



**NOTICE UNDER REGULATION 10
OF THE LOCAL AUTHORITIES (EXECUTIVE ARRANGEMENTS (MEETINGS
AND ACCESS TO INFORMATION) ENGLAND REGULATIONS 2012 RULES**

The following item was not on the Executive Meetings and Key Decisions Notice

London Business Rates Pilot scheme.

This item was not shown on the Executive Meetings and Key Decisions Notice and pursuant to Regulation 10 of the Local Authorities (Executive Arrangements (Meetings and Access to Information) England Regulations 2012 this report is submitted as a General Exception. The reason why compliance with Regulation 10 is impracticable is set out below.

This report is being submitted under general exception as it is urgent.

Monday, 17th December, 2018

at 6.00 pm

CABINET

All members of the public are welcome to attend

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LONDON 75% BUSINESS RATES RETENTION PILOT 2019/20

KEY DECISION NO – GENERAL EXCEPTION REPORT

CABINET MEETING DATE 2018/19

17 December 2018

CLASSIFICATION:

OPEN

WARD(S) AFFECTED: ALL WARDS

CABINET MEMBER

Philip Glanville

Mayor of Hackney

KEY DECISION

Yes

REASON

Spending or Savings

GROUP DIRECTOR

Ian Williams: Finance and Corporate Resources

1. MAYOR'S INTRODUCTION

- 1.1 This report sets out the progress which has been made with the London 2019/20 Business Rates Retention Pilot and Pooling Scheme. It also describes the next steps that need to be taken to implement the Pilot and lists the decisions that are required.
- 1.2 This year, in common with all boroughs, we are operating under the 2018/19 London Business Rates Retention Pilot Pooling arrangement. The operation of this scheme is detailed below.
- 1.3 Under this scheme London Boroughs keep 64% of the business rates raised and the Government is applying a "no detriment" guarantee that will ensure that the pool cannot be worse off than the participating authorities would have been collectively if they had not entered the pilot pool. In the event of this arising, the Government will intervene to provide additional resources. Based on an interim estimation of London rates taxbase growth in 2018/19 by London Councils, this will not be necessary as the scheme is, as expected, showing significant growth.
- 1.4 The pooling agreement between the boroughs and the GLA also ensures that no authority can be worse off as a result of participating - where authorities anticipate a decline in business rates, the first call on any additional resources generated by the pool would be used to ensure each borough and the GLA receives at least the same amount as it would have without entering the pool.
- 1.5 The net financial benefit of pooling consists of London Government retaining 100% of growth (rather than 67% across London under the 2017/18 scheme), and in not paying a levy on that growth (which tariff authorities and tariff pools currently pay). The principle means that *any aggregate growth* in the pool in 2018/19 overall – because of the increased retention level – will generate additional resources to share, with each pooling member to benefit to some extent. The method of allocating out the growth is favourable to Hackney as it gives a high weight to needs and population which is something we looked to ensure was a priority in the scheme.
- 1.6 In 2019/20, Government has agreed to extend the retention and pooling scheme but with two important changes. The first is a reduction in the percentage to be retained by London Government from 100% to 75%. This is despite lobbying from London Councils and the GLA. What this means is that boroughs will keep an estimated 48% of the total rates raised as opposed to the current 64%, with the GLA retaining 27% and the Government 25%. As will be demonstrated below, there will still be a significant benefit even under a 75% scheme compared to the default arrangement, whereby the boroughs would keep 30%.

- 1.7 The other change is that the Government will not apply the 'no-detriment' rule in 2019/20. This is not really of any practical significance as it is extremely unlikely that London's rates base will decline in 2019/20. More important is the clause in the current pooling agreement between the boroughs and the GLA (which will be retained in 2019/20), which ensures no authority can be worse off as a result of participating. As with 2018/19, where authorities anticipate a decline in business rates, the first call on any additional resources generated by the pool would be used to ensure each borough and the GLA receives at least the same amount as it would have without entering the pool.
- 1.8 But it does mean that once again the Government have ignored the representations made by London Government, that I have fully supported through London Councils, and have decided to reduce the amount of business rates that will be retained locally to 75%. While there are potential financial benefits under this scheme to bring in £3.5 million income for Hackney, it does not make up for the £170 million cuts to our government grant since 2010, with a further £30m still needed to find by 2022. We will continue to campaign for a sustainable future for local government's finances and say that the system is reaching breaking point. Local government has already sustained the biggest cut in public funding. Hackney is bearing the biggest cut in per capita core funding amongst London boroughs -- £512 lost in per capita funding -- making our mission to build a fairer, safer and more sustainable Hackney even more of a challenge.
- 1.9 Until then, the generated income can be used to support the delivery of our manifesto commitments, including our new Young Futures Commission as well as maintaining frontline services where demand and need continue to rise and austerity continues to impact on the Council's finances. I recommend this paper and its recommendations to Cabinet. We will ensure that Cabinet continues to be kept informed about progress in future Overall Finance Position Papers.

2. GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES INTRODUCTION

- 2.1 This report provides an update on progress on the 2019/20 scheme and details the next steps, and the decisions that will need to be taken for the Council to join the Pilot and Pooling scheme. A series of recommendations are included to affect these decisions.

3 RECOMMENDATIONS

- 1. To approve and accept the designation by the Secretary of State as an authority within the London Business Rates Pilot Pool pursuant to 34(7)(1) of Schedule 7B Local Government Finance Act 1988;**
- 2. To participate in the London Business Rates Pilot Pool with effect from 1 April 2019 to 31 March 2020;**

3. To delegate the authority administrative functions as a billing authority pursuant to the Non- Domestic Rating (Rates Retention) Regulations 2013, to the City of London Corporation ("COLC") acting as the Lead Authority;
4. To authorise the Lead Authority to sub-contract certain ancillary administrative functions [regarding the financial transactions [payment of tariffs and top-ups] within the Pool to the GLA as it considers expedient];
5. To delegate authority to Group Director of Finance and Corporate Resources in consultation with the Mayor to agree the operational details of the pooling arrangements with the participating authorities;
6. To agree to enter into such Memorandum of Understanding with the participating authorities as may be necessary to implement and/or regulate the pool and to delegate authority to the Group Director of Finance and Corporate Resources in consultation with the Director of Legal to negotiate, finalise and execute the same on behalf of the authority.
7. To authorise the Mayor to represent the authority in relation to consultations regarding the London Business Rates Pilot Pool consultative as may be undertaken by the Lead Authority pursuant to the Memorandum of Understanding;

These recommendations are subject to assurances from the Group Director of Finance and Corporate Resources to be provided to the Mayor once known that baseline funding allocations contained within the Provisional Local Government Finance Settlement 2019/20 expected in early to mid-December 2018 and actual funding allocations from the Lead Authority are in line with expectations based on previous financial modelling carried out by London Councils.

The recommendations are also subject to assurances from the Group Director of Finance and Corporate Resources to be provided to the Mayor that the Memorandum of Understanding referred to in 6 above, has the same provisions as that which applied in 2017/18 and as set out in this report below.

The Council has 28 days to opt out of the scheme from the publication date of the Local Government Finance Settlement so this is the effective timescale the Group Director of Finance and Corporate Resources has to provide the required assurances but it is very likely that he will be able to review the allocations and Memorandum of Understanding much sooner than this.

