LOCAL GOVERNMENT FINANCE BILL

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EXPLANATORY NOTES ON LORDS AMENDMENTS

INTRODUCTION

1. These explanatory notes relate to the Lords amendments to the Local Government Finance Bill, as brought from the House of Lords on 22 October 2012. They have been prepared by the Department for Communities and Local Government in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.

2. These notes, like the Lords amendments themselves, refer to HL Bill 24, the Bill as first printed for the Lords.

3. These Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords amendments.

4. All of the Lords amendments were tabled in the name of the Minister apart from Lords Amendment 3, which was opposed by the Government.

5. In the following Commentary, an asterisk appears in the heading of the paragraph dealing with the non-Government amendment.

COMMENTARY ON LORDS AMENDMENTS

Lords Amendments 1, 26, 28 and 39

6. The Government has committed to funding certain discretionary rate relief in enterprise zones. These amendments would allow regulations to deliver this commitment by allowing billing authorities to deduct the cost of the relief from central share payments and to pass a proportion of this amount to major precepting authorities.

7. Amendment 28 would give the Secretary of State power to make regulations to provide for deductions from central share payments, in particular by reference to rates relief awarded.

8. Amendment 39 would give the Secretary of State power to make regulations to provide for a proportion of the amount deducted to be passed on to major precepting authorities. Such regulations would be subject to the affirmative Parliamentary procedure by virtue of amendment 1.

9. Amendment 26 is consequential to these amendments

Lords Amendment 2

10. Amendment 2 would give effect to the recommendation of the Delegated Powers and Regulatory Reform Committee that regulations made under paragraph 37 or 38 of new Schedule 7B to the Local Government Finance Act 1988 ("the Schedule") as inserted by Schedule 1 to the Bill should be subject to the affirmative Parliamentary procedure where they contain provision about payments to billing authorities and major precepting authorities made under paragraph 39 of the Schedule.

****Lords Amendment 3***

11. Lords Amendment 3 would require the Secretary of State to make provision for an independent review of council tax reduction schemes. The review would need to take place within three years after the Bill comes into effect.

Lords Amendment 4

12. Clause 11 of the Bill inserts a new section 11B in the Local Government Finance Act 1992 ("the LGFA 1992") to create the Empty Homes Premium which may be charged on dwellings that have been unoccupied and substantially unfurnished for a continuous period of at least two years.

13. In determining whether a dwelling has been unoccupied for any period, one or more periods of no more than six weeks during which it was occupied are disregarded.

14. This amendment would mean that:

- one or more periods of occupation of not more than six weeks are disregarded regardless of whether the dwelling is furnished or not during that time; and

- one or more periods of not more than six weeks where the property is furnished only are also disregarded.

15. The amendment is intended to clarify that periods of occupation are disregarded whether or not the dwelling is also furnished and to prevent council tax payers avoiding the premium by placing furniture in the dwelling for short periods.

Lords Amendment 5

16. Clause 12 of the Bill provides that mortgagees in possession of a dwelling will be liable to pay council tax. This amendment would enable the Secretary of State to commence this provision by order, rather than it coming into force automatically on 1 April 2013.

17. This would give the Secretary of State the flexibility to delay implementation of this provision until further discussions have taken place with the mortgage lender and local authority sectors, leading to satisfactory and workable administrative arrangements.

Lords Amendments 6 to 9

18. Amendment 6 would allow the Treasury to make an order varying the level of a penalty which an authority may impose under regulations made under new section 14C of the Local Government Finance Act 1992 ("the LGFA 1992") (inserted by clause 13 of the Bill) by the Secretary of State or by Welsh Ministers. (Section 14C enables regulations to provide for penalties to be imposed where a person's act or omission means that the person has the benefit of a reduction in or exemption from council tax to which the person is not entitled.) This power may be exercised where the Treasury considers there has been a change in the value of money since the regulations have been made and enables penalties to be increased in line with inflation by order using the negative resolution procedure. This is the mechanism that is currently used to increase the existing penalties that may be imposed in relation to council tax under Schedule 3 to the LGFA 1992.

19. Amendment 7 would clarify that any new penalties created in regulations will not affect the operation of the existing penalties that may be imposed under Schedule 3 to the LGFA 1992. It would do this by specifying the provisions of Schedule 3 that are not affected.

20. Amendment 8 would amend existing powers to make regulations under section 18 of the LGFA 1992 to deal with a situation where a person dies and was liable to pay a penalty, so that provision may also be made in relation to the new penalties to be created in regulations under new section 14C.

