

LOCAL GOVERNMENT FINANCE BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Local Government Finance Bill as introduced in the House of Commons on 19 December 2011. They have been prepared by the Department for Communities and Local Government in order to assist the reader of the Bill and inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. These notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

OVERVIEW AND SUMMARY

3. The Bill supports the Government's commitment to delivering economic growth, decentralising control over finance, and reducing the deficit.

4. The Bill will introduce a rates retention scheme, enabling local authorities to retain a proportion of the business rates generated in their area. This will give local authorities a strong financial incentive to promote local economic growth.

5. The Bill will provide a framework for the localisation of support for council tax in England, which, alongside other council tax measures, will give councils increased financial autonomy and a greater stake in the economic future of their local area, while providing continuation of council tax support for the most vulnerable in society, including pensioners.

6. Further background is included on these elements of the Bill in the "Overview of the Structure" section.

7. A glossary of terms and abbreviations used in these Explanatory Notes is provided at the end of these Notes.

OVERVIEW OF THE STRUCTURE

NON-DOMESTIC RATES

8. Existing provision in Schedule 8 to the Local Government Finance Act 1988 (“the LGFA 1988”) in respect of England will be replaced and provision made for the treatment of non-domestic rates collected by billing authorities. The treatment of non-domestic rates will include the localisation of a percentage share of non-domestic rates to which a rates retention scheme will apply

9. Key protections are built into the scheme; a stable starting point will ensure no local authority is worse off as a result of its business rates base at the outset of the scheme. This is achieved through a system of tariffs and top-ups, the basis for which will be set out in the local government finance report. Further protections are built in to ensure that councils can meet local needs, including a safety net for places in need of additional support, funded by a levy recovering a share of disproportionate gain.

10. The Secretary of State will be required to prepare a local government finance report each year, which sets out the central and local share percentages of non-domestic rates. It will also set out which payments are required to be made by billing authorities and major precepting authorities (“relevant authorities”) to the Secretary of State, into the main non-domestic rating account, and which payments are required to be made by the Secretary of State to relevant authorities, from the main non-domestic rating account.

11. The Secretary of State will also be required to establish a levy account and make regulations as to whether payments are required from any relevant authority. Payments may be made from the levy account for the safety net to authorities in accordance with regulations to be made by the Secretary of State. The Secretary of State may also make regulations as to transitional protection payments for authorities, to take account of transitional relief. Billing authorities will also be required to make payments to major precepting authorities, under regulations to be made by the Secretary of State.

12. A number of relevant authorities may also be designated as a pool of authorities, which will then be treated for most purposes of the new provisions as a single authority. The Secretary of State may designate certain areas of England and provide through regulations that a proportion of the rates are to be retained by billing authorities in those areas. Similarly, the Secretary of State may also designate certain

classes of hereditament and provide that rates are to be retained by billing authorities whose area includes the designated class.

COUNCIL TAX

Council tax reduction schemes

13. At the Spending Review 2010 the Government announced that it would localise support for council tax from 2013-14, reducing expenditure by 10%. On 17 February 2011 the Government published the Welfare Reform Bill, containing provisions for the abolition of council tax benefit. Council tax benefit is currently a social security benefit, administered by local authorities on behalf of the Department for Work and Pensions. The Government intends that in future support should be offered in the form of council tax reductions, according to criteria set by local authorities (in relation to working age taxpayers).

14. The Government is committed to ensuring that local authorities continue to provide support for council tax for the most vulnerable in society, including pensioners. The localisation of support for council tax is taking place within a wider programme of welfare reform which is intended to help move people back into work. However, there are certain low-income groups, in particular pensioners, whom the Government does not expect to work to increase their income.

15. Following consultation, the Government has concluded that support for vulnerable pensioners should be delivered through a national framework of criteria and allowances. This is to ensure that pensioner council tax support is not reduced as a result of the introduction of this reform. The Bill includes powers for the Secretary of State to make requirements about the schemes which local authorities must make. The Government intends to use these powers to ensure that reductions are provided for pensioners.

16. Each billing authority in England must make a council tax reduction scheme by 31st January 2013 and those schemes must relate to the financial year beginning on 1st April 2013 (“2013-14”). This is necessary to enable the planned reduction in expenditure to be achieved in 2013-14. The Secretary of State has power to alter the commencement of these provisions.