4. REASONS FOR DECISION

- 4.1 To approve the entry of the London Borough of Hackney into the 2019/20 London 75% Business Rates Retention Pilot and Pooling Scheme.

4.2 THE SCHEME

The agreement with Government for London's current 100% Business Rate Retention Pilot is specifically limited to 2018/19. Any extension into 2019/20 will need agreement both within London and with the Government.

In July 2018, MHCLG published a prospectus inviting local authorities to apply to become Business Rate Retention Pilots in 2019/20. At the same time, the Secretary of State for Housing, Communities and Local Government wrote to the Chair of London Councils and the Mayor of London confirming that the Government was willing separately to negotiate the extension of the London pilot.

There is no firm timetable for final decisions by Government, except that any pilots will need to be approved for inclusion in the Provisional Local Government Finance Settlement in early to mid-December. In practice, this meant that London's negotiations with Government had to be substantially completed during October 2018. It should be noted that under the terms of the current MoU between the 34 authorities, if the pilot is not extended beyond 31 March 2019, then the pool would also lapse and be dissolved.

Following previous proposals and the steer provided by Leaders' Committee in July 2018, officers from London Councils, the GLA and the City of London (as Lead Authority) confirmed to MHCLG that London Government will seek agreement to continue the pilot in 2019/20 and wished the continuation of 100% retention, and that any financial benefit of a continuing pool would be distributed on the basis of the formula agreed by London's local authorities for the current year.

James Brokenshire, Secretary of State for MHCLG, then wrote to the Chair of London Councils and the Mayor of London, responding to our joint proposals for extending the Business Rates Pilot Pool into next year. His response provides for 75% retention, in line with the other pilot pools to be agreed for 2019/20 – i.e. without a "no detriment" guarantee, and with a "safety net" level of 95% (reduced from 97% in the current year to reflect the lower exposure to variation in rates income). He does not seek to change the agreed distribution of any net financial benefits;

In effect, the key decision for Hackney and the other boroughs and the GLA is whether we wish to continue with the pilot in 2019/20 with a 75% retention level, without a “no detriment” guarantee, and with no other changes. In effect this halves the potential financial benefit (which arises from increased retention above the current national 50% scheme). The change reflects both the Government’s emerging proposals for a national 75% retention scheme from April 2020 and concern, particularly within the Treasury, at the “cost” of the 2018/19 pilots. The financial benefit of a 75% retention pilot would, of course, depend on the level of growth in business rate income across the capital next year, which cannot currently be accurately calculated. However, given the level of growth already anticipated to be achieved in 2018/19, London Councils have estimated that ***London could expect to collectively retain additional business rates in 2019/20 of approximately £200 million even without any additional year-on-year growth.*** Under the agreed distribution mechanism, this would lead to an additional £109 million for the Boroughs and the City of London, £61 million for the GLA and £30 million for the Strategic Investment Pot. Hackney’s indicative share of this is estimated to be £3.5m.

Ministers requested a response from London government by 14 November 2018 and Leaders’ approval was obtained through London Councils’ Urgency arrangements and formally accepted. MHCLG will now incorporate the London pilot pool within the Provisional Local Government Finance Settlement to be announced in December.

Each authority will then have 28 days to “opt out” if it does not wish to participate – in which case the pilot would not proceed. At the same time, boroughs, the City of London and the Mayor will all need to agree a Memorandum of Understanding between each other (referred to in recommendation 6 above) which will be updated from 2018/19 version.

Additionally, continuation of the pilot in 2019/20 requires continued unanimous support within London Government, which will need to be agreed by a second memorandum of understanding (MOU) signed by executive officers of MHCLG, London Councils and the GLA. This document has been duly signed and attached at **Appendix 2.**

The current administrative arrangements, including the role of the City of London as Lead Authority, would continue unchanged.

4.3 Pilot Principles – Government MOU

The MOU between London Government and the Government on the London 75% business rates retention pilot agrees that:

- The 75% business rates retention pilot in London will be voluntary but will be a pool comprising all 32 London boroughs, the Corporation of the City of London and the Greater London Authority.
- From 1 April 2019 the London authorities will retain 75% of their non-domestic rating income.

- London authorities will also receive section 31 grants in respect of Government changes to the business rates system which reduce the level of business rates income.
- The London pool will retain 75% of any growth in business rate income above baselines and will pay no levy on that growth.
- In moving to 75% rates retention, the Department for Communities and Local Government will no longer pay Revenue Support Grant (RSG) to the London authorities in 2019/20 but boroughs currently in receipt of a top-up such as Hackney, will receive a higher top-up payment than they would have done under a 100% scheme.
- No “new burdens” will be transferred to London and participation in the pilot will not affect the development or implementation of the Fair Funding Review.

4.4 Pooling principles – London Boroughs and GLA MOU

The MOU with the Government establishes the terms of the 75% retention pilot, but the London business rates pool must be set up following the same process as in 2018/19.

The key principles that underpin the London pooling agreement are set out in the MOU between the boroughs, the GLA and City of London will be the same as those that applied in 2017/18 and are summarised below.

- The pool in 2019/20 would not bind boroughs or the Mayor of London indefinitely – the founding agreement includes notice provisions for authorities to withdraw provided notice is given by 31 August each year. Were the pool to continue beyond 2019/20, unanimous agreement would be required to reconfirm a pool from 2020/21 onwards
- Where authorities anticipate a decline in business rates, the first call on any additional resources generated by the pool would be used to ensure each borough and the GLA receives at least the same amount as it would have without entering the pool (this would include the equivalent of a safety net payment were it eligible for one individually under the current 67% system).
- All members will receive some share of any net benefits arising from the pilot pool – recognising that growing London’s economy is a collective endeavour in which all boroughs make some contribution to the success of the whole, all members of the pool will receive at least some financial benefit, were the pool to generate additional resources.

4.5 Lead authority

As with 2018/19, it is a statutory requirement that a “Lead Authority” acts as the accountable body to government and is responsible for the administration of the pooled fund. The City of London has once again agreed to be the lead authority for the London business rates pool.

The Lead Authority’s standard responsibilities will include, but not be limited, to: all accounting for the finances of the pool including payments to and from the Government; management of the pool's collection fund; all audit requirements in relation to the pool; production of an annual report of the pool's activity following final allocation of funds for the year; the administration of the dissolution of the pool; all communications with the DCLG including year-end reconciliations; and the collation and submission of information required for planning and monitoring purposes.

It will be for the Lead Authority for the pool to determine the distribution of revenues between members of the pool and also pay the net tariff payment to the Government during the year. In practice, this will mean some authorities will receive net payments from the pool in instalments during the 2019/20 financial year and others will make net payments into the pool depending on their top up and tariff positions and estimated business rates income. These transfers through the pool will also incorporate the GLA’s share.

Under a delegation arrangement, the GLA will manage treasury management issues and monetary transfers between billing authorities on behalf of the lead authority.

In the case of the London pilot pool, the lead authority will have an additional role in formally taking decisions over the allocation of the Strategic Investment Pot following consultation with all participating authorities.

4.6 Distributing the benefits of pooling

The net financial benefit of pooling consists of retaining 75% of growth and in not paying a levy on that growth (which tariff authorities and tariff pools currently pay). The principle would mean that *any aggregate growth* in the pool overall – because of the increased retention level – would generate additional resources to share, with each pooling member to benefit to some extent.

