

**EXPLANATORY MEMORANDUM TO THE
NON-DOMESTIC RATING (ALTERATION OF LISTS AND APPEALS)(ENGLAND)
REGULATIONS 2005**

2005 No.659

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

2. Description

These Regulations make provision in relation to the making of proposals to alter a local or central rating list and provide the procedure to be followed on appeal.

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

None.

4. Legislative Background

These Regulations are made under sections 42(5), 53(5), 55(2) to (6) and (7A), 143(1) and (2) of, paragraph 10 to 12 of Schedule 7A to, paragraph 6(1A) of Schedule 9 to, and paragraphs 1, 4, 5, 6, 8, 11, 12 and 14 to 16 of Schedule 11 to, the Local Government Finance Act 1988.

5. Extent

This instrument applies to England only.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 Ratepayers may object to the relevant Valuation Officer - known as 'making a proposal' - against the rateable value and other matters shown on the local or, where applicable, central rating list. The Valuation Office Agency (VOA) receives around 300,000 proposals a year. Due to a backlog of cases, most proposals are not dealt with immediately and, after three months, they are referred to the Valuation Tribunal Service at which point they turn into 'appeals'.

7.2 Ratepayers or their agents may currently submit numerous proposals in different formats (e-mail, fax, letter) and each proposal must be registered as a separate proposal. Also, a proposal by one agent can be followed by others from different agents on the same business. Not only does this cause additional and unnecessary work for the VOA, it also slows down the system to the detriment of ratepayers who may have a clear case for a change in their rateable value. Proposals are often also poorly presented and fail to provide adequate rental information.

- 7.3 As an encouragement to submit proposals early in relation to the 2000 Revaluation, limitations were placed on the date from which appeals could be effective. This enabled the VOA to introduce ‘programming’, where similar cases could be grouped together and considered as a group at a programmed time in the future. Agents responded to these limitations by simply submitting blanket proposals at each limitation date before giving any proper consideration to whether the case was justified. This has significantly increased the number of proposals and the workload on the VOA. The complexity of the provision has also created a number of difficulties in interpretation especially where these regulations interact with other regulations.
- 7.4 ODPM announced in October 2004 that it proposed consulting on a package of measures to reduce the number of proposals made to the VOA, to improve the quality of information submitted in support of proposals and to tidy up and clarify some elements of the existing regulations. Among the main proposals in the consultation paper, issued in January 2005, were that ratepayers should be restricted to just one proposal against the compiled list entry of their property or any subsequent alteration made by a Valuation Officer, that the limitations over the effective date for appeals should be removed, and that those making proposals should be required to provide basic rental information.
- 7.5 The consultation exercise attracted 57 responses mainly from rating professionals, business representatives and local authorities, and generated mixed views. There was overall support for the proposals to consolidate the existing Regulations, to allow appeals to be submitted electronically, and with the proposed arrangements for dealing with appeals against civil penalties.
- 7.6 Most respondents were not in favour of the proposal to limit ratepayers to one right of appeal against the compiled list entry. They thought this was likely to encourage ‘cowboy’ agents to lodge appeals and then mislead ratepayers into thinking that they had no alternative but to appoint them. It was also seen by some as a curtailment of ratepayers’ rights. There was general support for the proposal to remove the general limitation on the effective date so that most alterations will have effect from the day on which the circumstances giving rise to them first occurred.
- 7.7 There was also little support for the proposal to require rental information. Respondents felt that this would introduce an unnecessary complication, and that ratepayers would not have the information readily available. They were not happy that failure to produce this information would make a proposal invalid. A number commented that the VOA already had sufficient powers to require this information under other legislation.
- 7.8 In the light of these representations, the ODPM has decided to implement the requirement to disclose the rent, but not to pursue the requirement to state the date from which the rent became payable, and from which it will next be reviewed. Provision of rental information will enable the VOA to check their records and use its other legislation to glean further information in appropriate cases. Some further changes have also been made to the version of the draft Regulations proposed in the consultation paper, in the interests of clarity and to reflect points made by the Valuation Tribunal Service in response to the consultation exercise.

8. Impact

A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

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FINAL REGULATORY IMPACT ASSESSMENT

PROPOSED AMENDMENTS TO EXISTING BUSINESS RATES APPEALS REGULATIONS

Purpose and intended effect

(i) The objective

The objective is to improve the efficiency of the system which allows a ratepayer to request an alteration to the rateable value of a property shown on the national non-domestic rating lists.

(ii) The background and risk assessment

The occupiers of non-domestic properties in England and Wales pay non-domestic rates. Individual rate bills are based on the rateable values of each non-domestic property. Rating lists containing rateable values are prepared by valuation officers of the Valuation Office Agency (VOA - an agency of the Inland Revenue) and are a proxy for the rental values of non-domestic property if it were to be available for rent on the open market at a particular date - known as the Antecedent Valuation Date. To ensure rateable values keep pace with changes in the property market, all non-domestic properties are revalued every five years by the VOA. The last revaluation was effective from 1 April 2000 with an Antecedent Valuation Date of 1 April 1998.

