EXPLANATORY MEMORANDUM TO

THE VALUATION TRIBUNAL FOR ENGLAND (COUNCIL TAX AND RATING APPEALS)(PROCEDURE)(AMENDMENT) REGULATIONS 2017

2017 No. 156

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.

2. Purpose of the instrument

2.1 This instrument makes amendments to the existing appeals process as set out in the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269).

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 from 1 April 2017, to coincide with the new ratings list (i.e. 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 fee[1], and some are not). The potential financial impact of delaying regulations would be high for the Valuation Office Agency 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 Valuation Office Agency 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 appeal are an important part of the new appeals framework.

Other matters of interest to the House of Commons

3.3 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 the business rates list (including who may make the 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 valuation tribunal where there is disagreement between a valuation officer 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 for the grounds on which an appeal may be made, the matters which are not to be taken into account by the valuation tribunal as part of an appeal and the circumstances in which new evidence may be admitted on an appeal.

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 Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure)Regulations 2009 (SI 2009/2269). The amending regulations make provision for the introduction of a new appeals process.

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 values of non-domestic properties by which a ratepayer's liability for non-domestic rates is determined are 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 assessment shown in the non-domestic rating list, they may challenge their rateable value by making a proposal to the Valuation Office Agency (VOA) for an alteration to the rating list. If there is a disagreement between the ratepayer and the VOA as to the proposed alteration, the ratepayer can appeal to the Valuation Tribunal for England (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 VOA 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 VOA following the proposal stage.

7.7 These Regulations alongside the Non-Domestic Rating (Alteration of Lists and Appeals) (England)(Amendment) Regulations 2017 (S.I. 2017/155) 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 prescribe the evidence and matters which are not to be taken into account by the VTE in order to limit the introduction of new matters at Appeal stage and to reinforce the incentive for all parties to engage fully at Check and the proposal/Challenge stages. The changes will not rule out new evidence and arguments being brought forward, where the evidence was not known and could not reasonably have been acquired by the appellant at an earlier stage.

7.9 This set of Regulations also makes amendments to reflect that under the new appeals system appeals are made by a proposer to the VTE rather than being referred by the VOA.

Consolidation

7.10 There are no plans to consolidate these 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/consultations/reforming-business-rates-appeals-check-challenge-appeal. 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 the Department published the Government statement, which set out the decisions the Government has taken, as a basis for preparing draft regulations on appeals reform for consultation in the summer. The Government response can be found at: https://www.gov.uk/government/consultations/reforming-business-rates-appeals-check-challenge-appeal.

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/consultations/reforming-business-rates-appeals-draft-regulations.

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 Valuation Officer 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 by providing details about why it is being made, so that the issues under dispute can be established early on. This will allow the Valuation Officer to respond with a tailored package of information and will allow the VOA (Valuation Office Agency) to deploy resources more efficiently than it is able to do at present and provide an improved service. Under the proposed regulations, on receipt of a proposal the Valuation Office Agency will be required to provide relevant information it holds in response to the particulars of 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 tribunal to decide if they consider the rateable value to be a reasonable valuation.

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 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 Valuation Officer, 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, Valuation Officer and VTE.

8.8 A number of respondents from local government suggested that it would be important that information they provide to the Valuation Officer 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 Valuation Tribunal, should the proposer decide to launch 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 VTE may issue practice statements for their members in relation to the Appeals stage.

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 VOA. This means that cases should be resolved more efficiently and any alterations made more quickly.

10.2 The impact on the public sector is that local authorities will be able to present evidence to the VTE at Appeal stage and receive more information on the cases appealed in their area. The measures will also increase their certainty as it will help appeals to be resolved at an earlier stage than under the current system.

10.3 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.

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.