The pooling agreement sets out the principles and method for distributing any net financial benefits that may be generated. The principles are based on four objectives agreed by Leaders and the Mayor:

- **incentivising growth** (by allowing those boroughs where growth occurs to keep some proportion of the additional resources retained as a result of the pool)
- **recognising the contribution of all boroughs** (through a per capita allocation)

- **recognising need** (through the needs assessment formula);
and
- **facilitating collective investment** (through an investment pot designed to promote economic growth and lever additional investment funding from other sources)

The final agreed distribution method recognises all four of these objectives with 15% of any net financial benefit set aside as a “Strategic Investment Pot” and the resources not top-sliced for the investment pot being shared between the GLA and the 33 billing authorities (the 32 boroughs and the Corporation of London) in the ratio 36:64, in accordance with the principle previously agreed by London Councils and the GLA in the joint business rate devolution proposals to Government in September 2016. Strategic investment pot and pool governance

The joint Strategic Investment Pot (SIP) - representing 15% of the total additional net benefit - will be spent on projects that contribute to the sustainable growth of London’s economy and an increase in business rates income either directly or as a result of the wider economic benefits anticipated; leverage additional investment funding from other private or public sources; and have broad support across London government in accordance with the proposed governance process.

4.7 Next Steps

Establishing a pilot pool will require two separate decisions to be made by each participating authority:

- the agreement to accept the designation order by government to form the pool; and
- agreement between the boroughs, the City of London and the GLA by which London Government collectively decides how to operate the pool and distribute the financial benefits (the pooling MOU).

Regarding the former, the Government has prepared a draft “designation order” establishing a London pilot pool that will be sent out by DCLG alongside in the Provisional Local Government Finance Settlement in December. If any authority decides to opt out within the following 28 days – that is, by 28 days after the Provisional Local Government Finance Settlement – the pool would not proceed.

The pooling agreement MOU between the 34 London authorities will be signed by each Leader or elected Mayor of the 32 London boroughs, the Chairman of the Policy and Resources Committee of the City of London and the Mayor of London will be issued shortly after the Settlement has published and will be signed off by the Mayor.

Each authority will need to take the relevant decisions regarding the pooling agreement and designation order, through its own constitutional decision-making arrangements in time for the resulting business rate and funding baselines to be incorporated within the Final Local Government Finance Report in February.

The timeline to make the pool operational is as follows:

- Government publishing draft baseline figures in the provisional settlement (Early December).
- Boroughs taking formal decisions to participate in the pool and the framework for its operation within 28 days of the Provisional Settlement (by early January 2019).
- Final baselines published in final LGF Settlement (February 2019).
- Pool goes live (April 1, 2019).

5.0 DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

Either we join the Pool, or we don't and on the basis of the Pooling MOU and potential financial benefits we are proposing to join the Pool.

6.1 BACKGROUND

6.2 Policy Context

This proposal forms part of the overall 2019/20 Council budget to be presented to Cabinet in February 2019.

6.3 Equality Impact Assessment

This proposal is a change in funding source which will make the Council no worse off and so there is not a need for an Equality impact assessment. When the Council's budget is set of which the resources generated by the Pilot Scheme will form part, an Equalities impact assessment of the Budget will be included in the relevant reports to Cabinet.

6.4 Sustainability

As above

6.5 Consultations

Relevant consultations have been carried out involving, the Mayor, the Member for Finance, HMT, Heads of Finance and Assistant Directors of Finance.

6.6 Risk Assessment

The risks associated with the scheme are detailed in this report.

7. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES

7.1 The Group Director of Finance and Resources' financial considerations are included throughout the report.

8. COMMENTS OF THE DIRECTOR OF LEGAL

8.1 The recommendations in this report concern executive functions under sub-sections 9D(3) & 9DA(2) of the Local Government Act 2000. The Mayor's scheme of delegation provides that delegating executive functions to another local authority or the executive of another local authority is for the Mayor to decide (recommendation 3). However, the other recommendations are not reserved to the Mayor and so it is appropriate for Mayor and Cabinet to consider this report.

8.2 London Councils obtained legal advice from Trowers & Hamlins LLP dated 15 November 2017 (Appendix 2) on the legal framework and governance options for pooling business rates in London and circulated the legal advice to the London authorities.

8.3 Subsequent to this London Councils stated the preferred option for the pooling agreement will be a Memorandum of Understanding between the 34 London local authorities participating in the Pool.

8.4 Detailed legal advice and commentary on the proposal is contained in **Appendix 1**. The Director of Legal is satisfied that there is the power to establish a business rate pooling arrangement and for the proposed governance arrangements as set out in this report and recommendations.

Appendices

- Appendix 1: Advice on the legal framework and governance options
- Appendix 2: Memorandum of Understanding between MHCLG, London Boroughs and the GLA

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Cabinet

17 DECEMBER 2018

**LONDON 75% BUSINESS RATES
RETENTION PILOT 2019/20**

**KEY DECISION - GENERAL
EXCEPTION**

Appendix 1

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Dated 15 November 2017

London Councils

Pooling Business Rates in London

Advice on the legal framework and governance options

Trowers & Hamblins LLP has produced this advice solely for the benefit of London Councils and does not assume any responsibility or liability to any third party in respect of the contents or accuracy of this advice.

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Circulation Draft dated 15 November 2017

1 Executive Summary

- 1.1 This note outlines the potential governance options for the proposed London Business Rates 100% retention pilot pool for 2018/19.
- 1.2 Most of the functions associated with the pool will be administrative and would be performed by a lead authority and accountable body.
- 1.3 It is proposed that a portion of some of the net gain from the pooling arrangement would be retained as a strategic investment pot (**SIP**) which could be used to fund projects that will deliver economic growth.
- 1.4 This note suggests alternative governance options for oversight of project funding approvals from the SIP.
- 1.5 The three most pragmatic forms of governance for the business rates pooling arrangement appear to be:
- 1.5.1 a joint committee (**Option 1**); or
 - 1.5.2 a quasi-contractual approach involving a lead authority in consultation with participating authorities (**Option 2**); or
 - 1.5.3 a lead authority with a decision-making meeting of duly authorised officers (**Option 3**).
- 1.6 Of these three options, it would appear that Option 2 would be the most appropriate as it affords more flexibility and would appear to have the most support based on discussions held to date via London Councils.
- 1.7 Option 2 would be documented in a non-legally binding Memorandum of Understanding. It would involve the individual local authorities delegating authority to the City of London Corporation (COLC), as the Lead Authority, to take decisions on the allocation of the SIP, in consultation with the other 33 participating authorities. As some London Boroughs and COLC do not currently operate executive arrangements, those authorities cannot lawfully delegate decisions to single elected members. Therefore a meeting comprising elected members would need to be consultative in nature to enable all participating authorities to participate in the same way.
- 1.8 The Lead Authority would consult all individual participating London authorities including the GLA (the **Participating Authorities**) before making any decisions to allocate funds from the SIP to projects. The Lead Authority would only decide to approve projects for SIP funding where both the GLA and two thirds or more of the other Participating Authorities had, assuming no sub-region unanimously disagreed, already voted in favour of a project.
- 1.9 Currently, the only governance model which could incorporate this level of approval and enable all Participating Authorities' elected members to participate in the same way, whilst accommodating Participating Authorities' diverse constitutional structures, would constitute a consultative meeting of Participating Authorities (Option 2).
- 1.10 Other options for a governance model for the Pool have been considered but none would appear to be suitable or offer the flexibility or potential appeal of Option 2. Under current legislation, a joint committee structure could not accommodate voting other than by simple majority. A decision-making forum of Participating Authorities' officers would disenfranchise elected members from due consideration and involvement in the decisions of the pool regarding the allocation of the SIP to individual projects. An Economic Prosperity Board (EPB) model would not appear to be viable at this stage as it would require an order from the Secretary of State and its area would overlap with the existing

West London EPB. Nor would an incorporated structure as it has no precedent and may take too long to agree within the limited timescale.

