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BRIEFING PAPER

Number 07873, 19 January 2017

Local Government Finance Bill 2016-17

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Summary

The *Local Government Finance Bill 2016-17* would amend the framework legislation for business rates in England. Much of the Bill consists of amendments to the *Local Government Finance Act 1988* (the '1988 Act').

The Bill is divided into four Parts, which give effect to a number of commitments regarding business rates made by the Government during 2014-2016:

- Part 1 provides the legislative framework for the introduction of full retention of business rate revenue by local authorities ('100% business rate retention').
- Part 2 gives effect to a number of adjustments to liability for business rates arising from recent policy reviews and decisions, and permits initiatives towards greater digitisation of rates collection.
- Part 3 permits the imposition of 'infrastructure supplements' by mayoral combined authorities and the Mayor of London, as agreed in a number of the 'devolution deals' concluded in 2014-16.
- Part 4 introduces a new 'property owner levy', built upon the concept of 'property owner Business Improvement Districts' developed in 2014, and extends the power to create business rate supplements to mayoral combined authorities.

The Bill had its First Reading in the House of Commons on 13 January 2017 (HCDeb 13 Jan 2017 c577). Second Reading is scheduled for Monday 23 January 2017, as are a Money Resolution and Ways and Means resolution.

The Bill has previously been referred to, in the Queen's Speech and Government announcements, as the *Local Growth and Jobs Bill*.

The Bill extends to England and Wales, but its territorial effect is within England only. The majority of the Bill, but not all, has been certified as falling within the provisions of Standing Order 83J (i.e. the English Votes on English Laws provisions).[1] Certified provisions will require assent from an English Grand Committee.

The Bill and explanatory notes have been published on the Bill pages of the Parliamentary website.

[1] At the time of writing, see the *Future Business* for 23 January 2017

1. Local government finance: background

The *Local Government Finance Bill 2016-17* makes a number of adjustments to the system of business rates within England. It would:

- introduce the retention of 100% of business rate revenue by the local government sector;
- introduce powers to set an 'infrastructure supplement' for combined authorities and the Mayor of London;
- introduce powers for local authorities to set a property owner levy in specified areas;
- make various amendments to mandatory reliefs and the administration provisions for business rates.

This takes place in the context of:

- Recent debate around, and reviews of, the structure of business rating;
- Government ambitions for local government finance reform, specifically for local authorities to raise more of the funding that they spend;
- Significant reductions in central grant funding for local authorities in recent years.

This section of the paper provides an account of the developments leading up to the publication of the Bill.

1.1 What are business rates?

Non-domestic rates, or business rates, are a tax on non-domestic properties or 'hereditaments'.

Business rates are calculated by multiplying a property's **rateable value** (which is set by the independent Valuation Office Agency, and normally reflects what the property would rent for on the open market), with the **national multiplier** (set by the UK Government for England, the Scottish Parliament in Scotland and the National Assembly for Wales). The multiplier is expressed in pence per pound.

Hence, a property with a rateable value of £100,000, where the multiplier was 49.3 pence in the pound, would have an annual business rate liability of £49,300.

Bills are sent out and rates collected by **billing authorities**. These are district councils (in two-tier areas), unitary councils, metropolitan boroughs and London borough councils. The occupier of the property is liable for business rates. Owners will become liable where a property is unoccupied.

The amount payable – the business rate 'liability' – may be subject to a number of reliefs or exemptions, such as small business rate relief. Billing authorities are responsible for deciding whether to apply any

exemptions or reliefs to individual businesses or properties. Some reliefs are mandatory, whilst others are given at the discretion of the billing authority.

Business rates have long been a significant source of revenue for local authorities. On average, in the 1990s and 2000s some 20% of their revenue came from this source. This percentage has increased in recent years, as central government funding has reduced substantially (see section 2.9 below). Therefore, how rate revenue is raised and distributed amongst local government is of critical interest to local authorities.

1.2 Development of the business rates system

Business rates originally formed one half of a general property rating system that can be traced back to 1601 in England – the other half being the domestic rating system. The system was operated by local authorities, with property valuation being the responsibility of the Valuation Office (latterly the VOA) from 1948 onwards. Local authorities were free to set a multiplier for domestic and non-domestic properties as they saw fit. They retained rate revenue at source: the wide variations in income were compensated, from 1948 onwards, by grants from central government.

This system was brought to an end by the *Local Government Finance Act 1988*. This Act replaced domestic rating with the community charge (the 'poll tax') and replaced business rates with the National Non-Domestic Rate.[2] From 1990 onwards, the Government set a single multiplier for the whole of England.[3] The revenue collected from business rates was paid into a central pool and redistributed on a needs basis by the Government.

This meant that, in effect, business rates became an extension of the Revenue Support Grant (RSG) system (the general grant made to local authorities). This funding arrangement reflected the prioritisation of funding public services operated by local government equally across England. The centralisation of business rates meant that, from 1990, some 80% of local authority revenue was provided by central government.[4]

Throughout the 1990s and 2000s, commentators and sector representatives called for business rates, or elements of business rates, to be returned to local control. For instance, a report by the Commission on Local Governance (2002) concluded that "returning the business rates to local control would be the easiest way of changing the balance

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2 The 1988 Act did not extend to Northern Ireland. The community charge was abolished by the *Local Government Finance Act 1992*, which introduced the council tax in England, Scotland and Wales.

3 Separate rates were set (at very similar levels) for Scotland and Wales by the Secretaries of State for those countries. Since devolution in 1999, this power has passed to the devolved government in each country.

4 MacLean I., and A. Macmillan. 2003. *New localism, new finance*. London: New Local Government Network.

of funding and giving business a clear and transparent link with their local council".[5]

The Labour Government set up a *Balance of Funding Review* in 2003, in light of concerns at the percentage of local authority funding derived from central grant funding.[6] It concluded that any major shift in the balance of funding would require the introduction of a local income tax alongside a reformed council tax and relocalisation of business rates.

The Government proceeded to commission Sir Michael Lyons to look into local government finance reform. In his 2007 report he described business rates as:

> at one and the same time both a contested part of the system – with recurring arguments over the last 17 years over whether the tax rate should be set locally or nationally – and a tax which in its fundamentals seems to be little questioned.[7]

Lyons goes on to suggest that concerns were usually expressed about the level of business rates, rather than the mechanics of their collection:

> In my discussions with businesses, concerns were expressed by some in the retail and manufacturing sectors about the greater burden they perceived from business rates because of their significant property usage. This was a significant issue during the 1970s and 1980s, though it has been more muted in recent years, as a result of the more prominent debate about whether the tax rate should be set nationally or locally. The growth of e-commerce retail businesses with little need for property, particularly in expensive city centre and high street locations, also raises questions about how the tax burden falls across business sectors, and how that may change in the future.[8]

Most of the recommendations of the Lyons Inquiry were not implemented. An exception was the proposal for local Business Rate Supplements (see section 5.1 below): powers to introduce these were provided by the *Business Rate Supplements Act 2009*. No further impetus toward greater localisation of revenue-raising occurred under the Labour governments of the 2000s. The issue was next revisited under the Coalition government (see section 2.1 below).

1.3 Fiscal devolution proposals

The Government's aspiration to "self-sufficient local government" has generated a number of recent proposals for additional 'fiscal devolution'. Some have sought additional local powers over council tax and business rates; others have proposed moving particular taxes to local authority control.

Reflecting the proposals in the 2016 consultation *Self-sufficient local government*, it might be expected that any additional devolved taxes would be accompanied by additional devolved powers to 'match' the expected revenue.

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5 Commission on Local Governance, *Free to Differ: The Future for Local Democracy*, June 2002, p50

6 Office of Deputy Prime Minister, *Balance of Funding Review – Report*, July 2004

7 *Lyons Inquiry into Local Government*, p. 284

8 Ibid., p. 286

Proposals for changes to business rates

Proposals made by independent reports in the 2010-15 Parliament include:

- Allowing **local authorities** to **set the multiplier** (again reflecting practice before 1990), sometimes with limits on the annual increase based on increases in council tax;[9]
- Allowing local authorities to direct revaluations of properties: this normally takes place on a five-year cycle, set centrally;[10]
- Giving local authorities greater control over reliefs that are currently mandatory: for instance, over the level of small business;
- Removing the 'fixed yield' requirement.[11] This requires the England-wide multiplier to be adjusted at each revaluation so that the overall level of revenue from business rates remains the same. This can mean that rises in rateable value in some areas may not lead to rises in revenue for individual local authorities.

Alternative approaches to business rates

In 1995 the Institute for Fiscal Studies (IFS) published a paper *Options for Business Rate Reform*, which noted that business rates are a fixed cost for ratepayers, with no connection to profitability, turnover or economic conditions:

> ...non-domestic rates have the disadvantage that they are unresponsive to changes in economic conditions, both overall and in particular within different sectors of the economy… The measure of taxable capacity used to assess rates liabilities does not take account of profitability…[rates are] thus more of a burden on businesses with low profits than other business taxes, such as taxes on profits or elements of variable cost such as payroll.[12]

The IFS suggested the possibility of a "multi-base business tax". This calculated the tax base by adding a factor ('Z') to rateable value, then multiplying by the business's aggregate payroll. The IFS paper also discussed the idea of varying business rates according to economic sector.[13]

The independent Mirrlees Review, which looked at the UK's tax system as a whole in 2010, supported the abolition of the business rate entirely:

> The business rate is not a good tax. It discriminates between different sorts of businesses—agriculture is exempt, for example. More fundamentally, from an economic perspective, business property is an input to the productive process of a company. Further, it is a produced, or *intermediate*, input with the same economic properties as other forms of physical capital. ....it is an important principle of the economics of taxation that an efficient tax system should not distort choices firms make about inputs into

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9 *Decentralisation Decade*, p. 75; also City Growth Commission

10 The Government published a consultation paper in March 2016 on moving to three-yearly revaluations: see DCLG, *Business rates: delivering more frequent revaluations*, 2016

11 See Centre for Cities, *Beyond Business Rates*, 2015, p13

12 Institute for Fiscal Studies, *Options for Business Rate Reform*, 1995, p86

13 Kevin Denny, John Hall and Stephen Smith, *Options for Business Rates Reform*, Institute for Fiscal Studies, 1996, p100

> the production process, and hence that intermediate goods—those used in the production process—should not be taxed. The principal effect of business rates is that economic activity in the UK is artificially skewed away from property-intensive production.[14]

The Review recommended a land value tax for commercial property, to be introduced gradually whilst business rates were phased out.

Other taxes

There have been a number of recent proposals for localisation of other taxes, including:

- **Income tax**: tax on earned income has been devolved to Scotland and some power over income tax is expected to be devolved to Wales. Local income tax (LIT) was proposed by the 1976 Layfield Committee on local government finance[15] and the 2004 *Balance of Funding Review*. The 2007 Lyons Inquiry considered LIT at some length and concluded that it would be feasible to introduce it in the UK, but did not directly recommend that this be done.
- **VAT receipts**: shortly to be devolved to Scotland.[16] There are substantial practical difficulties with determining what VAT receipts arise in a particular locality;
- **Stamp duty**: this raises revenue in the order of £10-11 billion per year in England. It was devolved to Scotland from 2015, and will be devolved to Wales from 2017.[17] Its incidence varies across England, often reflecting the wealth of an area;
- A **development tax** on land that has planning permission but has not been built on;[18]
- A **'tourism tax',** consisting of a charge levied on occupancy of hotel beds – for instance, £1 per bed per night. This has been considered recently by Bath & North East Somerset Council and Edinburgh City Council, amongst others. No legal powers currently exist to introduce such a tax. Edinburgh City Council estimated annual revenue of £3 million in 2012.[19]

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[14] Institute for Fiscal Studies, *Tax by Design (the Mirrlees Review)*, 2010, p.376
[15] Layfield Committee, *Local Government Finance: Report of the Commission of Enquiry*, Cmnd 6453, 1976
[16] Core Cities Group, *Competitive Cities, Prosperous People*, p. 16; Morrin and Blond, *Restoring Britain's City States*, p. 15-16
[17] See London Finance Commission, *Raising the Capital*, 2013; Centre for Cities, *Beyond Business Rates*, 2015.
[18] IPPR, *Condition of Britain*, p. 182
[19] Homa Khaleeli, "Will Bath dare to become the first UK city with a 'tourist tax'?", *Guardian*, 11 January 2017

2. 100% business rate retention

Summary

Part 1 of the Bill is concerned with 100% retention of business rates. It would make changes to the Business Rate Retention Scheme (BRRS), which has operated in England since the 2013-14 financial year.

It would enable local government *collectively* to retain 100% of business rates by 2020. However, this does not mean that each local authority would keep all of their business rate revenue. This is because a redistribution system, similar to the existing 'tariff and top up' system, will remain in place.

The Bill does not provide details on how the revenue would be distributed between local authorities. It simply provides power for the Government to make redistributive payments. This information is critical to the outcomes of the new system for individual local authorities. Decisions on this are not expected to be finalised before summer 2018.

As part of these changes, the Revenue Support Grant (RSG) would be phased out, and local government would be required to take on additional responsibilities in return for the extra business rate revenue they will receive.

Part 1 of the Bill provides for all business rate revenue to be retained by the local government sector ('100% business rate retention').

The Bill does not provide an explanation of how rate revenue would be distributed between local authorities. It simply provides power for the Government to make redistributive payments. The distribution system is critical to the outcomes of the new system for individual local authorities. Decisions on this are not expected to be finalised before summer 2018.

The Bill would also remove the current requirement for the local government finance settlement to be approved annually by the House of Commons. The settlement will be replaced by alternative forms of reporting, that do not require this approval.

The Bill would not devolve control over the entire system of business rates to local government. The Government would still retain ultimate discretion over the 'multiplier', for which it would (in effect) set a maximum. It would also continue to control decisions on mandatory reliefs. Property valuation, and appeals against valuations, would continue to be determined by the Valuation Office Agency and the Valuation Tribunal.

