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Reviewing and reforming business rates

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Summary

This note covers the introduction of local government retention of all business rate revenue in England ('100% business rate retention'); the existing system of 50% business rate retention by local government; and adjustments to business rate reliefs made between 2014 and 2016. It also notes some future business rate reliefs that would have been introduced by the *Local Government Finance Bill 2016-17*. It draws links between these changes and the two 'business rate reviews' conducted by the Government between 2013 and 2015.

The paper also notes current debate around business rates appeals; planned changes to the business rate 'central list'; and proposals for further changes to the rating system.

This note applies to England only. Responsibility for business rates is devolved to Scotland, Wales and Northern Ireland. For a more general explanation of the business rates system in England, see the Library briefing paper *Business rates*. For more details on the 2017 revaluation of business rates in England, Wales and Scotland, see the Library briefing paper *Business rates: the 2017 revaluation*.

1. The Business Rate Retention Scheme

The Business Rate Retention Scheme (BRRS) governs a substantial proportion of local authority funding in England. This section explains the workings of the scheme at present.

Under the BRRS, local government retains 50% of business rates revenue (the 'local share') and passes 50% to central government (the 'central share'). A 'tariff' or 'top-up' element is then applied to each authority's 50% 'local share'. This is the main element of redistribution within the BRRS. The tariff payments pay for the top-ups. The aim of the redistribution is to ensure that areas do not have access to disproportionately low or high business rate revenue, as collected rate levels vary widely across England.

Local authorities will then retain up to 50% of additional business rate revenue that they raise in the period 2013-19. 'Additional revenue' is revenue above the 'business rates baseline', based on the authority's average business rate revenue in 2011-12 and 2012-13. This is subject to a 'levy' of between 0% and 50% on the retained growth (see section 1.2 below).

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.

1.1 Tariffs and top-ups

Each authority's tariff or top-up level is fixed for a number of years (see section 4.3). Fixing the tariff and top-up levels has two effects. First, growth is retained against a recent baseline, meaning that authorities benefit from the BRRS according to recent economic change rather than their inherent economic strength. Second, revenue levels are predictable: retained revenue is not offset by regular swings in tariff and top-up levels. This means that authorities can plan to drive growth and be confident about the revenue that will be available to them over a number of years.

Figures 1 and 2 show examples of the outcomes for a tariff and top-up authority respectively. In Figure 1, a 'tariff authority' collects £40 million in rate revenue in year 1. 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 has access to £5 million in rate revenue in year 1.

In year 2, the tariff authority collects £44 million in rate revenue. The central share is therefore £22 million. The tariff remains at £15 million. The authority retains the remaining £7 million (the two middle parts of the bar). This is £2 million more revenue than it had access to in year 1.

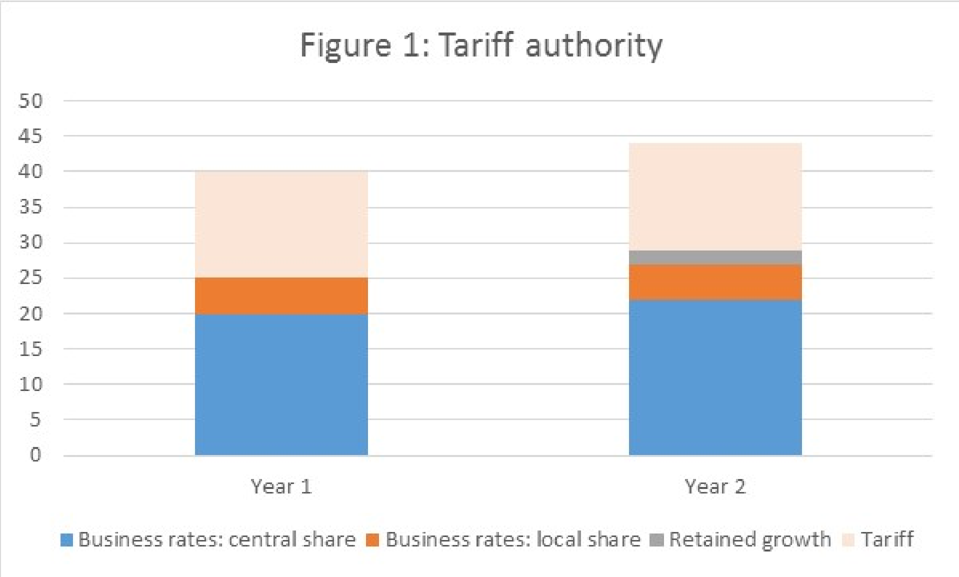
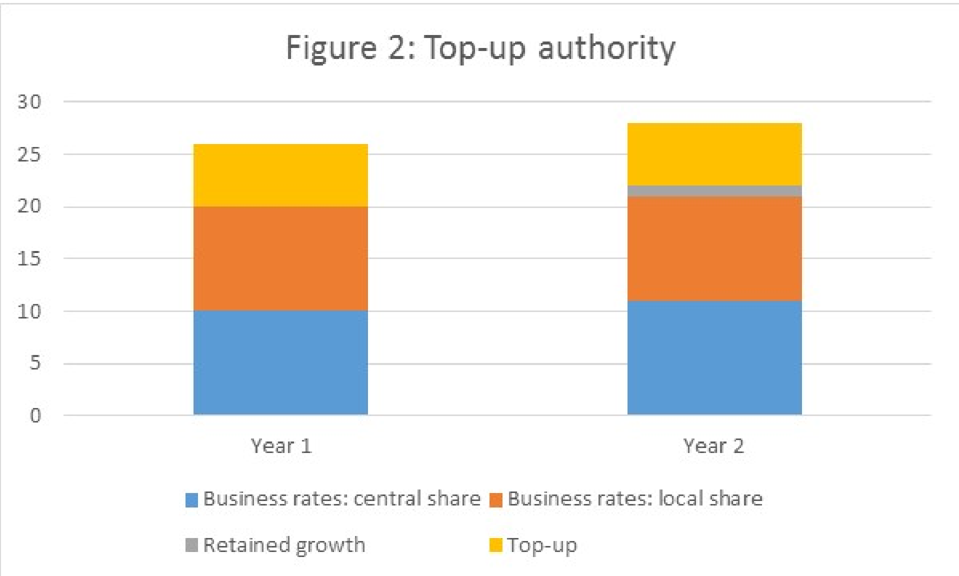


Figure 2 shows the effects on a top-up authority. The authority collects £20 million in rate revenue in year 1. £10 million, or 50%, goes to the central share. A top-up of £6 million is added, meaning that the top-up authority has £16 million in rate revenue in year 1.

In year 2, the top-up authority collects £22 million in rate revenue. Therefore, £11 million goes to the central share. The top-up remains at £6 million. The authority retains an additional £1 million compared to year 2, and has access to a total of £17 million in rate revenue (£10m + £6m + £1m).



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. The tariff may be substantial, leading to some such authorities retaining only some 10%-20% of total revenue once the tariff has been applied.

1.2 The 'safety net' and the 'levy'

Retention of 50% of revenue growth may be subject to a further levy on authorities with very high revenue growth. Each tariff authority has a 'levy rate', varying between 0% and 50%.[1] 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.

The purpose of the levy is to ensure that authorities with very high potential to increase their rates do not benefit disproportionately from the system. Clause 1 of the *Local Government Finance Bill 2016-17* will abolish the 'levy' under 100% retention of business rates.[2]

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 will be topped up to reach that level.

