EXPLANATORY MEMORANDUM TO

THE VALUATION TRIBUNAL FOR ENGLAND (COUNCIL TAX AND RATING APPEALS) (PROCEDURE) (AMENDMENT) REGULATIONS 2013

2013 No. 465

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.

2. Purpose of the instrument

2.1 These Regulations amend the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and make certain changes in relation to how council tax appeals are treated.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Valuation Tribunal for England was established by the Local Government and Public Involvement in Health Act 2007 and replaced the 56 valuation tribunals that existed previously in England. The Tribunal hears certain appeals relating to council tax and non-domestic rating liabilities.

4.2 The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (S.I. 2009/2269) (the 2009 Regulations) made under powers in Schedule 11 to the Local Government Finance Act 1988 prescribe various procedural matters relating to appeals and the powers of the Valuation Tribunal.

4.3 Council tax in England is provided for in Part 1 of the Local Government Finance Act 1992 (the 1992 Act). Section 16 of that Act provides that a person may appeal to a valuation tribunal if he is aggrieved by any decision of a billing authority that a dwelling is a chargeable dwelling, or that he is liable to pay council tax in respect of such a dwelling; or any calculation made by such an authority of an amount which he is liable to pay to the authority in respect of council tax. A challenge to a scheme itself can only be made by way of judicial review (see section 66 of the 1992 Act). Before making an appeal, the aggrieved person must first serve a written notice on the billing authority concerned setting out the grounds of the grievance. This gives the billing authority an opportunity to take steps to change its decision or to say why the grievance is not well founded.

4.4 Council tax benefit is abolished from 1st April 2013 by the Welfare Reform Act 2012. It is replaced by local council tax reduction schemes prepared by each billing authority (see section 13A of, and Schedule 1A to, the 1992 Act inserted by the Local Government Finance Act 2012). The right of appeal in section 16 applies to calculations made under a billing authority's council tax reduction scheme.

4.5 Schedule 3 to the 1992 Act makes provision for the imposition of penalties by billing authorities. There is a right of appeal against the imposition of a penalty to the Valuation Tribunal. Section 14C of the 1992 Act (inserted by the Local Government Finance Act 2012) allows the Secretary of State to make regulations to provide for the imposition of penalties relating to council tax reduction schemes. There is a right of appeal to the Valuation Tribunal. The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 have been made under this power.

4.6 Section 15A of the 1992 Act (inserted by the Local Government Finance Act 2012) empowers a Revenue and Customs official to supply information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs to a qualifying person (including a billing authority in England) for prescribed purposes relating to council tax. This extends existing powers relating to council tax to council tax reduction schemes. Regulation 17(3) of the 2009 Regulations prescribes the procedure to be followed before such evidence is admitted by the Valuation Tribunal.

5. Territorial Extent and Application

5.1 This instrument applies to England.

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 Government announced in the 2010 Spending Review that council tax benefit will be replaced by local council tax reduction schemes from April 2013. From April 2013 council tax benefit will be abolished by the Welfare Reform Act 2012. Future support for council tax payers will be offered as reductions within the council tax system under provisions in the Local Government Finance Act 2012.

7.2 To ensure that the Valuation Tribunal contains appropriate expertise when considering these appeals, the Local Government Finance Act 2012 was amended to enable First-tier Tribunal members (judges and other members) to

sit as members of the Valuation Tribunal when requested to do so by its President, subject to the approval of the Senior President of Tribunals.

7.3 The Regulations will help deliver the changes required to enable the Valuation Tribunal to handle local council tax reduction appeals in the most cost-effective manner consistent with ensuring justice and in accordance with the statutory framework within which the Tribunal must operate.

7.4 New regulation 10(9) of the 2009 Regulations empowers the Valuation Tribunal Service, which is the administrative arm of the Valuation Tribunal, to efficiently respond to applications for appeals that are outside the jurisdiction of the Tribunal. The amendments made by these Regulations provide that the power to dismiss applications to appeal because they are outside the Tribunal's jurisdiction may be exercised by the clerk of the Tribunal or by any other member of the Tribunal's staff. An example of where this might be the case is when the maximum reduction permissible within the terms of the local scheme has been awarded – such an appeal would amount to questioning the scheme itself.