Business rate retention is a complex policy with many overlapping effects. This section of the paper therefore begins with an analysis of the clauses in Part 1 of the Bill. Sections 2.2 through to 2.9 contain greater explanation of the concepts and technical terms introduced in section 2.1, specifically addressing:

- How the current system of 50% business rate retention works;
- The Government's announcements and consultations so far on 100% rate retention;
- The possible outcomes for councils of 100% rate retention;
- The proposals to devolve new powers to local authorities to match the jump in local authority revenue that would arise from 100% rate retention;
- Issues around business rates appeals, and why they have been addressed in the Bill;
- The financial context: pressures on local authority budgets since 2010.

2.1 The Bill

100% rate retention (clause 1)

Clause 1 (2) of the Bill amends the *Local Government Finance Act 1988* to provide for the introduction of full local retention of business rate revenue. It does this by removing the provision in the 1988 Act for a proportion of non-domestic rate revenue to be paid to the Secretary of State. In the BRRS as introduced, this is the legal authority for the collection of the 'central share' (see section 2.3 below). Clause 1 means that it would no longer be possible for the Government to require a proportion of rate revenue to be paid into a central pool.

Clause 1 (3) gives effect to the commitment to abolish Revenue Support Grant (see section 2.7 below). This is done by repealing Part 5 chapter 2 of the 1988 Act. This removes the mechanism to pay a general grant to local authorities. The Government would still, however, have access to the discretionary grant-paying power in section 31 of the *Local Government Act 2003*.[20]

The Bill would also abolish the requirement to produce an annual local government finance report. This report is approved annually by the House of Commons. Provisions in **Schedule 1** would require a 'principles of allocation statement' to be produced each year in its place.

Schedule 1 would make number of amendments to the text of Schedule 7B of the 1988 Act in consequence of the changes in Clause 1.

Tariffs and top-ups

Paragraph 4 of Schedule 1 provides for a single rating account to handle payments to and from authorities within the business rates system (including tariffs, top-ups, and safety net payments). It further provides that payments from the account must be used "for the purposes of local government in England".

[20] Government documents frequently refer to grants paid under this power as 'Section 31 grants'.

Principles of allocation statement

Paragraph 7 would repeal the power to create a central share and local share, and the requirement to provide a local government finance report regarding this decision. Instead the Secretary of State would be required to publish a ‘principles of allocation statement’ (paragraph 12 (3)). This would set out how the tariff and top-up levels had been calculated: in practice, it is likely to substitute for the annual local government finance settlement. However, the Secretary of State may publish a ‘statement’ covering several years at once: the Bill will remove the requirement to publish funding statements annually.

Paragraph 15 provides that an amending statement may be made “at any time before the end of the year following the relevant year”. That is, tariffs and top-ups could be altered retrospectively, up to a year after the financial year in question. Amending statements must be preceded by consultation with local government, and copies must be sent to each relevant authority.

As is the case currently with the local government finance settlement, all affected authorities must be consulted before the ‘principles of allocation statement’ is made, and a copy must be sent to all authorities (paragraph 12 (4)).

At present, the local government finance settlement must be approved by the House of Commons. However, the Bill provides that the ‘principles of allocation statement’ will not require approval by the House of Commons.[21] This is also true of future reports on council tax referendums (see below).

Paragraph 18 (1) would abolish the power to impose a levy on authorities which gain excessive amounts from rate retention (see section 2.3 below).

Paragraph 23 would amend the legislation on safety nets (see section 2.3 below) to enable regulations to be made permitting ‘reconciliation payments’. These are payments which would be paid where safety net payments were made on the basis of estimates that subsequently turned out to be inaccurate.

Pooling

Currently, two or more local authorities may pool their business rate revenue within the BRRS. Pools are assigned a single tariff or top-up; and it is for the pool itself to decide how to distribute revenue amongst its members. Pools are voluntary under the current system: they normally consist of geographically aligned authorities, though there is no statutory requirement for this.

Participation in pools could reduce local authorities’ exposure to risk, particularly the risk arising from appeals. This is largely because pools operate on a larger scale. This means that they have more revenue ad

21 The settlement always has been approved, often without a division, since the introduction of current practice in 1990. The 1988 Act is silent at present on what happens if the House of Commons fails to approve the local government finance settlement.

can spread the impact of lost revenue from appeals over a number of participants. Also, the effect of single, very large ratepayers (see section 2.8 below) is more diffuse in a pool of authorities because the rate base is larger. The July 2016 consultation *Self-Sufficient Local Government* asked for views the future use of pooling to reduce risk, but made no mention of obligatory participation in pools.[22]

Paragraph 26(3) of Schedule 1 would repeal paragraph 34 (2) and (3) (b) of Schedule 7B to the 1988 Act. Those paragraphs provide that authorities in a pool must all consent to taking part and obliges a pool to be ended on the request of any authority. This implies that the Secretary of State would be able to compel authorities to take part in a business rates pool against their wishes.

Paragraph 27 would require the Secretary of State to designate a lead authority for each pool. The designation may be varied to specify additional functions to be carried out by the lead authority. The participating authorities must be consulted before a designation is made, revoked or varied.

Appeals: loss payments (clause 2)

Clause 2 would provide a general power to the Government to make 'loss payments'. The intention of this clause is to address the issue of business rates appeals (see section 2.8 below).

Prior to the introduction of business rate retention in 2013, any losses of rate revenue arising from successful appeals were shared amongst all local authorities, as they were absorbed by the England-wide pool. The introduction of 50% retention shifted this risk to individual local authorities, and it would increase when 100% retention is implemented. Local authorities rarely have any control over the outcome of appeals, as these are managed by the Valuation Tribunal for England.

Local authorities' exposure to risk of this sort varies widely. The most exposed authorities are those where one property is by far the largest ratepayer, or a small number of properties are dominant. For instance, Hartlepool Council stood to lose some £3.9 million per annum as a result of the revaluation of Hartlepool power station in 2014. The current 50% retention scheme does not have any provision for Government to intervene in this scenario.

Clause 2 would insert new section 33A into the 1988 Act, so as to give the Secretary of State power to make regulations concerning 'loss payments' under specified circumstances. In essence, the circumstances would be when a "reduction in rating income … results from an alteration of the relevant billing authority's local non-domestic rating list". Payments could be made to billing authorities or precepting authorities (county councils, police and crime commissioners and fire and rescue authorities) (new section 33A (2)). The regulations may concern how to calculate a loss payment; how this should be timed; how the authority in question should be notified; and how the payment should be made (new section 33A (3)).

[22] DCLG, *Self-Sufficient Local Government*, 2016, p31

New section 33A (4) specifies that the regulations may relate to a council's total rate income, the rateable value of a specified property, or any other matters.

New section 33(6) states that the regulations may include provisions about authorities receiving loss payments supplying information to the Secretary of State; the consequences of failure to supply information; certification of the information for the purposes of receiving a loss payment; and consequences if this does not match other information supplied by the authority.

The Government has announced its intention to top-slice an amount of funding from the business rate system, before it sets tariffs and top-ups (as is the case under the current system) from which loss payments will be made. This will be done under new paragraph 2 (3) of Schedule 7B of the 1988 Act.

Growth areas (clause 3)

Clause 3 would permit regulations to be made allowing pools of authorities to designate areas to be excluded from calculations related to business rate retention. This appears to reflect a suggestion made by the London Finance Commission in May 2013. It suggested that local authorities should be able to "specify and benefit from valuation rises in 'investment zones' within their overall areas".[23]

The purpose of this clause is to allow areas to designate 'growth areas' voluntarily, the revenue from which will be exempted from tariff and top-up calculations. In effect, these are locally-determined 'enterprise zones'. The local authority will assume the full risk of rate retention: if rate revenue is greater than expected, it will reap the full benefit, whereas if it is lower than expected, the authority will bear the full loss. New section 38A (3) provides that the revenue for a designated area is the amount that would be raised from the properties within it "if each of the authorities in the pool acted diligently".

The power to designate growth areas in this way exists for individual authorities, but it is only exercisable by the Secretary of State. Alongside the provisions regarding obligatory pools (see below), the fact that pools, but not individual authorities, will have the power to self-designate growth areas may be intended to encourage pooling.

The intention appears to be that separate regulations would be made for individual pools: new section 38A (9) provides that a pool must be consulted before being specified in regulations. The remainder of the new section lists further subjects that may be covered by the regulations. These include: the period during which the power would apply; what use the pool of authorities may make of any additional revenue; how to alter or revoke a designated area; how the power to designate may be withdrawn from particular pools; restrictions on the type of areas that may be designated; and the supply of information on designated areas by pool authorities.

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[23] London Finance Commission, *Raising the capital*, May 2013, p. 66

Clause 4 would allow council tax excessiveness thresholds to be specified for multiple years. Any local authority seeking to raise its council tax by more than the threshold must hold, and win, a local referendum. At present these thresholds must be set annually by the Secretary of State via a 'referendum principles' report. This clause would align this process with other provisions in the Bill to permit multi-year finance settlements.

Sub-section (5) provides the specific power to fix thresholds for more than one year, and places a requirement on the Secretary of State to consult representatives of local government about them.

Sub-section (8) permits the Secretary of State to make a revised set of principles during the period covered by an existing report. It also requires him to publish reports and send copies to billing and major precepting authorities (county councils, fire and rescue authorities, and Police and Crime Commissioners).

2.2 Origins of business rate retention

In 2011 the Coalition Government ran a consultation on proposals for business rate retention as part of the Local Government Resource Review.[24] This led to the introduction of a Business Rate Retention Scheme (BRRS) from April 2013. The Government's aim was two-fold:

- to give local authorities greater freedom and flexibilities, reducing their reliance on central government for funding;[25] and
- to introduce an incentive for local authorities to encourage business, bringing economic benefits in the region of £10 billion to the national economy over seven years.[26]

The Local Government Association (LGA) had "been calling for the relocalisation of business rates for some time", and at Second Reading of the Local Government Finance Bill the then Shadow Secretary of State for Communities and Local Government voiced his support for localisation.[27]

In August 2011, the Government published a series of technical papers outlining the proposed business rate retention system. Further policy statements were also published. A paper on the economic benefits of business rate retention gave some insight into the Government's plans:

> There is a wealth of evidence that planning restrictiveness is imposing national economic costs. …By reintroducing a fiscal incentive for local authorities to permit development, business rates retention could go some way towards reducing their

24 For further information about the local government resource review please see section 3 of *Local Government Finance Bill 2010 – 12*, 5 January 2012, House of Commons Library Research Paper (RP12/01)

25 DCLG, *A Plain English Guide to Business Rate Retention: Local Government Finance Bill*, July 2012, p3

26 DCLG, *Business Rates Retention: Technical Consultation*, July 2012, para 5; DCLG, *Business Rates Retention Scheme: the economic benefit of local business rates retention*, May 2012

27 Local Government Association, Local Government Finance Bill – House of Commons Second Reading Briefing, 10 January 2012; HC Deb 10 Jan 2012 cc86-87

> planning restrictiveness, thus increasing the supply of business premises and reducing costs for business, which in turn would allow for the expansion of existing businesses and/or the start-up of businesses which otherwise might not have been viable.[28]

Overall, the Government's expectation was that the rate retention scheme would give local authorities an incentive to promote growth in their areas, as they would benefit financially from the increased rate revenue that resulted from growth:

> The rates retention scheme will provide a strong incentive for local authorities to promote growth, while ensuring all local authorities have adequate resources to provide services to local people. It will give councils every possible reason to use the influence they have over planning, investment in skills and infrastructure and their relationship with local businesses to create the right conditions for local economic growth.[29]

2.3 The Business Rate Retention Scheme (BRRS): current practice

Under the current Business Rate Retention Scheme (BRRS), which has operated since 2013-14, local government collectively retains 50% of business rates revenue (the 'local share'), while 50% goes to central government (the 'central share').

This does not mean that each local authority keeps 50% of the business rate revenue that it collects. Because local authorities' rate revenues vary widely, there is a redistribution element known as the 'tariff and top up system' which is applied to each authority's local share. Simply put, local authorities with high business rate revenue pay a 'tariff', which is used to 'top up' the revenues of local authorities with lower business rate revenues. This is the redistributive element within the system.

Each authority's tariff or top-up level is fixed for a number of years. Fixing the tariff or top-up is intended to provide each authority with enough funding to pay for the public services that they deliver, but also to allow them to retain the growth in revenue over a number of years.

In addition to the 50% local share, individual local authorities can retain up to 50% of the growth in business rates against a baseline. The baseline funding level is the authority's share of business rates determined by an assessment of their needs undertaken in 2012-13. The intention of the system is to encourage local authorities to grow their local economies and to be rewarded for doing so by extra revenue.

An example is shown in Figure 1. A 'tariff authority' collects £40 million in rate revenue in 2015-16. The 'central share' is 50% (£20 million). A £15 million tariff (the pale block at the top of each bar) is then applied. Thus the authority retains £5 million in rate revenue.

In 2016-17, the tariff authority collects £44 million in rate revenue. The central share is therefore £22 million. The tariff remains at £15 million.

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[28] DCLG, Business rates retention scheme: The economic benefits of local business rates retention, May 2012, p5

[29] DCLG, *Business rates retention: policy statement*, 2012, p3

The remaining £7 million revenue (the two middle parts of the bar) is retained by the authority. This is £2 million more revenue than it had in 2015-16.

