Hackney

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 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

Report Author	Russell Harvey – Tel: 020-8356-2739 Senior Financial Control Officer russell.harvey@hackney.gov.uk
Comments of the Group Director of Finance and Corporate Resources	Ian Williams – Tel: 020-8356-3003 Group Director of Finance and Corporate Resources ian.williams@hackney.gov.uk
Comments of the Director of Legal	Dawn Carter-McDonald – Tel: 0208-356-4817 Deputy Monitoring Officer Interim Head of Litigation and Commercial dawn.carter-mcdonald@hackney.gov.uk