17. A scheme must set out the classes of person who are entitled to a reduction, the reductions which are to apply to those classes and the procedure by which a person may apply for a reduction. The Secretary of State has power to prescribe classes of persons which must be included in a scheme and the reductions which must apply to them. The Secretary of State intends to use this power to ensure that reductions are provided for pensioners.

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18. A billing authority must consult before making a scheme and each financial year it must consider whether to revise or to replace its scheme. The Secretary of State has power to make provision for the procedure for preparing a scheme or a revision to a scheme

Technical reforms for council tax

19. A billing authority will have a new power to set discounts on dwellings of a kind set out in regulations. Billing authorities will also be able to charge an ‘empty homes premium’ in respect of dwellings which have been empty for two years or more.

20. Mortgagees in possession of the owner’s interest in a dwelling will be included in the hierarchy of council tax liability set out in section 6 of the Local Government Finance Act 1992 (“the LGFA 1992”).

TERRITORIAL EXTENT AND APPLICATION

Territorial Application: Scotland

21. This Bill does not contain any provisions which extend to Scotland.

Territorial Extent: Wales

22. The Bill extends to England and Wales, although most of it applies only in relation to England. New section 13A(1)(b), which will be inserted into the LGFA 1992 by clause 7 will apply to both England and Wales. The clause does not alter the legal position in relation to Wales. Schedule 3 to the Bill amends Schedule 8 to the LGFA 1988 so that it applies only to Wales.

Territorial Extent: Northern Ireland

23. This Bill does not contain any provisions that extend to Northern Ireland.

COMMENTARY ON CLAUSES

Non-Domestic Rates

Clause 1 – Local retention of non-domestic rates

24. Clause 1 gives effect to Schedule 1 and amends the LGFA 1988 by-

- a) inserting and giving effect to a new Schedule 7B (local retention of non-domestic rates) ; and
- b) providing that regulations made under paragraphs 8, 20 or 23 of Schedule 7B are to be subject to the affirmative resolution procedure.

25. Further detail on the provisions of Schedule 1 is provided at paragraphs 46 to

71 below.

Clause 2 - Revenue support grant

26. Clause 2 gives effect to Schedule 2 (amendments of provisions about revenue support grant in England). Further detail is provided at paragraph 64 below.

Clause 3 - Additional grant

27. Clause 3 amends the LGFA 1988 to remove provision for the Secretary of State to pay additional grant to local authorities in England at sections 85 and 86 and make amendments consequential to this change to the LGFA 1992 and the Greater London Authority Act 1999.

Clause 4 – General GLA Grant

28. Clause 4 amends section 100 of the Greater London Authority Act 1999. From the financial year beginning 1 April 2013, the Secretary of State may pay a general grant to the Greater London Authority for a financial year, but will not be required to do so.

Clause 5 – Local retention of non-domestic rates: further amendments

29. Clause 5 gives effect to Schedule 3 (further amendments relating to non-domestic rating) and is discussed in further detail at paragraphs 65 and 66 below.

Clause 6 - Definition of domestic property

30. Clause 6 will correct a drafting error in the LGFA 1988. Subsections (2B) and (2C) of section 66 of that Act identify when a building or a self-contained part of a building is not 'domestic property', and apply particularly to provide that where serviced apartments in a building are let out for short periods, they shall be treated as in non-domestic use. The High Court has determined that, due to a drafting error in subsection (2C), the provision does not apply where the apartments are being let by the freeholder of a self-contained part of a building. This clause corrects the defect.

Clause 7 – Provision of information about non-domestic rates

31. Clause 7 amends the provisions on collection and recovery of non-domestic rates in Schedule 9 to the LGFA 1988, the effect of which will enable publication of information by electronic means.

Council Tax

Clause 8 - Council tax reduction schemes

32. Clause 8 inserts a new section 13A into the LGFA 1992 (reductions by billing authority). New section 13A(1) provides-

- (a) in the case of a dwelling situated in England, that a person's liability to council tax is to be reduced in accordance with the billing authority's council tax reduction scheme ('a scheme'); and

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(b) in the case of a dwelling situated in England or Wales, that a person's liability to council tax may be reduced to such extent as the billing authority thinks fit.

33. Billing authorities in England must make a council tax reduction scheme by 31st January 2013 and those schemes must relate to the financial year 2013-14 (new section 13A(2) and clause 8(4)). The Secretary of State may alter the commencement of these provisions by amending the 31st January 2013 date or the 2013-14 financial year (clause 8(5)).