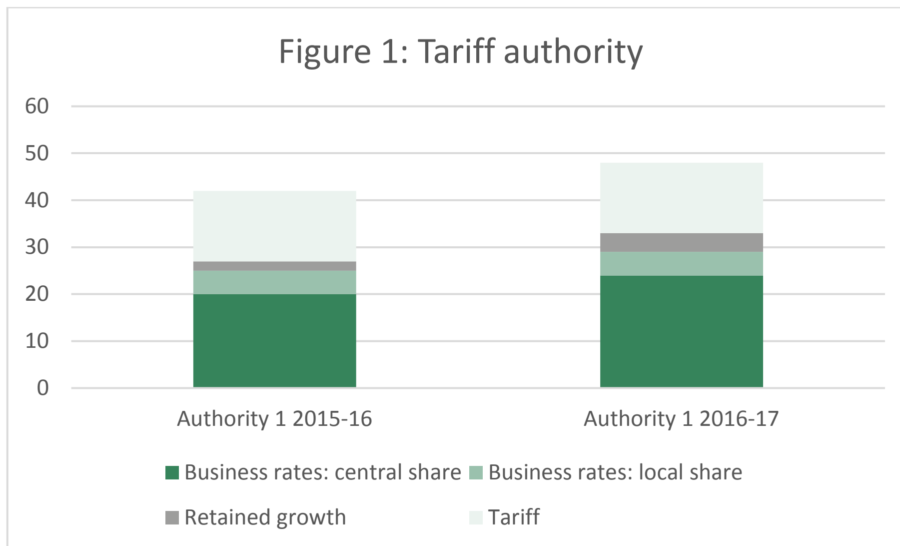
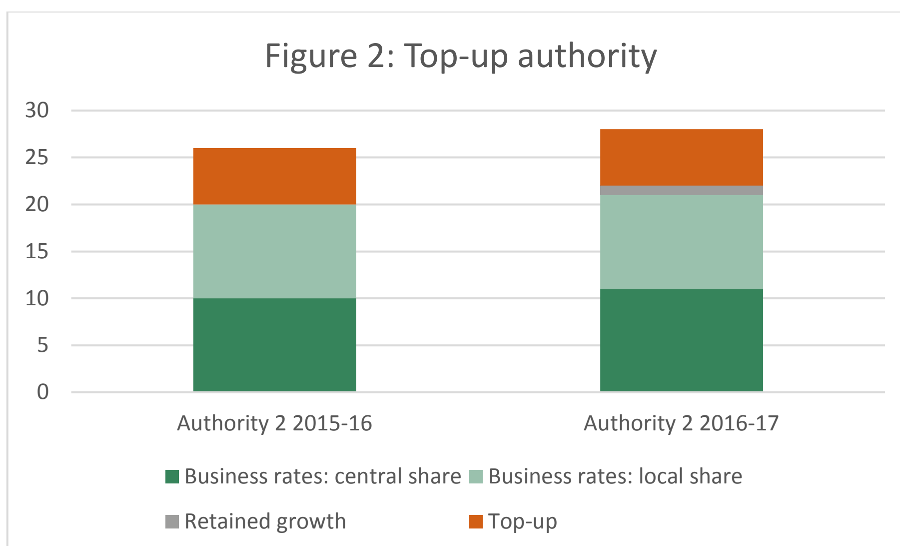


Figure 2 shows the effects on a top-up authority. The authority collects £20 million in rate revenue in 2015-16. £10 million, or 50%, goes to the central share. A top-up of £6 million is added, meaning that the top-up authority has £16 million in rate revenue in 2015-16.

In 2016-17, the top-up authority collects £22 million in rate revenue. £11 million goes to the central share. The top-up remains at £6 million. The authority retains an additional £1 million compared to 2015-16, and has access to a total of £17 million in rate revenue.



Other things being equal, tariff authorities are likely to have more capacity both to gain and lose from the system. This is because the existence of the 'top-up' means that a larger proportion of a top-up authority's income is guaranteed. Conversely, if a tariff authority's

revenue either rises or falls, it is likely to have a sharper effect on the authority's *overall* levels of revenue.

In two-tier areas, 40% of business rate revenues initially go to district councils and 10% to county councils. As county councils' spending commitments are greater than those of district councils, to compensate for this difference, all county councils are top-up authorities; whilst many district councils are tariff authorities.

Some authorities' tariffs may be substantial. It is possible for an authority to retain only 10%-20% of the business rate revenue they collect once the tariff has been applied.

Outcomes

According to the Institute for Fiscal Studies (IFS), over the last four years, and compared with a scenario where councils shared in the average growth in business rates revenue across the country, "52 councils have gained the equivalent of 5% or more of their overall budgets from local retention of business rates, mostly district councils".[30]

However, "119 councils have seen less funding as a result, including most county councils, although no council has lost more than 2% of their budget, and most much less".[31]

According to the IFS, 'losers' in the 50% retention scheme in 2013-14 and 2014-15 tended to be "larger councils with larger budgets – including many metropolitan boroughs, London boroughs and counties".[32]

The 'safety net' and the 'levy'

Tariff authorities may be subject to a further levy on revenue growth. Each authority has been set a 'levy rate', varying between 0% and 50%.[33] An authority which has a 0% levy rate will keep all of its growth in revenue. An authority with a positive levy rate must pay that percentage of their growth in revenue to the Government. (This is why the retention scheme is described as allowing local authorities to retain 'up to' 50% of additional revenue.)

The purpose of the 'levy' is to ensure that authorities with high taxbases relative to their assessed needs do not benefit disproportionately from the system. The Bill will remove the Secretary of State's power to set a levy (see **Schedule 1 paragraph 18**).[34]

Authorities are also guaranteed that their business rates revenue will not fall more than 7.5% below their 'business rates baseline'. This is known as the 'safety net'. Where authorities' revenue falls below that level, it is

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30 Institute for Fiscal Studies, *A Time of Revolution? British Local Government Finance in the 2010s*, October 2016, p3

31 Ibid

32 Ibid, p23

33 Authorities' levy rates can be found in the Core spending power: supporting information spreadsheet within the 2016-17 local government finance settlement. The levy rates were set at the outset of the BRRS in 2013-14 and remain the same from year to year.

34 DCLG, *Self-sufficient local government: 100% business rate retention*, July 2016, p.23

topped up to reach that level. It is not yet clear what form, if any, the safety net would take under 100% retention of business rates.

Resets and needs assessments

When it was introduced, the BRRS was to be subject to a 'reset' in 2020, seven years after it began. At a reset, tariff and top-up levels would be recalculated. This could lead to some or all of an authority's growth in business rates revenue being removed.

In general, the greater the time between resets, the greater the potential benefit for authorities from growth in rate revenue resulting from their policies (or, by the same token, the more authorities that benefit less may fall behind). Conversely, the more frequently resets take place, the less opportunity each individual authority has to benefit from the revenue growth that it generates. More frequent resets would increase the influence of needs assessment on individual authorities' funding levels.

David Phillips, of the IFS, told the Communities and Local Government Committee in February 2016 that redistribution and incentives were difficult to reconcile within the local government finance system:

> The important thing to recognise is there is almost an inherent trade-off between equalisation, on the one hand, and incentives, on the other. That is a trade-off that is difficult to avoid, but what might be worthwhile thinking about is when it is that growth incentives matter. You could have two kinds of systems: those that give weaker incentives but for longer, so you get to keep somewhat less of the revenue but for more years, or you get to keep all of the revenue, or more of it, for a shorter period of time…The Government are saying this is 100% retention but, if they want to keep a degree of equalisation, implicit in that is that it will be less than 100%. We should have that in mind as well. If you want some equalisation in the background to stop divergence that inherently means, in the long term at least, that it cannot be full 100% retention.[35]

2.4 100% retention of business rates

At the Conservative Party conference on 5 October 2015 the then Chancellor, George Osborne, announced that local government would be allowed to retain 100% of business rates revenue 'by the end of the Parliament', i.e. by 2020.

In his speech, the Chancellor also announced:

- that the Government would abolish the Uniform Business Rate [i.e. the standard multiplier] and 'give local authorities the power to cut business rates to boost enterprise and economic activities in their areas';
- that 'the core grant from Whitehall' – the Revenue Support Grant (RSG) – would end; and
- that local authorities would take on new responsibilities.[36]

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[35] Communities and Local Government Committee, *Oral evidence: Business Rates HC665*, 22 Feb 2016, Q6

[36] HM Treasury, Chancellor unveils 'devolution revolution', 5 October 2015

The Government sees the further devolution of business rate revenue as a step towards greater financial responsibility for local authorities:

> 1.1. By the end of this Parliament, local government will retain 100% of taxes raised locally. This will give local councils in England control of around an additional £12.5 billion of revenue from business rates to spend on local services. In order to ensure that the reforms are fiscally neutral, councils will gain new responsibilities, and some Whitehall grants will be phased out.
>
> 1.2. This amounts to a fundamental reform to the financing of local government. This move towards self-sufficiency and away from dependence on central government is something that councils have called for over a number of decades. The historic 2016/17 local government finance settlement was a first step along this road. It gave those local authorities who are committed to reform far greater certainty over their future funding.[37]

At present, Government planning documents suggest that the Government's target is to introduce 100% business rate retention on 1 April 2019.[38]

Pilots

100% rate retention is being piloted, from April 2017, via bilateral agreements in five areas: Greater Manchester, Liverpool City Region, Greater London, Cornwall, and West of England.[39] A July 2016 consultation stated:

> We expect that the pilots might look different in different places and in particular might help develop mechanisms that will be needed to manage risk and reward in a new system.
>
> The offer to pilot the approach to business rates retention is open to any area that has ratified its devolution deal.[40]

A further consultation paper in September 2016 proposed an approach to implementing the business rate pilots.[41] It proposed to assign a monetary value to the new responsibilities that would be given to pilot areas. The areas would then retain rate revenue equivalent to that value.[42]

Needs assessment

The pre-2013 local government finance system included a complex annual assessment of local authority need, which formed the basis of allocations of RSG to each council. As there is a proposal in the Bill to abolish RSG (see section 2.7 below), this would no longer be possible if the Bill passes. In future, the results of needs assessment would be

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37 DCLG, *Self-sufficient local government: proposals for 100% business rates retention*, 2016, p6

38 See DCLG/LGA, *Business rate retention: possible timeline to implementation*

39 DCLG, *The provisional 2017-18 local government finance settlement: confirming the offer to councils*, 2016, p20

40 DCLG, *Self-sufficient local government: 100% business rate retention*, July 2016, p.13

41 DCLG, *The 2017-18 Local Government Finance Settlement: Technical consultation paper*, 2016, pp.16-17

42 A grant is being used as there is currently no legal power to allow different local areas to retain different proportions of business rate revenues.

implemented at the end of a 'retention period', via adjusting tariffs and top-ups at a 'reset'.

A council's new tariff or top-up level after the reset, therefore, would play a key role in its financial health under 100% rate retention. How tariffs and top-ups are calculated will therefore be a critical issue for the sector.

In February 2016, the then Secretary of State for Communities and Local Government, Greg Clark, committed to revising the 'underlying assessment of needs' contributing to the allocation of local authority funding:

> It is too long since the underlying assessment of needs was updated—it is more than 10 years—and that is why I have proposed to go back to the drawing board and look at the needs and the resources available to each county.[43]

The Government envisages a final decision being made on any changes to needs assessment in summer 2018.[44]

2.5 Consultation on 100% retention, July 2016

The Government published consultation papers on 5 July 2016 on the introduction of full retention of business rates by local government, and on how to review the assessment needs that would underlie the introduction of 100% retention.[45] The Government intends to hold a final consultation on the approach to needs assessment in summer 2018.

The consultation covered, amongst other points:

- What additional responsibilities should be devolved to local authorities alongside 100% retention;
- How often resets should take place, and how far they should balance needs assessment with incentives;
- How best to handle the impact of appeals: local authorities perceive this to have the strongest impact on the incentives within the system. One suggestion made by the Government is for pooling to become more commonplace;
- Whether the share of income across different tiers of local government should be changed. In two-tier areas, currently 80% of business rate income goes to district councils and 20% to county councils.[46]

The consultation also confirmed that a redistribution system similar to the current mechanism of tariffs and top-ups would remain in place.[47]

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[43] HCDeb 10 Feb 2016 c1642

[44] DCLG, *Self-sufficient local government: 100% business rate retention*, July 2016, p.11

[45] DCLG, Self-sufficient local government:100% business rates retention, 5 July 2016

[46] DCLG, *Self-sufficient local government: 100% business rate retention*, July 2016, p.28

[47] DCLG, *Self-sufficient local government: 100% business rate retention*, July 2016, p.8-9

In autumn 2016 the Department for Communities and Local Government (DCLG) and the Local Government Association (LGA) set up a number of discussion groups to look at the features of the new system. There is a steering group, bringing together the work of a number of technical sub-groups:

- **Responsibilities Working Group**: this is addressing which powers should be devolved to local government to 'match' the jump in overall revenue that will result from the retention of 100% of business rate revenue by local government. This was the subject of consultation in the 2016 consultation paper *Self-sufficient local government*;
- **Technical Working Group on Needs and Redistribution**: this is looking at the approach to needs and resource assessment. It is expected that the introduction of 100% rate retention would be accompanied by a new needs assessment, which would in effect form the 'starting point' of rate retention for each individual authority;
- **Systems Design Working Group**: this addresses matters such as the division of revenue between tiers of government in two-tier areas, and how appeals, safety nets and the central rating list should be managed;
- **Accounting and Accountabilities Working Group**: concerned with technical accounting matters for local authorities;
- **Business Interests Group**: consulting on business views on matters such as the infrastructure supplement and multiplier discounts.

Agendas and minutes from each working group can be found on dedicated pages on the LGA website.

2.6 New powers for local government

The Government has, up to now, implemented reductions to local government funding by reducing RSG. By 2019-20, RSG is projected to be some £11-13 billion less than the 'central share'. Thus, other things being equal, permitting local government to retain 100% of business rate revenue would lead to an immediate rise in its funding by this amount. The Treasury press release announcing the decision stated:

> …the core grant [i.e. Revenue Support Grant] from Whitehall will be phased out, and local government will take on new responsibilities … to ensure the reforms are fiscally neutral.[48]

The July 2016 consultation *Self-sufficient local government* includes discussion of what new powers should be passed to local government, and/or which existing grants should be ended. The suggestions were based on the following principles:

1. Devolution of a responsibility should build on the strengths of local government

[48] HM Treasury, "Chancellor unveils devolution revolution", 5 October 2015

2. Devolution of a responsibility should support the drive for economic growth
3. Devolution of a responsibility should support improved outcomes for service users or local people
4. Devolution of responsibilities should be made with consideration for the medium-term financial impact on local government.[49]

The grants and responsibilities included in the consultation as possible candidates for devolution are listed in Table 1, with approximate figures for these grants in 2017-18 (unless otherwise indicated):

Table 1: grants which may be devolved to local authorities

Grant	Funding (2017-18 unless indicated)
Revenue Support Grant	£7.4 billion
Rural Services Delivery Grant	£65 million[50]
GLA Transport Grant	£1.5 billion (2015-16)[51]
Public Health Grant	£3 billion[52]
Improved Better Care Fund	£105 million[53]
Independent Living Fund	£177 million (2016-17)[54]
Early Years Grant	£3.4 billion[55]
Youth Justice Grant	n/a
Council Tax Support administration subsidy	n/a
Housing Benefit pensioner subsidy	n/a
Attendance Allowance	£5.5 billion[56]

The first five responsibilities in the list above already belong to local government and are funded by specific grants. Including them in this list amounts to suggesting that the specific grants would be discontinued

49 DCLG, *Self-sufficient local government: 100% business rate retention*, July 2016, p.16-7
50 Source: Local Government Finance Settlement Consultation 2017/18)
51 PQ 26407, 2 September 2016
52 DCLG and DH: Public Health Grant Allocations 2017/18
53 Source: Local Government Finance Settlement Consultation 2017/18
54 DCLG Independent Living Fund grant determination 2016/17
55 DFE: Dedicated Schools Grant Allocations 2017/18
56 DWP Benefit expenditure and caseload tables

and that local authorities would in future need to fund these responsibilities from their general revenue.