The next revaluation is effective from 1 April 2005, with an Antecedent Valuation Date of 1 April 2003. In preparation for the 2005 Revaluation, the VOA has been sending out to businesses 'Summary Valuations' which explain how the rateable value of their properties have been calculated and to give ratepayers a better understanding of the basis on which their rates bills will be calculated for 2005/06.

Appeals

Ratepayers may seek an alteration to the rateable value of a property on a number of different grounds. In summary, they may do if:

1. they object to the valuation that has been determined by the valuation officer;
2. they believe that the factors taken into account in the valuation of the property are factually incorrect;
3. the physical circumstances of the property have changed due to the property being split, merged with another property, partially demolished, or extended;
4. the basis of the valuation has altered due to external factors that were not present at the valuation date.

A ratepayer seeks an alteration by "making a proposal" to the valuation officer to have the valuation altered. After three months, proposals are automatically referred to the local valuation tribunal, at which point they become 'appeals'. The Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993 (SI 1993 No.

291) and subsequent amending Regulations - referred to in this RIA collectively as 'the Appeals Regulations' set out the rules governing the alteration of lists and the administration of proposals and appeals.

The Appeals Regulations contain the following key terms.

- The **material day** is the day on which the physical circumstances affecting a property are to be taken into account when valuing it for rating purposes.
- The **effective date** is the day to which the alteration to the list is backdated and thus the key date for recalculating the rate bill.
- The **compilation date** is the date on which the compiled list is published. For the 2005 Revaluation, this is 1 April 2005.

Valuation officers (VO) are responsible for compiling and maintaining the National Non-Domestic rating lists. VOs are required to keep the lists updated and to correct them if they believe they contain inaccuracies. A list may be corrected from the relevant day it becomes inaccurate subject to any limitations contained in the Appeals Regulations. This is normally the material day or the compilation date.

Issues arising from the Appeals Regulations

There are about 1.5 million proposals made to the VOA during the five-year life of successive rating lists, an average of around 300,000 each year. As very few proposals are settled within three months, most are referred to valuation tribunals (VT) as appeals. However, in practice, very few appeals are heard by the VTs as either the appeal is withdrawn or an amended valuation is agreed during the discussion between the VO and the ratepayer.

It can take up to three years for a case to be considered by the VO, because of the large volumes involved. It is often only at this stage that the first discussion takes place between the ratepayer and the VO about the basis of the original proposal.

Ratepayers are required to provide a reason substantiating their proposal and to give an indication of the rateable value they consider would be more appropriate. In practice, however, many proposals are made on the basis that the rateable value is "incorrect, excessive and wrong in law and should be reduced to £1". Further consideration by ratepayers or their agents of the basis of their proposals often leads to proposals being withdrawn.

Ratepayers may submit proposals direct to the VO, but many prefer to employ rating agents. These professional individuals and companies offer a commercial service to ratepayers advising them about their proposal and representing them through the process. Small businesses often sign contracts with agents because they are taken in by the promise of reductions in their rate bills, or they do not have the time to understand the rating issues. Reputable agents operate according to a code of practice developed by the Royal Institution of Chartered Surveyors (RICS), the Institute of Rating Revenue and Valuation (IRRV), and the Rating Surveyors Association (RSA) which is mandatory upon members of those professional bodies. The less scrupulous agents tend to operate outside the code of practice.

Amendments made to appeals procedures for the 2000 list

In 2000, the VOA introduced "programming" to try to improve the speed and efficiency of handling appeals. Under the programming system, ratepayers were encouraged to submit their proposals early and the VOA would group similar proposals together. They would then be considered as a group at a programmed time in the future.

In order to encourage ratepayers to submit proposals early, date limitations were placed on the effective date depending on when the proposal was submitted. The general rule was that the proposal must have been made by the end of the chargeable year concerned in order for any change to be applicable to the first day of the chargeable year, with a six-month interim cut-off date in the first year. These worked out as follows for the 2000 List.

| <u>Date proposal submitted</u> | <u>Effective date</u> |
|--|-----------------------|
| Before 30 September 2000 | 1 April 2000 |
| Between 1 October 2000 and 31 March 2001 | 1 October 2000 |
| Before 31 March 2002 | 1 April 2001 |
| Before 31 March 2003 | 1 April 2002 |
| Before 31 March 2004 | 1 April 2003 |
| Before 31 March 2005 | 1 April 2004 |

For example, a revised rateable value arising from an appeal made in December 2003 could not be backdated to the compilation date (1 April 2000). Instead, the new value would only apply from the start of the year in which the appeal was made, ie 1 April 2003.

While reductions in rateable value are backdated, increases are only imposed from the date at which the alteration took effect. These are not backdated where the change had the effect of increasing the rateable value of the property.

The introduction of these date limitations enabled the VOA to introduce programming successfully. There was no significant change in the pattern of proposals submitted to the VOA, but there was a tendency for agents to submit blanket proposals before each date limitation to ensure their clients' interests were protected. They argue that the date limitations virtually obliges them to submit a proposal before any date limitation takes effect, in case they discover some new basis for an alteration after the cut off date has passed.

