance Act 1988 the Government has the power to determine a central ratings list. Under the current system, transfers between the local and central list can have a significant impact on local authorities' income.
38. The future role of the central list in the 100 per cent rates retention system is yet to be determined. However, it may be desirable to include legislation on the circumstances in which non-domestic properties can be moved between local lists and the central list. This would provide greater stability and predictability for local authorities' business rates income.