7.5 The amendment to regulation 17(3)(a) of the 2009 Regulations is about the use of information supplied by Her Majesty's Revenue and Customs and the Department for Work and Pensions at tribunal. This will enable data shared under other regulations to be used in Tribunals. This is an amendment being made in light of and as consequence of the new data sharing provisions in the Local Government Finance Act 2012.

7.6 New regulation 20A will assist the Valuation Tribunal Service in acquiring the relevant information for section 16 appeals from appellants. This will avoid unnecessary administrative burdens on the Service in obtaining the necessary information to deal with appeals.

7.7 The amendment to regulation 36(2) will provide for the notification of the right to request a written statement of reasons and how the request may be made.

7.8 The amendment to regulation 37 will provide that the Valuation Tribunal may (but need not) give reasons for their decisions, but must provide written reasons on request.

7.9 The amendment to regulation 38 will allow for the Valuation Tribunal to quash, but not to vary the amount of a penalty. This provides that the Tribunal may quash a council tax penalty imposed by a billing authority following a successful appeal. Such appeals would be against either the fact of the penalty or the amount of the penalty. In both cases, a successful appeal would result in the penalty being quashed. The billing authority would take into account that judgement when imposing or offering to impose any replacement penalty.

- Consolidation

7.10 These are the second set of amendments to the 2009 Regulations. They are not extensive and consequently we do not think that consolidation is necessary.

8. Consultation outcome

8.1 We have been in discussions with the President of the Valuation Tribunal and the Valuation Tribunal Service since October 2012 to determine what further powers and resources they may need to manage these new appeals effectively.

8.2 We also consulted with the Ministry of Justice, Her Majesty's Courts and Tribunals Service and the Administrative Justice and Tribunals Council. A draft of the Regulations was sent to the various bodies for comment.

8.3 The President of the Valuation Tribunal suggested that it would be helpful to stipulate in regulations the information required of an appellant to institute an appeal. This would minimise delays and administrative costs arising from the need to go back to appellants to obtain the necessary information to progress their case. Therefore the new regulation 20A – notices of appeal - has been added to provide for this.

8.4 The Administrative Justice and Tribunals Council have been formally consulted and provided the Council's view.

<u>Regulation 10(9) – Striking out proceedings</u>

8.5 The Council expressed concern that this provision would allow the final discharge of an appeal both by someone who does not exercise the judicial authority of the tribunal members and without the need for that person to act under the supervision of the tribunal members when striking out proceedings. To address this concern, the viability of a practice statement between the Valuation Tribunal and the Valuation Tribunal Service is being explored to cover arrangements for the delegation of cases in appropriate circumstances. We will share the proposed practice statement and any accompanying guidance with the Council as they are developed.

8.6 The Council also asked us to consider including an express right of review of a decision to strike out which must be determined by the Valuation Tribunal and cannot be delegated. We have carefully considered this suggestion but do not consider that such a provision is necessary. The practice statement referred to in paragraph 8.5 will set out the circumstances in which it is appropriate to delegate the function of striking out. These will be limited to cases where it is clear that the Tribunal has no jurisdiction to entertain the appeal. Cases in which there may be some doubt will continue to be considered by the Tribunal.

8.7 We are reluctant to limit representations under regulation 10(4) to written representations because of potential unfairness to appellants. This view is supported by both the President of the Valuation Tribunal and the

Administrative Justice and Tribunals Council. Therefore, the provision on representation remains as it is.

Regulation 20A – Notices of appeal – section 16 appeals

8.8 In commenting on the draft regulations, the President of the Valuation Tribunal, the Valuation Tribunal Service and the Administrative Justice and Tribunals Council all expressed concerns about the requirement for an appellant to provide written notice to the Tribunal of certain matters "as soon as reasonably practicable". This provision has been recast so that it is clearer, and sets out the information required of appellants as part of the notice of appeal, so streamlining the process by avoiding the need for the Valuation Tribunal Service to write to appellants subsequently to request the information.

8.9 The President of the Valuation Tribunal has stated his view that it is essential that the notice of appeal should also include the grounds on which someone is appealing and to set out why he or she believes that the local authority has incorrectly applied their scheme to the individual's circumstances. Therefore (e) and (f) have been added under 20A to provide for these.