Currently a large number of proposals are made each year – as many as 300,000. There is currently no limitation on the number of times a person may make a proposal on the same facts, except where a tribunal has determined an appeal. Between 1 April 2000 and 30 November 2004, nearly 22% of proposals challenging the compiled list entry were duplicates of earlier proposals on the same facts, amounting to nearly 180,000 proposals. Of these, over 100,000 of the duplicate proposals were submitted by ratepayers themselves or by different agents acting on behalf of the same ratepayer. The rest were cases where the same agent made duplicate proposals in respect of the same property. In some cases ten or more duplicate proposals have been made. Since all proposals have to be dealt with as if

they were unique, this adds unnecessarily to the cost to the taxpayer of administration of the rating system. It also adds to ratepayers' costs and means that appeals take longer to be resolved because time is being wasted in processing duplicates.

The combined effect is that numerous proposals are submitted which have little foundation, many are submitted by agents as a means of protecting themselves and showing the client that the agent is acting diligently on their behalf, and many are duplicate proposals. Some agents argue that this behaviour would end if there were no date limitations. This seems to follow although evidence from 1995 - 2000, when there were no date limitations, shows little difference in the number of proposals that were received. The sheer number of proposals being made to the VOA means that 'genuine' proposals have a longer wait. Having a system with numerous unnecessary proposals is clearly not efficient and simply delays the process for those ratepayers who have genuine concerns about the accuracy of their rateable value. In addition, the cost of operating the appeals system is significantly more than the cost involved in drawing up the new rating lists

Steps already taken to improve the process for the 2005 List

For the 2005 Revaluation, the VOA has taken a number of steps to improve the valuation process and to ensure that valuations are based on up-to-date accurate evidence. This has included the following.

Ratepayer Forums

The VOA established the National Ratepayer Valuation Forum (NRVF) in order to keep ratepayer organisations informed of developments leading towards the revaluation and to improve dialogue with these organisations.

Consultation / Discussion with Ratepayers on basis of individual valuations

In the build-up to the revaluation VO's have been engaging with ratepayers and sharing information and where possible agreeing the basis of the valuation. This benefits the ratepayer who then pays the right amount of rates based on the correct valuation from the beginning and does not need to appeal against the valuation. It also helps the VO who will not have to devote resources to considering an appeal.

Forms of Return

The Notice Requesting the Supply of Information (NRSI or 'Form of Return') is a VOA form requesting information from a ratepayer about the property including rental information. The Local Government Act 2003 changed the penalty for the non-return of the Form of Return from a criminal to a civil penalty and has given the ratepayer longer to supply the necessary information. This has been a useful tool in obtaining more accurate data on which to base the valuations.

Draft 2005 Rating Lists

On 1 October 2004, the draft 2005 rating lists were published. This was three months earlier than in any previous revaluation. This has enabled ratepayers to plan

ahead and for other policy discussions to take place with the information on values to hand.

Summary Valuations

Alongside the draft rating lists, the VOA published Summary Valuations. The Summary Valuations contain details of the property, (e.g. floor space, storerooms, parking bays) with valuations for each separate part of the property. These were sent to over 1.3 million ratepayers in October and made available on the VOA website. In addition, the website provides more detail on the way the valuation was made. Ratepayers were then encouraged to approach the VO to correct any facts. This has provided ratepayers with more information than ever before and has allowed the data to be verified and corrected without recourse to submitting a proposal.

Proposals for change

The ODPM announced in October 2004 that it proposed consulting on a package of proposals aimed at reducing the number of proposals made to the VOA, to improve the quality of information submitted in support of proposals and to tidy up and clarify some elements of the existing Regulations. A number of options were considered in the consultation paper issued in January 2005. The closing date for responses was 28 February 2005.

Options

There were two possible options, to do nothing or to amend the regulations to try and deal with the issues identified above.

Option 1 - Do nothing

If the Government did not introduce any amendment to the Appeals Regulations, the existing arrangements in the 1993 Appeals Regulations would continue to apply in respect of the new Non-Domestic Rating Lists that are due to take effect from 1 April 2005. This would mean retaining the date limitations and possibly the same level of appeals as are currently experienced.

Option 2 - Amend the legislation

The following suggested amendments arose from recommendations or feedback from different stakeholders and deal with many of the issues identified above.

These amendments would be achieved by amending the existing Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 1993 as follows.

- A. Consolidate into a new set of Regulations the existing 1993 Appeals Regulations and subsequent amendments.
- B. Remove the current limitations over when alterations should take effect from.

- C. Limit ratepayers to one proposal against the rateable value shown in the compiled list entry and one proposal for any subsequent alteration.
- D. Require appellants to provide basic rental information when submitting proposals.
- E. Introduce some more minor technical changes.
- F. Amend the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 which prescribe the rules under which the material day is to be determined.
- G. Introduce new regulations to deal with appeals to the valuation tribunals against a valuation officer's imposition of a civil penalty for the non-return of the Form of Return.