Currently the revenue collected via the levy is expected to pay for the safety net, though this has not always been the case. The Government has confirmed that a safety-net will remain in place under 100% rate retention, to be funded by a 'top-slice' of all rate revenue.

1.3 Resets

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 would ensure that authorities did not gain or lose disproportionately over time.

Before the 2017 general election, the Government planned to introduce 100% rate retention in 2019. This would have meant that a reset took place in that year. As those plans have now been suspended, it is not clear at present when the first reset will take place.

The reset will be based on a needs assessment. The pre-2013 local government finance system included a complex and fine-grained annual assessment of local authority need, which formed the basis of funding allocations to each council. This annual needs assessment was discontinued from 2013.

1 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.

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

The Government's July 2016 consultation *Business rates reform: call for evidence on needs and redistribution* invited views on how often a reset should be applied, offering examples of a short period (5 years) or a long period (20 years). It also floated the idea of a 'partial reset':

> Under a partial reset we would still adjust for changes in relative need and business rates income but to a lesser extent that under a full reset.[3]

This appears to be a means to balance protection for public service funding with incentives. A partial reset could imply that not all of the revenue increase achieved by an authority would be redistributed to other authorities (see section 2.4 below).

1.4 Pools

Local authorities are permitted to form 'pools' for the purposes of the retention scheme. A business rates pool has a single tariff and top-up level applying to the entire pool. The pool members themselves decide on how rate revenue should be divided within the pool.

Pools must be re-established for each financial year. A list of pools can be found in the documentation of each local government finance settlement.[4] Though most pools consist of authorities that are geographically close – e.g. a county and its districts, or groups of metropolitan boroughs within a city-region – there is no requirement for a pool to be geographically contiguous.

The Government's July 2016 consultation suggested that pooling might be a viable means of reducing risk within the rate retention system. It could mitigate the effects of a local business rate list being dominated by one very large rateable property.[5]

The July 2016 consultation on 100% retention suggested that, in effect, areas with devolution deals could be awarded a pool:

> Other places have discussed whether the Mayor and local authorities could be given a single area-wide 'baseline' of relative need, and therefore a single tariff or top-up; and could develop appropriate governance arrangements for deciding how resources are distributed; or even whether they could assume greater responsibility for determining the relative needs baseline itself.
>
> These, or similar ideas, could increase the autonomy of Mayoral areas and might help stimulate coherent decision making across local authority boundaries, with growth gains being owned and used at a strategic level.[6]

The Centre for Cities report *Beyond Business Rates* proposes that a more comprehensive approach should be taken to the pooling of

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[3] DCLG, *Self-sufficient local government: 100% business rate retention*, July 2016, p.25

[4] For 2016-17, the settlement includes a list of authorities participating in pools (see pages 13-20 of the *Local Government Finance Report 2016-17*) and data on projected rate revenues for each pool.

[5] DCLG, *Self-sufficient local government: 100% business rate retention*, July 2016, p.31

[6] DCLG, *Self-sufficient local government: 100% business rate retention*, July 2016, p.27

business rates across functional economic areas. It states that, in city regions, centre-city authorities often have far higher business rates revenue than authorities in their hinterland, which in turn rely more on council tax, being more residential in character:

> ...it would not make sense for a predominantly residential local authority with a strong council tax base to chase the business rates revenue of the local authority in which most of its residents work, or to compete with the city centre of the city-region by building out of town shopping centres or business parks.[7]

The final report of the 2014 *Independent Commission on Local Government Finance* made a similar suggestion:

> If local areas are aggregated into groupings of sufficient size and economic coherence (what we describe as sub-national areas) we find that the variation in need between the areas is far less than the variation within them. The proposition is therefore that the national grant settlement is on the basis of the larger geographical area and remains largely stable (perhaps adjusted for changes in population). It would then become the role of the governance within the area to manage equalisation between component parts.[8]

The *Local Government Finance Bill 2016-17* would have allowed the Secretary of State to create pools without requiring individual authorities' consent as at present. This is intended to "enable the Secretary of State to ensure that pools are created across functional economic areas".[9]

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[7] Centre for Cities, *Beyond Business Rates*, 2015, p. 19
[8] LGA / CIPFA, *Financing English Devolution*, 2014, p.26
[9] Ibid,. p. 14

2. 100% retention of business rates

In a speech at the Conservative Party conference on 5 October 2015, the Chancellor committed to allowing local government to retain 100% of business rates revenue 'by the end of the Parliament'. This was planned to begin in the 2019-20 financial year. However, following the falling of the *Local Government Finance Bill 2016-17*, reports indicate that this policy has been 'suspended indefinitely'.[10] Questions in the House of Commons on 17 July 2017 confirmed this:

> **Andrew Gwynne (Lab)**: Can I assume from the Minister's answer to my hon. Friend the Member for Bradford East (Imran Hussain) that the previous measures in the Local Government Finance Bill, and the timetable, have now been ditched? Will he now give absolute certainty to local councils? What precisely will be in place by 2020 when the RSG goes?
>
> **Marcus Jones (Con):** I think this is the sixth time that I have answered the hon. Gentleman's question; his question has been put with a considerable amount of faux rage each time, although it is an important issue. I say to him again that we are absolutely committed to what we said in our manifesto: we will give local authorities greater control over the money they raise.[11]

At a hearing of the Communities and Local Government Committee on 11 October 2017, Sajid Javid expanded on current Government thinking:

> One of the options that we are looking at ...[is to] transfer fewer responsibilities but it is not quite 100%. As a result, for the local authorities, you still have a big step towards business rates retention but, by transferring fewer responsibilities, there is no need to take it up to 100%.[12]

This section sets out some of the debates associated with this policy.

2.1 Consultation on 100% retention

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 of needs that will underlie the introduction of 100% business rate retention. The Government intended to hold a final consultation on needs assessment formulae in summer 2018 (see section 2.4).

The consultation covered the following questions:

- How the new funding system would take into account additional local responsibilities held in areas with devolution deals;
- Options for stronger management of risk, including creating additional rating lists at combined authority level for very large

[10] David Paine, "100% business rate reforms 'suspended indefinitely'", *Local Government Chronicle*, 21 June 2017

[11] HCDeb 17 Jul 2017 c539

[12] Communities and Local Government Committee, *Oral evidence: work of DCLG 2017*, HC-371, 11 October 2017, Q60

properties; the pooling of revenue at combined authority level; and options for better handling of appeals;

- How best to handle the impact of appeals: local authorities perceive this to have the strongest impact on the incentives within the system (see section 5.2);
- Whether the share of income across different tiers of local government ('tier splits') should be changed (see section 2.2);[13]
- How pilots in Liverpool, Greater Manchester and London will be managed (see section 2.2);
- What additional responsibilities should be devolved to local authorities alongside 100% retention (see section 2.3);
- How often resets should take place, and how far they should balance needs assessment with incentives (see section 2.4).

The consultation also confirmed that a redistribution system similar to the current mechanism of tariffs and top-ups will remain.[14]

The Government published a response to this consultation, and a further consultation paper, on 15 February 2017.[15]

The Government has suggested that funding made available to combined authorities under devolution deals could be delivered via the business rates system. This includes investment funds; adult education budgets; transport capital grants; and the Local Growth Fund. This implies that 'devolved' areas (and Greater London) would have different funding arrangements from non-devolved areas. This was still under consideration in the February 2017 consultation, although it was opposed by 74% of respondents to the first consultation.