- 1.11 While the initial pooling agreement will be for 2018/19 only, there is a possibility that the pilot will be extended by government and the pool may therefore continue for a further year in 2019/20. The Pool's operation, including this governance model, will be evaluated by London Councils, the GLA and government and could allow for potential adjustments to the governance model if agreed as expedient, were pooling to continue beyond the first two years.
- 1.12 We recommend that each authority's decision to participate in the Pool should confirm the allocation of business rates between the collecting authorities, the GLA and the SIP and form part of the terms of reference for the Pool.

2 Background

2.1 We have been instructed by London Councils to provide legal advice in connection with a proposal to establish a business rates pooling arrangement involving the COLC, all of the London Boroughs¹ and the Greater London Authority (**GLA**).

2.2 This advice note considers:

2.2.1 The powers of the London Boroughs to participate in a business rate pooling arrangement with each other and the GLA and any limitations or restrictions which need to be addressed;

2.2.2 The principal options for the form of governance arrangement for the pooling arrangements including the mechanism for allocating funds comprising the SIP.

2.3 The preferred model for the pilot pool would include the following features:

2.3.1 No participating authority would suffer financial detriment as a result of its involvement in the pooling arrangement;

2.3.2 The pooling arrangement should include three categories of distribution as follows:

(a) a percentage of the fund for distribution by the GLA/Mayor;

(b) a percentage of the fund which will be returned to each London Borough; and

(c) a percentage of the fund which will be included in the SIP to be allocated to projects by the Lead Authority taking into account the responses of the Participating Authorities.

2.3.3 The governance of the SIP should permit the Lead Authority to make decisions on the use of resources within the SIP where both the GLA and at least two thirds of the London Boroughs are in favour (subject to no participating authorities in one sub-region² unanimously disagreeing with the decision).

3 Powers to establish a Business Rate Pooling Arrangement

3.1 The Secretary of State has the power to designate two or more "relevant authorities" as a pool of authorities for the purposes of the provisions of Schedule 7B of the Local Government Finance Act 1988³.

3.2 Paragraph 45 (Interpretation) of Schedule 7B defines a "relevant authority" as:

3.2.1 a billing authority in England, or

3.2.2 a major precepting authority in England.

3.3 The list of billing authorities at Schedule 5, Part 1 of the Non-domestic Rating (Rates Retention) Regulations 2013/452 includes the GLA and the London Boroughs as billing

¹ Henceforth, for the purposes of this advice note, any reference to "London Boroughs" should be deemed to include COLC acting in its capacity as a local authority.

² London Councils' link to the map of sub regions: <http://www.londoncouncils.gov.uk/download/file/21341>. The Lead Authority can make decisions where consultation indicates the GLA and London Boroughs are in favour, and London Borough support is defined as two-thirds majority subject to sub-regional veto – as defined in the London Councils; prospectus.

³ As amended by the Local Government Finance Act 2012.

authorities and the GLA is also a precepting authority pursuant to section 39 (1) of the Local Government Finance Act 1992.

3.4 Schedule 7B, Part 9 imposes a number of requirements with regard to the designation of a pool including:

3.4.1 The authorities covered by the designation must be notified by the Secretary of State as per Part 9, paragraph 34 (7);

3.4.2 Timing requirements regarding notification before making the local government finance report under paragraph 12 (2);

3.4.3 A condition requiring the authorities to which the pooling designation relates to appoint a lead authority to exercise the functions specified in the condition⁴;

3.4.4 Such other condition(s) as the Secretary of State thinks fit⁵;

3.4.5 Any regulations with regard to levy payments and safety net payments on account may treat the pool as a "relevant authority" for the purposes of the regulations; and

3.4.6 Furthermore, where a pool of authorities is required to make a payment to the Secretary of State, each authority in the pool is jointly and severally liable to make that payment⁶ and where the Secretary of State is required to make a payment to pool authorities, the payment must be made to the lead authority appointed in accordance with conditions under paragraph 35 (1)⁷.

3.5 As far as we have been able to ascertain, there is nothing in legislation (except insofar as may be included within a condition by the Secretary of State pursuant to the relevant Designation Order) which would require a pooling arrangement to assume a particular legal structure or corporate form.

3.6 In light of our understanding of discussions which have taken place to date, there are in our view theoretically five principal options which might be available to the GLA and the London Boroughs for the administration of the proposed pooling of business rates in London. These are as follows:

3.6.1 A joint committee (**Option 1**)⁸; or

3.6.2 A lead authority consulting the participating authorities in advance and, within their authority's own constitutional arrangements, decide their authority's view on proposals for the allocation of funds to individual projects from the SIP (**Option 2**);

3.6.3 A lead authority with a meeting of duly authorised officers with delegated authority from their Participating Authorities to make decisions at meetings on allocations of SIP funds (**Option 3**);

3.6.4 The Participating Authorities each becoming members of a separate corporate vehicle, (such as a limited company) for the purpose of operating the pooling arrangement (**Option 4**); and

⁴ Paragraph 35(1)(A)

⁵ Paragraph 35(2).

⁶ Paragraph 38(2) the potential risk associated with this issue can be mitigated contractually – see later at page 12

⁷ Paragraph 38(3)

⁸ Pursuant to the Local Government Act 1972, section 101 (5) (**Joint Committee Option**) and in respect of the GLA pursuant to section 39 of the Greater London Authority Act 1999.

3.6.5 The establishment of an Economic Prosperity Board (**EPB**) (**Option 5**).

3.7 Given the constraints of the timetable for implementation of the London pooling proposal, we do not propose to explore at present Options 4 or 5 for the following pragmatic reasons.

3.8 We would suggest a corporate vehicle (**Option 4**) would not be appropriate in these circumstances given this form has no precedent within other authorities' pooling arrangements; and that it would be ambitious to expect resolution by all the stakeholders of the requisite fundamental issues and documentation (for example, a shareholders or members agreement) to form a company within the timescale is for what is intended to be a two year pilot arrangement. The legal powers to found such a proposal would also require more detailed consideration.

3.9 An EPB (**Option 5**) we suggest would similarly not be feasible in the short term both because it would require an order from the Secretary of State and it would overlap with the current West London EPB area.

4 **"Proper Purpose"**

4.1 Given that local authorities and any pooling arrangement designated by the Secretary of State are generally⁹ "creatures of statute", as a matter of public law, the relevant authorities must exercise the powers available to them for a "proper purpose" when deciding which form of governance the pooling arrangement should take. For example, the authorities should not seek to adopt a particular form of governance as an artificial device with the main purpose of circumventing legislation that might otherwise be applicable in order to avoid controls¹⁰.

4.2 However, the authorities are entitled to identify and follow a legitimate route to a legitimate end by reference to the relative operational and financial advantages and disadvantages which will follow from the potential different options available to them.