The proposals apply to England only.

Alternatives to Regulation

We also considered alternatives to regulation. However, trying to address concerns that had been raised through means such as good practice guidance would not solve the problems inherent in the Appeals Regulations. As with the Do Nothing option, agents would argue that their behaviour was influenced by the constraints of the existing Regulations; good practice guidance would not alter the legal position and the obligation this places on them in terms of acting in their clients' best interests.

The RICS, IRRV and RSA have issued extensive good practice guidance to their members and it was considered that issuing further guidance was unlikely to make a difference.

Preferred consultation option

The Government's preferred option was to introduce the package of amendments outlined in Option 2 above. It was considered that continuing under the existing Regulations or relying on good practice guidance would not address the difficulties that have arisen under the existing arrangements.

BENEFITS

Economic

The ultimate benefit the Government is seeking to achieve is to reduce the number of duplicate and "just in case" proposals so that substantive proposals can be settled more quickly. The changes should deliver cost savings for appellants and the general taxpayer and allow those who make a successful proposal to start paying their true (reduced) liability earlier.

Based on the expected administrative savings from at least 76,000 fewer (duplicate) proposals, the VOA have estimated that they could save around £2m over the course of the list. It is unfortunately not possible to provide firm estimates on other

potential cost savings, such as duplicate proposals made by different agents or the ratepayer direct (as these cannot be isolated from the statistics). These could be significant however, as they involve reducing the amount of valuation officer input.

All savings made by the VOA will be re-invested, thus improving the service they provide.

Option 1 - Do nothing

If the Government did not introduce any amendment to the Appeals Regulations, the existing arrangements would continue to apply in respect of the new Non-Domestic rating lists that are due to take effect from 1 April 2005. This would mean retaining the date limitations and would be likely to give rise to the same high numbers of proposals.

The benefit would be the retention of a process with which rating agents are familiar and this provides a measure of continuity in the system. The only way forward then would be to encourage a different behaviour from ratepayers and their agents with regard to submitting proposals but this is unlikely to happen while the date limitations still exist.

Option 2 - Amend the legislation

A Consolidate into a new set of Regulations the existing 1993 Appeals Regulations and subsequent amendments as these apply from 1 April 2005.

There have been a number of amendments to the regulations since 1993 to the extent that understanding the regulations has become complicated and very difficult even for practitioners to use. There has been strong support for the regulations to be consolidated and a new set of regulations issued which would make the regulations more understandable to everyone. The current regulations have been amended at every revaluation and on a number of occasions within the five-year review periods to deal with various issues.

B. Remove the current limitations on the effective date of an alteration

The limitations on the effective date have had the benefit of enabling the VO to deal with appeals in a more efficient manner through programming, allowing similar proposals to be considered together. This is a benefit to the ratepayer because all the factors are taken into account at one time.

However, the date limitations have created additional complications. In particular they have had the effect of increasing the number of proposals submitted, especially in the period leading up to each cut-off date.

Now that the programming system has been established, the VOA considers that it will still be able to administer an effective programming regime if date limitations were removed.

The restrictions on the effective date of certain list alterations have also added to the complexity of administration and a lack of clarity in the interpretation of rating list entries. In particular, the limitation on the insertion of new property in a rating list tends to discourage owners and potential ratepayers from declaring that new property has become occupied. The draft regulations rectify this anomaly.

C. Limit ratepayers to one proposal against the rateable value shown in the compiled list entry and one proposal for any subsequent alteration.

The Government would like to reduce the number of unnecessary and unsubstantiated proposals. Agents argue that the date limitations created the need to rush into submitting a proposal or to submit a duplicate proposal. Removal of the date limitations removes the need for the ratepayer to submit a proposal immediately. The ratepayer would have time to consider whether there was any basis for making a proposal and, if so, to gather appropriate information in support of their case. Under the existing system, in excess of 180,000 unnecessary duplicate proposals have been made against entries in the 2000 rating lists.

It therefore seems fair to limit each interested party to one proposal against an entry in the list. This would not be a limitation on ratepayers' rights, but an encouragement to ratepayers to make considered, as opposed to unsubstantiated, proposals. New proposals could be made if there were a material change of circumstances, or if a new occupier took over the occupation.

The benefit is that the VOA should then receive properly considered proposals, making the system more efficient by reducing the number of speculative appeals.

D. Require appellants to provide basic rental information when submitting appeals

The rateable value is based on the assumed rental value of the property on the Antecedent Valuation Date (AVD) – for 2005 lists this is 1 April 2003.

The Government believes it is perfectly reasonable to ask ratepayers to provide any information about rental agreements and occupation payments.

This information will be required anyway when the discussions take place between the valuation officer and the ratepayer about the valuation. It is helpful to show the ratepayer the link between the rental value and the rateable value – a principle which is not always recognised by ratepayers. Submitting it up front may allow the valuation officer to spot any simple errors in the valuation. Also, a ratepayer who has a rental agreement reviewed close to the Antecedent Valuation Date would have useful information for the valuation officer and may have a strong case for seeking an alteration to the rateable value in the event that the evidence provided by the rent actually paid differed significantly from the rateable value.

