**EXPLANATORY MEMORANDUM TO**

**THE NON-DOMESTIC RATING (ALTERATION OF LISTS AND APPEALS) (ENGLAND) (AMENDMENT) REGULATIONS 2017**

**2017 No. 155**

## 1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

## 2. Purpose of the instrument

2.1 This instrument makes amendments to the existing appeals process as set out in the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2268).

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 We regret to inform the Committee that in order to bring these Regulations into force in time for the implementation of the new appeals framework from 1 April 2017 it has become necessary to breach the 21 day rule. There has been a very high level of scrutiny of the business rates system over February and March, resulting mainly from significant concerns raised across the business sector in relation to the business rates revaluation coming into effect on 1 April. The Government announced some specific additional measures on business rates at the 8 March Budget, in part as a response to some of the concerns raised. In the context of the wider scrutiny of the business rates system, the Department considered it necessary to carefully consider the views and issues raised before finalising the Regulations.

3.2 These Regulations need to come into force on 1 April 2017, to coincide with the compilation of the new ratings lists showing revised rateable values for non-domestic properties following the 2017 revaluation. If the Regulations were brought into force on a date later than 1 April 2017, this would mean that ratepayers would continue to make appeals on the new ratings list under the existing appeals system – creating a two-tier system and possible unfairness (for example where some appeals on the new list are subject to a fee1, and some are not). The potential financial impact of delaying the Regulations would be high for the Valuation Office Agency (VOA) as they had already prepared extensive operational changes to accommodate the reformed business rates appeals system being in place from 1 April (and the end of the old system). The process of running two appeals systems would be resource intensive for the VOA and confusing for ratepayers. The Department did not therefore consider it possible to delay the coming into force date to meet the 21-day rule.

[1] Fees for appeals are an important part of the new appeals framework.

3.3 The Joint Committee on Statutory Instruments received a letter from Berwin Leighton Paisner LLP, sent on behalf of a number of business trade bodies, raising concerns about the Government's proposed changes to determining business rates appeals set out in the draft regulations published as part of the consultation in October 2016, and specifically about the term "reasonable professional judgement".

3.4 The Government has carefully considered the points made in the letter, alongside the wider responses and views on this specific proposal gathered through the formal consultation. Following the consultation, the Government decided to amend the proposed approach and remove the reference to "reasonable professional judgement". Instead, to make it clear that it will be for the Valuation Tribunal for England (the VTE) to decide what they consider reasonable, the Regulations simply provide that the ground of appeal will be that the valuation is not reasonable. The Government also noted concerns over the approach in the draft Regulations of introducing an additional interpretation of the word "inaccurate". The final Regulations do not take this approach, and instead specifically use the concept of a 'reasonable valuation' in the grounds of appeal.

***Other matters of interest to the House of Commons***

3.5 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

## 4. Legislative Context

4.1 The existing legislative framework for business rates appeals is set out in Part 3 of the Local Government Finance Act 1988 ("the 1988 Act"). Section 55 of the 1988 Act contains powers for the Secretary of State to make regulations in relation to proposals for alteration of business rates lists (including who may make a proposal, the circumstances in which a proposal may be made, the time limit for making a proposal, procedure for making a proposal). Regulations under section 55 may include provision for appeals to be made to the VTE where there is disagreement between the Valuation Officer (the VO) and the person making a proposal. These regulation-making powers were extended through provisions in the Enterprise Act 2016. Regulations under the new powers may provide the steps which must be taken before the ratepayer can make a proposal. The regulations may also make provision about the grounds on which an appeal may be made to the VTE and provide for the imposition of fees for an appeal and for refunds of those fees.

4.2 The secondary legislation that deals with the existing appeals process is the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2268) and the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations (SI 2009/2269).

4.3 This instrument amends the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2268). The amending Regulations make provisions for the introduction of a new process for dealing with business rates proposals/ appeals.

## 5. Extent and Territorial Application

5.1 The extent of this instrument is England only.

5.2 The territorial application of this instrument is England only.

## 6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

***What is being done and why***

7.1 The rateable value of a non-domestic property by which a ratepayer's liability for non-domestic rates is determined is reassessed at a revaluation. Between revaluations, changes to rateable values are generally only made on the basis of physical changes to the property or its locality.

7.2 In cases where a ratepayer disagrees with the rateable value shown in a non-domestic rating list, they may challenge the accuracy of the rateable value by making a proposal to the VO for an alteration to the list. If there is a disagreement between the ratepayer and the VO as to the proposed alteration, the ratepayer can appeal to the VTE.

7.3 There is widespread agreement that the system for business rates appeals is in need of reform. Currently too many rating appeals are made with little supporting evidence. When that evidence is provided, it regularly comes late in the process, often leading to long delays for ratepayers. Many appeals are made as a matter of routine, and the majority of appeals do not result in either an appeal hearing or a change to the rating list.