Some local authorities' business rate revenue is dominated by payments from one very large property. This exposes them to a high level of risk if that property's rateable value is changed, or if the business closes down and the property is no longer rateable. The July 2016 consultation invited views on whether certain classes of property – for instance, power stations or airports - might be moved from local lists on to 'area lists' at combined authority level.[16] In February 2017, the Government announced that it would not proceed with this idea for the time being.

The New Burdens doctrine will remain in place after 2020. This will have funding implications for any further devolution of power to local authorities.

2.2 Pilot schemes

The March 2016 Budget announced the piloting of 100% retention of business rates revenue:

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

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

[15] See DCLG, *Self-sufficient local government: 100% business rates retention - summary of responses and government response*, 15 February 2017; DCLG, *100% business rates retention: further consultation on the design of the reformed system*, 15 February 2017

[16] DCLG, *Self-sufficient local government: 100% business rate retention*, July 2016, p.30

> The government will pilot the approach to 100% business rates retention in Greater Manchester and Liverpool City Region and will increase the share of business rates retained in London. This will help to develop the mechanisms that will be needed to manage risk and reward under 100% rates retention and will help authorities to build financial capacity to reform core services and invest in long term economic growth from 2017 – three years ahead of schedule. The offer is open to any area that has ratified its devolution deal.[17]

On 15 December 2016 Sajid Javid, the Secretary of State for communities and local government, announced that pilots would also take place in the West of England, Cornwall and the West Midlands.[18] A pilot for London, to begin in April 2018, was also announced at the November 2017 Budget.[19] The Government since invited applications for further pilots, to begin in April 2018. According to the Local Government Chronicle, applicants include councils in Leicestershire, Derbyshire, Worcestershire, Staffordshire, and North and East Yorkshire. Some are proposing alternative 'tier splits' for the retained revenue.[20]

Details of the initial round of pilots were published on 22 February 2017.[21] In each area, the pilot consists of folding in to the business rates system a different selection of existing grants. The participating authorities' tariff or top-up will be adjusted to take account both of the grants being 'folded in' and the move to 100% rate retention.[22]

2.3 Phasing out grants

The existing local government funding system sees Revenue Support Grant, and a number of smaller grants, paid to local authorities, alongside retained business rate revenue.

Permitting local government to retain 100% business rates from 2019-20 would lead to an immediate rise in its funding levels by an amount estimated at £12-13 billion. The Government has stated that existing central grants will be ended, and/or additional funding responsibilities passed to local government, to approximately that value:

> …the core grant [i.e. Revenue Support Grant] from Whitehall will be phased out, and local government will take on new responsibilities. …These new powers must come with new

[17] HM Treasury, *Budget 2016*, 2016, p. 70. Note that 'ratifying' a devolution deal refers to its final acceptance by the participating local authorities, not to the publication of the proposed deal by the Government.

[18] HCDeb 15 Dec 2016 c976

[19] HM Treasury, *Budget 2017*, p55

[20] See David Paine, "Two-tier areas renegotiate business rates splits in pilot bids", *Local Government Chronicle*, 13 November 2017. Currently 80% of rate revenue in two-tier areas passes to district councils, and 20% to county councils. This has different consequences for each tier regarding the strength of the incentive to grow rate revenue. Worcestershire's bid, for example, proposes reversing the tier split, and a bid from West Sussex proposes 70% for the county council and 30% for districts.

[21] DCLG, *Settlement funding assessment calculation model: business rate pilots 2017-18*, 20 February 2017; DCLG, *Explanatory note on business rate pilots 2017-18*, 21 February 2017

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

> responsibilities, as well as phasing out the main grant from Whitehall, to ensure the reforms are fiscally neutral.[23]

The then Chancellor, George Osborne, committed to phasing out Revenue Support Grant (RSG) on 5 October 2015, at the same time as announcing the introduction of 100% rate retention. The future of this commitment is unclear at the time of writing, given the suspension of 100% rate retention.

RSG is expected to amount to considerably less than £12-13 billion by 2019, due to planned reductions. Thus the Government's July 2016 consultation included a number of suggestions for additional responsibilities that could be passed to local government, and the existing grants for which could be phased out. The suggestions were based on the following principles:

> - Devolution of a responsibility should build on the strengths of local government
> - Devolution of a responsibility should support the drive for economic growth
> - Devolution of a responsibility should support improved outcomes for service users or local people
> - Devolution of responsibilities should be made with consideration for the medium-term financial impact on local government.[24]

The last of these has been of most concern to local government, which has expressed reluctance to take on responsibilities the costs of which are driven by factors beyond local authorities' control.

The new responsibilities suggested were:

- Revenue Support Grant;
- Rural Services Delivery Grant;
- GLA Transport Grant;
- Public Health Grant;
- Improved Better Care Fund;
- Independent Living Fund;
- Early Years Grant;
- Youth Justice Grant;
- Council Tax Support administration subsidy;
- Housing Benefit pensioner subsidy;
- Attendance Allowance.

The response to consultation published in February 2017 confirmed that RSG, Rural Services Delivery Grant, the GLA Transport Grant and Public Health Grant will be replaced by retained business rates under 100% retention, but Attendance Allowance will not.[25] The further consultation states that these funds will account for around half, in revenue terms, of

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

[24] DCLG, *Self-sufficient local government: 100% business rate retention*, July 2016, p.16-7

[25] The Government had already indicated, at Second Reading of the *Local Government Finance Bill 2016-17,* that attendance allowance was no longer under consideration: see HCDeb 23 Jan 2017 c69

the additional funding that will be made available when 100% retention is introduced.

It is possible that grants could be retained if additional responsibilities were devolved to local authorities. The July 2016 consultation *Self-Sufficient Local Government* said:

> 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.[26]

Simon Parker, 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 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.[27]

The Government makes extensive use of 'section 31 grants' to channel funding to authorities, to ensure local authorities do not lose out due to central government decisions.[28]

2.4 Needs assessment and resets

In February 2016, the then Secretary of State, Greg Clark, recently 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.[29]

The Government published a consultation in July 2016 entitled *Business rates reform: call for evidence on needs and redistribution*. It announced a 'Fair Funding Review' to feed into the move to 100% rate retention. Although 100% rate retention has been suspended indefinitely, the Fair Funding Review remains Government policy.[30] A report in November 2017 stated that the Local Government Association was anticipating the 'fair funding review' being implemented in 2021.[31]

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26 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.

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

28 These are named after section 31 of the *Local Government Act 2003*, which provides Government with a general power to give grants to local authorities for any purpose. This will remain in place under 100% rate retention.

29 HCDeb 10 Feb 2016 c1642

30 See HCDeb 17 Jul 2017 c540

31 David Paine, "Outcome of fair funding review mooted for implementation in 2021", *Local Government Chronicle*, 20 October 2017

Within the current Business Rates Retention Scheme, there is no annual needs assessment. Any changes resulting from a needs assessment would have to be applied at a 'reset'.[32] The needs assessment results would need to be implemented by assigning a new tariff or top-up value to each local authority (see section 1.1). In effect, the needs assessment would set the starting point for the incentive element of the Retention Scheme. As individual authorities then begin to retain revenue under the Retention Scheme, their business rate revenue will begin to move away from the needs-related levels fixed by the reset.

The greater the time between resets, the greater the potential benefit for authorities from growth in rate revenue resulting from their policies. Conversely, the more frequently resets take place, the less opportunity each individual authority has to benefit from the revenue growth that it generates.

