EXPLANATORY MEMORANDUM TO

THE VALUATION TRIBUNAL FOR ENGLAND (MEMBERSHIP AND TRANSITIONAL PROVISIONS) REGULATIONS 2009

2009 No. 2267

THE VALUATION TRIBUNAL FOR ENGLAND (COUNCIL TAX AND RATING APPEALS) (PROCEDURE) REGULATIONS 2009

2009 No. 2269

THE COUNCIL TAX (ALTERATION OF LISTS AND APPEALS) (ENGLAND) REGULATIONS 2009

2009 No. 2270

THE NON-DOMESTIC RATING (ALTERATION OF LISTS AND APPEALS) (ENGLAND) REGULATIONS 2009

2009 No. 2268

THE VALUATION TRIBUNALS (CONSEQUENTIAL MODIFICATIONS AND SAVING AND TRANSITIONAL PROVISIONS) (ENGLAND) REGULATIONS 2009

2009 No. 2271

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 instruments

2.1 The Valuation Tribunal for England (Membership and Transitional Provisions) Regulations 2009 ("the Membership Regulations"), the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 ("the Procedure Regulations"), the Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 ("the Council Tax

Regulations"), the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 ("the Rating Regulations") and the Valuation Tribunals (Consequential Modifications and Saving and Transitional Provisions) (England) Regulations 2009 ("the Consequential Provisions Regulations") are all connected with the coming into force on 1st October 2009 of provisions of the Local Government and Public Involvement in Health Act 2007 that transfer the jurisdiction of the 56 current valuation tribunals in England to the Valuation Tribunal for England ("the VTE").

2.2 The Membership Regulations provide for members of the existing valuation tribunals to become members of the VTE, for certain members to be members of the VTE's panel of chairmen, for the qualification and disqualification of members, and for related matters. The Procedure Regulations deal with the procedure to be adopted by the VTE when dealing with council tax and rating appeals arising under the Council Tax Regulations and the Rating Regulations. The Consequential Provisions Regulations continue in force, with modifications, specified provisions in Part 1 of the Valuation and Community Charge Tribunals Regulations 1989, and the whole of Part 4 of those Regulations so that appeals under Part 4 that have not been determined by 1st October 2009 may be dealt with by the VTE.

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

3.1 The Joint Committee may wonder why the preamble to the Procedure Regulations does not contain a reference to the Regulations having been the subject of consultation with the Administrative Justice and Tribunals Council ("the AJTC"). That Council was established by section 44 of the Tribunals, Courts and Enforcement Act 2007 (c.15) as the successor to the Council on Tribunals, which was abolished by section 45 of that Act. Paragraph 23 of Part 3 of Schedule 7 to that Act imposes a consultation requirement in relation to procedural rules of a "listed tribunal" (defined in paragraph 24 in Part 4 of that Schedule). Although an Order was made by the Lord Chancellor on 9th October 2007 making various tribunals "listed tribunals" for the purposes of Schedule 7 to that Act (S.I. 2007/2951), the VTE was not included in that list. (The Local Government and Public Involvement in Health Act 2007 (c.28), under which the VTE is established, did not receive Royal Assent until 30th October 2007.)

3.2 In June 2009 Ministry of Justice officials were alerted to the fact that the VTE had not been made a "listed tribunal" for the purposes of Schedule 7 (a fact which had become apparent to the Department when drafting the Procedure Regulations). The Department understands from those officials that an amending order is to be made in the autumn, possibly in November, which will have the effect of making the VTE a "listed tribunal". For the time being, therefore, the VTE is not such a tribunal, so the consultation requirement in paragraph 23 of Part 3 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 does not apply.

3.3 In anticipation of the VTE becoming a "listed tribunal", the drafting approach in relation to the Procedure Regulations adopts, where appropriate, the approach taken in relation to other tribunal jurisdictions; see, for example, S.I. 2009/273 (L.1) and 2009/1976 (L.20). The Department has consulted the AJTC informally on a near-final draft of the Procedure Regulations (see paragraph 7.10).

4. Legislative Context

4.1 Part 13 of, and Schedule 15 to, the Local Government and Public Involvement in Health Act 2007 (c.28) ("the 2007 Act") provide for the transfer of jurisdiction relating to certain council tax and non-domestic rating matters from the 56 existing valuation tribunals in England to the Valuation Tribunal for England.

4.2 The transfer of jurisdiction is achieved by the commencement on 1st October 2009 of paragraph A2 of Schedule 11 to the Local Government Finance Act 1988 ("the 1988 Act"), which was inserted by paragraphs 1 and 2 of Schedule 15 to the 2007 Act. The abolition of the existing tribunals is effected by the commencement on 1st October 2009 of section 219 of the 2007 Act. These commencements are made by article 6 of S.I. 2008/3110.