The consultation also stated that revenue from the business rate central list[57] – currently some £1.5 billion – would continue to be distributed to local government.

2.7 Ending the Revenue Support Grant

The then Chancellor announced in his October 2015 speech that the Revenue Support Grant would be phased out. The Revenue Support Grant (RSG) is a general grant, currently paid from the 'central share' of business rate revenue - i.e., the 50% of business rate revenue which is currently passed to central government.

The Communities and Local Government Select Committee stated that that without RSG "there is no obvious way to shift resources in immediate response to councils affected differently by sudden increases in need, for example immigration, and environmental challenges, such as flooding".[58]

However, it is unlikely that all central government grant funding to local authorities will cease. The July 2016 consultation said explicitly that "some Whitehall grants will be phased out" alongside the introduction of 100% business rate retention – not all grants.[59] It also stated:

> If the value of new responsibilities exceeds the increased retained rates receipts, Government would continue to make grant payments to fund the difference, although our expectation would be any grant payments would not replicate the current Revenue Support Grant.[60]

The Government makes extensive use of 'section 31 grants' to channel specific lines of funding to authorities, to ensure local authorities do not lose out due to central government decisions.[61] The New Homes Bonus and the Rural Services Delivery Grant, for instance, are both paid under section 31 powers, as are emergency funds to compensate for waiving council tax and business rates on flooded properties.

Simon Parker, former director of the New Local Government Network, has suggested that it is unlikely that central government grants would no longer exist when 100% business rate retention is introduced:

> …you get to 2020 and you look at where local government funding will be by then. Councils are going to be pretty threadbare places, and the business rate and council tax will not

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57 This is not the same as the 'central share': see the Library briefing paper *Business rates* for an explanation.

58 Communities and Local Government Committee, 100 per cent retention of business rates: issues for consideration, HC241, 13 June 2016

59 DCLG, *Self-sufficient local government: 100% business rate retention*, July 2016, p.6

60 DCLG, *Self-sufficient local government: 100% business rate retention*, July 2016, p.15. This commitment is reflected in the proposed arrangements for the pilots: see section 3.3.

61 These are named after section 31 of the *Local Government Act 2003*, which provides Government with a general power to give grants (either general or with conditions) to local authorities for any purpose.

> meet the full range of local need. The idea that we have permanently said goodbye to central grants is not credible. One way or another, it will come back in. It will have to.[62]

2.8 What are the main issues and concerns with 100% retention?

The Communities and Local Government Select Committee looked at the Government's proposals for 100% retention of business rates in 2016. They stated that the Government's reforms could be "transformative and create a real opportunity for local government":

> In retaining 100 per cent of business rate revenue, councils will have a direct and strong incentive to promote local growth and economic development.[63]

The proposals for 100% retention announced in October 2015 were also initially welcomed by Lord (Gary) Porter, Chairman of the Local Government Association. He said the proposals were "great news for councils" and showed that the Government had listened to local government.[64] However, local authorities and other stakeholders have raised a number of issues and concerns about 100% retention of business rates.

The impact of 100% retention on *individual* authorities will not become clear until final decisions are made on the additional responsibilities that will accompany the full devolution of business rate revenue; the approach to needs assessment that will underlie the setting of new tariff and top-up levels for the new system; and the design of the new system generally.[65]

Previously, Government ministers had suggested that the aim of the system was to mitigate ongoing reductions in central funding with new tools to increase local funding. For example, on 20 January 2014 Brandon Lewis, then Minister for Local Government, said: "The entire system of local government funding has been changed under this Government so that it is based on incentives rather than the begging bowl. Authorities that build houses will get more money and authorities that deliver economic growth will benefit from business rate retention".[66]

The local government sector's response to 100% business rate retention has been guarded. They argue that the new system faces an unavoidable tension. On the one hand, levels of business rate revenue vary substantially between local authorities (in per capita and absolute terms). On the other, local governments still face a broad range of statutory duties that they must fulfil. The tariff and top-up system takes account of the latter point: but, to the extent that funding is

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[62] Communities and Local Government Committee, *Oral evidence: Business Rates HC665*, 22 Feb 2016, Q9

[63] DCLG, *100 per cent retention of business rates: issues for consideration*, HC 241, 13 June 2016, para 3

[64] Local Government Association, *LGA responds to Chancellor's business rates announcement*, 5 October 2015

[65] See HCDeb 16 Jan 2017 c661-2

[66] HCDeb 20 Jan 2014 c20

redistributed, the incentive to grow business rates is blunted. Amongst other matters, this also means that different local authorities have different interests when it comes to designing the 100% retention system.

'Inherent policy tensions'

Sean Nolan, Senior Local Government Adviser at the Chartered Institute of Public Finance and Accountability, has argued that there are 'inherent policy tensions' in the policy of local business rate retention.[67]

According to Nolan, these tensions centre on four issues, which are each pulling in a different direction:

- *Resources* – councils who have a relatively large business rate tax base;
- *Needs* – councils that have a high requirement for local government services and who have low business rate tax bases;
- *Incentives* – keeping any growth in business rate revenue: why invest to promote growth in your area if you cannot keep a significant portion of the returns?
- *Stability* – guarding against the reality of income shocks.

Nolan argues that the more business rates growth that individual councils get to retain, the more incentives there are for them to promote growth. However:

> ... that means the less there is to help out those who cannot grow as much, if at all, or to put aside in a shared fund to soften the impact of shocks in the system.

Conversely:

> […] if the local reward for promoting business growth is too limited, the incentive to try will also be limited. This risks undermining a key reason the 100% retention policy was created in the first place.[68]

The balance struck between these tensions will be key to the outcomes of 100% retention.

Appeals

Beyond the general 'policy tensions' highlighted above, appeals against rate bills have formed the biggest concern among local authorities in the context of 100% business rate retention.

Ratepayers have the right to appeal against their rateable value. Appeals are made to the Valuation Office Agency (VOA) in the first instance, and may move on to the Valuation Tribunal, which is part of the court system. A court may direct that a property's rateable value may be increased or reduced, sometimes substantially, and it may direct that the change should be backdated to the date when the circumstances that justify it first arose.

[67] Sean Nolan, 'The Pressure Has Started…', *Municipal Journal*, 31 March 2016
[68] Ibid

This can lead to a ratepayer being entitled to substantial refunds from a local authority, as a result of a tribunal decision over which the local authority has no control. Under rate retention, local authorities must set aside some of their business rate revenue as 'provisions' to meet the cost of future business rate appeals. In practice, this means that once an appeal is launched, substantial amounts of money have to be set aside by councils and are unavailable for long periods of time.

As noted, **Clause 2** of the Bill would provide for the Government to make 'loss payments' to local authorities that see their rate revenue reduced as a result of successful appeals. It is not yet known exactly how this would be done.

According to a report by the Institute for Fiscal Studies (October 2016), when setting up the 50% retention scheme in 2013, the Government built in £1.8bn for the cost of appeals provision. In fact, councils actually made:

> …£1.7 billion of provisions in 2013-14 and £1.5 billion of provisions in 2014-15, of which around £0.7 billion was actually "used" to settle appeals by March 2015 (meaning £2.5 billion remains set aside in provisions.[69]

The Communities and Local Government Committee noted that for many councils, a significant proportion of their rateable value is under appeal. For instance, '33 per cent in Sheffield and 40 per cent and 34 per cent respectively in the City of London and in Westminster'.[70] The Committee said that there was a 'substantial amount of evidence on the impact of appeals…dwarfing growth in the tax base and affecting incentives, and injecting volatility into the system'.[71]

While the current system does provide councils with a few ways to mitigate financial risk – for example, local authorities can create business rate pools, sharing risk and reward among a number of parties[72] - there is widespread concern that 100% retention of business rates may exacerbate the current issues with appeals.

In December 2016, in response to a Parliamentary Question in the House of Lords, the Minister said that the Government was:

> ...looking again, in collaboration with local government representatives, at the way in which the new system should deal with appeal losses and aim to bring forward proposals shortly.[73]

Limits to growth?

The overall intention behind the policy of 100% business rate retention is to provide a financial incentive for councils to grow their business rate income by fostering stronger local economies. The ability of local authorities to generate and sustain growth will therefore be crucial.

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[69] Institute for Fiscal Studies, *A Time of Revolution? British Local Government Finance in the 2010s*, October 2016, p38

[70] Communities and Local Government Committee, *100 per cent retention of business rates: issues for consideration* HC241 2016-17, June 2016, para 34

[71] Ibid para 38

[72] Local Government Association , *Business Rate Retention: the story continues*, March 2015, p10

[73] HL3834 [Non-domestic rates: appeals], 19 December 2016

In their report *100 per cent retention of business rates: issues for consideration* (June 2016), the Communities and Local Government Committee questioned how far all local authorities would be able to drive business growth in their areas.

Andy Hall of Boston Borough Council told the Committee that he did not think that local authorities are in a position to "drive the growth in the way that you might think from how the announcement has been framed". He added that:

> If we are going to get the growth, we are going to get it. Some areas will not be able to attract the growth. They do not have the infrastructure in place. Perhaps regionally there will be growth, but there will be pockets of deprivation.[74]

The Committee concluded that some authorities may be unable to drive and generate growth, as a result of area characteristics which limited business rate revenue. For instance, agricultural land is exempt from business rates. If agriculture is the dominant industry in a local authority area, growth in the sector would not lead to an increase in business rate revenue.

According to David Phillips of the Institute for Fiscal Studies, the current business rate system operates in such a way that growth in business rates can only be generated by constructing new buildings or increasing net floor space. He has said that "The main thing with this system is that it is about attracting new development […] because that is the only revenue [local authorities] get to keep".[75]

The Communities and Local Government Committee agreed that currently:

> …growth in business rates can only be generated by constructing new buildings or increasing net floor space: growth resulting from improvements to existing buildings is mostly removed in the revaluation process and redistributed and therefore not retained locally.[76]

The Committee suggested that the Government should consider:

- What effect these constraints have on incentives to improve premises and invest in the local area, which would benefit the local economy.
- How heavily-developed urban areas which do not have the space to accommodate new development can grow their rates.
- How areas where rents are low and there is little demand for new property development can grow their rates.
- Whether large out of town developments are encouraged to the detriment of town and city centres.[77]

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[74] DCLG, *100 per cent retention of business rates: issues for consideration*, HC 241, 13 June 2016, para 68

[75] Ibid para 71

[76] Ibid p33

[77] Ibid p33

Will retention lead to greater divergence in revenues?

Providing a stronger incentive for growing business rate revenues could mean greater funding divergence between local authorities.

According to Sean Nolan, Senior Local Government Adviser at the Chartered Institute of Public Finance and Accountability, councils with a higher tax base generally welcome the idea of retention of business rates, while those with a lower tax base are generally more uneasy about retention, as they are uncertain about how much revenue they will be able to retain and grow.[78]

Under the 100% retention scheme proposed, there is greater potential for divergence in revenues between authorities that have higher tax bases and those which do not. Removing the current levy on growth, and enabling authorities to keep 100% of growth in business rate income between reset periods, could result in some authorities gaining more and more revenue, while those with less opportunity to expand business rate growth fall further behind.

The Institute for Fiscal Studies considered what would have happened under a hypothetical 100% retention scheme between 2013-14 and 2016-17. They estimated that such a system would have led to 16 (mostly district) councils seeing their funding increase by 20% or more. Only one council was estimated to have gained that much under the 50% retention scheme. According to the IFS, "the larger gains reflect both the increase in the percentage retained locally to 100% and the ending of the levies system". However, the IFS estimated that 122 councils would have seen their funding fall, while 12 authorities would have lost more than 2% of their funding. They said that "No councils are estimated to have lost that much under the 50% retention scheme".[79]

2.9 Pressure on local authority budgets

The introduction of 100% retention of business rates and the ending of the Revenue Support Grant are taking place within a context of "unprecedented pressure on local authority budgets", according to the Communities and Local Government Committee.[80]

From 2010 to 2015, the Coalition Government reduced central funding for local authorities substantially. This was achieved by reducing Revenue Support Grant. Reductions are expected to continue in the current Parliament. Table 2 below shows the levels of revenue support grant committed by the Government in the Autumn Statement 2015.