7.4 At the same time, businesses need to have a better understanding of how their properties have been valued. They need to be confident that valuations are correct and that they are paying the right amount of business rates. Where this is not the case, it needs to be put right more quickly – businesses need refunds which are due to them as soon as possible. The system needs to be clear and easy to navigate so that businesses of all sizes can easily use it. Scarce public resources need to be used more efficiently in focusing on legitimate cases.

7.5 The Government is committed to delivering a more efficient business rates appeals system. The business rates appeals reforms introduce a three-stage system: Check, Challenge, Appeal. This is designed to manage the flow of cases through the system in a structured and transparent way which will allow ratepayers to make an informed decision about how to proceed.

7.6 The Check stage, in which facts concerning the property are agreed between the VO and the ratepayer, is intended to be both swift and to lead to an agreed position for the great majority of cases. The proposal ("Challenge") stage will deal with cases where the ratepayer challenges their rating assessment. And at the Appeal stage the ratepayer will be able to appeal their case to the VTE, if they continue to disagree with VO following the proposal stage.

7.7 These Regulations and the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) (Amendment) Regulations 2017 (S.I 2017/156) bring into effect these policy aims and will have effect in relation to non-domestic rating lists compiled on or after 1st April 2017.

7.8 These Regulations amend the provisions about who may make a proposal ("Challenge") and set out details of the pre-proposal steps (the Check stage) which must be completed before a proposal may be made. They also place requirements on the parties to share evidence and arguments early in the process and provide for time limits at each stage, to keep cases moving forward, and 'trigger points' at Check and Challenge stages, so the ratepayer can feel confident that they can progress the case even if no decision is made by the VO. These Regulations amend the he procedure to be followed after a proposal is made. The Regulations provide for grounds for making an appeal to the VTE. In addition these Regulations introduce fees for making an appeal.

7.9 Parliament has imposed a statutory duty of confidentiality on the VOA (as an executive agency of HMRC). The VOA is not permitted to disclose the information it holds except in certain circumstances, including for the purposes of its functions and where there is a specific legislative gateway. This duty of confidentiality is essential to the effective operation of the tax system as it ensures that taxpayers have confidence that the information they give to the VOA will be protected.

7.10 The approach in these Regulations allows the Valuation Officer (VO) to exercise their discretion to decide what information can be shared. Where there are mandatory requirements for the VO to provide information to another person, the Regulations provide that the VO must provide that information if they consider it reasonable to do so. This is intended to provide the VO with the ability to comply with their wider duty to protect any sensitive information they hold, for example on commercial confidentiality grounds.

7.11 The consideration of what information may reasonably be shared will take into account whether the disclosure is reasonable and proportionate, the necessity of the disclosure of that information and the circumstances of each case. Examples of where it may be unreasonable to share information might include:

7.12 • At the check stage where the information concerns another property and it is not necessary for the proposer to confirm the accuracy of that information.

7.13 • At the check stage where the information requested relates to the rental details of the property.

7.14 • At the proposal stage where it is not necessary for the VO to provide the information in order to respond to the issues raised by the proposer.

7.15 • In a decision notice served on a local authority where it is not necessary for the authority to be aware of detailed information that may be confidential.

7.16 • At any point where sharing of the information may affect national security, personal safety or the economy if released.

7.17 The Regulations provide for an online facility provided by the VO for use in connection with proposals. We anticipate that the VO will require the majority of ratepayers to use the new online portal in order to make a Check or a Challenge. However, there will be occasions where a ratepayer is unable to use the digital system (for example if they have no access to digital) or where the system is not suitable for that particular ratepayer (for example because of security reasons). As it is not possible to anticipate all the circumstances where it might not be possible to use the digital platform, the Regulations are drafted so that the ratepayer must complete the

Check or Challenge either by using the portal or in another manner agreed with the VO.

***Consolidation***

7.18 There are no plans to consolidate the Appeals Regulations.

## 8. Consultation outcome

8.1 On 30 October 2015 the Department for Communities and Local Government (DCLG) published a consultation paper entitled "Check, challenge, appeal: Reforming business rates appeals", which can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/472695/151029_Business_rates_appeals_consultation_document_-_final_version.pdf. The consultation sought views from businesses, local councils and other interested parties on proposals for a three-stage approach to resolving business rates appeals. Consultation closed on 4 January 2016 and a total of 214 responses were received.

8.2 The overwhelming majority of respondents recognised the need for change. Responses from businesses and rating agents were however generally sceptical about the extent to which the proposals would achieve the aims of reform. The majority of local councils supported the proposed system. Many were optimistic that the proposed changes would lead to more transparency and faster resolution, and would dissuade speculative appeals.