21. Amendment 9 would allow a person to appeal to a Valuation Tribunal against a billing authority's decision to impose a penalty under regulations made under new section 14C, unless that person has agreed to the imposition of the penalty as an alternative to criminal proceedings being taken against them. The amendment also enables a person to appeal to the Valuation Tribunal against the amount of any penalty imposed under those regulations.

22. New section 14C enables provision to be made in regulations for local authorities to offer to impose a penalty on a person, rather than taking criminal proceedings against them. As this penalty will have been agreed to by the person on whom it is imposed, the amendment does not allow for an appeal to

be made against the decision to impose such a penalty. However, the amendment does allow for appeals against the amount of such penalties.

23. The appeal route would be to the Valuation Tribunal for England for penalties imposed by English billing authorities and the Valuation Tribunal for Wales for penalties imposed by Welsh billing authorities.

24. This amendment would also ensure regulations can be made about the collection of any penalties imposed on a person under regulations made under new section 14C.

25. These amendments apply to England and to Wales.

Lords Amendment 10

26. This amendment would allow regulations under sections 34 and 45 of the LGFA 1992 to set out different rules for calculating the council tax base (or taxable capacity) for different parts of a billing authority's area where special items such as local parish or town council precepts or waste or transport levies apply, depending on the special item under consideration. It would also allow consequential amendments to be made to the Local Government Finance Act 1992 in those regulations.

Lords Amendment 11

27. Lords Amendment 11 would enable regulations to be made regarding the use as evidence at an appeal to the Valuation Tribunal for England of information supplied by HM Revenue & Customs ("HMRC") (under new paragraph 15A or 15B of Schedule 2 to the LGFA 1992 as inserted by clause 15 of the Bill) and DWP (under section 131 of the Welfare Reform Act 2012) to billing authorities.

28. This would enable regulations to be made about how local authorities may use relevant information supplied by HMRC or DWP as evidence at an appeal before the Valuation Tribunal.

Lords Amendment 12

29. The Bill currently provides that clause 15, which provides powers for HMRC to supply information to billing authorities in England and Wales and local authorities in Scotland for the purposes of council tax, is to come into force at the end of the period of 2 months beginning with the day on which the Act is passed. This amendment would amend that provision so that the clause comes into force on Royal Assent.

Lords Amendments 13 to 18 and 91

30. Lords Amendment 13 would enable officials of HMRC to supply information to the Department of Finance and Personnel in Northern Ireland (DFP) and the Northern Ireland Housing Executive (NIHE), or to persons authorised to

exercise functions on behalf of the DFP and NIHE or providing services to it, for prescribed purposes relating to rates. The other amendments would provide for offences for the misuse of this data; make some consequential amendments to the Bill; and provide that any consequential amendments to specified legislation of the devolved administrations would be subject to the affirmative resolution procedure.

Lords Amendments 19 to 24, 27, 32, 33, 35, 40, 41, 43, 44, 60, 61 and 65 to 81

31. These amendments would make technical changes to the way that the rates retention system is administered to allow an approach that is more closely aligned with that currently in use in relation to council tax income.

32. Under this approach (the "funds approach"), billing authorities will estimate their rating income before the start of the financial year and that estimate will then set the amounts to be paid to central government (for the central share), to be paid to major precepting authorities and to be transferred to their own general fund. If the amounts actually payable in the year are different then these will appear as surpluses or deficits on the authority's collection fund and be rolled forward and distributed in future years. In this way billing authorities and major precepting authorities have certainty for the purposes of budget setting.

33. Amendment 19 would ensure that payments received by the Secretary of State from billing authorities in respect of distribution of surpluses are credited to the main non-domestic rating account for the year. Amendment 21 similarly ensures payments with respect to deficits are debited from that account. Amendments 23 and 24 are consequential to these amendments and on Amendments 20 and 22 (see below).

34. Amendments 27 and 33 would facilitate the funds approach by allowing regulations about the administrative arrangements for payments to the Secretary of State in respect of the central share and to major precepting authorities to make provision for reconciliation of estimated amounts.

35. Amendment 32 and 35 would allow regulations under paragraph 8 of the Schedule also to make provision with respect to the calculation and certification of surpluses and deficits. Amendment 61 similarly would make provision for the Secretary of State to direct an authority to provide information or make calculations with respect to surpluses and deficits.

36. Amendments 40 and 43 are technical amendments which would align the drafting of the provisions in question with accounting practice – the term 'payable' is the correct one (even though the calculations are carried out after the end of the year) as the calculations are made on the accruals basis.