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78 Communities and Local Government Committee, Business Rates, HC 665, Oral Evidence, 22 March 2016, Q122

79 Institute for Fiscal Studies, *A Time of Revolution? British Local Government Finance in the 2010s*, October 2016, p32

80 Communities and Local Government Committee, *100 per cent retention of business rates: issues for consideration*, HC 241, 13 June 2016, para 5

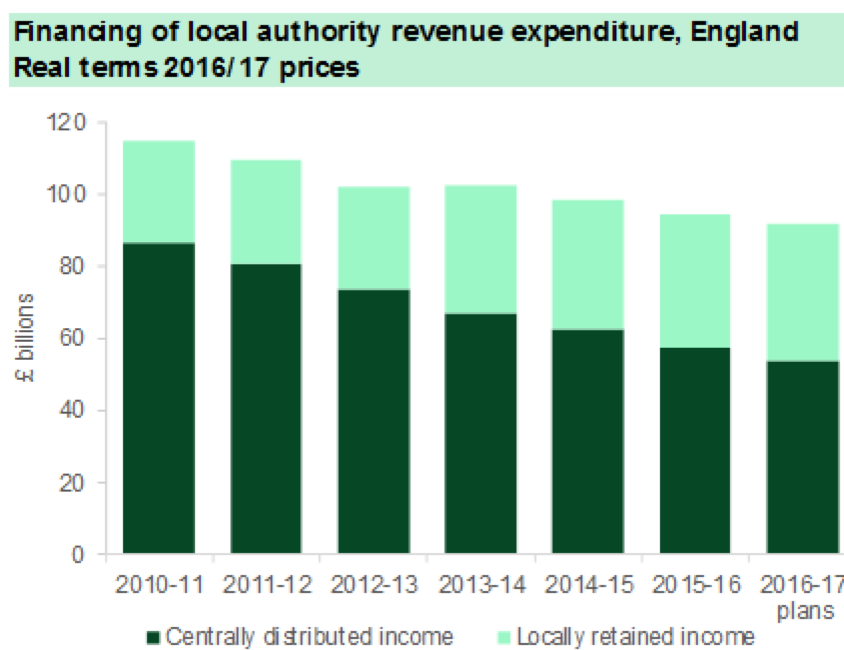
These sums include anticipated reductions to RSG for the following four years:

Table 2: local government spending (£ billion)[81]

	2015-16	2016-17	2017-18	2018-19	2019-20
RSG plus other grants	11.5	9.6	7.4	6.1	5.4
Locally-financed expenditure (council tax plus 50% business rates)	28.8	29	31.5	33.6	35.1
Total spending	40.3	38.6	38.9	39.7	40.5

The chart below shows changes in real terms local authority revenue expenditure from 2010-11 to 2016-17. Over this period real terms expenditure fell from £113.7 billion in 2010-11 to £94.1 billion in 2016-17, a 17% reduction. The proportion of expenditure financed by centrally distributed income fell from 75.9% in 2010-11 to 57.4% in 2016-17.

Financing of local authority revenue expenditure, England
Real terms 2016/17 prices



Source: DCLG Local Authority Revenue Expenditure and Financing 2016/17

The impact of these reductions has fallen differently on different types of authority (county, district, unitary) and on different geographical areas. Reviewing local authority finance towards the end of the 2010-15 Parliament, the IFS said:

> Cuts to net service spending have tended to be larger in those areas that were initially more reliant on central government grants (as opposed to locally-raised revenues) to fund spending --- these are areas that have, historically, been deemed to have a high level of spending need relative to their local revenue-raising capacity. The cuts to spending per person were also higher on average in areas that saw faster population growth.
>
> As a result, London boroughs, the North East and the North West have seen the largest average cuts to spending per person. Since these regions initially had the highest level of spending per person, there has been some equalisation in the average level of

[81] Reproduced from HM Treasury, *Autumn Statement 2015*, p100, table 2.17

> local authority spending per person across regions over the last five years.[82]

These reductions have led some local authorities to reduce or close discretionary services. Some have sought to increase other sources of revenue: for instance, by establishing commercial property portfolios or for-profit companies, the net revenues from which can be ploughed back into local services.

The National Audit Office also analysed the sustainability of local authorities and the impact of funding reductions and published two reports in November 2014. In its analysis the NAO found that the Government reduced its funding to local authorities by an estimated 28% in real terms between 2010-11 and 2014-15. Further planned cuts brought the total reduction to 37% by 2015-16, excluding the Better Care Fund and public health grant. However, the NAO also noted that the impact of funding reductions on services is difficult to quantify:

> There is little evidence of the extent to which local authorities have made savings through efficiencies rather than service reductions. Other than data on children's and adult social care, there are almost no data on local authority outputs and activities. Assessing how far savings have impacted on service users for most service areas, based on comparable national data, is not possible for the most part.[83]

David Innes and Gemma Tetlow, of the IFS, came to similar conclusions in their 2015 publication *Central Cuts, Local Decision-Making*:

> Grants from central government to local government (excluding housing benefit grant and those specifically for education, public health, police, and fire and rescue services and the housing benefit grant) have been cut by 36.3% overall (and by 38.7% per person) in real terms between 2009-10 and 2014-15. Total council tax revenues have grown slightly in real terms over this period (3.2%), although this still represents a decline of 0.7% per person.[84]

Moreover, while the intention behind business rate retention is to provide financial incentives for councils to grow their local economies, there is often little correlation between the amount of business rate revenue a local authority receives and local authorities' needs.[85] For example, Essex County Council has raised concerns that an increasing proportion of their budget will be required to support the vulnerable in their county, and they are concerned that the Government expects business rates to fund demand-led services:

> …by 2020 we will have significantly more over 85s than comparable areas and it is anticipated that around a third will have dementia. With aging carers who are also likely to need support, we are potentially facing a toxic combination of growing complex demand and rapidly shrinking revenue.

[82] David Innes and Gemma Tetlow, *Central Cuts, local decision-making*, IFS, 2015, p. 2
[83] National Audit Office, *The impact of funding reductions on local authorities*, 2014, p. 9
[84] David Innes and Gemma Tetlow, *Central Cuts, local decision-making*, IFS, 2015, p. 1
[85] CLGC, *100 per cent retention of business rates: issues for consideration*, HC 241, 13 June 2016, para 43

> […]
>
> We are concerned that government expects business rates to fund demand-led services despite the fact that demographic growth will likely far outstrip growth in business rates over a given period. There is a very real risk of a growing divergence between the amount we need and the amount we have. [86]

The Confederation of British Industry (CBI) has also raised concerns that revenues from business rates retention will be insufficient to fund public services long term, particularly social care. Anna Leach, CBI head of economic analysis, has said:

> Business rate retention should not be seen as a panacea for funding sustainable public services, given that growth in business rates revenue is not expected to keep pace with healthcare spending demands.[87]

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[86] Essex County Council, Written evidence submitted to the Communities and Local Government Committee, (BUR19) para 9

[87] *Local Government Chronicle*, 'CBI warns over business rates funding for social care', 29 September 2016

3. Business rates: reliefs and administration

3.1 Introduction

Part 2 of the Bill addresses a range of issues that have arisen in recent years relating to the administration of business rates and the application of reliefs. Some of the matters covered were addressed by the Business Rate Review that took place in 2015-16.[88] Others have arisen separately.

This Part of the Bill gives effect to commitments to:

- Replace the Retail Price Index (RPI) with the Consumer Price Index (CPI) to uprate the business rate multiplier;
- Permit local reductions in the multiplier ('multiplier discounts');
- Increase rural rate relief from 50% to 100%;
- Introduce a power to give rate relief to the telecoms industry;
- Permit rate relief for public toilets;

It also introduces powers for the Government to encourage electronic billing, and to make it easier to adjust the central rating list.

3.2 Multiplier uprating

Since the introduction of the national non-domestic rate system in 1990, the business rate multiplier has been set annually for England by HM Treasury. Previously individual billing authorities set their own multipliers, and were able to set them at any level they chose. This could lead to wide variations in rate bills between financial years.

The 1988 Act contains provisions to limit the amount by which the multiplier could be raised from year to year. **Schedule 7** provides that, for a given financial year, the multiplier will rise by the percentage of the Retail Price Index (RPI) for the previous September – unless the Treasury sets a lower figure. Thus, at the start of financial year 2016-17, the multiplier would rise by the rate of RPI for September 2015.

From 1990 to 2014-15, the multiplier rose each year by the RPI rate. In 2014-15 and 2015-16, the then Chancellor, George Osborne, announced that the multiplier would be increased by 2%, instead of 3.2% (2014-15) and 2.8% (2015-16).[89]

Through 2013 and 2014, many representative and stakeholder groups objected to the use of RPI for uprating the multiplier. For instance, the British Retail Consortium ran a campaign in 2013 called *Fair Rates for Retail*, urging the Government not to increase the multiplier for 2013-14 and suggesting the use of the CPI in future. Proposals were also

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[88] The terms of reference for the second review were published in March 2015, in a consultation paper entitled Business rates review: terms of reference and discussion paper.

[89] This provision applies to the *small business multiplier* in England, not to the *standard* multiplier.

made for a twelve-month average percentage of the Consumer Price Index (CPI), instead of a single month's RPI figure, to be used. Business groups argued that the use of RPI led to the multiplier's rises outpacing business growth:

> British retailers want more frequent revaluations of property, while the Confederation of British Industry wants the tax to be shifted in line with the consumer price index (CPI), rather than the retail price index (RPI).
>
> Unlike CPI, RPI includes housing costs, which considerably inflates the rate and has largely fallen out of favour as an economic measure. Such a move could save UK companies £1.5bn, the CBI has said, and would ensure business rates do not outpace the official measure of inflation.[90]

The 2016 Budget committed to replacing the use of RPI with the CPI.[91]

The Government's stated intention in the 2016 Budget was that this change would take effect in the 2020-21 financial year. The Budget estimated that the change would reduce business rate revenue by £370m in 2020-21, compared to revenue if RPI were retained.[92]

Clause 5 amends the provision in the 1988 Act requiring the use of the Retail Price Index to uprate the business rate multiplier. Sub-section (2) permits the Treasury to make regulations regarding how the uprating factor is to be calculated in the future. The clause does not specify that CPI must be used, or that the CPI level in a particular month must be used: this provision would have to be made in the regulations. The Treasury would also be able to make new regulations annually to alter how the uprating factor is calculated.

Sub-sections (3), (4), (5) and (8c) ensure that the existing RPI mechanism continues to apply with respect to Wales. The National Assembly for Wales has legislative competence to alter this if it chooses to do so.

Sub-section (6) amends the deadline by which the House of Commons must approve any regulations made under sub-section (2). It provides that new regulations for a given financial year must be approved before the 'principles of allocation' report for that year (see section 2.1 above), or at the latest by the 31 December before that year. Sub-section (8) (b) provides that the Secretary of State cannot calculate the multipliers that apply to billing authorities in England before regulations under sub-section (2) have been passed.

3.3 Local reduction of the multiplier (clause 6)

Clause 6 and **Schedule 2** would give effect to the Government's commitment to permit local authorities to reduce the business rate multiplier in respect of their areas. This commitment was first made by

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90 Ashley Armstrong and Elizabeth Anderson, "UK firms braced for 'watered-down' business rates review", *Daily Telegraph*, 21 February 2016

91 HM Treasury, *Budget 2016*, 2016, p.108

92 Reproduced from HM Treasury, *Budget 2016*, p. 84

the Chancellor, George Osborne, in a speech to the Conservative Party conference on 5 October 2015:

> We're going to abolish the uniform business rate entirely. That's the single, national tax rate we impose on every council.
>
> Any local area will be able to cut business rates as much as they like…to win new jobs and generate wealth.
>
> It's up to them to judge whether they can afford it.
>
> It's called having power and taking responsibility.[93]

Though the speech referred to the 'abolition' of the national rate, subsequent briefings made clear that the Government envisaged a power to cut the multiplier but not to raise it, implying a continued national maximum. This is reflected in the Bill, which leaves the national multiplier in place but permits 'multiplier discounts' to be set by local authorities.

Schedule 2 would amend section 44 and schedule 7 of the *Local Government Finance Act 1988* to create the concept of a 'multiplier discount'. Paragraph 2 sub-section (3) provides for a given area's multiplier discount to be taken into account when calculating the liability for business rates of each individual property. Paragraph 2 sub-section (5) applies the same provision to the small business multiplier. Paragraph 3 sub-section (3) applies the same provision to the calculation of liability for unoccupied properties.

Paragraphs 5 to 8 would provide that, where a multiplier discount is set, the same discount applies to the small business multiplier and the standard multiplier. The power cannot be used to apply a discount to part of a local authority's area.[94]

Paragraph 11 sets out the power to set a 'multiplier discount'. The power would be available to billing authorities, county councils, and the Greater London Authority (sub-paragraph (2)). This list of authorities may be amended by regulations (sub-paragraph (3)). The multiplier discount can be expressed as a figure, or as a percentage of the small business rate multiplier or of the standard multiplier (new paragraph 6B (1)). The Secretary of State may specify a maximum multiplier discount for a given year (new paragraph 6B (2-4)).

Authorities setting a multiplier discount must notify the Secretary of State and any other council in its area – i.e. a district must notify its county council and vice versa, and the GLA must notify the London boroughs and vice versa. The fire and rescue authority must also be notified. All these notifications must occur by 31 December preceding the relevant financial year, or the multiplier discount will not have effect (new paragraph 6C).

Paragraph 13 specifies that the setting of a multiplier discount may only be challenged via judicial review. This is also the case for the setting of

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93 See "George Osborne's speech in full", www.conservativehome.com, 5 October 2015

94 Billing authorities can apply discretionary discounts to any properties within their area via section 69 of the *Localism Act 2011*.

the England-wide multiplier by the Government. Paragraph 14 provides that a multiplier discount may only be set by full council (i.e., not by a council executive or mayor alone).

3.4 Business rate reliefs

The Bill introduces a number of adjustments to provisions for relief from business rates.

Rural rate relief (clause 7)

Clause 7 would amend the 1988 Act to provide that any property attracting rural rate relief in England will receive 100% rate relief. Currently, properties attracting rural rate relief are entitled to 50% rate relief. Clause 7 (1) (b) provides that rural rate relief in Wales will remain at 50% (the National Assembly has legislative competence over this matter).

This provision addresses an anomaly in the current legislation covering rural rate relief and small business relief. At present, in England, any property that attracts both these reliefs is entitled to rural rate relief but not small business rate relief (see section 43 (8A) (a) of the 1988 Act).[95] This means that a property could only be entitled to 50% rate relief instead of 100% *because* it is located in a rural area, whereas it would have attracted 100% small business rate relief if it had been located elsewhere. Many billing authorities have in the past used their discretion to top up rural rate relief to 100%, but they have not been obliged to do so.

The 2014 review *Administration of Business Rates in England* stated:

> Some small business representatives suggested where one relief was more generous than another, ratepayers should automatically move onto the more generous one e.g. small business rate relief instead of rural rate relief.[96]

In the 2016 Autumn Statement, Philip Hammond, the Chancellor of the Exchequer, said:

> … I will also increase the Rural Rate Relief to 100%, giving small businesses in rural areas a tax break worth up to £2,900 per year.[97]

Clause 7 (2) applies the same provision to the business rates supplements regime.