34. The power in new section 13A(1)(b) – which is a restatement of the current law – can be exercised in particular cases or by determining a class of case and an authority can reduce a person's liability to nil (new section 13A(3) and (4)).

Clause 9 - Power to determine further discounts for certain dwellings

35. This clause will insert new subsections into section 11A of the LGFA 1992. The new subsections will allow the Secretary of State to prescribe a new class of dwelling for the purposes of allowing billing authorities to make a determination that any discount under section 11(2)(a) shall not apply or shall be such percentage (which may be 100%) as it may specify.

36. In practice, this will allow billing authorities to set a discount on unoccupied and unfurnished dwellings prescribed in the new class of dwelling mentioned above.

Clause 10 - Power to set higher amount for long-term empty dwellings

37. This clause will insert a new section 11B into the LGFA 1992. In respect of a dwelling that has been unoccupied and substantially unfurnished for more than two years, the new section will allow billing authorities to charge up to 150% of the council tax that would be payable if the dwelling were occupied by two adults and no discounts were applicable.

38. The new section will allow the Secretary of State to make provision for exceptions, by prescribing classes of dwelling, taking into account the physical characteristics and the circumstances of any person liable, for which a billing authority will not be able to charge extra council tax.

Clause 11 - Mortgagee in possession to be liable for council tax

39. This clause will include mortgagees who repossess homes situated in England in the hierarchy of liability for council tax as set out in section 6 of the LGFA 1992.

Clause 12 – Provision of information about council tax

40. This amends the provisions on collection of council tax in Schedule 2 to the LGFA 1992, the effect of which will enable publication of information by electronic means.

General

Clause 13 - Interpretation

41. This provides that references to “the LGFA 1988” and “the LGFA 1992” mean the Local Government Finance Act 1988 and 1992 respectively.

Clause 14 – Power to make transitional, consequential etc provision

42. This clause will give the Secretary of State the power to make provision relating to the coming into force of the provisions in the Bill, so as to allow for the transition from one set of legislative provisions to another. The clause also gives the Secretary of State the power to make consequential provision as the Secretary of State considers appropriate in connection with any provision of the Bill and makes provision for the appropriate procedure.

Clause 15 – Financial provisions

43. This clause makes financial provision for the Bill.

Clause 16 - Extent and short title

44. This provides that the Act extends to England and Wales only.

45. This provides that the Act may be called the Local Government Finance Act 2012.

Schedule 1 – Local retention of non-domestic rates

46. Clause 1(2) and Schedule 1 insert a new Schedule 7B to the LGFA 1988. Schedule 7B replaces the existing provision in Schedule 8 to the LGFA 1988 in respect of England and makes provision for the treatment of non-domestic rates collected by billing authorities.

Part 1 - Main non-domestic rating accounts

47. Paragraph 1 places a requirement on the Secretary of State, each year, to keep a main non-domestic rating account and sets the overarching administrative requirements for keeping the account.

48. Paragraph 2 defines the credits and debits to the main rating account for the year. Credits to the account in the year comprise payments by relevant authorities following a local government finance report and any amending report; payments in respect of the central share of non-domestic rates, transitional protection payments; non-domestic rates from ratepayers liable for non-domestic rates under the Central List; and contributions in aid in respect of hereditaments exempt from local non-domestic rating. Debits to the account in the year comprise payments to relevant authorities following a local government finance report and any amending report; transitional protection payments, and any reconciliation payments due in respect of

the central share of non-domestic rates.

49. Paragraph 3 requires the Secretary of State, as soon as practicable after the end of the year, to calculate the aggregate of items credited and debited to the main non-domestic rating account for the year. Any resulting credit or debit for that year is to be credited or debited as appropriate to the main non-domestic rating account for the next year. (For example, if the aggregate of credits to the account is greater than the aggregate of debits, the excess is debited from the main non-domestic rating account for that year to produce a nil balance, and credited to the main non-domestic rating account for the next year, and vice versa.)

Part 2 – Determination of the central and local share

50. This places a requirement on the Secretary of State for each year, to determine the central and local share percentages for each billing authority. Paragraph 5 requires this determination to be set out in a local government finance report, which must be laid before the House of Commons, and sent to each relevant authority as soon as reasonably practicable thereafter. This requirement in respect of the local government finance report replaces the current provisions as to a local government finance report in section 78A of and Schedule 8 to the LGFA 1988, but makes similar provision in relation to the preparation and approval of the local government finance report.