4.3 The membership of the VTE is dealt with in paragraph A4 of Schedule 11 to the 1988 Act, inserted by paragraphs 1 and 2 of Schedule 15 to the 2007 Act. The President of the VTE and four Vice-Presidents have been appointed under paragraph A4. Section 220(2) and (3)(a) of the 2007 Act enables the Secretary of State to make provision in regulations for members of the existing English valuation tribunals to become members of the VTE. Such provision is made by regulations 2(1) and 3(1) of the Membership Regulations.

4.4 Provision relating to appeals and alterations of lists relevant to council tax and non-domestic rating was made in the Council Tax (Alteration of Lists and Appeals) Regulations 1993 (S.I. 1993/290) and the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 2005 (S.I. 2005/659). The provisions of those Regulations that are broadly comparable have been re-enacted, with amendments to reflect the establishment of the VTE, in the Procedure Regulations. Those Regulations have been the subject of informal consultation with the AJTC (see paragraphs 3.1 and 3.2).

4.5 Both S.I. 1993/290 and S.I. 2005/659 contained savings for earlier versions of regulations relating to appeals and alterations of lists relevant to council tax and non-domestic rating. The Procedure Regulations are to have effect in relation to the procedural aspects of appeals under those saved provisions, and the saved provisions of S.I. 1993/290 and S.I. 2005/659, subject to necessary modifications to reflect the abolition of English valuation tribunals and the advent of the VTE, and minor drafting changes..

4.6 Other aspects of S.I. 1993/290 and S.I. 2005/659, and of comparable earlier, saved provisions, have been re-enacted, with necessary modifications

and minor drafting changes, in the Council Tax Regulations and the Rating Regulations.

4.7 The Consequential Provisions Regulations deal with matters similar to those outlined in paragraphs 4.5 and 4.6 and relating to the community charge. The Department understands that it is possible that there are still appeals under the Valuation and Community Charge Tribunals Regulations 1989 (S.I. 1989/439) that remain undetermined. These matters are dealt with separately so that, once it has become clear that there are no extant appeals under the 1989 Regulations, the Consequential Provisions Regulations can be revoked.

4.8 The President of the VTE, the Vice-Presidents, members of the panel of chairmen and other members of the VTE are included within "the judiciary" for the purposes of section 3 of the Constitutional Reform Act 2005 (c.4) (guarantee of continued judicial independence); see section 3(7A)(a) of that Act (amended by section 1 of the Tribunals, Courts and Enforcement Act 2007) and Schedule 14 to that Act (amended by paragraph 16 of Schedule 16 to the Local Government and Public Involvement in Health Act 2007).

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 On 1st October 2009, the Valuation Tribunal for England (VTE) will be fully established and will take over the jurisdiction of the current 56 separately constituted valuation tribunals in England, which will be abolished. The Government's aim in creating the VTE is to establish a modern and responsive unified valuation tribunal for England with full customer focus that reflects modern thinking about tribunals and best practice in the tribunal world while continuing to sustain judicial independence. It aims also to establish a tribunal that is consistent in its organisation, works in effective partnership with the Valuation Tribunal Service (which currently provides the administrative support for the 56 English tribunals and will in future undertake a similar role for the VTE) and demonstrates flexibility of operation and coherence of practice.

7.2 The proposal to establish a single valuation tribunal for England was the subject of a public consultation paper -"Valuation Tribunals – Modernisation and Reorganisation" – which was published in the summer of 2006. This set out the Government's proposal to establish a national valuation tribunal for England which received widespread support – a copy is available at the following web link -

http://www.communities.gov.uk/publications/localgovernment/valuationtribunalsmodernisation.

7.3 The Government took powers (sections 219 & 220 and Schedules 15 & 16) in the Local Government and Public Involvement in Health Act 2007 (LGPIH Act 2007) to establish the Valuation Tribunal for England, including the new positions of President and Vice-Presidents. The Act received Royal Assent on 30th October 2007. It makes a number of amendments to existing legislation in consequence of the establishment of the VTE. In particular it amends Schedule 11 to the Local Government Finance Act 1988 (the 1988 Act), to provide power to make regulations about procedure or any other matter relating to the VTE.

7.4 As part of its consideration of the regulatory framework for the VTE, the Government issued a consultation paper on 16th March 2009 entitled "Valuation Tribunal for England: Regulatory Framework and Detailed Arrangements" – a copy is available at the following web link - http://www.communities.gov.uk/publications/localgovernment/vteframeworkconsultation. This consultation paper sought views on proposals for the framework as well as the transitional and other detailed arrangements that need to be put in place in order to establish the VTE fully and for it to take on the jurisdiction of the existing valuation tribunals in England on 1st October 2009. Almost all those who responded to the consultation supported the proposals it contained.

7.5 The Government has taken the opportunity presented by the creation of the VTE to produce a regulatory framework more suited to a valuation tribunal with jurisdiction covering the whole of England. Where possible, the overall aim was that the provisions should be less prescriptive and adopt a consistency of approach in the regulations that govern all the activities of the VTE in relation to appeals under its various jurisdictions.