37. Amendment 41 and 44 would ensure that calculations for the purposes of levy and safety net payments are, for major precepting authorities, based on the income payable to them for the year under the funds approach.

38. Amendment 60 would allow regulations under paragraph 37 and 38 of the Schedule (amounts to be disregarded with respect to designated areas or designated classes of hereditament) to make provision for the estimate of such amounts and for their reconciliation. Amendments 20 and 22 would ensure that reconciliation payments made to or by the Secretary of State are credited or debited to the main non-domestic rating account for the year.

39. Amendments 65 to 68 concern amendments to section 90(1) of the Local Government Finance Act 1988 ("the 1988 Act") and would ensure the sums received by a billing authority under the amended provisions of the Schedule are credited to the authority's collection fund. Similarly amendments 69 to 72 would make provision for payments from the collection fund. Amendments 73 and 74 would modify the amendments in the Bill to section 97 of the 1988 Act to give the Secretary of State power to make regulations to require a billing authority to transfer amounts from its general fund to its collection fund and to clarify that regulations about transfers from an authority's collection fund to its general fund can be made by reference to payments under regulations under the Schedule.

40. Amendments 75 to 77 would amend the Bill so it made the amendments to section 99 of the 1988 Act (regulations about funds) necessary to allow regulations made under that section to make provision for the operation of the funds approach.

41. Amendments 78 to 81 would amend the Bill so as to make consequential amendments to section 141 of the 1988 Act, to allow regulations made under that section to make provision for amounts due to the Secretary of State under the amended provisions of the Schedule to be set off against amounts payable.

Lords Amendments 25 and 29 to 31

42. Amendments 25 and 30 are technical amendments that would correct errors in paragraphs 6 and 8 – the definition of "non-domestic rating income" should apply for the whole of the paragraph, and not just the quoted sub-paragraph.

43. Amendment 29 would simplify the calculation of payments to major precepting authorities, and aid transparency, by allowing the payments to be defined as a proportion of the billing authorities' non-domestic rating income, rather than as a proportion of the local share. Amendment 31 is consequential and would ensure that the total amount payable to major precepting authorities still could not exceed the local share.

Lords Amendments 34, 36 to 38, 52 to 55, 62, 63 and 82

44. These amendments deal with arrangements for the assurance of calculations and information returns.

45. Under the current non-domestic rates pooling system, calculations and information supplied by local authorities are certified under arrangements put in place by the Audit Commission. The Bill, as drafted, assumes that the Audit

Commission will make similar certification arrangements for the new rates retention system. The proposed Local Audit Bill (published in July 2012 for pre-legislative scrutiny) would abolish the Audit Commission and repeal the Audit Commission Act 1998. The working assumption is that the Audit Commission will close before April 2015. This would mean that assurance arrangements would need to be changed at that time.

46. The Government has proposed that assurance arrangements should, instead, be provided through a tri-partite agreement (the parties being the Department for Communities and Local Government, the local authority and the auditor) from the outset of the scheme in 2013-14. Under this approach, the Secretary of State would, through directions, define the assurance requirements and produce certification instructions. At the end of the financial year, the local authority would make the arrangements for the assurance to be provided (probably by the auditor who audits the local authority's accounts) in line with the certification instructions.

47. The Bill as currently drafted also uses the term 'audit' in many places. The amendments would ensure that the Bill more accurately reflected the nature of the arrangements, which, as with the current system, will be a process of certification.

48. Amendment 82 amends an amendment to the Audit Commission Act 1998 that would have required the Audit Commission to have made the arrangements, if requested, for the certification of calculations and information supplied in respect of the new business rate retention scheme. Instead the existing requirement for the Audit Commission to make arrangements for certification under the existing scheme is removed.

49. Amendments 38 and 55 provide that regulations made under the Schedule can allow the Secretary of State to give directions about the certification of calculations or information in relation to payments by billing authorities to major precepting authorities and transitional protection payments.

50. Amendments 34, 36, 52, 53, 62 and 63 amend references to 'audit' in the Schedule by replacing them with references 'certification'.

51. Amendments 37 and 54 are technical amendments that insert the word 'certified' before the word 'information' for consistency with the drafting of similar provisions in the Schedule.

Lords Amendments 46 to 51

52. The Bill provides for the payment of safety net payments on account. It is the Government's intention that authorities should be able to request such payments on the basis of the estimate of their business rates income that they are already required to make before the start of the year for the purpose of making payments in respect of the central share and to major precepting authorities.

53. The Bill currently refers to an "in-year" calculation (although the actual requirement is that the calculation is made before the end of the year). Amendments 46 to 51 remove this term, and so remove any possible doubt that such calculations may be made before the start of the year.