Early provision of basic rental information in support of proposals will also allow the VO to build on its body of rental information. This will enable more effective targeting of future requests for information by way of Forms of Return (FOR), which will reduce the number and therefore burden on ratepayers in completing the forms.

The main source of accurate data to the VO is through the FORs. These require ratepayers to provide detailed information relating to the property and any rental information. While the VO has the power to issue a FOR to every ratepayer, it is not efficient to do this. VOs tend to select likely properties based on information they have available. It is more efficient to identify the properties that might have useful information and then target the issue of an FOR to obtain the detailed information from them.

Providing some simple information when making a proposal will enhance the database to identify these key properties. It should be no inconvenience to ratepayers, as the rental information will already be in their possession and they will need this information if they are to have a discussion with the VO about the valuation. If there is some delay in obtaining this information, then there is no loss of rights as there are no limitations on the effective date.

E. Introduce some more minor technical changes

Provision is made in the draft consolidated regulations to allow electronic submission of notices both to and from the VO. The Electronic Communications Act 2000 is now in force and is now referred to in the draft regulations.

This provision ties in with initiatives that are already underway within the VOA to allow electronic service of proposals.

The consolidation of the 1993 Appeals Regulations and the subsequent amending Regulations have also provided the opportunity to tidy up some of the wording in the existing Appeals Regulations.

The 1993 Appeals Regulations are unclear with regard to whether it is permitted for a proposal to be made on more than one ground, for example that both the rateable value and the description in the rating list are inaccurate. This means that two or more proposals may have to be made to achieve the correct entry in a rating list. The draft Regulations clarify the position by allowing more than one ground to be cited, but only where the material day and the resulting effective date are the same for all the grounds given. This removes a source of confusion and reduces the need for additional proposals to be made.

The period allowed for making a proposal to challenge an alteration by the VO to a 2000 rating list is not consistent with the cessation of other appeal rights on 1 April 2005 and the draft regulations now impose the same limit, subject to a further period of six months in respect of alterations made towards the expiry of the lists.

F. Amend the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992

These regulations prescribe the rules for determining the material day when carrying out a valuation for rating purposes. Under the current regulations, the material day is generally the day the event giving rise to the valuation took place. However, for material changes of circumstances during the life of the list, the material day is fixed

as the day that either the VO alters the list or a proposal is made, as appropriate. This has given rise to difficulty where at the time the proposal is made or the list is altered, the circumstances affecting the property have changed again.

We therefore propose amending the existing Material Day Regulations to make the material day for alterations by the VO to be the day of the event as long as this is reasonably ascertainable. For alterations pursuant to proposals, the material day for material changes of circumstance would remain the date the proposal is made.

This would clarify the position for all involved.

G. Introduce new regulations to deal with appeals to valuation tribunals against the valuation officer's imposition of civil penalty for the non-return of requested information

Under the Local Government Finance Act 1988, a valuation officer may serve a notice on a person who is an owner or occupier of a hereditament requiring him to supply information specified in the notice. The information is used to assist the valuation officer in making the correct valuation of a non-domestic or business property subject to rating (a hereditament) for the purposes of calculating business rate bills. A failure to supply the information requested in the form within 21 days of the date on which the notice was served was a criminal offence, but section 72 of the Local Government Act 2003 replaced the criminal sanction with a new system of civil penalties.

Instead of the 21-day period in which the Notice Requesting the Supply of Information (NRSI or 'form of return') must be returned, this was extended to 56 days. After 56 days, if the form has not been returned, the owner or occupier of the hereditament in question is liable to a £100 fine. If the person then fails to return the form within a further 21 days from the date the notice is served, a further civil penalty of £100 becomes due, and every day thereafter a daily penalty of £20 becomes due until the form is received by the valuation officer.

The ratepayer has a right of appeal to the relevant valuation tribunal against the imposition of these civil penalties.

The draft Regulations established the rules for dealing with such appeals and follow current Valuation Tribunal Service guidance for administering an appeal. It is of benefit to everyone to have these rules defined in Regulations.

Environmental and Social

There are no environmental or social benefits for any of the options.

COSTS

Economic

Option 1 - Do Nothing

As outlined above, agents argue that the reason why there are so many unnecessary appeals is due to the constraints of the legislation. Doing nothing and leaving the Regulations unchanged means that agents are likely to adopt the same approach following the revaluation in 2005. Agents are likely to continue to submit proposals before each date limitation as a precautionary measure. The VOA would also continue to receive duplicate versions of the same appeal and would have to process many proposals that are subsequently withdrawn.

The Appeals Regulations have also given rise to additional complications and these would continue if no action were taken to address them. A particular problem has arisen when the effective date from a valuation officer alteration has differed from the effective date resulting from the date limitation. In some cases, a valuation can often be agreed relatively easily between the ratepayer and the VO, but a lot of time can then be spent arguing over the interpretation of the regulations to find the appropriate effective date.