7.6 The approach which the Government has taken is to make a separate set of procedural regulations that will apply to appeals handled by the VTE under its council tax and non-domestic rating jurisdictions. The advantage of this approach is that procedures related to the two main jurisdictions of the VTE will now be in a single set of regulations, avoiding the current regulations' repetition of provisions that are common to each of the jurisdictions. This approach means that new regulations for council tax and for business rates (replacing each of the 1993 Council Tax and the 2005 NDR Regulations) have been produced which address matters related to alteration of lists by the Valuation Office Agency (VOA). It should be noted that none of the Regulations to which this memorandum relates seeks to alter the policy framework for dealing with appeals but rather to make the legislation more up to date and user-friendly and to allow the VTE flexibility in administrative matters.

7.7 Much of the current regulatory framework for valuation tribunals has been in place for more than 10 years and has been the subject of numerous amendments in the intervening years. The Government has taken the opportunity presented by the creation of the VTE to modernise the regulatory

framework governing the procedural arrangements for valuation tribunals. The new Regulations consolidate amendments made to date and take account of additional changes consequential on the establishment of the VTE.

7.8 The Consequential Provisions Regulations save provisions of the 1989 Regulations that relate to the community charge (Part IV and Schedule 3), but amend them to conform to other procedural arrangements for appeals handled by the VTE and also to recognise the establishment of the VTE. The Government's reason for retaining these provisions is to ensure that an appropriate appeals procedure remains available since local authorities continue to collect arrears of community charge. The Government has no plans to re-introduce the community charge.

7.9 The Membership Regulations reflect the arrangements proposed in the 2009 consultation for the transfer to the VTE of those existing valuation tribunal members who have agreed the terms and conditions for membership of the VTE. After 1st October 2009 all appointments to the VTE will be made by the Lord Chancellor, on the advice of the Judicial Appointments Commission and in accordance with the provisions set out in the Constitutional Reform Act 2005 (as amended by the LGPIH Act 2007). The expectation is that the Judicial Appointments Commission will run competitions as and when required to recruit new members (including the President and Vice-Presidents). Candidates for appointment will be assessed against a range of skills and competencies required of VTE members and chairmen. The competitions would recruit members to serve in the localities required by the VTE.

7.10 The Regulations aim to provide a regulatory framework that is also both consistent with the Administrative Justice and Tribunals Council's (AJTC) guidance on tribunal rules and consistent with the approach taken in other tribunal jurisdictions, particularly those coming under the umbrella of the Tribunals Service. The Government has consulted the AJTC about the Procedure Regulations (see paragraph 3.1 to 3.3) and they have raised no objections.

8. Consultation outcome

8.1 The Government has undertaken a public consultation on two occasions about the VTE and its proposals for the establishment of a single national valuation tribunal for England - the VTE (see paragraphs 7.2 and 7.4 above). The proposals in each of the consultation papers received strong support from respondents.

8.2 An analysis of the responses to the 2006 consultation proposal to establish the VTE can be found at the following web address: http://www.communities.gov.uk/publications/localgovernment/valuationtribunalsmodernis2 The Government's conclusions following the 2006 consultation can be found at the following web address: http://www.communities.gov.uk/publications/localgovernment/valuationtribunalsmodernisation An analysis of the Government's conclusions on the 2009 consultation can be found at the following web address:

http://www.communities.gov.uk/publications/localgovernment/valuationtribunalresponses

9. Guidance

9.1 None is to be issued by the Department. The President of the VTE will be issuing guidance about his tribunal business arrangements for selection of members (under paragraph A17 of Part 1 of Schedule 11 to the 1988 Act). He will also publish guidance and instructions about the application and implementation of the provisions in the instruments to which this memorandum relates. Additionally, the Valuation Tribunal Service will update its guidance for appellants.

10. Impact

10.1 The creation of the VTE is a structural change which has no impact on business, charities or voluntary bodies.

10.2 There is minimal impact on the public sector.

10.3 An Impact Assessment has not been prepared for the instruments to which this memorandum relates.

11. Regulating small business

11.1 None of the Regulations applies to small business. The structural change to create the VTE will have no impact on small business, and the Procedure Regulations and the Rating Regulations will affect small business to no greater extent than the current regulations.

12. Monitoring & review

12.1 Through the establishment of the VTE the Government aims to create a modern and responsive unified valuation tribunal for England with full customer focus that reflects modern thinking about tribunals and best practice in the tribunal world while continuing to sustain their judicial independence. The Valuation Tribunal Service (which will provide the administrative support for the VTE) undertakes annual customer surveys which will monitor the acceptance and effect of the establishment of the VTE.

12.2 While it has no current plans to do so, the Government will continue to keep under review whether the VTE and the VTS should at some stage be absorbed within the First-Tier Tribunal and the Tribunal Service respectively.

13. Contact

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Tel: 020 7944 5079 or email: Wendy.mcgregor@communities.gsi.gov.uk can answer any queries regarding the instruments to which this memorandum relates.

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