Part 3 – Payments to the Secretary of State in respect of the central share

51. Following House of Commons approval of a local government finance report, paragraph 6 places a duty on billing authorities to make payment of the central share to the Secretary of State (which will be the percentage of the billing authority's non-domestic rating income set out in the local government finance report). The Secretary of State may define non-domestic rating income for these purposes in regulations. Paragraph 7 provides for the Secretary of State to make regulations about the administrative arrangements for making such payments, including the time and manner of payments and any necessary payments to subsequently reconcile payments made during the course of the year.

Part 4 – Payments by billing authorities to major precepting authorities

52. Paragraph 8 provides for the Secretary of State to make regulations requiring billing authorities to pay a proportion of their local share of non-domestic rating income to major precepting authorities. Payments for a year may not be made unless the local government finance report for the year has been approved by the House of Commons. Paragraph 9 enables regulations about the administrative arrangements in connection with such payments, including the audit and timing of payments.

Part 5 – Principal payments in connection with local retention of non-domestic rates

53. Paragraph 10 requires the local government finance report for a year to specify

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the basis on which the Secretary of State intends to calculate which relevant authorities will make payments to and which relevant authorities will receive payments from the Secretary of State and calculate the amounts of each payment to or from relevant authorities. Before making such a report, the Secretary of State must notify local government representatives of the general nature of the basis of calculation.

54. Following House of Commons approval of a local government finance report, paragraph 11 requires the Secretary of State to calculate the payments that are to be made and received by relevant authorities. Calculations may include an estimated amount of a payment if the Secretary of State considers insufficient information is available. The Secretary of State is required to calculate the final amount of the payment as soon as information needed to make that calculation is available. Relevant authorities must be notified of the calculations as soon as practicable after they have been made. The Secretary of State may revise the calculations by making one further set of the calculations described in paragraph 47 above. The Secretary of State may do this at any time before the end of the year following the year to which the report relates provided an amending report has not since been approved by the House of Commons.

55. Paragraph 12 places a duty on relevant authorities and the Secretary of State to make payments required of them following the local government finance report and makes provision about how payments are to be made.

56. Paragraph 13 provides for the Secretary of State to make reports amending the basis of calculation specified in the local government finance report for a year at any time before the end of the year following the year to which the report relates. Notification and laying arrangements are as for a local government finance report prepared under paragraph 5. Paragraph 14 provides for the Secretary of State, following approval of an amending report, to make the necessary calculations and for a revised set of calculations to be made if needed and to notify each relevant authority of the outcome. Paragraph 15 sets out the provision for the making of payments following an amending report. Any payments following an amending report must take place after the end of the year in which the amending report is made.

Part 6 – Levy accounts

57. Paragraph 17 requires the Secretary of State, each year, to keep a levy account. Paragraph 18 defines the credits and debits to the main rating account for the year. Credits to the account in the year comprise levy payments from relevant authorities. Debits to the account in the year comprise safety net payments and safety net payments on account to relevant authorities, and any distribution of the remaining balance to one or more relevant authorities.

58. Paragraph 19 makes provision for calculating, after the year end, the aggregate of items credited and debited to the levy account for the year. Any resulting credit or

debit for that year is then credited or debited as appropriate to the levy account for the next year.

Part 7 – Levy payments, safety net payments and distribution of remaining balance

59. Paragraph 20 gives the Secretary of State the power to make regulations about the calculation of levy payments. Such calculations may only be made for a year after the end of that year – so calculations for the financial year 2014-15, for example, may only be made after the end of that financial year. Paragraph 20 requires the Secretary of State to calculate the levy payments required from relevant authorities for a year and to notify relevant authorities as soon as practicable after doing so. Paragraph 21 places a requirement on relevant authorities to make levy payments as specified by the Secretary of State.

60. Paragraph 23 allows the Secretary of State to make regulations about calculating whether a safety net payment should be made to a relevant authority for a year and, if so, the amount of the safety net payment. As with levy payments, such calculations may only be made for a year after the end of that year. Paragraph 24 requires the Secretary of State to make the safety net payment calculations and to notify relevant authorities as soon as practicable after doing so. The Secretary of State must make safety net payments in instalments of such amounts and at such times as specified with the Treasury's consent.