The consultation document *100% business rates retention: further consultation on the design of the reformed system*, published on 20 February 2017, indicates that the Government is attracted to the idea of a 'partial reset'. It made an initial proposal of a five-year partial reset, which would include a needs and resources assessment every five years, but the influence of which would be subject to authorities being able to retain permanently a proportion of their growth from the previous five years. The rest of the growth in revenue would "go back into the pot to be redistributed as required".[33] The paper stated that local authorities would not be expected to continue to bear any loss at this point, if their business rate revenue had fallen over the five-year period.

The Government will also explore the possibility of a transitional period following each reset. This would aim to ensure that the amount available for redistribution was the same at the end of a retention period as at the beginning. This would have consequences for the proportion of growth that could be retained by individual authorities at a reset.

David Phillips, of the Institute for Fiscal Studies, stated in evidence to the Communities and Local Government Committee 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

[32] This date is not in statute, and the Government could decide to alter it.
[33] Ibid., p.11

> that inherently means, in the long term at least, that it cannot be full 100% retention.[34]

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

3. The Business Rates Review

The Government initiated a review of the administration of business rates in the 2013 Autumn Statement. It then announced a review of the structure of business rates in the 2014 Autumn Statement. The two reviews were integrated as of March 2015. They concern the relationship of business rates to the ratepayer, not the distribution of rate revenue amongst local authorities.

A number of the outcomes from the Review would be implemented by the *Local Government Finance Bill 2016-17* (see section 4) and other adjustments to the business rates system (see section 5). This section outlines the process of the Review itself.

In the 2013 Autumn Statement, the Government announced its intention to review the business rates system:

> The government has heard businesses' concerns about the operation of the business rates system more broadly, its transparency, complexity and responsiveness to economic circumstances. ….The government will also discuss with business options for longer-term administrative reform of business rates post-2017.[35]
>
> …
>
> The government will publish a discussion paper in spring 2014 setting out the advantages and disadvantages of different options for longer-term reforms to business rates administration which maintain the aggregate tax yield.[36]

This review was entitled 'Administration of Business Rates in England'. The terms of reference were published in February 2014.[37] A discussion paper was published on 10 April 2014. A summary of responses to the paper, and an interim response from the Government, were published on 10 December 2014.[38] The interim response indicated support for more frequent revaluations; but little support for moves towards a 'banding' system similar to that used for council tax.[39]

The 2014 Autumn Statement said:

> The government will carry out a review of the future structure of business rates to report by Budget 2016. The review will be fiscally neutral and consistent with the government's agreed financing of local authorities. The government will also publish its interim findings from the review of business rates administration in December 2015, setting out how it will respond to business' calls

35 HM Treasury, *Autumn Statement 2013*, 2013, p. 46
36 Ibid., p. 93-4
37 HM Treasury, *Business Rates Administration Review: terms of reference*, February 2014
38 See also the published responses to the interim response, from July 2015.
39 DCLG, How might we expect more frequent revaluations to affect business rates bills?, Annex A to the *Administration of Business Rates Review: Interim Findings*, December 2014

> for clearer billing, better information sharing and a more efficient appeal system.[40]

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. The consultation ran until 12 June 2015.[41]

3.1 Outcomes from the Business Rates Review

The Government published a discussion paper in March 2016 entitled *Business rates: Delivering more frequent revaluations*. The Budget indicated the Government's **preference to move from five-yearly to three-yearly valuations**.[42] The November 2017 Budget confirmed that this would be implemented for England, with the next revaluations taking place in 2022 and 2025. Currently business rates are normally revalued every five years. The Budget document commits to publishing a consultation in spring 2018.[43]

The discussion paper also gives some space to **the possibility of introducing self-assessment for business rates.** Occupiers of properties would assess their own rateable value, with systems in place to assist with complex valuations.

There has been some media indication that this is under serious consideration by the Government. In January 2017, the *Retail Gazette* quoted John Webber of Colliers International as saying that the Government had been consulting privately with the 'Big Four' accounting firms on the practicality of such an option:

> "The official line is that the government is looking at all the options," head of rating at Colliers International John Webber said.
>
> "However, my sources have confirmed that the 'big four' have been consulted on how to make self-assessment work and what lessons could be learned from personal taxation,"
>
> "I now understand the government favours self-assessment not only as a way of delivering more frequent revaluations, but also as a quick-fire method of cutting costs at the VOA which is itself sitting on a backlog of over 300,000 business rates appeals".[44]

The Government committed to working with local authorities to **standardise business rate bills** across England and to ensure that ratepayers can pay bills online by April 2017. Clause 12 of the *Local Government Finance Bill 2016-17* would have provided the Government

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40 HM Treasury, *Autumn Statement 2014*, 2014, p. 46. The 'review of business rates administration' mentioned in this quote is the first review, discussed in section 2.2 above.
41 HM Treasury, *Business rates review: terms of reference and discussion paper*, 2015, p.8
42 HM Treasury, *Administration of business rates review in England: summary of responses*, 2014, p. 7
43 HM Treasury, *Budget 2017*, p34
44 Ben Stevens, "The Government could introduce a business rates self-assessment scheme", *Retail Gazette,* 30 Jan 2017. See also PwC, *Business rates: changes for 2017 and beyond,* 1 August 2016.

with powers to introduce regulations to require billing authorities to introduce a range of electronic billing-related services. Without the provisions in this Bill, no power exists to oblige billing authorities to do this.

The Government will "consider the feasibility of replacing Small Business Rate Relief with a **business rates allowance for small businesses**".[45]

45 Ibid.

4. Alterations to business rates: 2015-17

Between 2015 and 2017, the Government has made or proposed a number of adjustments to the mandatory reliefs available on business rate bills in England. This section notes the changes that have been made. Part 2 of the *Local Government Finance Bill 2016-17* would have introduced further changes, which are also noted here.

Business rates are devolved to Scotland, Wales and Northern Ireland. The changes below apply in England only. The Scottish Government opened a consultation on reforms to business rates in autumn 2016.[46] This is expected to report in summer 2017.

4.1 Small Business Rate Relief

Up to 31 March 2017 small business rate relief thresholds applied in England as follows:[47]

- Properties with a rateable value of below £6,000 are subject to a 50% discount. From September 2010 to 1 April 2017, this has been increased to 100%;[48]
- Properties with a rateable value of between £6,001 and £12,000 are subject to a tapering discount ranging from 0% to 100%, on the basis of 1% relief for every £60 of rateable value;
- Properties with a rateable value of between £12,000 and £17,999 (£25,499 in London) are subject to the small business multiplier only.[49]

As of 1 April 2017, the thresholds are as follows:

- Properties with a rateable value of £12,000 or less will attract 100% business rates relief;
- Properties with a rateable value of £12,000 to £15,000 will attract some business rate relief on a tapering scale;
- Properties with a rateable value between £15,000 and £51,000 will be subject to the small business multiplier.

Businesses with more than one property are only eligible for small business rate relief if their additional property or properties all have rateable values of under £2,900, **and** the total rateable value of all their properties does not exceed £19,999 (£27,499 in London).[50]

The relief is only available on the main property, not on any smaller properties that the business occupies.

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46 Scottish Government, *Scotland's Spending Plans and draft budget 2016-17*, 2015, p.11

47 DCLG, *Business rates information letter 9/2011*, 22 December 2011; *Non-Domestic Rating (Small Business Rate Relief) (England) Order 2012* (SI 2012/148).

