

2018 No. 398

RATING AND VALUATION, ENGLAND

**The Non-Domestic Rating (Alteration of Lists and Appeals)
(England) (Amendment) Regulations 2018**

Made - - - - - *26th March 2018*

Coming into force in accordance with regulation 1(2)

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The Secretary of State, in exercise of the powers conferred by sections 55(2), (4), (4A) and (4B) and 143(1) and (2) of, and paragraphs A19, 8, 11 and 16 of Schedule 11 to, the Local Government Finance Act 1988(a), makes the following Regulations.

(a) 1988 c. 41. Relevant amendments were made to section 55 by section 139 of, and Schedule 5 to, the Local Government and Housing Act 1989 (c. 42); sections 104, 117 and 118 of, and Schedules 10 and 13 to, the Local Government Finance Act 1992 (c. 14); sections 220 and 241 of, and Schedules 16 and 18 to, the Local Government and Public Involvement in

A draft of this instrument has been approved by a resolution of each House of Parliament pursuant to section 143(3E)(a) of that Act.

PART 1

Preliminary

Citation and commencement

1.—(1) These Regulations may be cited as the Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2018.

(2) These Regulations come into force on the day after the day on which they are made.

Application

2. The amendments made by these Regulations apply only in relation to a local non-domestic rating list(a) or central non-domestic rating list(b) compiled on or after 1st April 2017.

Interpretation

3. In these Regulations—

“the 2009 Procedure Regulations” means the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009(c); and

“the 2009 Regulations” means the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009(d).

PART 2

Amendment of the 2009 Regulations

Amendment of regulation 2

4.—(1) Regulation 2 of the 2009 Regulations (interpretation: general) is amended as follows.

(2) In paragraph (1)—

(a) at the appropriate places insert—

““Part 2 penalty” means a financial penalty imposed under regulation 9A;”;

““Schedule 9 penalty” means a penalty imposed under paragraph 5A of Schedule 9 to the Act(e);”;

(b) in the definition of “appeal”—

(i) before paragraph (a)(f) insert—

“(za) regulation 9C(g);”;

(ii) in paragraph (c) before “penalty” insert “Schedule 9”.

Health Act 2007 (c. 28); section 32 of the Enterprise Act 2016 (c. 12). Relevant amendments were made to section 143 by section 32 of the Enterprise Act 2016.

(a) See section 41(1) of the Local Government Finance Act 1988 for the meaning of “local non-domestic rating list”.

(b) See section 52(1) of that Act for the meaning of “central non-domestic rating list”.

(c) S.I. 2009/2269; relevant amending instruments are S.I. 2011/434, 2013/465 and 2017/156.

(d) S.I. 2009/2268; relevant amending instruments are S.I. 2011/434, 2015/424 and 2017/155.

(e) Paragraph 5A was inserted by the Local Government Act 2003 (c. 26), section 72(1), (4).

(f) Paragraph (a) was substituted by S.I. 2017/155.

(g) Regulation 9C was inserted by S.I. 2018/398.

(3) In paragraph (3)(a)(a), for “against imposition of a penalty” substitute “under regulation 9C or an appeal against imposition of a Schedule 9 penalty”.

(4) After paragraph (3) insert—

“(4) In these Regulations, a reference to the end of the period for making an appeal under regulation 9C is a reference to—

- (a) the end of the period of 28 days mentioned in regulation 9C(4); or
- (b) if that period is extended by the VTE under regulation 6(3)(a) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009(b), the end of the extended period.”.

Insertion of regulations 9A to 9D

5. After regulation 9 of the 2009 Regulations (procedure after a proposal is made) insert—

“Imposition of a Part 2 penalty

9A.—(1) This regulation applies in relation to a proposal(c) made by a person in relation to a hereditament.

(2) The VO may impose a financial penalty on that person if—

- (a) the person provides the VO with information in, or in connection with, the proposal which is false in a material particular; and
- (b) the person does so knowingly, recklessly or carelessly.

(3) The amount of penalty payable is—

- (a) for a smaller proposer(d), £200; and
- (b) for any other person, £500.

(4) If the VO imposes a penalty under this regulation, the VO must serve a notice on the person (“penalty notice”) stating—

- (a) that a Part 2 penalty has been imposed;
- (b) the date on which the check to which the proposal relates(e) was completed in relation to the hereditament;
- (c) the date the proposal was made;
- (d) the date the proposal was determined (if it has been determined);
- (e) the information which was found to be false;
- (f) the date the information was provided;
- (g) the date the penalty notice is served;
- (h) the amount of the penalty; and
- (i) the person’s right to appeal to the VTE under regulation 9C.