Telecommunications relief (clause 8)

Clause 8 and Schedule 3 would provide a power for the Secretary of State to apply mandatory relief to properties which are “wholly or mainly used for the purposes of facilitating the transmission of communications by any means involving the use of electrical or electromagnetic energy”.

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95 In Wales, the legislation provides that, where a property qualifies for both rural rate relief and small business rate relief, the greater amount of relief applies.

96 HM Treasury, *Administration of business rates review in England: summary of responses*, 2014, p. 11

97 HCDeb 23 Nov 2016 c907

This clause, along with provisions in clause 10 concerning the central list (see below), give effect to the commitment in the 2016 Autumn Statement:

> … from April [2017] we will introduce 100% business rates relief for a 5 year period on new fibre infrastructure, supporting further roll out of fibre to homes and businesses.[98]

Paragraph 2 (3) of Schedule 3 provides for a discount factor to be introduced into the calculation of the 'chargeable amount'. The discount factor is to be set by regulations made by the Secretary of State (paragraph 3, new sub-section (10)). Paragraph 4 makes an equivalent provision for unoccupied properties; paragraph 8 makes an equivalent provision for properties on the central rating list (see also clause 10 below); and paragraph 11 makes an equivalent provision for business rate supplements. It would be possible for the discount factor to be different in each of these cases. Paragraph 10 applies the VOA's power to disclose information to activities concerning any telecommunications discount.

The Autumn Statement documentation estimated that this, together with the changes to rural rate relief, would reduce business rate revenue by £10 million (compared to retaining the current provisions) in 2017-18, rising to £25 million by 2021-22.[99]

Discretionary relief for public toilets (clause 9)

Public toilets can attract a rateable value and thus a business rate bill.[100] This can be a substantial liability, in relative terms, for the toilet owners and/or can provide an incentive for public authorities owning toilets to close them down.

This issue attracted considerable local media attention through 2014 and 2015. The National Association of Local Councils submitted a proposal to abolish business rates on public toilets under the Sustainable Communities Act.[101]

Billing authorities cannot currently give discretionary relief to properties that they own; nor can they give relief to those that are owned by parish councils. Such properties are described as 'excepted hereditaments' in the relevant legislation.[102] In recognition of this, the 2016 Budget stated:

> The government will allow local authorities in England to use their discretionary relief powers to support publicly owned public lavatories from 1 April 2018.[103]

Clause 9 would implement this commitment by removing properties that "consist wholly or mainly of public lavatories" from the category of

[98] HCDeb 23 November 2016 c903
[99] HM Treasury, Autumn Statement, 2016, p23
[100] The rateable value will be based on the property's annual rental value. The ownership of the toilets, and any charge for their use, are not directly relevant to the rateable value.
[101] See NALC, "Don't let parishes get 'caught short' over public toilets", 22 June 2015
[102] *Local Government Finance Act 1988,* section 47 (9)
[103] HM Treasury, *Budget 2016*, 2016, p. 108.

'excepted hereditaments'. This will make it possible for local authorities to give discretionary discounts on public toilets.

3.5 Central list reliefs (clause 10)

The 'central rating list' is a centrally-held list of non-domestic properties. Most properties on the central list are related to the utilities and/or to property belonging to formerly nationalised industries. Whereas 'local rating lists' include a rateable value for each individual property, on the central list, each company or group of companies (a 'person' in the legislation) is given a single rateable value. The rateable value is assigned by the 'central valuation officer'.

The central list is established under sections 52-54 of the 1988 Act. Lists of central properties are available in the Central Rating List (England) Regulations 2005 (SI 2005/551) and the Central Rating List (Wales) Regulations 2005 (SI 2005/422). Both lists have been subject to amendments since their initial publication (see guidance notes on the VOA web pages).

As things stand, properties on the central list cannot qualify for charitable relief or empty property relief. **Clause 10** would apply these two reliefs to any qualifying properties on the central list. It also applies a telecommunications relief power (see clause 8 above) to properties on the central list. The aim of this clause is to bring the central list in line with local lists in terms of available reliefs. This will also permit properties that may qualify for reliefs to be moved between the central and local lists in future, if required, without triggering swings in liability for the ratepayer.[104]

Clause 10 would introduce new section 54ZB into the *Local Government Finance Act 1988*. Sub-section 1 provides that relief will apply where the occupant of a property is a charity or trustees for a charity *and* where the 'charitable purpose test' is met. This is specified in sub-section (2) (a) as the property being "wholly or mainly used for charitable purposes". 80% relief will be available (new sub-section 3), the same as is available for charitable properties on local lists.

New section 54ZC permits the Secretary of State to prescribe classes of central properties. These classes will face zero rate liability if they are unoccupied. The current intention is for these classes to be the same as those which have zero liability on local rating lists. The central valuation officer is required to 'certify' a property for it to be regarded as unoccupied for the purposes of this section.

Sub-section (3) provides that, if an entry includes some occupied and some unoccupied properties, the unoccupied properties must be assigned their own rateable value(s). This must be subtracted from the total rateable value for the entry.

Sub-clause (4) provides that the Secretary of State may prescribe a class of properties by reference to their physical characteristics, their

[104] A small number of ratepayers have all of their properties assigned to a particular local list instead of the central list. See also clause 12 below.

occupants, and whether they have been unoccupied in the past. Sub-section (5) provides that the Secretary of State may make regulations regarding duties or powers for the central valuation officer regarding certifying properties as unoccupied, and regarding appeals against the central valuation officer's decisions.

New section 54ZD sets up a 'hierarchy of reliefs' for properties on the central list that attract more than one of the three reliefs covered: charitable relief, empty property relief and telecommunications relief. The table in sub-section 54ZD (2) provides that empty property relief takes precedence over telecommunications relief, and charitable relief takes precedence over both of them.

3.6 Administration of the central list (clause 11)

Clause 11 would rationalise the system for updating the central list. It changes the requirements for compiling the central list for England. Sub-section (1) inserts a new section 52A into the *Local Government Finance Act 1988*. The Explanatory Notes to the Bill state:

> Since the introduction of the central rating list in 1990, changes in the utilities sectors have given rise to more frequent but minor administrative regulations having to be made merely to maintain the accuracy and integrity of the central rating list. Under the current regulation making powers, the Government believes that operating and maintaining the central list would give rise to an increasingly heavy process and regulatory burden for what is an administrative task.[105]

New section 52A gives effect to this commitment. The intention is that the central list will be maintained without the need for secondary legislation. This will make it easier to move properties or companies on or off the central list. This reflects some recent discussion in the local government sector of the rationale for properties' location on the central or local lists. The central list currently generates revenue of some £1.5 billion per year.

Subsection (1) provides that the Secretary of State may direct the central valuation officer regarding how to compile the central list. Subsection 2 (a) permits the Secretary of State to require entries in the central list to include the type of properties occupied by the 'person' (i.e. the company occupying the properties listed). This is expected to produce a central list that looks much the same as at present – i.e. with a single rateable value for each company – but with the power to attribute separate rateable values for separate types of property in the future. New sub-section 4 provides for different classes of property to be allocated their own rateable value (new sub-section 5).

Clause 11 (2) would ensure that the existing statutory basis for the compilation of central lists will continue to apply in respect of Wales.

[105] DCLG, *Local Government Finance Bill 2016-17: explanatory notes*, p13

3.7 Administrative reform of business rates (clauses 12-14)

In the 2013 Autumn Statement, the Government stated that it would consult on "options for longer-term administrative reform of business rates post-2017".[106] This was followed by the consultation paper *Administration of Business Rates in England*. This included a section on the administration of business rates, which said:

> 3.46 The government has taken steps to make other taxes easier for businesses to pay through improving digital systems. It welcomes views from ratepayers and local authorities on whether there are opportunities for modernising the collection of business rates, using digital solutions, where this would offer value for money for the taxpayer.
>
> 3.47 Ratepayers with properties in different areas in England deal with separate local authorities. Some have said that this can place extra burdens on them, particularly if bills issued by different authorities are not in the same format. The government would like to understand this better and welcomes views from ratepayers and local authorities on how to make bills clearer and easier to understand.[107]

The response to this consultation, published in December 2014, stated:

> 1.21 The government is committed to making tax easier, quicker and simpler for businesses to deal with and pay. Business rates bills can be difficult to understand and inconsistent in content and format. Stakeholders have made clear that they want to see simpler and standard business rates bills and that the rating system should make more use of digital technology.
>
> 1.22 The government wants to ensure that bills meet the needs of businesses, as well as local authorities. It will therefore set up a billing and collection forum that will bring forward practical improvements to the billing system including consideration of digital options. The government will also consider best practice guidance for standard and clear bills.[108]

A summary of responses document, published in March 2016, stated:

> The government will transform business rates billing and collection. By 2022, local authority business rate systems will be linked to HMRC digital tax accounts so that businesses can manage their rates bills in one place alongside other taxes. As a first step, Government will work with local authorities across England to standardise business rate bills and ensure ratepayers have the option to receive and pay bills online by April 2017. In addition, local authorities will make explanatory note available online, end multi-year billing and introduce an online bills calculator.[109]

These commitments were also found in the 2016 Budget:

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[106] HM Treasury, *Autumn Statement*, 2013, p46

[107] HM Treasury, *Administration of business rates in England: discussion paper*, 2014, p17

[108] HM Treasury, *Administration of business rates in England: interim findings*, 2014, p10

[109] HM Treasury / DCLG, *Business Rates Review: summary of responses*, March 2016, p11

> …the government will transform business rates billing and collection. By 2022, local authority business rate systems will be linked to HMRC digital tax accounts so that businesses can manage their rates bills in one place alongside other taxes. As a first step, the government will work with local authorities across England to standardise business rate bills and ensure ratepayers have the option to receive and pay bills online by April 2017.[110]

Clause 12 would introduce a new sub-section 2ZA into Schedule 9 of the 1988 Act. This would permit the Secretary of State to make regulations requiring billing authorities to introduce electronic billing systems. These regulations may include provision that:

- the billing authority must issue information, documents or rate bills electronically at the request of the ratepayer (sub-section (a));
- the billing authority must either provide web access to an account or send a single electronic bill, or document, on request, if the ratepayer has more than one property in the authority's area (sub-section (b));
- where the ratepayer has more than one property in the billing authority's area, the authority must supply information via a website or via the same communication as is used to serve bills (sub-section (c)).

The intention is to address the issue of ratepayers receiving multiple bills for their properties in a single billing authority, and to make access electronically available on request.

Clause 13 would provide the Secretary of State with the power to issue guidance regarding the form in which business rate demand notices (i.e. bills) must be served (i.e., sent to ratepayers). The required content of demand notices is already covered via regulations under schedule 9 of the 1988 Act. This new clause is intended to allow guidance on the "appearance and layout" of business rate bills.[111] This arises from concerns expressed in the *Administration of Business Rates in England* review:

> The government defines the minimum information which must be shown in a bill but does not define the format, layout or precise content of bills….Multiple traders have told us that handling many different types of bills creates extra cost and time in their business. Stakeholders have asked that bills:
>
> - include a clearer explanation of reliefs applied to a bill
> - use plain English
> - demonstrate greater consistency in bills issued by different local authorities
> - use online tools to improve ratepayers' understanding of how their bills have been calculated[112]

Clause 14 would give a specific power to HMRC to incur expenditure on digital services related to the administration of business rates. The

[110] HM Treasury, *Budget 2016*, p. 46
[111] DCLG, *Local Government Finance Bill 2016-17: explanatory notes*, p14
[112] HM Treasury, *Administration of business rates in England: interim findings*, 2014, p31

intention is to link local authority business rate systems with HMRC's digital tax accounts. Currently HMRC has no statutory power to undertake this work. This too was raised as a concern in the *Administration of Business Rates in England* review:

> The government is committed to making tax easier, quicker and simpler for businesses to deal with and pay. Stakeholders have made clear that they want to see simpler and standard business rates bills and that the rating system should make more use of digital technology. The government will therefore set up a billing and collection forum that will bring forward practical improvements to the billing system including consideration of digital options. The government will also consider best practice guidance for standard and clear bills.[113]

[113] HM Treasury, *Administration of business rates in England: interim findings*, 2014, p33

4. Infrastructure supplements

4.1 Devolution deals

A number of the 'devolution deals' concluded from 2014 onwards, between the Government and groups of local authorities, include a power for a directly-elected 'metro-mayor' to introduce a supplementary levy on business rates.[114]

The July 2016 consultation paper *Self-Sufficient Local Government* described this power as an 'infrastructure levy'. It consulted on a proposed definition of infrastructure: "roads and transport, flood defences, educational facilities, medical facilities, sporting / recreational facilities and open spaces".[115] It asked whether such a levy should only apply to properties over a set rateable value. It also invited comments on how the approval of the Local Enterprise Partnership board should be sought and expressed.

Currently, no power exists for combined authorities to levy upon business rates. Part 3 of the Bill amends the *Local Government Finance Act 1988* to provide that power. The Bill marks the first use of the phrase 'infrastructure supplement' to describe this levy.

The power will be available to mayoral combined authorities and the Mayor of London. For clarity, these are referred to in the analysis below as 'supplement authorities'.

Economic context

The proposal to introduce 'infrastructure supplements' arose in the context of a much broader debate regarding devolution of power, and 'fiscal devolution', that gathered pace through 2014 and 2015 (see section 1.3 above). A key element of this debate was the concept of the 'Northern Powerhouse', and associated increases in spending on infrastructure in the northern regions of England. The then Chancellor, George Osborne, first used the phrase 'Northern Powerhouse' in a speech on 23 June 2014.[116] This speech outlined four priority areas: transport, science and innovation, creating creative clusters, and devolving power to local areas.[117]

In the *Northern Powerhouse Strategy*, published in November 2016, the key matters had become 'connectivity' (including transport); skills; enterprise and innovation; and trade and investment. Infrastructure was mentioned as a key element of 'connectivity': this included a number of road and rail schemes and a further round of Growth Deals. The section on enterprise and innovation specifically stated:

114 For further details on the devolution deals, see the Library briefing *Devolution to local government in England* (December 2016).