48 See HM Treasury, *Autumn Statement 2013*, p.45-6

49 The small business multiplier has existed since 2003-04. The standard multiplier must be set taking into account the loss of revenue resulting from the existence of the small business multiplier.

50 DCLG, *Business Rates Information Letter 1/2017*, 24 January 2017

English local authorities will be compensated in full for reductions in revenue caused by the changes to small business rate relief in April 2017. This was confirmed by a letter on 22 March 2016 from the Secretary of State to Clive Betts MP, chair of the Communities and Local Government Committee. However, it is not clear for how many years this compensation will remain in place.

4.2 Additional reliefs in the March 2017 Budget

The March 2017 Budget announced three additional measures to address disquiet caused by the 2017 revaluation of business rates:

- Businesses that no longer receive small business rate relief or rural rate relief after the revaluation, but which did receive either relief before, will be subject to an additional limit on the amount by which their rate bills can rise. This is known as the 'Supporting Small Businesses scheme'.

  Eligible businesses will see their business rates bills rise by a minimum of £50 per month, or 5% in 2017-18, **whichever is the greater**, until they reach their full liability. The minimum percentage will become 7.5% in 2018-19, 10% in 2019-20, and 15% in 2020-21 and 2021-22.[51] Where a new ratepayer occupies an eligible property, the property will remain eligible for this relief.

  Businesses that have seen their rateable value rise above the threshold for the small business multiplier (£51,000) will be able to continue to use the small business multiplier if they are eligible for this scheme.[52]

  Billing authorities will be fully reimbursed by the Government for revenue foregone. The Budget 2017 document costs this at £25 million in 2017-18, then £20 million in 2018-19 and in 2019-20, then £25 million in 2020-21 and 2021-22.[53]

- A new £300 million fund will be made available to local authorities to enable them to apply discretionary relief to 'hard cases'. This will be made up of £180 million in 2017-18, followed by £85 million, £35 million and £5 million in the ensuing years, with no additional money in 2021-22.[54]

  The criteria for eligibility for the fund are the subject of a Government consultation, published on 9 March 2017. A related document fixes a maximum sum that each local authority will be able to claim back from the Government. These allocations were confirmed on 21 April 2017.[55]

  The availability of relief will be subject to State Aid provisions. This means that no company can receive more than €200,000 of relief during any three-year period.

[51] DCLG, *Business Rates Information Letter 2017/4*, paragraph 11
[52] Ibid. See this document for further details on eligibility.
[53] HM Treasury, *Budget 2017*, p. 26
[54] HM Treasury, *Budget 2017*, p. 26
[55] See DCLG, *Distribution of £300 million discretionary pot*, March 2017; DCLG, *Business Rates Information Letter 2017/4*, p. 3

- All pubs with a rateable value of under £100,000 will receive a flat-rate £1000 discount from their business rate bills. This will cost some £25 million nationally.[56] Billing authorities will be reimbursed by the Government for revenue foregone. The November 2017 Budget stated that this relief would apply in 2018-19 as well as 2017-18.[57]

  The DCLG's *Business Rates Information Letter 2017/4* provides details on how to define eligible pubs. There is no fixed definition of a 'pub' in law: thus the DCLG suggests a range of types of property that would not be eligible. This relief should be applied after the discretionary relief noted above.

  A report in *The Municipal Journal* in July 2017 claimed that councils have been unable to grant reliefs promised in the 2017 Budget due to Civica, who provide software used by billing authorities, being unable to update and test necessary changes to the software.[58]

These reliefs attract a New Burdens assessment, meaning that billing authorities can anticipate assistance from Government with the costs of implementation.[59]

4.3 The multiplier and CPI

Each year, the business rate multiplier may be uprated by a maximum percentage equivalent to the level of the Retail Price Index (RPI) in the previous September.[60] For instance, for 2016-17, the multiplier could be uprated by a maximum of the RPI level in September 2015. Since 1990, the maximum has always been used, with the exception of 2014-15 and 2015-16, when the Chancellor implemented a 2% cap.

The November 2017 Budget announced that this change will be made as of the 2018-19 financial year.[61] Making this change permanent would require legislation; in advance of this the Chancellor could cap the uprating at the level of CPI if it was lower than RPI.[62] The Budget stated that this would reduce business rate revenue by £240 million in 2018-19 and £530 million in 2019-20.[63] It says that local government will be "fully compensated for the loss of income as a result of these measures", though it does not say how long this will last.[64]

The 2016 Budget document stated that the changes to small business rate relief and RPI will represent a reduction in rate revenue of "£6.7

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56 HM Treasury, *Budget 2017*, p. 26
57 HM Treasury, *Budget 2017*, p34
58 Dan Peters, "Councils in business rates information 'black hole'", *Municipal Journal*, 5 Jul 2017
59 DCLG, *Business Rates Information Letter 2017/4*, page 3
60 The multiplier is multiplied by the rateable value of a property to determine the business rates due.
61 HM Treasury, *Budget 2017*, p34
62 Clause 5 of the *Local Government Finance Bill 2016-17* would have removed the legal requirement to use RPI. This Bill fell in advance of the snap 2017 general election.
63 HM Treasury, *Budget 2017*, p29
64 Ibid.

billion over the next five years". The following table breaks this figure down.[65]

Business rates changes: reductions in revenue (£m)

	2016-17	2017-18	2018-19	2019-20	2020-21
Permanently double Small Business Rate Relief and extend thresholds	0	1,575	1,410	1,420	1,460
Increase threshold for higher multiplier to £51,000	0	125	110	110	115
Switch from RPI in April 2020	0	0	0	0	370
Total		**1,700**	**1,520**	**1,530**	**1,945**

4.4 Public toilets

As they are non-domestic properties, public toilets can attract a rateable value and thus a business rate bill.[66] This can be a substantial outgoing for the toilet owners (often parish councils or community organisations) and/or can provide an incentive for public authorities to close them down. The National Association of Local Councils submitted a proposal to abolish business rates on public toilets under the Sustainable Communities Act.[67]

The VOA's guidance note on public toilets' rateable values suggests that, when valuing public toilets, valuers can take into account the policy of the borough council towards retaining (or not retaining) public toilets.

Billing authorities cannot currently give discretionary relief to properties, including toilets, that they own, or those that are owned by parish councils. 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.[68]

Clause 9 of the *Local Government Finance Bill 2016-17* would have provided a power for billing authorities to give discretionary relief on toilets that they own, or that are owned by parish councils. Without the provisions of that clause, no powers exist to give this type of relief.

4.5 Local newspaper relief

The 2016 Budget committed to introducing a discount on business rate bills for local newspapers:

> The government will introduce a £1,500 business rates discount for office space occupied by local newspapers in England, up to a maximum of one discount per local newspaper title and per hereditament, and up to state aid limits, for 2 years from 1 April 2017.[69]

65 Reproduced from HM Treasury, *Budget 2016*, p. 84
66 For instance, see media coverage an article from the National Association of Local Councils and an article from the BBC in June 2015.
67 See NALC, "Don't let parishes get 'caught short' over public toilets", 22 June 2015
68 HM Treasury, *Budget 2016*, 2016, p. 108.
69 Ibid.