4.3 By way of example, a decision to choose the lead authority and consultative members model (Option 2) rather than a joint committee (Option 1) because Option 2 would afford more opportunities for consultation with and consideration by the Participating Authorities would be an exercise of powers for a "proper" purpose. Whereas a decision to choose Option 2 with the sole motive of circumventing the statutory controls on voting applicable to Option 1 (referred to in paragraph 5.11 below) might arguably be regarded as an exercise of the relevant power for an "improper" purpose.

4.4 A potential improper purpose argument is an intrinsic risk of any innovative arrangement involving local government and the likelihood of challenge will diminish with the passage of time. In this context, it should be borne in mind that this arrangement will apply to a one or two year pilot and will be evaluated by London Councils and the government before any extension of pooling arrangements in London.

"Wednesbury Reasonableness"

4.5 The Participating Authorities will need to take into account the usual "Wednesbury" principles in making the decision as to which option to adopt. This will involve the authorities paying due regard to any relevant considerations (such as efficiency) and disregarding irrelevant considerations (such as purely political motives to secure re-election).

⁹ Although the COLC is not strictly a creature of statute, COLC must exercise the local authority powers and functions conferred upon it having regard to the same considerations.

¹⁰ *Credit Suisse v Allerdale BC* [1996] 4 All E.R. 129

4.6 The Participating Authorities should also act in a fairly business-like manner with reasonable care, skill and caution, and with a "due and alert regard" to the interests of their ratepayers¹¹. It is our current understanding that the choice of governance structure the pooling arrangement alone will not directly affect ratepayers in London.

¹¹ *Bromley LBC v Greater London Council* [1983] 1 A.C. 768; *Roberts v Hopwood* [1925] A.C. 578; *Prescott v Birmingham Corporation* [1955] Ch. 210

5 The Most Viable Governance Options

5.1 Joint Committee (Option 1)

Powers

5.2 The London Boroughs will be familiar with their powers to establish a joint committee which also underpin the London Councils Leaders' Committee Governing Agreement 2001 (as amended).

5.3 In summary, the legislative basis is contained in sections 101 and 102 of the Local Government Act 1972 (**LGA 1972**), restated here for convenience:

5.4 *"101 (1) Subject to any express provision contained in this Act or any Act passed after this Act, a local authority may arrange for the discharge of any of their functions:*

(a) by a committee, a sub-committee or an officer of the authority; or

(b) by any other local authority."

102 (1) For the purpose of discharging any functions in pursuance of arrangements made under section 101 above:

(b) two or more local authorities may appoint a joint committee of those authorities."

5.5 Executive functions are not to be delegated under section 101 of the LGA 1972 but can be delegated under similar provisions to those set out above pursuant to sections 9E and 9EA (formerly section 19) of the LGA 2000 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012.

5.6 For the purposes of sections 101 and 102 of the LGA 1972, each London Borough and the GLA are "relevant local authorities".

5.7 The GLA is not a participating member of the London Councils Leaders' Committee and accordingly, if a joint committee were the preferred governance model for the business rate pooling arrangement, it would be necessary to establish a further joint committee involving all of the London Boroughs and the GLA.

Governance issues concerning joint committees

5.8 A joint committee has no separate legal identity and no corporate status and so cannot own property and where it purports to employ staff or enter into contracts in effect such arrangements are enforceable against each of the individual authorities. Therefore any agreement will need to address such issues with one authority acting as a "lead" (which is also a requirement under paragraph 35(1) of Schedule 7B of the Local Government Finance Act 1988). In relation to the business rates pooling arrangement, the authorities have identified the City of London Corporation as the proposed lead authority.

5.9 There is a degree of flexibility in relation to the terms of any delegation and authorities may specify the manner in which the delegated functions may be exercised (e.g. by reference to geography, service, or financial parameters).

- 5.10 Authorities can agree joint arrangements where certain closely specified types of decisions taken by a joint committee might be able to be the subject of a review by any of the Participating Authorities, following certain procedural steps (perhaps including a "cooling off" period before any decisions of the joint committee could be acted upon). These issues, together with the constitutional set up of the joint committee (e.g. numbers of members each authority may appoint; their terms of office; designation and role of COLC as lead authority; allocation of running costs and so on would need to be addressed in a formal agreement between all authorities involved).
- 5.11 Voting rights for joint committees are prescribed by paragraphs 39 to 44 of Schedule 12 (Meetings and Proceedings of Local Authorities) of the LGA 1972. Paragraph 39 requires that "*all questions coming or arising before a local authority shall be decided by a majority of the members of the authority present and voting thereon at a meeting of the authority*". It is possible that this legislation could be amended and this issue has been raised with government but currently, given the timescales it is unlikely that any such legislative amendments would be made in time for the pilot to start next financial year.
- 5.12 As a formal committee of the Participating Authorities, a joint committee would of course be subject to the political balance requirements¹² in the Local Government and Housing Act 1989 (LGHA) Schedule 1 and the Local Government (Committees and Political Groups) Regulations 1990. Although we are given to understand, this is unlikely to be an issue in this case as each of the Participating Authorities' leaders would be involved in such an arrangement.

Advantages/What would be possible

Option 1, a joint committee, could offer the following principal advantages:

- 5.13 it is a model that has been used many times across the country for other functions and the Leeds City Region Business Rates Pool operates through a joint committee;
- 5.14 it is legally one of the more straightforward entities to set up, and has clear statutory authority;
- 5.15 it maintains direct democratic oversight of the functions in question;
- 5.16 it is possible to delegate statutory functions to it directly;
- 5.17 it would be possible to frame the terms of the delegations to incorporate a framework for decision making on the allocation of funds; and

Disadvantages/What would not be possible

However, there are a number of potential disadvantages associated with this model:

¹² Section 15(5) LGHA states that the seats on any body which fall to be filled by appointments made by any relevant authority or committee of a relevant authority must have regard to the following principles of political balance: (a) that not all of the seats on the body may be allocated to the same political group; (b) that the majority of the seats on the body is allocated to a particular political group if the number of persons belonging to that group is a majority of the authority's membership; (c) subject to (a) and (b), the number of seats on the ordinary committees of a relevant authority which are allocated to each political group bears the same proportion to the total of all the seats on the ordinary committees of that authority as is borne by the number of members of that group to the membership of the authority; and (d) subject to (a) and (c) the number of the seats on the body which are allocated to each political group bears the same proportion to the number of all the seats on that body as is borne by the number of members of that group to the membership of the authority.

- 5.18 from an operational viewpoint, the establishment of a new joint committee will require and engage the associated administrative machinery including compliance with formal requirements of advance publication of agenda papers, voting and publicity. On the one hand, this could be perceived as an advantage in terms of added visibility, transparency and accountability. On the other hand, this could be perceived as involving perhaps slightly more administrative resources. This is a matter for consideration and discussion by the authorities;
- 5.19 a joint committee has no separate legal personality and would need to operate through a lead authority;
- 5.20 the statutory restrictions on voting arrangements mean that the preferred governance arrangements addressing the principles for governance prepared by the London Finance Commission and reflected in the draft prospectus for the pilot pool considered by Leaders Committee and the Mayor (see footnote 13 for summary¹³) could not be applied;
- 5.21 each participating authority will need to ensure that it has obtained the required authorisations under its constitution to enter into the arrangements;
- 5.22 there are also specific provisions in section 13 LGHA with regard to the status of a person who is not an elected member of any of the authorities but is appointed a member of the joint committee. The disadvantage of a joint committee in this case is that a person who is appointed as a member of the joint committee but who is not an elected member of one of the Participating Authorities would not have a vote¹⁴.