61. Paragraph 26 enables the Secretary of State to provide for a relevant authority to request that the Secretary of State calculates during the financial year, whether the Secretary of State will be required to make a safety net payment for that year. Regulations may specify the time and manner in which requests may be made, the circumstances in which the Secretary of State may or must make a calculation in response to a request and about the making of an in-year calculation in addition to provisions about the timing of in year calculations and making of in-year payments.

62. Paragraph 27 requires the Secretary of State to calculate, each year (other than the first), whether there is a remaining balance on the levy account and sets out how that calculation must be made. Paragraph 28 provides that the Secretary of State may distribute the whole or part of any remaining balance for a year among one or more relevant authorities. Where the Secretary of State decides to do so, the basis of calculation for distribution must be in the local government finance report following such determination, and the Secretary of State must distribute any such payments in accordance with the paragraph.

63. Paragraph 29 has the effect of making the provisions in this Part subject to Parts 9 and 10 of this Schedule.

Part 8 – Transitional protection payments

64. Section 57A of the LGFA 1988 requires the Secretary of State to put in place a transitional relief scheme to protect ratepayers from large increases in their rates bills as a result of revaluation. Paragraphs 30 and 31 enable the effects of this transitional relief scheme to be taken account of in the business rates retention scheme through separate financial adjustments in regulations under paragraphs 30 and 31.

65. Paragraph 30 therefore enables the Secretary of State to make regulations about the calculation of the amounts that would be payable to billing authorities were a transitional relief scheme not in place. The making of any transitional protection payment by the Secretary of State to a billing authority, or by a billing authority to the Secretary of State as appropriate following calculations under paragraph 30 may be set out in regulations under paragraph 31.

Part 9 – Pooling of authorities

66. Paragraph 32 enables the Secretary of State to designate two or more relevant authorities as a pool of authorities. Designations may not be made unless each authority covered by the designation agrees to it. Once made, a designation continues to have effect unless it is revoked by the Secretary of State. Before making or revoking a designation the Secretary of State must consult with such persons likely to be affected by it. A designation must include conditions about the administration of the pool, including a requirement for the appointment of a lead authority and steps that are to be taken if the designation is revoked. Designations may be varied by the Secretary of State following consultation.

67. Paragraph 34 provides that a pool of authorities is to be treated as a relevant authority for the purposes of Part 2 of the Schedule (payments into and out of main non-domestic rating account). This does not prevent a local government finance report from also making provision in relation to the individual authorities within the pool. Paragraph 35 makes similar provision in respect of regulations about payments in and out of levy accounts.

68. Paragraph 36 makes further provision about the effect of designation. It provides that notification requirements apply to individual authorities within a pool. As to payments and receipts, it provides that authorities within a pool are jointly and severally liable to make payments and that payments from the Secretary of State shall be made to the lead authority.

Part 10 – Designation of areas and classes of hereditament

69. Paragraph 37 enables the Secretary of State to make regulations to designate one or more areas in which a proportion of non-domestic rates are to be disregarded from any calculations under paragraphs 11, 14, 21, 24, 26 or 28 of this Schedule for a specified period. Paragraph 38 provides equivalent provision for the Secretary of State

to make regulations designating one or more classes of hereditament, for which a proportion of non-domestic rates are to be disregarded from any calculations under paragraphs 11, 14, 21, 24, 26, or 28 of the Schedule for a specified time. Regulations made under paragraphs 37 or 38 may make provision for the payments to major precepting authorities to take account of the designated area or class of hereditament.

Part 11 - Supplementary

70. Paragraph 40 provides that the Secretary of State may direct a relevant authority to make calculations or supply information to the Secretary of State and for such calculations and information to be audited. The Secretary of State may make his own calculations or assumptions where an authority fails to comply and must notify the authority where this is the case.

71. Paragraph 41 defines key terms in the Schedule.

Schedule 2 – Amendments of provisions about revenue support grant in England

72. Schedule 2 makes amendments to provisions in the LGFA 1988 about payment of revenue support grant, and the local government finance report, which are consequential to the introduction of a scheme for local retention of non-domestic rates. The effect is to replace the Secretary of State's duty to pay grant with a power to do so.

Schedule 3 – Further amendments relating to non-domestic rating

Part 1 – Amendments to Schedule 8 to the LGFA 1988

73. Part 1 of Schedule 3 amends Schedule 8 to the LGFA 1988 so that in future it will apply to Wales only, thus retaining the current system of pooling and redistribution of non-domestic rates in Wales.

