

EXPLANATORY MEMORANDUM TO
THE NON-DOMESTIC RATING (ALTERATION OF LISTS AND APPEALS)
(ENGLAND) (AMENDMENT) REGULATIONS 2018

2018 No. [XXXX]

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 amends the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2268) to provide for the imposition of financial penalties for giving false information in, or in connection with, a proposal. It also provides for appeals against the imposition or amount of a financial penalty.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 This entire instrument applies only to England.
- 3.3 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.
- 3.4 The Department has reached this view because it considers that the primary purpose of the instrument relates to local government finance, which is within the devolved legislative competence of each of the three devolved legislatures. For example, the primary purpose of the subject matter of the instrument is within paragraph 12 of Schedule 7 to the Government of Wales Act 2006 and is not within one of the exceptions listed in that paragraph, nor is it otherwise outside the legislative competence of the National Assembly for Wales (see section 108 of that Act).

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 business rates lists (including who may make a proposal, the circumstances in which a proposal may be made, the time limit for making a proposal,

procedure for making a proposal and the steps which must be taken before the ratepayer can make a proposal). Regulations under section 55 may include provision for appeals to be made to the VTE where there is disagreement between the valuation officer (the VO) and the person making a proposal. These regulation-making powers were extended through provisions in the Enterprise Act 2016.

- 4.2 Regulations under the new powers may also provide for the imposition of financial penalties by the VO on persons who, in, or in connection with, proposals for the alteration of the list, knowingly, recklessly or carelessly provide false information. Under the new powers, regulations providing for the imposition of a financial penalty must also include provision enabling a person on whom a penalty is imposed to appeal against the imposition of the penalty or its amount to the Valuation Tribunal.
- 4.3 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), as amended by the Non-Domestic Rating (Alteration of Lists and Appeals)(England) (Amendment) Regulations 2017, and the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations (SI 2009/2269), as amended by the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) (Amendment) Regulations 2017. SI 2009/2268 and SI 2009/2269 were amended from 1st April 2017 to make provisions for the introduction of a new process for dealing with business rates proposals and appeals, which include pre-proposal steps (the Check stage), requirements to provide evidence early in the process, and fees for making an appeal to the Valuation Tribunal.
- 4.4 This instrument amends the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2268) (as amended). This instrument provides for the imposition of a financial penalty for the provision of false information in, or in connection with, a proposal, and provides for appeals to the Valuation Tribunal against the imposition or amount of the penalty.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is set out in Section 3 under “Other matters of interest to the House of Commons”.

6. European Convention on Human Rights

- 6.1 Marcus Jones MP has made the following statement regarding Human Rights:
“In my view the provisions of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2018 are compatible with the Convention rights”.

7. Policy background

What is being done and why

- 7.1 The rateable value of a non-domestic property by which a ratepayer’s liability for non-domestic rates is determined is 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 rateable value shown in a non-domestic rating list, they may challenge the accuracy of the rateable value by making a proposal to the VO for an alteration to the list. If there is a disagreement between the ratepayer and the VO as to the proposed alteration, the ratepayer can appeal to the VTE.
- 7.3 Prior to April 2017 it was widely accepted that previous system for business rates appeals was in need of reform. Too many rating appeals were made with little supporting evidence. When that evidence was provided, it regularly came late in the process, often leading to long delays for ratepayers. Many appeals were made as a matter of routine, and the majority of appeals did not result in either an appeal hearing or a change to the rating list.
- 7.4 The Government therefore made significant reforms to the system from April 2017. These changes introduced 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. These changes were made by the Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2017 (SI 2017/155) and Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) (Amendment) Regulations 2017 (SI 2017/156).
- 7.5 As part of the appeal process ratepayers will provide significant information to the VO. In line with other tax regimes, penalties for the submission of false information are an important element of the reforms and will support the submission of accurate information. These Regulations therefore make provision for the imposition of penalties by the VO. A penalty may be imposed where the ratepayer has provided false information knowingly, recklessly or carelessly. The penalty will be £500 and small businesses will be subject to a lower level of £200.
- 7.6 The Government recognises that there may be cases where ratepayers may wish to appeal against the imposition of a penalty, or the amount of penalty where they argue that they should have been subject to the lower penalty for small businesses. These Regulations therefore make provision for ratepayers to appeal against a penalty to the Valuation Tribunal. There is no fee for making such an appeal.
- 7.7 Any sum received by the VO by way of a penalty will not be retained by the Valuation Office Agency, and under the Regulations must be paid into the Government's Consolidated Fund. This ensures that the Valuation Office Agency do not benefit financially from the imposition of penalties.