This follows a consultation published by the Department for Culture, Media and Sport on 8 July 2015.[70]

4.6 Rural rate relief

Currently, properties attracting rural rate relief are entitled to 50% rate relief. In England, any property that attracts both rural and small business rate relief is entitled to rural rate relief but not small business rate relief.[71] 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. 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.[72]

This change was to have been introduced by clause 7 of the *Local Government Finance Bill 2016-17*, effective from 2018-19. The Government wrote to billing authorities stating that it expects them to award 100% rate relief to all properties qualifying for rural relief in 2017-18. It will compensate authorities for revenue foregone via a section 31 grant.[73] It is not yet clear how this will be implemented from 2018-19 onwards, if at all, in the absence of the 2016-17 Bill.

4.7 Telecommunications relief

In the 2016 Autumn Statement, the Chancellor announced a new relief on business rates for telecommunications infrastructure:

> … 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.[74]

This was to have been implemented under clause 8 of the *Local Government Finance Bill 2016-17*. It then became the subject of the *Telecommunications Infrastructure (Relief from Non-Domestic Rates) Bill 2017-18*, introduced into the House of Commons on 4 July 2017. This Bill would also give powers to implement the relief to the Welsh Government.

The Autumn Statement documentation estimated that this, together with the changes to rural rate relief, would reduce business rate revenue

70 DCMS, *The case for a business rates relief for local newspapers*, July 2015
71 See the *Local Government Finance Act 1988* section 43 (8A) (a). 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.
72 HCDeb 23 Nov 2016 c907
73 DCLG, *Business Rates Information Letter 1/2017*, 24 January 2017
74 HCDeb 23 November 2016 c903

by £10 million (compared to retaining the current provisions) in 2017-18, rising to £25 million by 2021-22.[75]

4.8 Multiplier discounts

On 5 October 2015 the Chancellor said:

> 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.[76]

Clause 6 of the *Local Government Finance Bill 2016-17* would have provided a power for local authorities to set 'multiplier discounts'. A standard multiplier would have been set by the Government, but local authorities would have been permitted to offer a discount covering their whole area.

Billing authorities can already grant discretionary discounts to business rate bills for any reason, under section 69 of the *Localism Act 2011*. Currently, 50% of any revenue foregone because of discretionary discounts comes out of the 'central share' and 50% out of the 'local share' (see section 4 for an explanation of these terms).

4.9 Infrastructure supplements

New elected mayors of combined authorities will be able to raise business rates within their areas, up to a cap of 2p in the pound.[77] This power has featured in a number of the 'devolution deals' between the Government and groups of local authorities in 2014-16.

Powers to introduce an 'infrastructure supplement' were in part 3 of the *Local Government Finance Bill 2016-17*.[78] Without the provisions of this Bill, combined authority mayors ('metro-mayors') have no power to introduce such a supplement.

4.10 End of retail relief

'Retail relief' of £1,000 on business rates bills for retail premises with a rateable value of up to £50,000 was introduced for 2014-15,[79] and increased to £1,500 for 2015-16.[80] This was a flat rate on all qualifying premises. Guidance on the definition of 'retail premises' is available in the Government's note on the scheme.[81]

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75 HM Treasury, Autumn Statement, 2016, p23
76 Conservative Home, *George Osborne's speech in full*, 5 October 2015
77 DCLG, *Self-sufficient local government: 100% business rate retention*, July 2016, p.35
78 See the Library briefing paper on the Bill for further details of the supplements.
79 HM Treasury, *Autumn Statement*, 2013, p45-6
80 HM Treasury *Autumn Statement 2014*, 2014, p45-6
81 See DCLG, *Business Rates retail relief – guidance*, 2014, p. 5-6

This relief came to an end on 1 April 2016.[82] Some businesses that have received retail relief may be ineligible for Small Business Rate Relief at present, but they might become eligible for the small business multiplier, and/or the higher rates of small business rate relief, from 1 April 2017.

[82] Retail relief was always intended to last for two years only. Its ending was not explicitly mentioned in the 2016 Budget.

5. Business rates appeals

5.1 Appeals: England - new system

A new business rate appeals system was introduced in England as of 1 April 2017. This is called *Check, Challenge, Appeal*. The 'check' and 'challenge' elements of the service are provided by the VOA, with the Valuation Tribunal handling appeals.

Check

At the 'check' stage, ratepayers will be required to check and confirm "the accuracy of the facts on which their rating list entry is based". The intention is that the majority of disagreements over rateable value will be resolved quickly at the 'check' stage.[83] The Government's response to consultation states that the VOA intends to "respond … to the great majority of cases within 3 months" at this stage.[84]

Challenge

Ratepayers who disagree with their rateable value following the 'check' process may initiate the 'challenge' stage. This must be initiated within four months of the end of the 'check' stage (although any case that has spent more than twelve months at 'check' stage without an extension being agreed will move on automatically). Ratepayers will be able to enter this stage immediately if they have "confirmed, within the last 4 months, that property specific details held by the VOA are correct".[85]

A challenge must contain:

- The name, address and contact details of the proposer;
- Details of the (legal) grounds for the challenge;
- A proposed alternative rateable value;[86]
- Evidence or analysis supporting the proposed alternative rateable value.

Challenges lacking these four elements will be returned as 'incomplete'. If an incomplete challenge is to be resubmitted, this must be done within four months of the end of the 'check' stage.[87] The VOA will then respond to the ratepayer's arguments and evidence.[88] It is expected that the information presented at the beginning of the challenge stage will normally be sufficient for the case to be determined:

> It should not be assumed that new evidence or arguments, or amendments to the challenge, will automatically be accepted. It is therefore in ratepayers' interests that they and their professional

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83 See DCLG, Reforming business rates appeals: Government response to consultation, July 2016, p. 4
84 Ibid., p. 5
85 Ibid., p. 5
86 An alternative valuation is required under the current appeals system, but there is no requirement to back it up with evidence.
87 DCLG, Check, challenge, appeal: reforming business rates appeals, 2015, p. 12. The time limit pauses whilst the VOA is deciding whether to accept the challenge as valid.
88 Ibid., p. 5

> representatives make full disclosure of all relevant evidence at the beginning of the process.[89]

The Government will introduce a "pre-challenge clearance process" to permit multiple ratepayers to provide evidence regarding valuations in their area. This in effect will allow the VOA to agree on a common approach for a group of businesses or a particular class of property, allowing quicker progress through the challenge stage.

If the ratepayer and the VOA cannot reach an agreement during the challenge stage, the VOA will issue a letter setting out a summary of their decision on outstanding matters, with the reasons for their decision. This will formally end the challenge stage and the ratepayer will have four months in which to lodge an appeal against the VOA's decision. Ratepayers will also have the right to move to appeal stage after 18 months without a decision at challenge stage unless an extension has been agreed.

Appeal

Appeals will take place, as now, before the Valuation Tribunal for England.