8.3 In response to the consultation DCLG published the Government statement, which set out the decisions the Government took, as a basis for preparing draft Regulations on appeals reform for consultation in the summer of 2016. The Government response can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/535295/Reforming_business_rates_appeal_-_govt_response.pdf

8.4 Following this on 16 August 2016 DCLG published the consultation "Check, challenge, appeal: Reforming business rates appeals - consultation on statutory implementation" seeking views on draft Regulations to implement the three-stage approach to resolving business rates appeals. The consultation on the draft Regulations also sought views on some specific further elements of the reform package that remained outstanding. The consultation can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/546100/Business_rates_appeals_reforms_consulation_draft_regs.pdf

8.5 The consultation closed on 11 October 2016 and a total of 287 responses were received. Responses from businesses and rating agents raised concerns about the extent to which the draft Regulations would achieve the wider aims of the reforms. They repeated some concerns from earlier consultations that changes would not provide sufficient transparency, and reiterated their preference for the full disclosure of all information (including rental evidence) from the VO to ratepayers at the earliest stages in the process. A number of respondents also reiterated concerns around the limitations on the introduction of new evidence after the submission of a proposal, as set out in the Government response. The Government continues to take the view that ratepayers should initiate a Challenge (proposal) by providing details about why it is being made, so that the issues under dispute can be established early on. This will allow the VO to respond with a tailored package of information and will allow the VOA to deploy resources more efficiently than it is able to do at present, and allow it

to provide an improved service. Under the final Regulations, on receipt of a proposal the VO will be required to provide the proposer with relevant information that the VO holds in response to the particulars of the grounds set out in the proposal.

8.6 A significant number of respondents raised specific concerns about the proposal that the VTE should only amend a rateable value where the current valuation is "outside the bounds of reasonable professional judgement" – for example that is could lead to an arbitrary 'margin of error' in appeals. The Government has amended the proposed approach, to make it clear that it will be for the VTE to decide if they consider the valuation to be reasonable.

8.7 Local authorities were mostly in favour of the draft Regulations. A number of respondents from local government argued that local authorities should have the right to appeal and to become a party to appeals in relation to properties that they do not occupy. Conversely, a large number of respondents (mainly from businesses or property organisations) stated a clear view that the appeals process should primarily be a matter between the ratepayer and the VO, and that local authorities should not be given a more significant role (for example being able to initiate appeals). Having considered the responses received, the Government continues to be of the view that the primary focus of Check, Challenge and Appeal should be the efficient transaction of business between the ratepayer, the VO and the VTE.

8.8 A number of respondents from local government suggested that it would be important that information they provide to the VO to support them in resolving cases is also available to the VTE if the case results in a hearing. In response to this the Government amended the draft Regulations to ensure that any evidence provided by the local authority is included in the overall package of information provided to the VTE on an appeal.

8.9 In addition, a small number of respondents raised concerns about local authorities receiving copies of proposals, and whether there would be appropriate safeguards to protect any commercially sensitive information contained within them. The Government noted these concerns and therefore reviewed the approach in the Regulations. The VOA intends to provide any potentially sensitive information via the new statutory gateway established through the Enterprise Act 2016. This will ensure that the information provided is subject to additional safeguards built into the gateway, for example around the potential for any onward disclosure. Alongside this, the Regulations set out the key management information on proposals that the VO will be required to routinely provide to local authorities, to support them in assessing the impact on business rate receipts.

8.10 The Government published its response to the consultation on 8 March and it can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/597609/CCA_Government_Response.pdf

## 9. Guidance

9.1 The Department does not intend to issue formal guidance on the business rates appeals process. The VOA may issue internal guidance to their staff, in relation to the reforms to the business rates appeals system.

## 10. Impact

10.1 The impact on the business, charities or voluntary bodies will be that under the reforms it will be easier to navigate through the new process and engage earlier in the process with the VO. This means that cases should be resolved more efficiently and any alterations made more quickly.

10.2 There will be a small financial impact on businesses due to the imposition of refundable fees. Fees will be only charged at Appeals stage and where an appeal is successful the ratepayer will be refunded in full. Fees will be refunded in part where an appeal is decided without the need for a Tribunal hearing.

10.3 The impact on the public sector is that local authorities will be able to receive more information on the cases appealed in their area and be confident the evidence they provided at Challenge stage will be available for the consideration of the VTE regardless of whether the VO considers the evidence and information reasonably relate to the proposal. The measures will improve certainty for local authorities since the appeals will be resolved at an earlier stage than under the current system.

10.4 An impact assessment has not been produced for this instrument because it amends an existing local tax regime. Publication of a full impact assessment is not necessary for such legislation.

## 11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses. The Regulations provide for lower levels of fees for "smaller proposers" making an appeal, which will be refunded if the appeal is successful.

11.2 The basis for the final decision on what actions to take to assist small business was taken following roundtable discussions with representative bodies.

## 12. Monitoring & review

12.1 The impact of the changes will be monitored. The Government intends to carry out a review of the implementation of the overall package of reforms under Check, Challenge and Appeal by 2019.

## 13. Contact

13.1 Danielle Angelopoulou at the Department for Communities and Local Government, Telephone: 030 3444 3174 or email: danielle.angelopoulou@communities.gsi.gov.uk can answer any queries regarding the instrument.