Consolidation

- 7.8 There are no plans to consolidate the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

8. Consultation outcome

- 8.1 On 30th 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/uploads/system/uploads/attachment_data/file/472695/151029_Business_rates_appeals_consultation_document_-_final_version.pdf. 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 4th January 2016 and a total of 214 responses were received.

- 8.2 The 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 July 2016, the Government responded to the consultation, setting out its views and the policy basis for draft Regulations on appeals reform that were published for consultation later in the summer of 2016. The Government response can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/535295/Reforming_business_rates_appeal_-_govt_response.pdf
- 8.4 Following this, on 16th 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/uploads/system/uploads/attachment_data/file/546100/Business_rates_appeals_reforms_consultation_draft_regs.pdf
- 8.5 The consultation closed on 11th October 2016 and a total of 287 responses were received. The consultation specifically sought views on the proposed approach to implementing penalties for the provision of false information. Many businesses accepted that the imposition of penalties was appropriate, but some raised concerns over the possibility that penalties might be imposed where a ratepayer has made a genuine mistake, or as a result of limited knowledge of the ratings system.
- 8.6 As set out in the published response to the consultation, the Government takes the view that, in line with other parts of the tax system, ratepayers have a responsibility to take reasonable care when providing information in relation to their tax affairs. Further, in cases where the ratepayer does not agree with imposition of the penalty they may appeal to the Valuation Tribunal. Given the concerns raised, the consultation response confirmed that the Valuation Office Agency (VOA) will provide guidance to support ratepayers with the provision of information, and provide clear guidance to support the consistent application of penalties by VOA officials.
- 8.7 The Government published its response to the consultation on 8 March 2017 and it can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/597609/CCA_Government_Response.pdf
- 8.8 Following the publication of the response to the consultation, the Government implemented the reforms through the Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2017 (SI 2017/155) and Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) (Amendment) Regulations 2017 (SI 2017/156). These regulations brought into effect all of the proposed policy changes, apart from the provisions for penalties which are the subject of this instrument - the Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment no. 2) Regulations 2017.

9. Guidance

- 9.1 The Department does not intend to issue formal guidance on the business rates appeals process. The VOA may issue internal guidance to their staff, in relation to the reforms to the business rates appeals system. As above the VOA intends to provide specific guidance on the provision of information by ratepayers, and internal guidance on the application of penalties.

10. Impact

- 10.1 The overall impact on the business, charities or voluntary bodies of the new system 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 There will be a small financial impact on businesses due to the imposition of penalties.
- 10.3 The impact on the public sector is minimal. The overall impact will be to improve the efficiency of the process by ensuring the VOA has accurate information. There will be a small impact on the VOA, relating to issuing of penalties and enforcement and a small impact on the Valuation Tribunal in dealing with appeals against penalty notices.
- 10.4 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. The Regulations provide for lower levels of penalties for “smaller proposers”.
- 11.2 The basis for the final decision on what actions to take to assist small business was taken following roundtable discussions with representative bodies.

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 Alex Lim at the Department for Communities and Local Government, Telephone: 030 3444 3115 or email: alex.lim@communities.gsi.gov.uk can answer any queries regarding the instrument.