

EXPLANATORY MEMORANDUM TO

THE VALUATION TRIBUNAL FOR ENGLAND (COUNCIL TAX AND RATING APPEALS) (PROCEDURE) (AMENDMENT) REGULATIONS 2021

2021 No. 579

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (S.I. 2009/2269) (“the 2009 Regulations”) set out the procedure for appeals made to the Valuation Tribunal for England. The 2009 Regulations do not provide a definition of the term “hearing”, and this instrument amends the 2009 Regulations to provide such a definition. This instrument confirms that the definition of a hearing includes those that can be conducted in whole or in part by video link, telephone, or other means of instantaneous two-way electronic communication. This clarification is the same as that found in the regulations governing the procedures for a number of similar tribunals. The instrument will come into force on 9 June 2021.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As this instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 On 1 October 2009, the Valuation Tribunal for England (“VTE”) was established under Part 13 of the Local Government and Public Involvement in Health Act 2007. The VTE hears appeals relating to council tax or non-domestic rating (“business rates”).

- 6.2 The 2009 Regulations set out the procedures for appeals made to the VTE. This instrument amends those Regulations.
- 6.3 Regulation 29 of the 2009 Regulations requires that the VTE must hold a hearing before making a decision about an appeal (unless the VTE considers it is able to decide that matter without a hearing, or each party has consented to the matter being decided in that way).
- 6.4 The 2009 Regulations do not provide a definition of the term “hearing”. By contrast, regulations governing the procedures for a number of similar tribunals do include a definition of “hearing”.¹ The definitions in those regulations state that a hearing is an oral hearing and include those that can be conducted in whole or in part by video link, telephone, or other means of instantaneous two-way electronic communication.
- 6.5 Regulation 6 of the 2009 Regulations does however give the VTE a general power to decide the form of any hearing. This instrument amends the 2009 Regulations to give more clarity about the ways in which a hearing can take place. The 2009 Regulations now include a definition of “hearing” that is the same as is already provided for in existing regulations governing several other tribunals.

7. **Policy background**

What is being done and why?

- 7.1 In the absence of clarification on what might comprise a “hearing”, the 2009 Regulations could create an expectation that hearings would be physical hearings that require in-person attendance.
- 7.2 The Covid-19 pandemic, and the need for social distancing, has meant that VTE hearings have not been able to take place in-person. This has highlighted the benefit of clarifying the options available to the VTE when deciding how to conduct a hearing. The regulations governing the procedures for several other tribunals already state that the relevant hearings can take place remotely.
- 7.3 Having considered the issue, the Department has concluded that greater clarity would be provided by ensuring consistency between the 2009 Regulations and those of other tribunals by providing an explicit definition of “hearing”. This definition includes hearings conducted remotely by video link or telephone. The definition will be added to the 2009 Regulations, to ensure that there is continued clarity about the forms a hearing can take.
- 7.4 In the immediate context of the pandemic, the VTE has used the general powers already contained in the 2009 Regulations to arrange for hearings to be heard remotely.
- 7.5 On 29 July 2020, the President of the VTE published a Practice Statement “COVID-19 Virus Emergency Variation of Practice”² and amended the VTE’s Consolidated

¹ For instance, The Tribunal Procedure (Upper Tribunal) Rules 2008 (S.I. 2008/2698), The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (S.I. 2009/273), and The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 (S.I. 2010/2600) all contain the same definition of “hearing” contained in this instrument.

² <https://www.valuationtribunal.gov.uk/wp-content/uploads/2020/07/Covid-19-Emergency-Practice-Statement-200729-2.pdf>.

Practice Statement.³ The Statements confirmed that the VTE would hold remote hearings via video link or telephone while it was not possible to carry out in-person hearings safely. This approach would ensure that hearings could be dealt with fairly and efficiently, when appellants would otherwise face very significant delays.

- 7.6 This approach followed the advice concerning remote hearings from the Senior President of Tribunals given in a practice direction of 19 March 2020, and the Judicial College guidance of July 2020.⁴ The VTE also explained that they would follow the approach of the High Court in *Municipio de Mariana & Ors v BHP Group plc* [2020] EWHC 928 (TCC) when directing a remote hearing.⁵ In that case, HH Judge Eyre QC identified a number of relevant principles for determining whether a hearing should take place remotely. These include that regard must be had to the importance of the continued administration of justice, and that there is to be a recognition of the extent to which disputes can in fact be resolved fairly by way of remote hearings.
- 7.7 This instrument amends the 2009 Regulations to make clear that VTE hearings may be conducted remotely. This will bring this aspect of the 2009 Regulations in line with the arrangements in the broader tribunal system.
- 7.8 The 2009 Regulations (as amended) do not require hearings to be held remotely; the VTE will continue to be able to hold in-person hearings where they decide such an approach would be appropriate.

8. **European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. **Consolidation**

- 9.1 There are no plans to undertake a consolidation exercise.

10. **Consultation outcome**

- 10.1 The Department has worked with the Valuation Tribunal Service (“VTS”), the body that undertakes the administration necessary for arranging VTE hearings, to seek their views on amendments to the 2009 Regulations. The Department has also engaged with the Ministry of Justice, HM Courts & Tribunals Service, the Department for Business, Energy & Industrial Strategy, and the Department for Education concerning the approach to remote hearings being taken by other tribunals. It was agreed that the proposed approach would bring the 2009 Regulations in line with those for other tribunals by providing a definition of “hearing”.

11. **Guidance**

- 11.1 The Department is not intending to issue guidance in relation to this instrument.

12. **Impact**

- 12.1 There is no significant impact on business, charities or voluntary bodies.

³ <https://www.valuationtribunal.gov.uk/wp-content/uploads/2020/07/Consolidated-Practice-Statement-2020-July.pdf>.

⁴ <https://www.judiciary.uk/wp-content/uploads/2020/03/Good-Practice-for-Remote-Hearings-May-2020-1.pdf>.

⁵ <http://www.bailii.org/ew/cases/EWHC/TCC/2020/928.html>.

- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because it amends the 2009 Regulations governing the existing procedures for the VTE. Ensuring a consistent approach to the definition of a “hearing” across tribunals will clarify the range of options available when deciding the format a that VTE hearing should take.
13. **Regulating small business**
- 13.1 The instrument does not apply to small businesses. It will affect small businesses only by providing clarity about how hearings for appeals in relation to their non-domestic rating will be held.
14. **Monitoring & review**
- 14.1 The Government works closely with the VTS to keep the operation of appeals to the VTE under regular review.
15. **Contact**
- 15.1 AJ Gilbert at the Ministry of Housing, Communities and Local Government, telephone: 0303 44 44942, or email: alexander.gilbert@communities.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Chris Megainey, Deputy Director for Local Taxation, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Luke Hall MP, Parliamentary Under Secretary of State at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.