115 DCLG, *Self-sufficient local government: 100% business rate retention*, July 2016, p.37

116 Rt Hon George Osborne MP, *Chancellor: 'We need a Northern powerhouse'*, 23 June 2014

117 See the Library briefing *The Northern Powerhouse*, 1 November 2016, for further details.

> The government will give mayoral combined authorities powers to borrow for their new functions, which will allow them to invest in economically productive infrastructure, subject to agreeing a borrowing cap with HM Treasury.[118]

Mayoral combined authorities will be able to use borrowing powers, investment funds, and an infrastructure supplement (if they choose to set one) to create a single pot for infrastructure investment.

Other supplements on business rates

The proposed infrastructure supplement is distinct from two other supplement powers within the business rates system: Business Rate Supplements (BRS) and Business Improvement Districts (BIDs) (see also section 5 below).

Local authorities in England and Wales may levy a 'business rate supplement' (BRS) on the standard business rate under the *Business Rate Supplements Act 2009*. Proposals must be approved by a majority of ratepayers, both in numerical and rateable value terms (see also section 5.1 below).[119] The maximum BRS is 2p per £1 of rateable value (i.e. the multiplier can be raised by 2p in the pound). All properties with rateable values below £50,000 are exempt.[120] Authorities must produce a prospectus and consult with affected businesses, and must spend the revenue on economic development.[121]

The only BRS in existence so far is a 2% supplement on businesses in the area of the Crossrail development in London. The revenue will help pay for Crossrail.[122]

Local businesses may also create a Business Improvement District (BID), covering a geographical area of their choice (normally smaller than a local authority: for instance, a town centre or a business park). A BID must be approved in a referendum by a majority, both in terms of number of voters and in terms of rateable value. The BID must be based on a prospectus published in advance of the vote, which must specify the levy to be collected and the works on which it will be spent. BIDs can last a maximum of five years, after which time a further referendum must be held. Most BID levies in England comprise an additional 1%-4% on the business rate. Businesses in the area covered cannot refuse to pay.

There is no legal barrier to all of these supplements being in force in a single place – a BRS, a BID, and an infrastructure supplement. But the likelihood of this seems low. The requirement for a referendum before

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[118] HM Treasury, *Northern Powerhouse Strategy*, 2016, p19

[119] This provision was brought in by section 68 of the Localism Act 2011. Prior to this, a ballot was only required where the supplement was to fund more than a third of the total cost of the relevant project(s). Eligibility to vote is limited to those who would be liable to pay: see sections 6 and 7 of the *Business Rate Supplements Act 2009*.

[120] The Business Rate Supplements (Rateable Value Condition) (England) Regulations 2009 SI 2009/2542

[121] HM Treasury/DCLG, Business Rates Supplements: guidance for local authorities, January 2010,

[122] The Crossrail BRS was established before the legislative requirement for a vote on a BRS was brought in – see the following footnote. See also the Library briefing paper *Railways: Crossrail* (SN/BT/0876).

establishing a BRS is a significant hurdle for any authority seeking to impose one.

Infrastructure supplement: practical details

The infrastructure supplement will comprise a maximum additional multiplier of 2p (see **Clause 22 (2)** below). The sums that would be raised via a levy of 2p in the pound on business rate revenue in the combined authority areas are not large.

Table 3 shows the maximum sums that infrastructure supplements would have raised if they had been levied in 2016-17, in the areas currently expected to qualify as 'supplement authorities'. These figures assume that unoccupied properties would be subject to the levy and that there would be no lower 'rateable value threshold' (see clause 22 below).

Table 3: infrastructure supplements - estimates

Potential business rate revenue for combined authority areas (£millions)

	Net amount receivable from rate payers in combined authority areas (2016/17)	Potential amount from 2p in the pound increase
Cambridge & Peterborough	379.31	15.67
Greater London	6896.54	284.98
Greater Manchester	985.14	40.71
Liverpool City	478.65	19.78
Tees Valley	228.19	9.43
West Midlands	1015.93	41.98
West of England	501.71	20.73

Some combined authorities have published indications of the spending towards which their infrastructure levy is likely to be directed. They intend to use the levy as a source of revenue against which to borrow larger sums of money for infrastructure investment. They may also plan to use the investment funds awarded via devolution deals, typically of £30 million per annum for 30 years, for this purpose.

4.2 The Bill

Use of the infrastructure supplement (clauses 16 and 17)

Clause 15 (1) would permit an infrastructure supplement to be levied by a relevant authority on non-domestic ratepayers in its area. Clause 15 (2) states that the funding must be spent on "a project that the authority is satisfied will promote economic development in its area". This mirrors the requirement in the *Business Rate Supplements Act 2009*, that funds must be spent on economic development. Sub-section (3) provides that occupied and unoccupied properties may be subject to an infrastructure supplement.

Clause 16 (1) would allow mayoral combined authorities, and the Greater London Authority, may levy an infrastructure supplement. Combined authorities without directly-elected mayors may not do so.

Clause 16 (2) provides that the decision to levy an infrastructure supplement must be made by the mayor of a mayoral combined authority. Clause 16 (3) and 16 (4) provide that relevant authorities can exercise the power jointly.

Clause 17 would set limits on the matters on which the infrastructure supplement may be spent. Sub-section (1) provides that the funding must be spent on the project for which it was raised (see also clause 19 on the 'prospectus'). Sub-section (1) (b) provides that the funding must be additional to what was otherwise available – i.e., the authority cannot levy a supplement if it already had funding available for the project.

Sub-section (2) contains a specific legal power to use the infrastructure supplement revenue to repay borrowed funds. This permits supplement authorities to use this income, alongside investment funds and other monies, as collateral for borrowing for infrastructure investment.

Sub-section (3) would provide that infrastructure levy funds may not be spent on housing; social services; education services; children's services; health services; or planning. Sub-section (4) provides that the Secretary of State may alter this list via regulations.

Sub-section (6) would provide that an authority may also not reallocate funds provided to it for an infrastructure project to other activities. Sub-section (7) provides that this also applies to funding obtained by the combined authority or the GLA that was originally passed to a billing authority (a district or unitary council) for infrastructure spending. Sub-section (11) extends this to funding contributions made to a functional body in London.

Sub-section (5) would provide that the GLA can pass infrastructure levy funds on to functional bodies (Transport for London and its Mayoral Development Corporations). Sub-section (10) provides that the limits on the use of infrastructure levy funding continue to apply if it is passed to a functional body.

The prospectus (clauses 18-20)

Clauses 18, 19 and **20** would establish the conditions required before an infrastructure levy may be imposed.

Clause 18 would require the authority to publish an 'initial prospectus', consult upon it, then publish a 'final prospectus'. The prospectus will be a significant document, as the authority will be able to rely on it as a basis for varying the supplement in the future (see clause 26).

Clause 19 and **Schedule 4** set out the information that must be included in each prospectus. **Clause 19 (2)** provides that both prospectuses must be published on the authority's website.

Schedule 4 provides a lengthy list of required contents of the prospectus:

- a description of the project, including any feasibility studies (paragraphs 1 and 3);
- a statement that the expenditure is additional to existing spending plans (paragraph 4);
- an estimate of the total cost (paragraph 5);
- an assessment of impact on businesses in the authority's area, and an assessment of the benefits for the area (paragraph 6);
- Details of any planning consent given (paragraph 7);
- Details of the use to be made of the supplement funds in relation to the project (paragraph 8);
- details of any loan that the funds are used to pay back (paragraph 9), including terms, period of loan, and consequences of early repayment;
- details of the involvement of any functional bodies;
- an explanation of how the authority will ensure that funds are only spent on this project (paragraph 11);
- the authority's policy regarding keeping supplement payers informed about progress of the project (paragraph 12);
- the amount expected to be raised and the level of the multiplier;
- the authority's 'rateable value threshold' (also clause 22 below). This is the rateable value level below which no supplement will be payable;
- Whether or not 'section 45 ratepayers' (i.e., ratepayers for unoccupied properties) will be liable for the supplement (paragraph 16);
- When the chargeable period will begin and how long it will last (paragraph 17). There is no maximum period for an infrastructure supplement;
- what reliefs will apply (see **clause 24** below) and when the supplement will be collected.
- How the authority will decide whether to vary the multiplier or the charging period (paragraph 20), and how this will be publicised (paragraph 21);
- what will be done if the project either overruns in time or cost, or comes in early and/or under budget (paragraph 22).

Clause 20 would provide that the authority must consult prospective ratepayers, all authorities in their area (whether district, county or borough councils) and anyone else they think appropriate. Clause 20 (8) includes a general power for the Secretary of State to vary the statutory consultees in this section.

The Government's original intention was to require the imposition of the infrastructure levy to be subject to sign-off by the relevant Local Enterprise Partnership (LEP). This requirement does not appear in the Bill.

Sub-sections 20 (2), (3) and (4) define 'ratepayers' for the purposes of the requirement to consult. Anyone who may have to pay the levy must be consulted. The consultation must also include those who might receive levy relief (see **clause 24** below) and those who might be caught by the levy before it ends, even if they are not initially liable. The consultation must be published (sub-section 5 (a)) along with a revised prospectus if this is thought necessary.

Liable ratepayers (clauses 21-23)

Clause 21 would provide that all non-domestic ratepayers will be liable to pay an infrastructure supplement if it is imposed, unless they fall into specified categories. Sub-section (3) (a) provides that *unoccupied* properties that receive the 'charitable use' exemption[123] from business rates cannot be liable for an infrastructure supplement. Sub-section (3) (b) provides that the prospectus (see clause 19) may exclude unoccupied properties entirely. Sub-section (7) states that the 'chargeable period' must be the one specified in the prospectus, unless it has been varied via the formal procedure in Clause 26 (see below).

Clause 22 would create a power to specify a 'rateable value threshold' – that is, a rateable value below which an infrastructure supplement will not be payable. This resembles business rate supplements, where regulations provide that a business rate supplement may only be imposed on properties with a rateable value of £50,000 or more.[124] Clause 22 (2) provides that the threshold must be set in the prospectus; but also that the Secretary of State will prescribe a minimum threshold via regulations (clause 22 (3)).

Where an infrastructure supplement is to be imposed but unoccupied properties are not liable, sub-sections (4) to (10) create a legal power for a partly occupied property to be apportioned between the occupied and unoccupied parts, and for only the occupied part to be liable for the supplement (sub-section (5)). This is at the discretion of the authority imposing the supplement. They may require the local listing officer to assign a rateable value to the occupied and unoccupied parts of the property (sub-section (6)). This latter power already exists in respect of ordinary business rate liability (see section 44A of the 1988 Act). Sub-section (7) provides that an apportionment under section 44A can be applied if this is preferred.

Clause 23 would contain the statutory mechanism for calculating the infrastructure supplement payable by a ratepayer. It mirrors the provisions in sections 43 and 44 of the 1988 Act for general non-domestic rate liability.

Sub-section (3) provides that the maximum possible infrastructure supplement is a multiplier of 2p in the pound. This is expressed in the Bill as a multiplier of 0.02. The standard multiplier in England for 2017-

[123] Unoccupied properties are exempt from business rates where "the ratepayer is a charity or trustees for a charity and it appears that when next in use the hereditament will be wholly or mainly used for charitable purposes" (Local Government Finance Act 1988 s45 (6)).

[124] See the *Business Rate Supplements (Rateable Value Condition) (England) Regulations* (SI 2009/2542)

18 is expected to be 48.0p. A 2p supplement on this would amount to 4.17%.

Sub-section (4) provides that 2p in the pound is still the total limit even if more than one supplement is imposed. Sub-section (5) also provides that the supplement must not exceed the rate set in the prospectus (see clause 19 above) unless it has been varied under clause 26 (see below).

Sub-sections (6) and (7) apply the provisions in clause 22, regarding apportioning liability to the occupied part of a partly-occupied property, to the calculation of the 'chargeable amount' of infrastructure supplement. This legal power ensures that the apportionment can feed through into the bill itself.

Procedure for imposing a supplement (clauses 24-33)

Clause 24 would provide a general power for the authority imposing the supplement to provide relief to any ratepayer. The terms of any relief must be set out in the prospectus (sub-section (3)), and must be followed by the authority (sub-section (2)).

Clause 25 would provide a general power for the Secretary of State to make regulations concerning liability where a property is occupied by more than one person, or where a liable person has died. This mirrors provisions in section 50 of the 1988 Act.

Clause 26 would give a general power for the authority imposing an infrastructure supplement to vary it whilst it is in force, providing that this is done in accordance with provisions in the final prospectus.

Clauses 27 and **28** would require the supplement authority to send a notice to billing authorities in its area for every year that it imposes a supplement. Clause 27 (2) specifies what the notice must contain: the multiplier rate, whether unoccupied properties are to be liable, and whether any types of relief are to apply. If more than one infrastructure supplement is in force, these details must be given for each one (sub-section (4)). This notice must be given before 31 December in the preceding financial year (sub-section (3)). It is possible to impose or vary a supplement in-year under **Clause 28,** but any mayor who does this will have to meet the costs of collecting the extra funds (see clause 31 (4)).

Clause 29 would provide that billing authorities must calculate ratepayers' liability for the infrastructure supplement. **Clause 30** would give general powers to the Secretary of State to make regulations concerning collection and enforcement of the infrastructure supplement. Clause 30 (3) provides that any unpaid infrastructure supplement is still payable if the project for which it has used has come to an end; and clause 30 (4) makes the same provision for a project that has been abandoned.

Clause 31 permits billing authorities to charge supplement authorities a proportion of the supplement sums collected to meet collection expenses. This proportion may be prescribed in regulations (sub-section (1)), which may also set a maximum cost (sub-section (6)). If no

regulations are made, there will be no power to recharge costs. The supplement authority must pay these costs (sub-section (4)), but cannot pay them out of the amount collected in respect of the supplement (sub-section (5)).

Clause 32 (1) would permit supplement authorities to require billing authorities to provide information concerning ratepayers' names, addresses and rateable values, and any other information they require for the purposes of operating an infrastructure supplement. Billing authorities may charge for providing this information (sub-section (3)(b)). The information may not be used for purposes other than the infrastructure supplement (sub-section (4) (a)) and must not be disclosed (sub-section (4) (b)) without the consent of the person concerned, or following a court order.