(5) In this regulation, “information in connection with the proposal” means the following information provided by a person as part of the check to which the proposal relates—

- (a) a confirmation(f);
- (b) any information provided by the person under regulation 4C(1)(a) or (b)(g).

(a) Paragraph (3)(a) was amended by S.I. 2017/155.

(b) S.I. 2009/2269; relevant amending instruments are S.I. 2011/434, 2013/465 and 2017/156.

(c) The definition of “proposal” in regulation 2 was amended by S.I. 2017/155.

(d) The definition of “smaller proposer” was inserted in regulation 3 by S.I. 2017/155.

(e) See regulations 6(1) and 6A(2) (respectively substituted and inserted by S.I. 2017/155) for the period within which a person may make a proposal following completion of a check.

(f) The definition of “confirmation” was inserted in regulation 3 by S.I. 2017/155.

(g) Regulation 4C was inserted by S.I. 2017/155.

Payment of a Part 2 penalty

9B.—(1) Any sum received by the VO by way of a Part 2 penalty must be paid into the Consolidated Fund.

(2) The VO may recover any outstanding Part 2 penalty as a civil debt due to the VO.

(3) A claim to recover a Part 2 penalty may not be made—

- (a) until the end of the period for making an appeal under regulation 9C; or
- (b) if an appeal is made under regulation 9C, until the appeal is decided.

(4) The VO may remit in full a Part 2 penalty.

(5) If the VO remits a Part 2 penalty, the VO must refund any amount paid in respect of that penalty.

(6) If the VO imposes a Part 2 penalty of £500 on a smaller proposer, the VO must—

- (a) refund to the smaller proposer any amount of penalty paid in excess of £200; or
- (b) if the penalty has not been paid, reduce the amount payable to £200.

Appeal against imposition or amount of a Part 2 penalty

9C.—(1) This regulation applies if a person has been served a penalty notice under regulation 9A(4).

(2) The person may appeal to the VTE against—

- (a) the imposition of the penalty; or
- (b) the amount of the penalty if—
 - (i) the person is a smaller proposer; and
 - (ii) the VO has imposed a Part 2 penalty of £500 on the person.

(3) An appeal must be made by serving a notice of appeal on the VTE—

- (a) using the VTE's electronic portal; or
- (b) in another manner agreed with the VTE.

(4) The person must serve the notice of appeal on the VTE so that it is received within 28 days after the date on which the penalty notice was served on the person.

(5) A notice of appeal must state—

- (a) whether the appeal is against—
 - (i) the imposition of the penalty; or
 - (ii) the amount of the penalty; and
- (b) the date on which the penalty notice was served on the person.

(6) A notice of appeal must be accompanied by—

- (a) a copy of the penalty notice; and
- (b) if the appeal is against the amount of the penalty—
 - (i) a statement that the person is a smaller proposer; and
 - (ii) a copy of the confirmation^(a) provided as part of the check to which the proposal relates.

(7) If the person serves the notice of appeal on the VTE later than the time required by paragraph (4) or allowed by an extension of time under regulation 6(3)(a) of the Procedure Regulations, the notice of appeal must include a request for an extension of time and the reason why the notice of appeal was not served in time.

(a) Under regulation 4C(3) a confirmation must include a statement as to whether or not, on the day the person provides the confirmation, the proposer qualifies as a smaller proposer.

Effect on time frame for determining proposal

9D.—(1) This regulation applies in relation to the determination of a proposal if a Part 2 penalty is imposed before the proposal is determined.

(2) The VO must not determine the proposal until the end of the period for making an appeal under regulation 9C.

(3) If an appeal is made under regulation 9C against the imposition of the penalty, the VO must not determine the proposal until the VTE has decided the appeal.”.

Amendment of regulation 13A

6. In regulation 13A(a) of the 2009 Regulations (making an appeal to the VTE), after paragraph (3) insert—

“(4) Paragraph (5) applies if a Part 2 penalty is imposed before a proposal is determined.

(5) In calculating the 18 month period referred to in paragraph (1)(c)(iii)—

- (a) unless sub-paragraph (b) applies, the period beginning on the day on which the Part 2 penalty is imposed and ending on the day after the day on which the period for making an appeal under regulation 9C ends shall be ignored;
- (b) if an appeal is made under regulation 9C against the imposition of the Part 2 penalty, the period beginning on the day on which the Part 2 penalty is imposed and ending on the day after the day on which the appeal under regulation 9C is determined shall be ignored.”