Part 2 – Other minor and consequential amendments

74. Part 2 contains other minor amendments consequential to the introduction of a scheme for local retention of non-domestic rates.

Schedule 4 – Amendments relating to council tax reduction schemes

75. Part 1 of Schedule 4 to the Bill inserts a new Schedule 1A into the LGFA 1992. The new Schedule 1A concerns council tax reductions schemes. Part 2 of Schedule 4 to the Bill makes amendments which are consequential on the introduction of council tax schemes.

76. Paragraph 2 of the new Schedule 1A provides, in particular, that a scheme must-

- state the classes of person entitled to a reduction (paragraph 2(1) and (2));
- state the reductions which are to apply to those classes (paragraph 2(3) and (4)); and,

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- state the procedure by which a person may apply for a reduction under the scheme (paragraph 2(5)).

77. The Secretary of State may make regulations prescribing classes of persons which must be included in a scheme and the reductions which must apply to those classes (paragraph 2(9) of new Schedule 1A). The Secretary of State intends to use this power to ensure that reductions are provided for pensioners.

78. Before it makes a scheme a billing authority must consult its major precepting authorities and other persons it considers are likely to have an interest in the scheme (paragraph 3(1) of new Schedule 1A). Provision is made recognising consultation which takes place prior to commencement (paragraph 3(2)). Once a scheme is made the billing authority must publish it (paragraph 3(3)). The Secretary of State may make regulations about the procedure for preparing a scheme, including requiring the authority to produce documents in connection with the preparation of a scheme and setting out requirements for publication (paragraph 3(4) and (5)).

79. The Secretary of State is required to make regulations prescribing a default scheme (paragraph 4(1)). The default scheme must relate to the financial year 2013-14 and it must comply with the requirements in paragraph 2(1) to (7) and regulations under paragraph 2(8) (paragraph 4(3)). The default scheme will apply to a billing authority's area if it fails to make a scheme on or before 31st January 2013 (paragraph 4(4)). Where a default scheme applies, new Schedule 1A applies as if the scheme had been made by the authority (paragraph 4(5)). In particular, this means that a billing authority must publish the default scheme in accordance with paragraph 3(3).

80. Each financial year a billing authority must consider whether to revise or replace its scheme (paragraph 5(1) of new Schedule 1A). The procedure for making a scheme also applies if a scheme is revised or replaced (paragraph 5(5) and (6)). If a reduction is reduced or removed the billing authority must make such transitional provision as it thinks fit (paragraph 5(4)).

81. A billing authority and major precepting authorities with a power to issue precepts to that billing authority may enter into arrangements which have effect if there is, or if the billing authority estimates that there will be, a deficit on the collection fund for that year (paragraph 6(1) and (2)). These arrangements can include the making of payments by one authority to another, or the variation of the payment of precepts (paragraph 6(3)).

82. The Secretary of State may by notice require a billing authority to supply information for the purpose of deciding whether to exercise any functions relating to schemes (paragraph 7(1) of new Schedule 1A). If an authority fails to comply the Secretary of State may exercise those functions on the basis of such assumptions and estimates as he thinks fit (paragraph 7(3)).

83. The Secretary of State may issue guidance to which billing authorities must have regard and also make regulations setting out transitional provision relating

to the commencement of schemes (paragraphs 8 and 9 of new Schedule 1A).

84. Part 2 of Schedule 4 makes further amendments relating to council tax reduction schemes. In particular, paragraph 6(2) inserts a new paragraph after paragraph 14 of Schedule 2 to the LGFA 1992 to allow information relating to any relevant social security benefit which is held by the Secretary of State, or a person providing services to the Secretary of State in connection with the provision of those services to be supplied to a billing authority in England, for use in the exercise of any of its functions under Part 1 of the LGFA 1992, or to a person authorised by such a billing authority to exercise any such functions, for use in the exercise of those functions (new paragraph 14A(1) and (2)).

85. The Secretary of State may-

- impose conditions on the use of information supplied, and
- charge a reasonable fee in respect of the cost of supplying information (new paragraph 14A(3)).

COMMENCEMENT

86. All provisions contained in the Bill will have effect for the financial year beginning on 1st April 2013 and later financial years. They will come into force on Royal Assent to enable the necessary preparations to be made.

FINANCIAL EFFECTS

SUMMARY OF IMPACT ASSESSMENT

87. The Bill will be accompanied by an overarching Impact Assessment. This will be available through the Vote Office and in the House Libraries.