For example, a ratepayer submitted a proposal in June 2003 and because no agreement was reached with the VO, the matter was determined by the valuation tribunal who directed the VO to reduce the assessment. The effective date was 1 April 2003. However, the VO considered that the other properties in the surroundings should also be reduced as the factor driving that reduction affected all of them and, therefore, as he is statutorily bound to do, reduced all the other assessments to the relevant date - 1 April 2000. The VO does not have the power to reduce the RV of the first property with effect from 1 April 2000.

A similar problem (often called "historics") had to be dealt with by taking a test case to court and then amending the Appeals Regulations (through SI 2004 No. 3057) to rectify the anomaly that existed.

Doing nothing is an option as the existing regulations have largely worked for the last five years. However, the complications caused by the existing regulations would continue to involve ratepayers and the VOs in time and expense arguing over the interpretation of the Regulations and could lead to inequalities in application across the country.

If the Government did not introduce any amendment to the Appeals Regulations, the existing arrangements would continue to apply in respect of the new Non-Domestic Rating Lists that are due to take effect from 1 April 2005. This would mean retaining the date limitation and would be likely to give rise to the same high numbers of appeals.

Option 2 - Amend the Legislation

A Consolidate into a new set of Regulations the existing 1993 Appeals Regulations and subsequent amendments.

There is no cost associated with this. There would be a benefit to everyone in making the regulations simpler and easier to understand.

B. Remove the current limitations on the effective date of an alteration

There are some potential economic costs associated with the removal of the date limitations. There is a risk of uncertainty to the revenue stream in that ratepayers will be able to make proposals very late in the life of the list. This might affect the overall revenue late in the life of the rating lists.

However, we believe that ratepayers will want to submit proposals as early as possible in order to obtain the benefit as soon as possible, rather than waiting for many years before submitting a proposal.

Historic data from the 1990, 1995 and 2000 rating lists shows that when there was a limit on the period for making a proposal (1990 list), 40% of all compiled list proposals were made in the first year of the list. When there was no limit on either the period for making a proposal or the effective date of consequent alterations (1995 list), the figure was still 40% and when the effective date of alterations only was limited (2000 list) the proportion rose to over 75%. It is difficult to draw firm conclusions from this data about risk to the revenue stream. As well as the distorting effect of duplicate proposals, discussed in option 1 above, the factors affecting the proposal timings for each rating list extend beyond the restriction or otherwise on effective date to the wider economic environment and the effect of transitional schemes on ratepayer liability. Further, the early receipt of proposals does not reduce the risk to the overall revenue late in the life of the list since late settlement of appeals would have resulted in retrospective losses from earlier years.

The basket of measures proposed seek to encourage proposals (and consequent alterations to lists) only where genuine need exists and together with the other initiatives taken by the VOA to advise and inform ratepayers of the basis of valuations at an early stage aim to increase the stability of rating lists and the revenue stream.

C. Limit ratepayers to one proposal against the rateable value shown in the compiled list entry and one proposal for any subsequent alteration.

Rating agents have argued that limiting the right to make proposals to one per ratepayer is a weakening of ratepayers' fundamental rights. They argue that many ratepayers, especially small businesses, will be lured into signing contracts with a less reputable agent who will in turn not handle their case very well. When the ratepayer subsequently turns to another agent for advice, that agent will not be able to do anything because the proposal has already been submitted and settled. They argue that this does not provide adequate protection for ratepayers and severely limits their rights.

The Government considers it fair to allow one right of appeal and expect this to encourage ratepayers to contract reputable agents and for the rating profession to introduce voluntary controls to ensure that good practice is more widely applied. The RICS, IRRV and RSA all subscribe to a mandatory code of practice they have developed. Guidance to ratepayers on the operation of the system, including the information sent out with all rate bills, emphasises the need for ratepayers to use reputable agents. Given all this, the Government believes that sufficient measures are being taken to warn and encourage ratepayers to act responsibly and that the

general taxpayer and other ratepayers should not have to bear additional costs or delays to protect those who do not act responsibly.

A new occupier would not be prevented from making a new proposal, and a ratepayer may make a proposal against an alteration and if there is a material change of circumstances.

Agents also argue that the proposal to limit the number of proposals per ratepayer will make the system less efficient and be more time-consuming, as the Valuation Officer will have to spend time determining which proposal is valid when more than one proposal is made on the same property. The VOA are confident that this cost will not be significant and basic administrative processes will be able to deal with this. Rating professionals believe that the potential problem is far greater and will be a significant drain on the resources of the VOA, agents, Valuation tribunals and ratepayers. They claim that instead of focussing effort on dealing with the substantive valuation issues, there will be a huge upsurge in invalidity appeals.

By making the proposed changes in these draft regulations it is expected that over the life of the 2005 rating lists around 180,000 unnecessary proposals will be avoided. This will allow VOA resources to be properly directed at resolving genuine appeals and improving the quality of service provided to ratepayers by the initiatives to which the VOA is already committed.