Amendment of regulation 18

7. In regulation 18(2) of the 2009 Regulations (relevant hereditaments), for sub-paragraph (d)(b) substitute—

“(d) regulations 9A to 12(c).”.

Amendment of regulation 19

8. In regulation 19 of the 2009 Regulations (the heading to which becomes “Appeals against completion notices or imposition of Schedule 9 penalties”), before “penalty” each time it occurs insert “Schedule 9”.

Amendment of regulation 22

9. In regulation 22 of the 2009 Regulations (notices), in paragraph (1A)(d) after sub-paragraph (d) insert—

“(da) regulation 9A;”.

PART 3

Consequential, miscellaneous and transitional provisions

Consequential and miscellaneous amendments to the 2009 Procedure Regulations

10.—(1) The 2009 Procedure Regulations are amended as follows.

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- (a) Regulation 13A was inserted by S.I. 2017/155.
 - (b) Sub-paragraph (d) was substituted by S.I. 2017/155.
 - (c) Regulations 9A to 9D were inserted by S.I. 2018/398.
 - (d) Paragraph (1A) was inserted by S.I. 2017/155.

- (2) In regulation 2 (interpretation: general)—
- (a) in paragraph (1), in the definition of “appeal”(a)—
 - (i) after paragraph (b) insert—

“(ba) regulation 9C of the NDR Regulations(b);”;
 - (ii) in paragraph (e), omit the words in parentheses;
 - (b) in paragraph (1), after the definition of “appeal against a completion notice” insert—

““appeal against imposition or amount of a NDR penalty” means—

 - (a) an appeal under paragraph 5C of Schedule 9 to the 1988 Act (penalties)(c); or
 - (b) an appeal under regulation 9C of the NDR Regulations (appeal against imposition or amount of a Part 2 penalty);”;
 - (c) in paragraph (3)(d)—
 - (i) after “imposition” insert “or amount”;
 - (ii) in paragraph (i)(d) for “regulation 13A” substitute “regulation 9C, 13A(e)”.
- (3) In regulation 5 (arrangement for appeals), in paragraph (2)(f), omit “or a NDR appeal”.
- (4) In regulation 6 (appeal management powers), in paragraph (3)(a), after “direction” insert “under these Regulations or any provision of the CT Regulations or the NDR Regulations”.
- (5) In regulation 19A(g) (withdrawals and deemed withdrawals for non-domestic rating appeals)—
- (a) in paragraph (2)(a)(i) for “under paragraph 5C of Schedule 9 to the 1988 Act (penalties)” substitute “against imposition or amount of a NDR penalty”;
 - (b) in paragraph (8) for “imposition of” substitute “imposition or amount of a”.
- (6) In regulation 28 (notices of appeal, etc), in paragraph (1)—
- (a) for “or the imposition of a penalty” substitute “, the imposition of a CT penalty or the imposition or amount of a NDR penalty”; and
 - (b) for “(as the case may be) or by an extension of time allowed” substitute “or later than the time allowed by an extension of time”.
- (7) In regulation 38 (orders other than consent orders)(h)—
- (a) in paragraph (8), for “NDR” substitute “Schedule 9”;
 - (b) after paragraph (8) insert—

“(8A) After dealing with an appeal under regulation 9C of the NDR Regulations(i) against the imposition of a Part 2 penalty, the VTE may order the VO to remit the penalty in full.

(8B) After dealing with an appeal by a person under regulation 9C of the NDR Regulations against the amount of a Part 2 penalty, the VTE may order the VO to reduce the amount of penalty payable to £200 if the VTE determines that the person was a smaller proposer.

(8C) In this regulation, “Part 2 penalty” has the meaning given in the NDR Regulations.”.
- (8) In regulation 42 (appeals to the Upper Tribunal)—

(a) The definition of “appeal” was amended by S.I. 2017/156.
 (b) Regulation 9C was inserted by S.I. 2018/398.
 (c) Paragraph 5C was inserted by the Local Government Act 2003 (c. 26), section 72(1) and (4), amended by the Local Government and Public Involvement in Health Act 2007 (c. 28), section 220(1), Schedule 16, paragraphs 2 and 5.
 (d) Paragraph (i) of regulation 2(3)(d) was amended by S.I. 2017/156.
 (e) Regulation 13A was inserted by S.I. 2017/155.
 (f) Paragraph (2) of regulation 5 was substituted by S.I. 2017/156.
 (g) Regulation 19A was inserted by S.I. 2011/434, amended by S.I. 2017/156.
 (h) Regulation 38 was amended by S.I. 2017/156.
 (i) Regulation 9C was inserted by S.I. 2018/398.