88. Individual Impact Assessments for provisions, signed by Ministers, have been produced and will be published alongside the Bill.

PUBLIC SECTOR MANPOWER IMPLICATIONS

89. This Bill will not represent a significant change to public service manpower.

EUROPEAN CONVENTION ON HUMAN RIGHTS

90. The Government considers that the Local Government Finance Bill is compatible with the ECHR. Accordingly, the Rt. Hon. Eric Pickles MP has made a statement under section 19(1)(a) of the HRA 1998 to this effect.

91. The Bill may from time to time engage article 6(1) (right to a fair trial), article 8 (right to respect for family and private life), article 14 (prohibition of discrimination) and article 1 of the first protocol (“article 1/1”) (right to peaceful enjoyment of possessions) of the ECHR. However, the Government’s view is that the Bill is compatible with the ECHR.

92. Further explanation of key human rights issues is provided below. References to articles are to articles of the ECHR.

Council Tax reduction schemes

93. Article 1/1 may be engaged from time to time. There is no doubt that it is legitimate for council tax to be levied and collected, but in relation to council tax reduction schemes the availability and extent of reductions must be proportionate in particular cases.

94. For the following reasons the Government considers that no breach of article 1/1 will arise as a result of the provisions in the Bill-

- A billing authority’s power under a council tax reduction scheme is a power to reduce the amount of council tax which a person would otherwise pay. There is not, therefore, any question of punitive rates of council tax being applied to particular individuals as a result of those schemes.
- Before making a council tax reduction the authority is required to consult such persons as it considers are likely to have an interest in the operation of the scheme. This should enable the proportionality of reductions under a scheme to be scrutinised.
- Section 6(1) of the HRA 1998 provides that it is unlawful for a public authority to act in a way which is incompatible with a Convention right. This provision will apply to a billing authority’s functions in relation to a council tax reduction scheme and so it will be unlawful for a billing authority to make a scheme which will necessarily give rise to a breach of article 1/1.

95. A reduction under a council tax reduction scheme may constitute a civil right for the purposes of article 6(1), but even if that is incorrect article 6(1) is likely to be engaged whenever article 1/1 or article 8 are themselves engaged. Article 6(1) is likely, therefore, to be engaged where there is a genuine dispute regarding a reduction under a council tax reduction scheme.

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96. Disputes in relation to council tax reduction schemes are likely to arise in one of the following forms-

- that a scheme has not been prepared lawfully;
- that a proper application of the scheme will result in a person not paying council tax or paying a lesser amount than the person has been billed for.

97. Where there is a dispute regarding the preparation of a scheme, it will be possible to challenge the making of a scheme by way of an application for judicial review. With the procedural safeguards in making the scheme, particularly the need for a billing authority to consult such persons as it considers are likely to have an interest in the operation of the scheme, the Government considers that such an application will meet the requirements of article 6(1).

98. In relation to disputes about the application of a scheme, aggrieved persons will be able to appeal to the Valuation Tribunal for England under section 16(1) of the LGFA 1992. Those procedures have been in place since the LGFA 1992 came into force and have never been successfully challenged on article 6(1) grounds.

99. The Government considers that article 8 may be engaged by a billing authority's council tax reduction scheme if, for example, its operation resulted in an individual suffering financial hardship with consequential effects for the individual's family life or home. However, for the following reasons the Government considers that the Bill is compatible with article 8-

- There are a number of safeguards in the procedure by which council tax reduction schemes will be prepared and billing authorities will be subject to section 6(1) of the HRA 1998 in exercising these functions. Our expectation is, therefore, that potential breaches of article 8 will be a relatively rare occurrence, which occurs as a result of specific circumstances affecting particular individuals.
- Where a breach of article 8 is alleged new section 13A(1)(b) of the LGFA 1992 provides a means of ensuring that these issues can be addressed by the billing authority. Where a person is liable to pay council tax in respect of any chargeable dwelling and any day, the new section 13A(1)(b) of the LGFA 1992 enables the billing authority for the area in which the dwelling is situated to reduce the amount which the person is liable to pay. This includes a power to reduce an amount to nil and the power may be exercised in relation to particular cases or by determining a class of case in which liability is to be reduced (see new section 13A(3) and (4)).