6 **Lead Authority and Consultation of Elected Member Representatives** (Option 2)

Powers

- 6.1 Local authorities have a power to delegate decisions to other authorities as referred to in paragraphs 5.4 and 5.5 above.
- 6.2 A pooling arrangement can be operated by agreement between the relevant authorities, whether as a non-legally binding memorandum of understanding (**MOU**); a more detailed formal legally binding contract or possibly, a hybrid arrangement where some provisions are expressed to be legally/contractually binding and others are included as expressions of general intent as to the protocols to be followed. Given the constrained timescale we consider an MOU is the most realistic option for documenting the governance arrangements and it also has precedent in other pools.
- 6.3 Local authorities have the power to enter into a Memorandum of Understanding to record the governing arrangements between them including under section 111 of the Local Government Act (**LGA**) 1972: "*Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the*

¹³ In summary: each element of London government should have a stake; no exclusion from the benefits of London's success or be disempowered from addressing local needs; no overriding of the Mayor's interests by the London local authorities, and vice versa; decision-making arrangements must provide for the prevention or breaking of any deadlock; the system must enforce binding decisions which reflect a clear consensus; the system must be simple and clear in the processes and parties' responsibilities; stability by retaining existing responsibilities where possible; there should be scope to respond to other relevant reforms; decision-making should reflect the roles of the authorities (the London Boroughs) and the GLA/Mayor; and the political arrangements should be supported by a formal officer group to provide standing technical advice and support.

¹⁴ Section 13(1) LGHA 1989

discharge of any of their functions". If a contractually binding Inter Authority Agreement were deployed then the relevant powers include section 1(1) of the Local Government (Contracts) Act 1997 "for the provision or making available of services for the purposes of, or in connection with the discharge of the functions of the local authority". In this context the relevant "functions" are those of a billing authority or a major precepting authority.

- 6.4 In relation to the London Business Rates Pooling arrangement, the Participating Authorities would have implicit powers to enter into arrangements with each other for the purposes of fulfilling the requirements of Schedule 7B for obtaining an order of the Secretary of State authorising the establishment of a business rate pool.

Governance issues

- 6.5 By and large, the governance and distribution arrangements would be set out within the terms of the MOU.
- 6.6 This could either involve a lead authority arrangement with authorities resolving to delegate certain clearly defined administrative functions to a single lead authority with a meeting of elected members who are consulted regarding allocations for the SIP (**Option 2**) or it could involve a lead authority supported by a decision-making forum of authority officer representatives who have delegated authority to make decisions (**Option 3**). The potential mechanics and responsibilities of the lead authority are explained in more detail below.

Lead Authority

- 6.7 The Participating Authorities could delegate most administrative functions to COLC as the lead authority who would then be responsible for administering the pool and could provide a secretariat with the GLA and London Councils for assessing and preparing reports to the Participating Authorities' applications for the SIP against pre-agreed criteria. We understand that it is currently proposed that the GLA may provide the transactional support role.

MOU

- 6.8 For this arrangement, the Lead Authority's role would (in addition to its normal responsibilities) cover:
- 6.8.1 Maintenance and support of the Pool's governance arrangements and the methodology for the allocation of resources;
 - 6.8.2 Assessment and preparation of reports on applications for the SIP in accordance with the agreed criteria.
- 6.9 The MOU could be expressed not to be legally binding and would not (in the absence of consideration or being expressed as a deed) be a contract. In due course for example if the pilot were deemed to be successful and were continued then, the arrangement in the MOU could be re-expressed as a legally binding Inter Authority Agreement and hence potentially enforceable as a contract between the authorities in part or as a whole.
- 6.10 As the arrangement under Option 2 or Option 3 would be an unincorporated association, the representatives will be able to operate bespoke voting arrangements (subject to the proviso above regarding a "proper purpose") according to the provisions of the MOU or Inter Authority Agreement.

Option 2 – Consultative Elected Member Representatives

- 6.11 With regard to the approval of allocations of the SIP for individual projects, the Lead Authority would take decisions following consultation with Participating Authorities. This could involve the Lead Authority preparing reports with proposed recommendations as to SIP allocations and circulating the report to the Participating Authorities for prior consultation and a decision as to which way the relevant authority will vote. The consultative representatives could then meet but decisions would not be made at that meeting.
- 6.12 If the representatives are to comprise elected members of the authorities, then care will need to be taken by each individual participating authority to ensure their appointments fit with their particular authority's constitution/governance model and scheme of delegation. Authorities which have a Mayor and Cabinet Executive or Leader and Cabinet Executive would be able to appoint the Senior Executive Member (Mayor or Leader) or another executive member as their appointed representative.
- 6.13 The elected members from authorities with non-executive arrangements (committees) would need to have the decision as to how to respond made in a duly constituted committee or subcommittee meeting of their authority.
- 6.14 In making decisions regarding allocations of the SIP it will be important that all Participating Authorities take lawful and valid decisions. Given the diversity of constitutional arrangements in London local government, (e.g. elected Mayors and Executives; Leader and Executives; and Committee forms of governance) the only way that all Participating Authorities can be engaged through their elected members on a two thirds response basis would be for each participating authority to take an individual view on the recommendations in a report prepared by the Lead Authority and then communicate their decision to the Lead Authority. This would need to ensure reports were circulated by the Lead Authority at least one month in advance of a meeting of the representatives to allow the individual authorities time to consider and make their decision within their own governance timetables (including scrutiny and call-in). The Lead Authority would then aggregate the individual Participating Authorities' responses and make the decisions regarding the allocation of the SIP to individual projects on the basis of the consultation principles and agreed thresholds. The decision-making process would be scheduled to take place bi-annually to allow the Lead Authority to report the outcome to the Congress of Leaders and the Mayor of London

Option 3 - Officer representatives

- 6.15 Alternatively, an officer representative arrangement could involve each Participating Authority delegating authority to its own authorised officer representative and the representatives which can respond to SIP allocation decisions. The representative(s) could all be officers¹⁵ (duly authorised and delegated with the authority to exercise the relevant functions by their authority), depending on what the individual authority's particular constitutional/governance arrangements¹⁶ and scheme of delegation allow, with

¹⁵ There is a general power to local authorities to discharge their functions through officers under section 101(1) Local Government Act 1972. Local authorities can delegate to officers as long as decisions are not effectively being made by a member(s) through an officer (*R v Port Talbot BC* [1988] 2 All E.R. 207; *Fraser v SoS for the Environment and the Kensington and Chelsea RLBC* (1987) 56 P. & C.R. 386). However, if a power is delegated to an officer acting in consultation with an executive member(s) then a decision without consulting the member(s) would be ultra vires.

¹⁶ If the relevant authorities have executive arrangements and to the extent executive functions as set out in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) are involved, then this would need to comply with the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012) where authorities have a committee system or prescribed arrangements.

those officer delegates then being duly empowered to make decisions at the duly constituted representatives meeting.

- 6.16 The extent of the terms governing the lead authority and consultative members' arrangement could similarly be comprised in a MOU or a more detailed Inter Authority Agreement.