- (a) in paragraph (1), for “an appeal under the NDR Regulations” substitute “a NDR appeal, an appeal under paragraph 5C of Schedule 9 to the 1988 Act (penalties)(a)”; and
- (b) after paragraph (1), insert—
 - “(1A) An appeal shall not lie to the Upper Tribunal in respect of a decision or order given or made by the VTE on an appeal under regulation 9C of the NDR Regulations(b).”.

Transitional provision

11.—(1) The 2009 Regulations, and the 2009 Procedure Regulations, as in force immediately before these Regulations come into force continue to have effect in relation to—

- (a) a proposal made before these Regulations come into force; and
- (b) for a proposal made after these Regulations come into force, information in connection with the proposal provided to the valuation officer before these Regulations come into force.

(2) In this regulation—

“information in connection with the proposal” means the following information provided by a person as part of the check (within the meaning of regulation 4A of the 2009 Regulations) to which the proposal relates—

- (a) a confirmation under regulation 4C(1)(c) of those Regulations(c);
- (b) any information provided by the person under regulation 4C(1)(a) or (b) of those Regulations; and

“proposal” means a proposal under regulation 6 of those Regulations(d) to alter a local non-domestic rating list or central non-domestic rating list(e) compiled on or after 1st April 2017.

Signed by authority of the Secretary of State for Housing, Communities and Local Government

Rishi Sunak

Parliamentary Under Secretary of State

26th March 2018

Ministry of Housing, Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in relation to England only, amend the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 2009 (S.I. 2009/2268) (“the 2009 Regulations”) to provide financial penalties for giving false information in or in connection with a proposal to alter a non-domestic rating list compiled on or after 1st April 2017.

Regulation 3 provides definitions for the purpose of these Regulations.

Regulation 4 amends definitions relating to appeals and penalties contained in regulation 2 of the 2009 Regulations.

Regulation 5 inserts regulations 9A to 9D into the 2009 Regulations to provide for the imposition of a financial penalty under Part 2 of those Regulations for knowingly, recklessly or carelessly providing the VO with false information in, or in connection with, a proposal. Regulation 9A provides for imposition of the penalty; regulation 9B provides for payment of the penalty and for a refund or reduction if a penalty of £500 is imposed on a smaller proposer; regulation 9C provides

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- (a) Paragraph 5C was inserted by the Local Government Act 2003 (c. 26), section 72(1) and (4), amended by the Local Government and Public Involvement in Health Act 2007 (c. 28), section 220(1), Schedule 16, paragraphs 2 and 5.
 - (b) Regulation 9C was inserted by S.I. 2018/398.
 - (c) Regulation 4C of S.I. 2009/2268 was inserted by S.I. 2017/155.
 - (d) Regulation 6 of S.I. 2009/2268 was amended by S.I. 2017/155.
 - (e) Regulation 6 of S.I. 2009/2268 applies as if any reference in it to a local non-domestic rating list were a reference to the central non-domestic rating list. See regulation 18(1) and (2)(b) of S.I. 2009/2268, as amended by S.I. 2017/155.

for an appeal against the imposition or amount of the penalty; and regulation 9D provides that a proposal must not be determined until the end of the period for making an appeal under regulation 9C, or if an appeal is made under regulation 9C against the imposition of the penalty, until the appeal is decided.

Regulation 6 amends regulation 13A of the 2009 Regulations to extend the timeframe for determination of a proposal to account for the possibility of an appeal under regulation 9C.

Regulation 7 amends regulation 18 of the 2009 Regulations to update a cross-reference.

Regulation 8 makes consequential amendments to regulation 19 of the 2009 Regulations.

Regulation 9 amends regulation 22 of the 2009 Regulations in relation to service of a penalty notice under regulation 9A.

Regulation 10 makes consequential amendments to the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (S.I. 2009/2269) (“the 2009 Procedure Regulations”).

Regulation 11 provides for the circumstances in which the 2009 Regulations and the 2009 Procedure Regulations, as in force immediately before they were amended by these Regulations, are to continue to have effect.

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.

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