8.10 Whilst the Valuation Tribunal Service need to know whether the appellant has made an appeal to the First-tier Tribunal on housing benefit, they do not need sight of the appeal form as it would add to the volume of paperwork at that stage which they believe is unnecessary. Therefore the initial draft regulations have been amended so the new regulation 20A now provides that an appellant only has to say that a housing benefit appeal has been made, and not provide copies of the appeal.

8.11 The Tribunal already has power to adjourn or stay proceedings in a particular case which could be used to stay an appeal pending the outcome of a housing benefit case. The Tribunal also has wide discretion to admit evidence, including evidence put forward at the previous Tribunal. The President of the Valuation Tribunal agreed that express provision is not necessary. This will be included within the Q&A which is being developed to clarify the position on this.

8.12 The Valuation Tribunal Service also do not require the determination letter at the point of appealing, and that reference has been removed.

Regulation 36(2) – Notice of decisions

8.13 The Administrative Justice and Tribunals Council welcomed the provisions of regulation 37 but argued that the right to obtain reasons would be robbed of practical utility unless parties are made aware of it when its exercise becomes available to them. They have suggested it be amended so as to require that any final decision notice should include reference both to the party's right to obtain reasons for the decision in question, as well as the

means by which the reasons might be obtained. Therefore, a reference to provide for this has been included under regulation 36(2) Notice of decisions.

Regulation 37 – Reasons for the decision

8.14 The President of the Valuation Tribunal was concerned that there was no provision for providing brief reasons as per the Social Entitlement Chamber Rules (SI 2008 No. 2865). This provides that the tribunal may (but need not) give reasons for their decisions but must provide written reasons on request. This approach has been adopted – albeit that it allows a request to be made either orally or in writing. We think that the provision as drafted represents a fair balance between administrative convenience and the interests of the parties.

8.15 The Valuation Tribunal Service noted that written reasons would be required for any onward appeal to the High Court. The amendments to regulation 37 provide that there is a right in every case to request written reasons.

8.16 The Valuation Tribunal Service was concerned by the addition, in the earlier draft of the Regulations, of 28 days for a request for full reasons, 28 days for the Valuation Tribunal to comply and then a further 28 days to appeal to the High Court as this seemed to be a long process for an appellant. Therefore, this provision has been amended to two weeks to request for full reasons, two weeks for the Valuation Tribunal to comply and two weeks to appeal to the High Court.

9. Guidance

9.1 We will be providing a Q&A document which has been developed with the Valuation Tribunal Service to give some clear guidance on the operation of the appeals process and set out how these appeals can be handled effectively. This guidance also aims to address issues which cannot be provided for in regulations.

9.2 Local authorities will be informed of changes in relation to provisions relating to council tax reduction appeals.

10. Impact

10.1 These regulations have no impact on business, charities or voluntary bodies.

10.2 The impact of these regulations on billing authorities is that it will enable data supplied by HM Revenue and Customs and the Department of Work and Pensions to be shared and used in Tribunals.

10.3 An Impact Assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen and the

impact on the public sector is minimal. An impact assessment is available in relation to the proposals for localising council tax support and is available at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8465/2158675.pdf

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Government will monitor the impact of these Regulations as part of the ongoing maintenance of the system.

12.2 A robust monitoring and review process to be put in place at three monthly intervals to assess the existing resource allocation, business arrangements - for instance which appeals merit First-tier Tribunal member involvement and general administration of these appeals.

12.3 The Valuation Tribunal will be putting in place a process to ensure that cases that are outside the jurisdiction of the Tribunal are identified at the earliest possible stage and routed accordingly. These cases will be included in the monitoring arrangements to raise awareness of any patterns that may emerge and take steps to encourage any local authorities that may be seeing a disproportionate number of appeals going to the Tribunal to look at their approach to handling concerns when they are first alerted to these by bill payers.

13. Contact

Please contact Catherine Marsh at the Department for Communities and Local Government on telephone number 0303 444 2638 or by email at catherine.marsh@communities.gsi.gov.uk who can answer any queries regarding this instrument.