Advantages of Options 2 and 3

- 6.17 Options 2 and 3 have the advantage of familiarity to DCLG and the Secretary of State: All of the established business pool agreements we have reviewed have been based on MOUs signed by the relevant s151 Officers of the authorities involved whether or not there is a combined authority or joint committee as well.
- 6.18 Simplicity – in the context of achieving agreement between the Participating Authorities within the time constraints, it may be easier for the Participating Authorities to reach agreement on a shorter MOU than on a more detailed contract, joint committee or corporate shareholding arrangements.
- 6.19 Voting rights – the statutory requirements regarding voting which apply to joint committees do not apply to the arrangements described in Option 2 or 3. Whilst most of the current MOUs for operational business pooling arrangements do provide for decisions by a simple majority, a number require unanimity (which indicates that the Secretary of State is prepared to agree bespoke voting rights where agreed by the Participating Authorities).
- 6.20 A contractual arrangement in the form of Option 2 or Option 3 could accommodate the features summarised at paragraph 2.3 of the Background section above.
- 6.21 Flexibility – the terms of the MOU can specify whether particular provisions are intended to be legally binding between the parties, allowing the Participating Authorities to clarify their legal rights and obligations to one another.
- 6.22 It should be borne in mind that either Option 2 or 3 could later transition to a joint committee arrangement if the factors mitigating against the latter option (e.g. restrictions on voting rights) were to be resolved by legislation or otherwise.

Disadvantages associated with Options 2 and 3

- 6.23 Whilst existing MOUs indicate that the Secretary of State is willing to approve bespoke voting arrangements, none include the degree of detail required by the Participating Authorities in this project.

7 Distribution arrangements – key issues

Authorities' decisions to enter into arrangements/terms of reference

- 7.1 Whichever governance form the Participating Authorities adopt to govern the pooling arrangement it will be necessary for each of them to approve those arrangements formally.
- 7.2 Confidence that the conditions which the authority leaders set out in their "in principle" agreement to participate is likely to be underpinned if each authority's formal decision to participate includes a condition which confirms the allocation of business rates between the collecting authorities, the GLA and the SIP. Further, this condition could with other terms be mandated as terms of reference for both the pooling arrangement and decisions to allocate funding to SIP initiatives.
- 7.3 The terms of reference/conditions which are likely to underpin confidence in the proposals appear to us to include:

- 7.3.1 That no authority should be financially worse off compared to their position if they had not participated in the pooling arrangement - we see this as being of particular importance in order to reassure s151 Officers that the authorities could not be in breach of their common law fiduciary duty to their ratepayers given the potential joint and several liability provision under Schedule 7B, Part 9, paragraph 35(1);
- 7.3.2 The allocation to each authority and the share allocated to the SIP;
- 7.3.3 The factors which are to be applied in the allocation of funds from the SIP to individual projects - including:
- (a) a requirement to make SIP allocations (within each financial year) with a requirement to seek to do this to meet specified targets;
 - (b) specified broad economic/growth criteria which must be satisfied to enable an initiative to qualify for funding – we appreciate this will have to be approved by DCLG – existing criteria used by central government business growth funds might be applicable or capable of adaptation;
 - (c) that the pooling arrangement is time limited unless all of the authorities and government approve an extension;
 - (d) a mechanism to deal with and distribute either income above that projected or income less than projected;
 - (e) a liability distribution provision to deal with claw-back on an equitable basis in the event income is subsequently reduced (through rating appeals) after the pool is dissolved; and
 - (f) a sub-regional right to veto a project for funding.
- 7.3.4 The report underlying the decision of each authority is likely to consist of a part common to all of them but should also include a part which addresses any particular implications for that individual authority.
- 7.3.5 Our expectation is that the 'governance arrangement' will in each year approve projected business rate income and subsequently review/reconcile the actual income. With notional allocations being made and a subsequent review to ensure notional allocations had been paid/committed with a process to deal/reallocate any underspent amounts.
- 7.3.6 If the Participating Authorities decide to appoint one of their members as the lead authority, the MOU or Inter Authority Agreement will need to recognise this. The lead authority will need protection that the consequences of certain actions taken in its name are shared (e.g. through indemnities and financial compensation mechanisms) and conversely, the other authorities will need to be protected from the unauthorised actions of the lead authority, the issue of joint and several liability and will want reassurance that should any payments be made by the Secretary of State to the lead authority under Schedule 7B paragraph 38(3) that these are equitably redistributed.

8 Conclusion

- 8.1 We would recommend either Option 2 or 3 involving a designated lead authority delegated with the role of undertaking the bulk of administrative decisions and supported by a meeting of representatives.

- 8.2 If Option 2 were adopted then it should be borne in mind that the elected member representatives could not validly take decisions at the bi-annual meetings, hence they would be consulted in advance.
- 8.3 If Option 3 were pursued then the officer representatives could be delegated with authority to make decisions on behalf of their authorities.
- 8.4 Meetings could be convened biannually during the financial year. The pilot arrangement would be documented in a MOU and then in due course in an Inter Authority Agreement if felt advantageous to do so.

Trowers & Hamlins LLP
Ref: HZR
15 November 2017

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Cabinet

17 DECEMBER 2018

**LONDON 75% BUSINESS RATES
RETENTION PILOT 2019/20**

**KEY DECISION - GENERAL
EXCEPTION**

Appendix 2

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Memorandum of Understanding on the London 75% business rates retention pilot 2019-20



MAYOR OF LONDON

Stuart Hoggan

Stuart Hoggan, Deputy Director, Local Government Finance - Ministry of Housing, Communities and Local Government

John O'Brien

John O'Brien, Chief Executive - London Councils

Martin Clarke

Martin Clarke, Executive Director, Resources - Greater London Authority

Memorandum of Understanding on the 75% Business Rates Retention Pilot 2019-20 for London

Introduction

1. In the Spring Budget 2017, the London Devolution Memorandum of Understanding¹ included a commitment to exploring options for granting London government greater powers and flexibilities over the administration of business rates, including supporting the voluntary pooling of business rates within London, subject to appropriate governance structures being agreed.
2. Following the establishment of a pan London business rates pool to pilot the previously proposed principles of 100% Business Rates Retention in 2018-19, this Memorandum of Understanding confirms the commitment by the Government, the Mayor of London and London local government to pilot the principles of 75% business rates retention in 2019-20 through the continuation of the pan-London business rates pool. It sets out the basis on which the local authorities listed at **Annex A** will pilot 75% business rates retention.
3. This Memorandum of Understanding (MoU) comes into effect from 1 April 2019 and expires on 31 March 2020.
4. This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the parties from this MoU.

Pilot principles

5. The pilot pool will be voluntary, but will include all 32 London boroughs, the City of London Corporation and the Greater London Authority [“the London authorities”].
6. From 1 April 2019 the London authorities will retain 75% of their non-domestic rating income². They will also receive section 31 grants in respect of Government changes to the business rates system which reduce the level of business rates income. Section 31 grant will amount to 75% of the value of the lost income. Tariffs and top-ups will be adjusted to ensure cost neutrality.
7. In moving to 75% business rates retention, the Ministry of Housing, Communities and Local Government will continue not to pay Revenue Support Grant to the

¹ <https://www.gov.uk/government/publications/memorandum-of-understanding-on-further-devolution-to-london>

² As defined in the Non-Domestic Rating (Rates Retention) Regulations 2013 (SI2013/452) (as amended).