D. Require appellants to provide basic rental information when submitting appeals

Agents are concerned that requiring ratepayers to submit rental information when making a proposal will be an imposition, particularly for small businesses. They argue that the information can be obtained through the issuing a form of return to ratepayers and that asking for this basic rental information is pointless and an unnecessary burden on small businesses especially as the information might have already been supplied in response to the issue of a NRSI.

However, the Government believes that it is appropriate for the ratepayer to provide any information that is relevant to establishing the rateable value when submitting a proposal and does not believe that this is an additional cost to small businesses. It is information a rating agent should know and similarly, as it is basic rental details, is information the small businessperson will have to hand.

E. Introduce some more minor technical changes

There are no costs associated with this option.

F. Amend the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992

There are no costs associated with this option.

G. Introduce new regulations to deal with appeals to the Valuation Tribunal Service against the Valuation Officer imposition of civil penalty for the non-return of the Form of Return

There are no costs associated with this option.

Environmental and Social

There are no environmental or social costs associated with any of the options.

Response to consultation

The consultation exercise attracted 57 responses mainly from rating professionals, business representatives and local authorities, and generated mixed views. There was overall support for the proposals to consolidate the existing Regulations, to allow appeals to be submitted electronically, and with the proposed arrangements for dealing with appeals against civil penalties.

Most respondents were not in favour of the proposal to limit ratepayers to one right of appeal. They thought this was likely to encourage 'cowboy' agents to lodge appeals and then mislead ratepayers into thinking that they had no alternative but to appoint them. It was also seen by some as a serious curtailment of ratepayers' rights. There was general support for the proposal to remove the general limitation on the effective date so that most alterations will have effect from the day the circumstances giving rise to them first occurred.

There was also little support for the proposals to require rental information. Respondents felt that this would introduce an unnecessary complication, that ratepayers would not have the information readily available and they were not happy that failure to produce this information would make a proposal invalid. A number commented that the VOA already had sufficient powers to require this information through a Form of Return (FOR).

Some respondents were in favour of the proposed change to the Material Day Regulations, whereas others thought that there should be a limit on how far back the VO should be able to go. Several of those making comments on this particular proposal agreed with the proposed amendment, but felt that in the interests of equity, the provision should be extended to apply also in respect of proposals made by interested persons.

Action as a result of the consultation

The Government does not consider that the proposal to limit ratepayers to one right of appeal is a serious dilution of ratepayers' rights. The ratepayer would still have a right of appeal against each and every valuation, from the compiled list entry to any alteration by the VO and in respect of any material change in circumstances (MCC) that takes place during the life of the list. In addition, the Government has strongly

supported the recognised rating organisations in their efforts to encourage all agents to follow an agreed code of practice. The ODPM literature on business rates, including the material on the joint ODOM/VOA mybusinessrates website and that sent out with rate bills, supports this approach and provides appropriate advice and warnings to ratepayers.

In terms of the removal of effective dates, the Government takes the view that all restrictions, except corrections resulting in increases to the compiled list or previous alterations, should be removed. To provide limitations for VO alterations or for inserting new entries would create anomalies that exist with the present system. We think it reasonable that occupiers of properties that are not shown in a list and that are not therefore making any contribution should have to meet their liability when the omission comes to light. In the case of splits and mergers, the existing Regulations allow backdating anyway and the change puts new property on the same footing.

The extension of the VO's ability through the Material Day Regulations to correct the list retrospectively will ensure the lists are more accurate without creating an opportunity for spurious proposals to be made relating to long-gone events. We do not consider this to be a matter where the ratepayer needs to be on an equal footing with the VO, as the VO is a statutory officer with a duty to maintain the list and this change will enable him to do so more effectively.

For those seeking to challenge a rental-based tax to be asked to produce information to support their case at the time of the challenge does not, on the face of it, seem unreasonable, especially given that other proposed changes to the Regulations reduce the time pressure on agents. The Government accepts that the VO already has power to obtain rental information through FORs but, even with the civil penalty available, only 65% of these forms are sent back.

The Government is concerned about the impact that dropping this proposal in its entirety would have on ratepayers. In the absence of any information about rents, the VOA would have to consider issuing FORs to a wider range of ratepayers than necessary, increasing the burden on ratepayers. The suggestion from some respondents for a 'tick-box' on the proposal form indicating whether the hereditament was occupied freehold or leasehold would have much the same effect. It would inevitably result in VO's having to issue more FORs because they would be uncertain whether any information already held was still applicable, although it would enable some targeting to take place.

The Government has therefore decided to retain the requirement to declare the rent, but to remove the requirement to state the dates from which the rent became payable, and from which it will next be reviewed. Providing details of rent will enable the VO to be able to check the records so that FORs can be issued in appropriate cases. Some further changes have also been made to the version of the draft Regulations proposed in the consultation paper, in the interests of clarity and to reflect points made by the Valuation Tribunal Service in response to the consultation exercise.