The introduction of substantial new evidence at appeal stage by either party to the appeal will be restricted, save at the mutual agreement of the parties.[90] The Government has introduced a fee for the appeal stage, of £300 for large businesses and £150 for small businesses.[91]

The regulations propose that the Valuation Tribunal should only order a change in rateable value if the valuation is not seen as 'reasonable'. The response to consultation published in March 2017 stated:

> The Government will not impose an arbitrary fixed percentage boundary on decisions by the VTE. Instead it will be for the VTE to take a view, based on the available evidence, on whether they consider the valuation to be reasonable. Where they consider that the current list reflects a reasonable valuation, it is right that they should not order a change.[92]

The consultation on the regulations, published in August 2015, had proposed that:

> ... the VTE, in considering an appeal, should order a change in the rateable value only where their view is that the valuation is outside the bounds of reasonable professional judgement. In cases where the VTE consider the extant valuation is within the bounds of reasonable professional judgement, no change will be made to the valuation.[93]

This approach is known within the valuation profession as 'blunting'. It provoked an adverse response from the profession. The local finance

89 DCLG, *Check, challenge, appeal: reforming business rates appeals*, 2015, p. 13.
90 Ibid., p. 16
91 DCLG, *Reforming business rates appeals: consultation on statutory implementation*, August 2015, p.10
92 DCLG, *Check, challenge, appeal: reforming business rate appeals – consultation on statutory implementation*, March 2017, p10
93 Ibid., p12-13

officers' website *Room 151* quoted John Webber, Head of Rates at property consultants Colliers, as saying:

> Valuations can vary between 10% and 20% within the bounds of reasonable judgement. This is saying your rates bill could be 20% higher than you think it should be and it doesn't matter.
>
> That is bad enough for a ratepayer. For a local authority it will mean a flurry of appeals come in before the new rules are introduced.
>
> After that, more challenges will end up at appeals. The initial Valuation Office Agency will just fold its arms at the first stage.[94]

Specific percentages demarcating the bounds of 'professional judgement' were not included in the consultation or the draft or final regulations.

5.2 Appeals: Wales

In Wales, appeals should be made to the Valuation Office Agency. Where an appeal is unsuccessful, it can be progressed to the Valuation Tribunal for Wales. Appeals may be submitted at any time during the life of the valuation list; but each occupier can only appeal once against any particular set of facts. This system is the same as the one that operated in England until 1 April 2017.

Some property consultancies, such as Gerald Eve and Blake Penfold, have suggested that the Welsh Government may follow England in changing the appeals process for cost reasons, as it would be more costly to engage the VOA to continue with the current process in Wales when it changes in England.

The practice of the Valuation Tribunal for Wales differs slightly from that in England. Its best practice protocols for appeals state that:

- the Welsh Tribunal, wherever possible, will arrange for the first hearing of an appeal within 6 to 8 weeks of the target date unless it has been determined that the appeal should proceed initially to a pre hearing review (shorter timescale than in England where it is intended that appeals take place within 6 months of the target date);
- the Welsh Tribunal will give a minimum of 28 days' notice of the date, time and place of the hearing (less than in England where it is 6 weeks);
- the Valuation Officer must provide details of the rental evidence that they wish to refer to at the hearing at least 3 weeks before the hearing date (in England the VOA must submit its Statement of Case at least 4 weeks before the hearing date);
- the Welsh Tribunal expects that all parties to the appeal discuss and exchange evidence at least 2 weeks before the hearing day (in England those making an appeal must submit their Statement of Case to the VOA at least 6 weeks before the hearing date).[95]

[94] John Webber, Colliers, quoted in Colin Marrs, "Business rates 'bombshell' could worsen appeals backlog", *Room 151*, 18 August 2016

[95] See VOA, *How to appeal your rateable value*, 22 January 2016

5.3 Effects on billing authorities

The draft regulations published in July 2016 have a number of consequences for billing authorities.

Roles in appeals

Billing authorities will not have access to information from the VOA when a ratepayer enters the 'check' or the 'challenge' element of the process. This means that billing authorities will have no advance notice of upcoming changes to rateable values resulting from those stages of the process. This could make forecasting of business rates income, and thus local authorities' financial management, harder to do for billing authorities.

The draft regulations would also see the end of 'interested party' status for billing authorities regarding appeals. Currently local authorities can initiate appeals under certain circumstances, or they can register an interest in an appeal.[96]

Impacts on local revenue

Whilst an appeal is under way, the relevant billing authority must set aside a sum of money that it may be required to repay to the ratepayer if the appeal is successful. This can lead to substantial sums of money being unavailable to the council for long periods of time.[97]

Likewise, appeal decisions by the VOA, or by courts, can lead to large revenue gaps for individual authorities. Examples include Hartlepool power station: its rateable value was halved following a VOA review, leading to a drop in revenue for Hartlepool BC of £3.9 million per year; and Tewkesbury DC, where Virgin Media was repaid some £3.9 million in rate revenue, and Tewkesbury saw an annual drop of some £660,000 in revenue.[98]

Clause 2 of the *Local Government Finance Bill 2016-17* would introduce the concept of 'loss payments'. These would have been made to billing authorities that suffer revenue losses as a result of decisions on rateable values over which they have no control. This is in line with the Government's July 2016 consultation:

> Alongside this, we continue to explore how some of the risk associated with successful appeals could be managed at a national level – i.e. funded by all authorities instead of being borne entirely by individual local authorities. Such an approach would necessitate identifying which losses were to be met by the system as a whole and how.[99]

96 Colin Marrs, "Business rates consultation causes rancour over valuations", *Room 151*, 25 August 2016
97 See David Paine, "Surge in business rates appeals causes 'huge uncertainty' over income", *Local Government Chronicle*, 2 July 2015
98 See Sarah Calkin, "Exclusive: appeals drive £750m business rates shortfall", *Local Government Chronicle*, 24 November 2015
99 DCLG, *Self-sufficient local government: 100% business rate retention*, July 2016, p.31

> The new 'loss payments' regime for addressing appeals will also operate via a top-slice of total revenue, to be held and distributed centrally.[100]

The payments were to have been made from a top-slice of business rate revenue, to be held and distributed centrally.[101] Without the provisions of the 2016-17 Bill there is no power to make such payments, though it is plausible that they could be made at present via the tariff and top-up system.

Because of the 50%-50% split between the local and central shares in the Retention Scheme, local authorities bear 50% of the financial risk caused by this element of the system. This affects all business rate appeals that are **concluded** from 1 April 2013 onwards, irrespective of when the appeal was launched. Local authorities will bear 100% of the financial risk under 100% rate retention.

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[100] Ibid., p.17. For further details on 'loss payments', see the Library briefing paper *Local Government Finance Bill 2016-17*, p.13

[101] Ibid., p.17. For further details on 'loss payments', see the Library briefing paper *Local Government Finance Bill 2016-17*, p.13

6. Proposed adjustments to business rates

Recent years have seen calls for a number of more minor adjustments to the business rate system. These can be divided into three categories:

- Proposals to remove certain classes of property from the business rate system;
- Proposals to change the operation of the multiplier;
- Proposals to change how properties' rateable value is calculated.

This section sets out a selection of these proposals.

6.1 Reliefs on classes of property

The legal definition of 'non-domestic property' liable for business rates is inclusive and broad, defining it as all property that is not domestic. This means that all non-domestic property is potentially liable for business rates unless it is specifically excluded.[102]

There have been recent pressures to reduce or abolish business rates on a number of classes of non-domestic property, some of which have attracted campaigns or achieved some media profile.

ATMs

ATMs (automatic teller machines) can be liable for business rates in their own right.[103] In recent years, some press articles have asserted that the VOA has become readier to assign them a rateable value, rather than treating them as forming part of the property in which they are located.[104] Depending on the agreement between the occupant of the property and the ATM owner, either could be liable for the rate bill.