London authorities in 2019/20. The value of these grants in 2019-20 is set out in **Annex B**.

8. The London authorities will not be subject to more onerous rules or constraints under the 75% rates retention pilot, than they would have been if they had remained subject to the 67% scheme in place in 2017-18, reflecting the incremental impact of the Greater London Authority's partial pilot as a result of the 'rolling in' of its Revenue Support Grant and the Transport for London investment grant. No 'new burdens' will be transferred to London and participation in the pilot will not affect the development or implementation of the Fair Funding Review.
9. Levy and safety net payments due from/to the London business rates pool will be calculated, in accordance with the Non-Domestic Rating (Levy and Safety Net) Regulations 2013 (SI 2013/737) (as amended), as if the London authorities were not 75% pilots, but instead were operating under the 50% rates retention scheme adjusted for the GLA's partial pilot for 2017-18, which is continuing as part of the pool and increased the locally retained share to 67%.
10. However, notwithstanding the calculation of levy and safety net payments under the Regulations, the Government will calculate levy and safety net payments due from/to the London business rates pool on the basis that it has a 'zero' levy rate and 'safety net threshold' of 95%, and that the London authorities will be retaining 75% of London's business rates income. The difference between any sums due under this calculation and the levy/safety net due under SI 2013/737 will be paid to the London business rates pool via a section 31 grant.
11. The piloted approach will have no impact on Enterprise Zones and 'designated areas' where the designations made by the Secretary of State come into force on or before 1 April 2019, along with other special arrangements, such as the statutory provision to reflect the unique circumstances of the City of London Corporation.

Distribution of any financial benefit

12. The 34 London authorities will prepare a framework agreement for the operation of a pilot pool in which, assuming the pool has 'growth' in comparison to its assessed business rates baseline:
 - each authority will receive at least as much from the pool as they would have individually under the existing 67% retention scheme;
 - 15% of any net financial benefit will continue to be set aside as a 'Strategic Investment Pot' (see paragraphs 13-16); and

- the resources not top-sliced for the investment pot will be shared between the GLA and the 33 billing authorities (the 32 boroughs and the City of London Corporation) in the ratio 36:64, in accordance with the principle previously agreed by London Councils and the GLA in the joint business rate devolution proposals to Government in September 2016.

Strategic investment

13. The Mayor of London commits that the GLA's share of any additional net financial benefit from the pilot will be spent on strategic investment projects. Decisions on the allocation of the GLA's share will be made by the Mayor of London.
14. For this purpose, and for the separate joint Strategic Investment Pot, 'strategic investment' will be defined as projects that will contribute to the sustainable growth of London's economy or support the delivery of new infrastructure, housing or employment, which lead directly to or are expected to facilitate an increase in London's overall business rates income.
15. The joint Strategic Investment Pot will be spent on projects that meet each of the following requirements:
- contribute to the sustainable growth of London's economy and an increase in business rates income either directly or as a result of the wider economic benefits anticipated;
 - leverage additional investment funding from other private or public sources; and
 - have broad support across London government in accordance with the proposed governance process (see paragraph 17-18).
16. It is anticipated that approximately 50% of net additional benefits arising from the pilot pool will continue to be spent on strategic investment projects.

Governance

17. Decisions regarding the Strategic Investment Pot will be taken formally by the City of London Corporation – as the lead authority – in consultation with all member authorities, reflecting voting principles designed to protect Mayoral, borough and sub-regional interests, agreed under the 2018-19 100% pilot and previously endorsed by Leaders and the Mayor in the London Finance Commission (both 2013 and 2017), and set out in London Government's detailed proposition on 100% business rates in September 2016. These are that:

- both the Mayor and a clear majority of the boroughs would have to agree;
- a majority would be defined as two-thirds of the 33 billing authorities (the 32 boroughs and the City of London Corporation), subject to the caveat that where all boroughs in a given sub-region disagreed, the decision would not be approved;
- if no decisions on allocation can be reached, the available resources would be rolled forward within the pot for future consideration at the next decision-making round.

18. It is envisaged that decisions will be taken annually. Each authority will be required to take the relevant decisions through its own constitutional decision-making arrangements.

Evaluation

19. The Government will undertake a qualitative evaluation on the progress of the pilot with focus on the governance mechanism and decision-making process, and the scale of resources dedicated to strategic investment.

Next steps

20. As specified in paragraph 3, the pilot will operate for one year. The Government is committed to giving local government greater control over the revenues they raise, and plans to implement 75% business rates retention across England from 2020-21 onwards. Piloting at 75% in a key area like London will provide information about the immediate future. The Government will work with London authorities to explore legislative changes:

- a. needed to develop a Joint Committee model for future governance of a London pool; and
- b. regarding the re-listing of central list assessments located wholly or primarily in the Greater London area, such as London Underground and Docklands Light Railway, in an 'area list.'

21. Neither are achievable without primary or secondary legislation and so if this were to be implemented it would be necessary for there to be a commitment to a longer-term London business rates pool.

22. The Government will reflect the pilot pool arrangements in the Provisional 2019-20 Local Government Finance Settlement in December 2018. If any authority decides to opt out within the following 28 days – that is, by 28 days after the Provisional Local Government Finance Settlement – the pool would not proceed.

23. London Government will update the existing pooling agreement between the 34 London authorities by which London Government collectively decides how to operate the pool and distribute the financial benefits. Each authority will be required to take the relevant decisions through its own constitutional decision-making arrangements.

Annex A

Authorities in the London Pilot

Barking & Dagenham
Barnet
Bexley
Brent
Bromley
Camden
City of London
Croydon
Ealing
Enfield
Greenwich
Hackney
Hammersmith & Fulham
Haringey
Harrow
Havering
Hillingdon
Hounslow
Islington
Kensington & Chelsea
Kingston upon Thames
Lambeth
Lewisham
Merton
Newham
Redbridge
Richmond upon Thames
Southwark
Sutton
Tower Hamlets
Waltham Forest
Wandsworth
Westminster
Greater London Authority

Annex B

Grants

The amount of Revenue Support Grant (RSG) to be 'rolled-in' to 75% rates retention for 2019/20 for each of the 33 billing authorities is set out below. This is in addition to the funding streams rolled in to the GLA's funding baseline in 2017-18 in respect of the Transport for London investment grant (£993 million in 2019-20) and the Greater London Authority's RSG (£127.9 million in 2019-20) under the GLA's partial pilot.

RSG	Amount (£m) for 2019/20
Barking & Dagenham	17.7
Barnet	6.2
Bexley	3.2
Brent	24.5
Bromley	0.0
Camden	22.3
City of London	6.2
Croydon	13.9
Ealing	17.2
Enfield	17.3
Greenwich	25.1
Hackney	34.8
Hammersmith & Fulham	17.1
Haringey	21.6
Harrow	1.6
Havering	1.4
Hillingdon	6.7
Hounslow	9.5
Islington	24.1
Kensington & Chelsea	9.9
Kingston upon Thames	0.0
Lambeth	31.7
Lewisham	27.5
Merton	5.1
Newham	36.2
Redbridge	10.2
Richmond upon Thames	0.0
Southwark	35.9
Sutton	6.6
Tower Hamlets	33.3
Waltham Forest	18.5
Wandsworth	23.1
Westminster	29.6