Clause 33 would give a general power to the Secretary of State to issue guidance, to which a supplement authority must have regard. This includes guidance on what constitute 'infrastructure projects'; impact and benefit assessments for the prospectus; how money from the supplement may be spent, plus how to ensure it is only spent on the project in question; the level of detail required for a prospectus; and what type of reliefs might be given.

5. Property owner levies and business rate supplements

Part 4 of the Bill adds a number of sections to the *Local Government Act 2003* to create a "property owner levy", a levy based on a property's rateable value that is charged to property owners rather than ratepayers.

This Part also repeals existing provisions in the *Business Rate Supplements Act 2009* that set up "BRS-BID arrangements", which the property owner levy replaces.

Finally, it expands the definition of a "levying authority" in the 2009 Act to include mayors of combined authorities, thereby allowing those mayors to propose and arrange business rate supplements under that Act.

5.1 Business rate supplements

Under the *Business Rate Supplements Act 2009*, a levying authority has the power to impose a business rate supplement (BRS) on non-domestic ratepayers in its area. This is subject to a local ballot of those who are liable for the levy. The only BRS currently in force is that levied by the Mayor of London in order to part-finance Crossrail.

BIDs also involve an additional levy on the business rate but there are important differences between the two.[125] These include the following:

- BIDs run for a maximum of 5 years. There is no national maximum limit for rate supplements, although the duration must be specified in the prospectus;
- BID arrangements are made by billing authorities (district and unitary councils). Rate supplements are levied by upper-tier authorities (county and unitary councils);
- BIDs tend to be focused on defined areas such as town centres or business parks; rate supplements must be levied on the whole area of an upper-tier authority(ies);
- BIDs tend to involve measures designed to improve the attractiveness and/or safety/security of an area (although the legislation is not prescriptive). Rate supplements must be used to promote local economic development: various prohibited categories of spending are set out in the 2009 Act;
- Under regulations, properties with a rateable value of under £50,000 (£55,000 for the Crossrail development) are exempted from business rate supplements.[126]

[125] See the Commons Library briefing Business Improvement Districts, 7 November 2016
[126] See the *Business Rate Supplements (Rateable Value Condition) (England) Regulations 2009* (SI 2009/2542).

BRS-BID arrangements: "Property owner BIDs"

Business rates, supplements and BID levies are paid by the occupants of a property. In 2014, the Government introduced regulations under the *Business Rate Supplements Act 2009* for England allowing BID structures to implement a levy on property owners.[127] (Property owner BIDs were permitted under the initial BID legislation in Scotland and Northern Ireland.)

Property owner BIDs were proposed in the 2011 'Portas Review' of the economy of the UK's high streets. This recommended developing the BID model into 'Super BIDs' that would be able to:

- Use the Community Right to Challenge and the Community Right to Bid in their own right;
- Acquire powers to use Compulsory Purchase Orders.

The report also recommended that landlords as well as business tenants should have a stake in the process and BIDs should be able to levy a charge on property owners.[128] The Government's response committed to looking further at involving property owners in BIDs:

> On landlords' involvement, there are already examples where landlords are effectively engaged in Business Improvement District activity. We will build on this knowledge to explore how a property owner Business Improvement District could be delivered, with the support of the industry.[129]

The *Business Improvement Districts (Property Owners) (England) Regulations* took effect in 2014. They provided a mechanism for property owners to set up and manage BIDs. Property owner BIDs ("BRS-BID arrangements") can only be set up in an area where a BID and a BRS is in force.[130]

BRS-BID arrangements may be proposed by any person with a relevant property interest in relation to a property situated in the area of the proposed arrangements; a body formed for the creation of BRS-BID proposals; or the relevant billing authority.[131]

There are currently three property owner BIDs, all in London. These are New West End, Piccadilly & St James's and Leicester Square to Piccadilly Circus. The New West End Company only covers property owners with a property with a rateable value of £250,000 or more: 125 landlords in the area fulfil the criteria. It expects to raise £3.2 million in its first year. All of these meet the requirements of a BRS being in force because the Crossrail BRS is in force in their effective area.

Two property owner BIDs have been established to date in Scotland, in Inverness City and Clackmannan. In each case, both the property

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[127] The Business Improvement Districts (Property Owners) (England) Regulations 2014 (SI 2014/3204)

[128] The Portas Review: An independent review into the future of our high streets, 2011, pp 21-22. See also the Commons Library briefing The retail industry: statistics and policy, SN06186, June 2014

[129] Ibid., p10

[130] *Business Rate Supplements Act 2009*, Sch. 2, para 3(1)

[131] The *Business Improvement Districts (Property Owners) (England) Regulations 2014* (SI 2014/3204), regulation 4

owners and the occupiers are liable for the levy, as permitted by the initial legislation in Scotland. No such developments have taken place to date in Wales.

Table 4 provides some points of comparison between BIDs, Business Rate Supplements, and property owner BIDs.

Table 4: BIDs, BRSs and BRS-BIDs in England

	BID	**BRS**	**BRS-BID**
Who pays?	Ratepayers	Ratepayers	Owners
Who makes arrangements?	In a two-tier area, lower-tier authorities	Upper-tier authorities	In a two-tier area, lower-tier authorities
Who may propose?	A ratepayer or property owner in the proposal area, a body whose purpose is developing proposals, or the billing authority	Upper-tier authorities responsible for the area of the proposal.	A property owner in the proposal area, a body whose purpose is developing proposals, or the billing authority
Max. term	5 years	None – but term must be in prospectus	5 years and must be concurrent with BID
Feasibility work required in proposal?	No, only statement of work or services to be provided	Yes, and conclusions from that work	No, only statement of work or services to be provided
Statement of existing services in proposal?	Yes	No	Yes
Cost assessment required in proposal?	No	Yes, estimated total cost of project must be provided	No
Planning consent details required?	No	Yes	No
Expenditure details required in proposal?	A statement of the “works and services to be provided”, and who will provide them	A description of the expenditure of the money raised, including full details of any loans to be serviced.	A statement of the “works and services to be provided”, and who will provide them

5.2 Property owner levies (clause 37)

Clause 37 and **Schedule 5** would allow for property owner levies to be introduced via regulations. The Government's explanatory notes to the Bill state:

> [This part of the Bill] moves the property owner legislation to the Local Government Act 2003, and allows a levy to be imposed on property owners without the requirement that a Business Rate Supplement be in force, and in the process providing parity of language and structure between the original provisions for BID arrangements and the new property owner arrangements.[132]

The Bill would therefore repeal the existing legislation for BRS-BID arrangements in the 2009 Act. The sections that the Bill would introduce (to be inserted into the *Local Government Act 2003*) are very similar. The key difference is that a BRS need not be in force to allow a property owner levy to be set up.

Arrangement of property owner levies

New section 59A would allow a billing authority to set up property owner levies alongside Business Improvement District levies. It is analogous to Schedule 2, paragraph 2 of the 2009 Act.

The project specified by the property owner arrangements need not be the same project set up by the BID arrangements, although they must be in the same geographical area.

However, if the same project is specified by both the BID and property owner arrangements, the amount of liability for the property owner levy may offset the amount of liability for the BID levy. There is no requirement for a billing authority to choose to offset liability for the BID levy if it chooses not to do so.

New section 59B would allow regulations to be made allowing two or more billing authorities to make joint arrangements. These powers existed under the 2014 regulations[133] but none of the three existing BRS-BID arrangements make use of them.

Who pays for property owner levies?

Each property owner BID will decide which classes of property owner are liable to pay any property owner levy that is imposed.

The consultation to the 2014 Regulations picked up on concerns from some respondents that occupiers could end up paying for the property owner levy by their landlord simply passing the cost on to their tenant.

New section 59F would allow regulations to be made which would forbid a landlord from charging property owner levies to their tenants. The Government has previously indicated that it would be too difficult to implement this:

> The Government has noted the concern from some respondents that ratepayers could pay for the property owner levy through an increase in their business rates. The Government could include a

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[132] *Local Government Finance Bill*: Explanatory Notes, para 138

[133] *Business Improvement Districts (Property Owners) (England) Regulations 2014* (SI 2014/3204), regulation 22

> provision in regulations, which would seek to invalidate any attempt made by the landlord to require the tenant to reimburse the landlord for the levy. However, it would be not be possible to enforce this in practice as it would be very difficult to prove that an amount charged to the tenant is attributable to the levy rather than a legitimate charge, particularly if it is wrapped up in the rent. The Government therefore proposes not to introduce legislation for this at this stage.[134]

The new power to make such regulations in **section 59F** is identical to the previous power (and therefore does not answer the Government's question as to how to enforce such regulations).

Ballots

The system by which ballots would be held for property owner levies is set out in new **sections 59I to N.** Property owner levies may not come into force until those who are liable to pay the proposed levy approve the levy in a ballot.

Section 59J sets out the ballot requirements for setting up a property owner levy. Where property owner arrangements are to come into force, a ballot must be held of property owners who will be liable for the proposed levy. These ballots appear to follow the "dual-key" mechanism used in BID, BRS, and BRS-BID ballots, that a numerical majority of property owners and a majority by rateable value must approve the arrangements.

However, the precise means by which the ballot requirements are calculated is left to regulations, as they were in the 2009 Act for BRS-BID arrangements. In the 2014 regulations, the calculation requirements were the "dual-key" method described above.

Section 59K would allow for regulations to be made to allow property owner levy proposals to be on the same ballot as BID proposals. This is the same as the provisions for combining ballots in the 2009 Act.[135]

The regulations under this Act may also make provision for declaring the ballot void. Both the BID and the BRS-BID regulations also make provision for a ballot to be declared void by the Secretary of State in the event of material irregularity, but only if 5% of persons entitled to vote request this is done so.

> The 5% threshold requires there to be a number of persons entitled to vote to be concerned about the operation of the ballot rather than for just one individual.[136]

Whether these arrangements are the same for property owner levies will be set out in regulations.

Veto

Sections 59L and M make provision for veto of a property owner levy proposal.

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[134] *Business Rate Supplements Act 2009*, Sch. 2, para 4
[135] *Business Rate Supplements Act 2009,* Schedule 2, para 6
[136] Ibid., para 65

Section 59L would give the billing authority and Secretary of State the power of veto over property owner levies in circumstances to be prescribed by regulations. This is the same as the power granted by the 2009 Act.[137] The circumstances in which a billing authority may veto a BID or BRS-BID proposal are when it believes that:

- The arrangements are likely to conflict with a policy formally adopted by the authority;
- The arrangements are likely to be a significant inequitable financial burden to any person or class of persons; or
- (for BRS-BID proposals only) The proposer has failed to prepare a document showing the name and address of each person entitled to vote in the ballot.[138]

Both regulations also require the billing authority to consider the extent of the conflict and the level of support for the proposal before using its veto. In effect, this allows some degree of discretion where a conflict is minor and support is high.

Section 59M would permit regulations to be made for a person to appeal a billing authority's veto to the Secretary of State. In the 2014 regulations, the appellant must appeal within 28 days of the veto notice being given by the billing authority.[139]

Section 59O would make provisions for the duration of property owner arrangements. The property owner arrangements may only be in effect concurrently with a BID, and the duration for which they can be in effect without requiring a renewal ballot is five years. This is the same term limit as for BID arrangements.

Identifying property owners

There is no definitive and accurate record of property owners in the UK. Developing a list of those liable to pay a property owner levy within a given area could be challenging.

Under the 2014 regulations, this task is the responsibility of the ballot holder. Under the same regulations for BRS-BID arrangements, the relevant billing authority is to supply to the ballot holder any information the ballot holder requires to organise a ballot.[140] These regulations, however, allow a billing authority to charge a ballot holder for the cost of any work conducted in the case of a ballot receiving less than 20% support from all voters or it is declared void.[141]

Section 59P would make provision for regulations that would confer on a billing authority, for property owner levy purposes, powers under section 5A of the *Acquisition of Land Act 1981* to compel property

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137 *Business Rate Supplements Act 2009*, Schedule 2, para 7
138 *Business Improvement Districts (Property Owners) (England) Regulations 2014* (SI 2014/3204, regulation 14
139 Ibid., regulation 15
140 Ibid., regulation 13, sub-section 4
141 Ibid., regulation 12

occupiers[142] to identify who they believe to be the owner of the land. Regulations may also grant the powers under that act to make it an offence not to provide that information.[143] Billing authorities could not use information gained by such powers for any other purpose but for the operation of property owner levies.

What happens to existing BRS-BID arrangements?

Schedule 2 of the 2009 Act, which set up BRS-BID arrangements, would be repealed by this Bill.[144] **Paragraph 7** of **Schedule 5** would ensure that the Bill does not have any effect on any existing BRS-BID arrangements that are currently in effect.

When such arrangements are to be renewed, they will be treated as though they are property owner levies.

5.3 Granting powers to levy business rate supplements to mayors (clause 38)

Clause 38 would grant the power to impose business rate supplements to mayoral combined authorities. The power is not granted to non-mayoral combined authorities.

At present, the following can potentially levy business rate supplements:[145]

- the Greater London Authority;
- an upper-tier authority in a two-tier area;
- a unitary authority;
- a county council or county borough in Wales.

Where these powers are used by a mayoral combined authority, they are exercisable only by a mayor acting on behalf of the authority.

This power would continue to be subject to the same ballot requirements that already exist under the 2009 Act, which require a local ballot of non-domestic ratepayers where both a majority of voters and a majority of the rateable value of those ratepayers' properties votes in favour of the proposals.

As noted above, this power is distinct from the infrastructure supplement provided for in part 3. A mayoral combined authority could in principle levy both an infrastructure supplement and a business rate supplement simultaneously.

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[142] As well as: any person who has an interest in the land either as freeholder, mortgagee or lessee; any person who directly or indirectly receives rent for the land; and any person who is authorized to manage the land or to arrange for the letting of it.
[143] *Acquisition of Land Act 1981,* section 5B
[144] Schedule 5, para 6(6)
[145] *Business Rate Supplements Act 2009* c. 7, s2(1)

BRIEFING PAPER
Number 07873
19 January 2017

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