The subject was raised in a Westminster Hall debate on business rates in rural areas on 8 September 2015. Jake Berry MP said:

> In the past five years, the number of ATMs liable to business rates has risen from about 3,000 in 2010 to over 12,000 this year. Each through-wall ATM that is liable to business rates has an average charge of £3,600. Major supermarkets or petrol retailers, such as Shell or BP, may be able to absorb such costs, but a small village store or post office will not. A small village store or post office may be exempt from business rates, due to this Government's action, through small business rates relief, but creating a second rateable unit at the shop means that it is hit with a bill in excess of £3,000.[105]

For the Government, Marcus Jones MP replied:

> It is for the Valuation Office Agency to decide, based on the facts, whether an automated teller machine should be separately

[102] See section 64 of the *Local Government Finance Act 1988*.
[103] Technically, the site on which the ATM is located, rather than the machine itself, attracts the liability for business rates: see the VOA Manual entry on ATMs.
[104] For instance, see Alex Hawkes, "Banks and supermarkets face unexpected rates bill of almost £500 million for cash machines installed in shops", *Financial Mail on Sunday*, 16 November 2013
[105] HCDeb 8 Sep 2015 c25WH

> assessed for business rates. That is decided independently of Ministers, based on the facts of each case, and we do not intervene. However, where cash machines are assessed for rates, it is fair that the cash machine operators, which include banks and other financial organisations, pay rates alongside other sectors, such as retail and offices.[106]

In a judgment in January 2017 (*Sainsbury's v Sykes and Others*), the Upper Tribunal found that the VOA was correct to rate ATMs as separate 'hereditaments' (rateable properties), on the grounds that in legal terms they were 'occupied' by a different company from the occupier of the building in which they were located. The key question was whether the presence of an ATM constituted a separate hereditament:

> The physical characteristics of a site, rather than incidental details of access or servicing arrangements, justify treating it as a potential hereditament. There are inevitably borderline cases …. but a clear distinction can be drawn between the space occupied by free standing machines on the one hand and specific sites which have been designed or adapted for the purpose on the other.[107]

The judgment also suggests that 'internal ATMs', which are only accessible by going into a shop and are therefore 'occupied' by the retailer, would not necessarily constitute separate hereditaments and thus would not necessarily attract a separate rateable value.

Music festivals

Agricultural land has been exempt from business rates since 1929.[108] However, land must be used for agricultural purposes in order to attain the exemption. If it is used for other purposes, even for only a small part of the year, it may be rateable. 'Other purposes' could include music festivals held on agricultural land. A few trade press articles indicate that a number of owners of farms which host festivals have received business rates demands backdated to 2010.[109]

According to the Valuation Office Agency, generally only "repeated" or "substantial use" of a site for a music festival will mean that the site becomes rateable. The VOA's Rating Manual indicates that decisions should be taken on a case-by-case basis:

> Some sporting or recreational activities held for a few days in a year may be disregarded (e.g. a field occasionally used for amateur cricket, village show, motor show and football matches or as a car park in connection with such occasional events), but only where it is clearly a use that ceases to exist before the end of the day and does not resume again without an intervening agricultural use. Setting up and taking down periods not exceeding 14 days or fewer days should be disregarded. A pragmatic view should be taken on whether a rating list should be

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106 HCDeb 8 Sep 2015 c27WH

107 *Sainsbury's v Sykes*, [2017] UKUT 0138 (LC), p. 34

108 For a definition of 'agricultural land' for this purpose, see the *Local Government Finance Act 1988*, Schedule 5 paragraph 2

109 See, for instance, "Festivals stung by business rates blitz", *Record of the Day*, 11 December 2014

> altered in such circumstances, after having regard to the size, scale and duration of such an event.[110]

During a Westminster Hall debate in September 2015, Marcus Jones MP, for the Government, said:

> …if there are no permanent physical adaptations to the land to facilitate festival use, and the duration of the festival is only a matter of a few days, it is unlikely to attract a rating assessment in its own right. Any assessment would be proportionate to the scale of the festival. Of course, if a ratepayer is unhappy with their assessment, they have a right of appeal to an independent tribunal.
>
> The VOA is working with the Events Industry Forum to draw up guidance to help organisers better understand when rateability will arise.[111]

Charities and discretionary relief

Mandatory business rate relief of 80% is available on properties occupied by charities that are using the property wholly or mainly for charitable purposes. Local authorities have the discretion to top this up to 100% relief.

Some charities have expressed concern that, when 100% retention of business rates is introduced, local authorities may be less inclined to grant the discretionary element of this relief, because they will be under pressure to maximise revenue.[112] There is a single reference to charitable relief in the Review of Business Rates's terms of reference document:

> The government recognises that some sectors, such as farming and charities, play an important part in the community. The government does not intend to increase business rates for those most deserving of relief or exemption and it wants to consider carefully the impacts of any change.[113]

6.2 Alterations to the multiplier

The following suggestions have been made for alterations to the way in which the 'multiplier' is set.

Supermarket levy

The idea of a 'supermarket levy' derives from the Scottish Government's 'public health supplement' and the Northern Ireland Executive's 'large retail levy'. Both of these operated via an additional multiplier within the business rates system, set by the devolved government and applying only to specified properties with rateable values above a certain level. New primary legislation would be required to introduce this in England and Wales.

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110 Valuation Office Agency, Rating Manual, Section 8, Part D, paragraph 4.1
111 HC Deb 8 Sept 2015 cc28-29WH
112 See, for instance, Michael Birtwistle, *What Osborne's Business Rates Devolution Means for Charities*, NCVO.
113 HM Treasury, *Business rates review: terms of reference and discussion paper*, 2015, p. 24

Parish councils and rate revenue

Until 1990, parish and town councils were able to raise a 'precept' on domestic rates and non-domestic rates. Since 1990, they have only been able to raise a precept on council tax.

A proposal was submitted under the Sustainable Communities Act procedure to permit parish and town councils to retain a portion of business rate revenue. This was submitted by Sevenoaks Town Council on 11 February 2014, and then resubmitted by NALC (the National Association of Local Councils) in its capacity as a selector on 8 January 2015. The Government rejected the proposal on 26 October 2015.[114]

[114] See the Barrier Busting website.

7. The central list

A small number of properties are subject to rating via the 'central rating list'. These are mostly very extensive property holdings of former nationalised industries. Each company or group of companies is given a single rateable value, and the revenue collected goes to the Consolidated Fund, not to local government. Central list properties can be viewed 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.

The central list has no connection to the 'central share' of business rates (see section 1.1 above).

Clauses 10 and 11 of the *Local Government Finance Bill 2016-17* would have removed the requirement to use secondary legislation to alter the English central list. The Bill would also have allowed properties on the central list to qualify for charitable relief, empty property relief or telecommunications relief, which they currently cannot do. The *Telecommunications Infrastructure (Relief from Non-Domestic Rates) Bill 2017-18* would permit telecommunications-related property on the central list to qualify for relief.[115]

Recent commentary has suggested that some properties on the central list could be transferred to local lists.[116] In the Public Bill Committee for the Bill, Marcus Jones MP stated that this issue would be revisited in advance of the introduction of 100% rate retention:

> We will prepare and publish our policy on which properties should appear on the central list and then review that against the existing contents of the local and central lists prior to the introduction of 100% business rate retention. In doing so, we will identify all properties that need to move lists ahead of the set-up of the 100% scheme, and ensure that that is reflected in the baseline funding for local authorities. We will then move those properties between rating lists on the first day of the 100% scheme. The objective will be to ensure that authorities are not penalised in either the 50% or 100% scheme.[117]

Revenue from the central list must be redistributed to local government via grants. The July 2016 consultation *Self-Sufficient Local Government* stated that this would continue. Revenue from the English central list in 2016-17 totals some £1.5 billion.

115 See the Library briefing paper on this Bill.
116 See for instance London Councils, written evidence to Communities and Local Government Committee [BUR-07], February 2016
117 Ibid., c263-4

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