Lords Amendments 42, 45 and 64

54. Amendment 64 would provide a power for the Secretary of State to make by regulations the same provision as can be made by direction under paragraph 40 of the Schedule. This would allow the regulations that will be made to implement the rates retention system to make provision for calculations and the supply of information, rather than having separate directions.

55. Amendments 42 and 45 are consequential.

Lords Amendments 56 to 59

56. The Bill currently requires the Secretary of State to consult such persons as the Secretary of State thinks are likely to be affected before making or revoking a pooling designation. In practice, the impact of a pool designation or its revocation is limited to the members of the pool and because each local authority in the pool must have consented to be in the pool, the consultation requirement is superfluous. Amendments 56 and 57 would remove the obligation to consult before making or revoking a pooling designation.

57. Amendments 58 and 59 concern the power of the Secretary of State to alter any conditions that may have attached to a pooling designation. Apart from pool members no other parties are likely to be affected by the addition, modification or deletion of a condition and therefore a duty to consult persons outside the membership of the pool is unnecessary. These amendments therefore would limit consultation to the members of the pool.

Lords Amendments 83, 84 and 86

58. Lords Amendments 83, 84 and 86 would enable regulations made by the Secretary of State to require the council tax reduction schemes of billing authorities in England to make provision equivalent to the provisions of, or the provisions which could be made under, sections 32 to 34 of the Welfare Reform Act 2007. The Secretary of State's powers to prescribe a default scheme would also be expanded in the same way. These amendments would also give billing authorities in England power to make additional provision in their local scheme which replicates, or could be made under, those sections. The powers of Welsh Ministers to make regulations about council tax reduction schemes would be amended in a similar manner.

59. The amendments are to paragraphs 2 (matters to be included in a scheme) and 4 (default scheme) of Schedule 1A to the Local Government Finance Act 1992 (council tax reduction schemes: England), inserted by Schedule 4 to the Bill, and Schedule 1B to that Act (council tax reduction schemes: Wales), also inserted by Schedule 4 to the Bill.

60. Sections 32 to 34 of the Welfare Reform Act 2007 make provision for what are called 'extended payments' in the council tax benefit system – a form of work incentive whereby in certain circumstances a person may continue to receive specific benefits for up to four weeks after they are no longer strictly eligible for that benefit (for example, because they have returned to work or increased their earnings).

61. The policy is to ensure that schemes drawn up, either by the Department or by billing authorities, are able to work in a similar way to the council tax benefit system with regard to the extended payment work incentive.

62. The effect of these amendments is:

- To add to the Bill technical provisions that will enable the **Secretary of State** to make regulations prescribing provisions equivalent to, or provisions which could be provided for under, specified sections in the Welfare Reform Act 2007 relating to the existing council tax benefit system, with such modifications as the Secretary of State thinks fit. The 2007 Act provisions relate to 'extended payments'. This will apply to regulations prescribing requirements for schemes (for pensioners under Schedule 1A, paragraph 2(8) to (10) and the 'default scheme' under Schedule 1A, paragraph 4).

- To add to the Bill technical provision that will enable **billing authorities** to include in their schemes provisions equivalent to, or which could be provided for, under specified sections in the Welfare Reform Act 2007 relating to the existing council tax benefit system regarding incentivising work through extended payments, with such modifications as the authority thinks fit.

- To add to the Bill technical provision that will enable **Welsh Ministers** to make regulations to include the same provisions in their scheme.

Lords Amendment 85

63. Lords Amendment 85 would limit the ability of authorities to enter into arrangements to vary payments, or instalments of payments required to be made in regulations about funds made under section 99 of the Local Government Finance Act 1988, so that authorities may only vary payments required to be made in regulations relating to the collection fund for council tax receipts (and not other receipts). The arrangements in question can be made where there is, or it is anticipated there will be, a deficit in a billing authority's collection fund as a result of the operation of a council tax reduction scheme.

Lords Amendments 87 to 90

64. These amendments would enable First-tier Tribunal members (judges and other members) to sit as members of the Valuation Tribunal for England. They would only be able to do so at the request of the President of the Tribunal and with the approval of the Senior President of Tribunals, and only

in relation to appeals which relate in whole or in part to a council tax reduction scheme. This would be so that their expertise could be used when deciding appeals against decisions made in relation to council tax reduction schemes.

LOCAL GOVERNMENT FINANCE BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

These notes refer to the Lords Amendments to the Local Government Finance Bill as brought from the House of Lords on 22 October 2012 [Bill 78]

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