Equity and Fairness

The proposed amendments would apply equally to all business ratepayers, including small businesses, whether in urban or rural areas.

Agents have argued that small businesses might be persuaded to sign a contract with a disreputable agent who then represents them poorly and uses up their one right of appeal. They argue that the one right of appeal removes a necessary protection from small business. In addition, they argue that asking for basic rental information as part of the information required when submitting a proposal places an unfair burden on small business.

The Government considers that the requirements are perfectly reasonable and do not introduce any unfairness into the system. See the next section below 'Consultation with Small Business: The Small Firms Impact Test'.

There are no health or race equality issues raised by the proposals.

Consultation with Small Business: The Small Firms Impact Test

Small businesses stand to benefit from the proposed changes. Reducing the number of unsubstantiated and unnecessary proposals made to the VO means that those making proposals may have their cases determined more quickly. It also means that any financial benefit arising from the determination of proposals will accrue to the small business earlier than would be the case under the existing arrangements.

Removing the date limitations will benefit small firms who do not employ a rating agent as there is no requirement to submit the proposal early.

The Government does not share the view expressed by some rating agents that asking for rental information will be unduly burdensome for small businesses. It is information that would have to be provided in any event to the VO at some stage during negotiations about the rateable value and the proposal simply means that the information has to be provided at an earlier stage in the process. It is information that a small business should have to hand.

The Small Business Service (SBS) has been consulted on these proposals and this RIA. The SBS originally agreed that stage 2 of the Small Firms Impact Test was not required in this instance, unless responses to the consultation suggest that there may be significant small business implications that warrant further assessment and discussion. They note that some concerns were subsequently raised in response to the consultation, but also note that amendments in respect of the provision of rental information have been made as a result. Whilst noting that the amended proposals may still impact on small businesses to some extent, the SBS agrees that the impact is not expected to be significant and does not warrant further assessment through a stage 2 test. The SBS has confirmed that it is content with the overall assessment.

Competition Assessment

The competition assessment was introduced jointly by the Office of Fair Trading and the Cabinet Office to ensure that new legislation will not introduce change to the competitive environment which could lead to a negative effect on the working of the

markets. We do not believe any market sector will be disproportionately affected by these measures.

Enforcement and Sanctions

In terms of enforcement and sanctions, the two key proposals are the limitation on the right to make proposals and the requirement to submit rental information. On the former, if ratepayers continue to make duplicate proposals, these will be treated as invalid by the VO. Similarly, failure to supply the necessary rental information when making a proposal will render the proposal invalid.

Monitoring and Review

Business properties are revalued every five years and the new non-domestic rating lists are due to come into effect on 1 April 2005. The proposed amendments would apply in respect of hereditaments on the new Lists. The ODPM and the VOA will monitor the number of proposals made under the new lists and will compare this with the number made under the current 2000 lists. Any issues arising from the operation of these proposed new arrangements would be noted and considered with a view to introducing further possible changes for the 2010 lists.

Consultation

On 21 October 2004, the Government announced through a Parliamentary Written Statement its intention to review the current arrangements for handling proposals made against the rateable value of business properties. The proposals for change were also announced through a News Release that was distributed nationally.

Following the announcement, there have been informal discussions with rating professionals about the substance of the proposals and how they should be given effect. Their views were reflected in both the consultation document and the Partial RIA. In addition, during the formal consultation period, some rating professionals have had the opportunity to present their views orally to the ODPM.

The consultation exercise involved a wide range of interests, including local authorities, rating professionals and business interests. Responses to the consultation paper are summarised above.

The period for formal consultation was shortened from the standard 12 weeks in order to be able to get the regulations made before the start of the next rating lists - 1 April 2005 - when ratepayers will be able to submit proposals for an alteration of their rateable value. Some of those responding to the consultation exercise were critical that the whole process has been unduly rushed and that the package of proposals had been ill-considered.

A full 12-week consultation period would have meant that the existing regulations would have remained in place for 1 April 2005 and any proposals received would have been handled under those Regulations. This would not have been of benefit to ratepayers and would have undermined the intention of the amendments.

Summary and recommendation

Continuing under the existing Regulations or relying on good practice guidance will not address the difficulties that have arisen under the existing arrangements. These amendments to the existing Regulations will greatly reduce the amount of duplicate and unnecessary proposals being made to VO's to the benefit of all interested parties. Crucially, they will not remove a ratepayer's fundamental right to challenge the rateable value of a business property. However, the measures will encourage ratepayers to give further consideration before making proposals and to provide key supporting evidence to improve the database.

Guidance

Information about how to make a proposal to the VOA is contained on the VOA's website and the on the joint ODPM / VOA website mybusinessrates.gov.uk.

The ODPM is also updating its existing booklet 'Business Rates - A Guide' which will include information about how to make a proposal to the VOA. The Guide explains how the business rates system operates and is used primarily to send to businesses and others that raise queries with billing authorities.

Ministerial signature

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister

Nick Raynsford Minister of State

Date...10th March 2005

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