100. While it is possible that council tax reduction schemes will engage article 14 (prohibition of discrimination), it is not possible to pursue a case on the grounds of article 14 alone. Instead the facts must fall within the ambit of one or more of the

ECHR rights. The issues in relation to article 14 should, therefore, be very similar to the issues mentioned above in relation to article 6(1), article 8 and article 1/1. In particular, a billing authority will have to consider possible discrimination issues when formulating its scheme, but no systemic article 14 issues arise from the Bill itself and the billing authority will be subject to section 6(1) of the HRA 1998 when exercising functions related to council tax reduction schemes.

Power to set higher amount for long-term empty dwellings

101. Clause 9 inserts a new section 11B into the LGFA 1992, which will result in increases in the amount of council tax payable in respect of a long-term empty dwelling to a level in excess of the amounts payable in respect of chargeable dwellings in the same valuation band.

102. For the following reasons the Government considers that the making of a determination under new section 11B(1) is likely to be compatible with article 1/1-

- The power in section 11B(1) is a power and not a duty. It will, therefore, be for the billing authority to decide whether and how to exercise the power and in doing so the authority will be subject to section 6(1) of the HRA 1998.
- In particular, when making a determination under new section 11B(1) it will be for the billing authority to show that a fair balance has been struck between the general interest of the community and the need to protect the individual's fundamental rights, applying a proportionality test.

103. If the application of the determination will be disproportionate in a specific case, a billing authority will be able to address the situation using its powers in new section 13A(1)(b) of the LGFA 1992.

104. Where there is a genuine dispute article 6(1) is likely to be engaged where article 1/1 is itself engaged. However, it is the Department's view that no breach of article 6(1) will arise since-

- an aggrieved person will be able to challenge the making of a determination under new section 11B(1) or the failure to make a determination under new section 13A(1)(b) by way of judicial review; and
- where the proper application of a new section 11B(1) determination is at issue an aggrieved person will be able to under appeal to the Valuation Tribunal for England under section 16(1) of the LGFA 1992.

105. It is unlikely, in the Government's view, that article 8 will be engaged in relation to determinations under new section 11B(1), as it is unlikely that a long-term empty dwelling could be viewed as central to a person's private or family life. Consequently, article 8 will very rarely if ever be engaged. The Government

*These notes refer to the Local Government Finance Bill
as introduced in the House of Commons on 19 December 2011 [Bill 265]*

considers that any breach of article 8 will arise as a result of the actions of the relevant billing authority and not as an inevitable result of the provisions in the Bill.

106. While it is possible that a determination under new section 11B(1) could engage article 14, as mentioned above the issues in relation to article 14 should be very similar to those in relation to article 6(1), article 8 and article 1/1. In particular, a billing authority will have to consider possible discrimination issues when making a determination under section 11B(1), but no systemic article 14 issues arise from the Bill itself and the billing authority will be subject to section 6(1) of the HRA 1998 when exercising functions under new section 11B(1).

GLOSSARY OF TERMS AND ABBREVIATIONS

Business rates	A national non-domestic rate charged on business properties
Billing authorities	Those local authorities responsible for the collection of non-domestic rates
ECHR	European Convention on Human Rights
Hereditament	Property which is or may become liable to business rates, and thus appears on the rating list, compiled and maintained by the Valuation Office Agency of HM Revenue and Customs.
HRA 1998	Human Rights Act 1998
Levy	A charge on the potential disproportionate growth some local authorities may gain as a result of rates retention
LGFA 1988	Local Government Finance Act 1988
LGFA 1992	Local Government Finance Act 1992

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Local Government Finance Report	The annual determination, by affirmative resolution of the House of Commons, in respect of the following year of: the amount of Revenue Support Grant and Non-Domestic Rates to be distributed to local authorities; how that support will be distributed; and the support for certain other local government bodies.
Major precepting authorities	An authority that exercises local government functions but does not collect non-domestic rates or council tax itself (for example, a county council in an area where there is a district council, or a combined fire authority).
Non – domestic rates	A tax charged on business properties
Revenue support grant	A general grant given by central government to local authorities.
Safety net	A protection within the rates retention scheme which provides local authorities with: i) annual protection against a decline in retained income and ii) protection against a decline in retained income relative to the individual authorities baseline funding level
Transitional relief	Transitional relief is designed to reduce the impact of any significant changes in the rateable value - whether the change is up or down – by limiting the percentage a business rates bill can be increased or decreased each year following revaluation until the bill reaches the amount it would have been on revaluation.

LOCAL GOVERNMENT FINANCE BILL

EXPLANATORY NOTES

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