

Date: 15 February 2017
Our ref: RDC/SHLL/LIT01.00021
Your ref:
DDI: +44 (0)20 3400 4598
e-mail: Roger.Cohen@blplaw.com

Berwin Leighton Paisner LLP
Adelaide House
London Bridge
London EC4R 9HA
Tel: +44 (0)20 3400 1000
Fax: +44 (0)20 3400 1111
DX92 London
www.blplaw.com

Mr Mike Winter (Clerk)
Joint Committee on Statutory Instruments
House of Commons
London
SW1A 0AA

Dear Sirs

Representation regarding the draft Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2017 ("2017 Regulations")

This letter is written on behalf of the organisations listed at Appendix 1.

1 INTRODUCTION

- 1.1 On 16 August 2016, the Secretary of State ("DCLG") consulted on draft regulations to reform business rates appeals (the 2017 Regulations). The 2017 Regulations are attached at Appendix 2.
- 1.2 Responses were due on 11 October 2016. Following receipt of those responses the DCLG was due to lay the 2017 Regulations before Parliament. This was anticipated towards the end of 2016.
- 1.3 Subject to Parliamentary approval, the 2017 Regulations are due to come into force from 1 April 2017, to coincide with the revaluation of rateable values.
- 1.4 As yet, DCLG has neither published any comments on or reaction to the consultation responses received nor have the 2017 Regulations been laid before Parliament.
- 1.5 Given the resultant urgency, we write in advance of the 2017 Regulations being laid before Parliament.

2 SUMMARY

- 2.1 We respectfully submit that the 2017 Regulations should be reported to Parliament on the following grounds:
 - (a) they require elucidation; and
 - (b) there is a doubt as to whether, if made, they would be *intra vires*.

3 ANALYSIS OF THE 2017 REGULATIONS

- 3.1 The 2017 Regulations amend the "Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (the "2009 Regulations") in relation to a non-domestic rating list compiled on or after 1 April 2017.

To: Mr Mike Winter (Clerk)
Date: 15 February 2017
Page: 2

3.2 Regulation 5 of the 2017 Regulations states as follows:

*"5. In regulation 3 (interpretation of Part 2) of the 2009 Regulations—
[...]*

(b) in paragraph (1), at the appropriate places insert—

[...]

"inaccurate", in relation to rateable value, means outside the bounds of reasonable professional judgement"

3.3 Part 2 of the 2009 Regulations sets out the grounds for:

- (a) making a proposal to the Valuation Officer ("VO") in respect of the rateable value shown in the list; and
- (b) appealing to the Valuation Tribunal England ("VTE") regarding the rateable value shown in the list.

3.4 In respect of Clause 3.3(a) above, Regulation 4 of the 2009 Regulations (the relevant sections of which are set out below at Annex 1) specifies the grounds for making a proposal. In relation to the rateable value, grounds for making a proposal will only arise where the rateable value in the list is inaccurate.

3.5 With regard to Clause 3.3(b) above, Regulation 14 of the 2017 Regulations amends Part 2 of the 2009 Regulations as follows:

Substitution of regulation 13

14. For regulation 13 (disagreement as to proposed alteration) of the 2009 Regulations substitute—

[...]

Making an appeal to the VTE

13A.—(1) A proposer may appeal to the VTE on any of the following grounds—

- (a) that the VO has decided under regulation 13 not to alter the list and the list remains inaccurate;*
- (b) that the VO has decided under regulation 13 to alter the list otherwise than in accordance with the proposal and the list remains inaccurate;*
- (c) that a decision has not been made under regulation 10 or 13, and the period of 18 months beginning with the date on which the proposal was made has elapsed."*

3.6 Therefore, the effect of the 2017 Regulations is that, in relation to any non-domestic rating list compiled on or after 1 April 2017, a proposal cannot be made unless the rateable value shown in the list for a hereditament is so inaccurate that it is "outside the bounds of reasonable professional judgment".

To: Mr Mike Winter (Clerk)
Date: 15 February 2017
Page: 3

3.7 Similarly, where the VO decides that a proposal is not well founded, a proposer may appeal to the VTE, once the VO's decision has been provided, only if the list remains inaccurate to the point where the rateable value shown in the list for a hereditament is "*outside the bounds of reasonable professional judgment*".

3.8 The 2017 Regulations therefore specify when a proposal or an appeal shall not be made (i.e. where the rateable value in the list is within the bounds of reasonable professional judgment).

3.9 House of Commons Library Briefing Paper Number 07538, 13 February 2017: Reviewing and reforming business rates (the "Briefing Paper") at P30, explains that the effect of the amendment (which it states was rejected by the Government in 2005 and 2010) is to imply that "*businesses could fail to gain backdated reductions in rates even if a reduction in rates was found to be justified*".

4 **THE 2017 REGULATIONS REQUIRE ELUCIDATION**

4.1 The 2017 Regulations fail to define the phrase "*reasonable professional judgment*".

4.2 No criteria are specified as to what the bounds of this judgment are whether in qualitative or quantitative terms.

4.3 We are not aware of any precedent for the use of this term in property taxation. We understand that the DCLG is of the same view.¹

4.4 It is therefore unclear in what circumstances a proposal to alter the list with regard to the rateable value can be made to the VO, and in what circumstances a VO's decision regarding a proposal can be appealed to the VTE.

5 **THERE IS DOUBT AS TO WHETHER, IF MADE, THE 2017 REGULATIONS WOULD BE *INTRA VIRES***

5.1 The 2017 Regulations purport to be made in exercise of the powers conferred by sections 55(2) to (6) and (7A) of the Local Government Finance Act 1988, as amended by the Enterprise Act 2017 (the "Act").

5.2 The relevant Sections of the Act are as follows:

"55(4) *The regulations may include provision—*

(a) *as to who (other than a valuation officer) may make a proposal for the alteration of a list with a view to its being accurately maintained,*

(b) *as to the [manner and] circumstances in which a proposal may be made [and the information to be included in a proposal]...*

¹ The Briefing Paper at P30, also acknowledges that there is no precedent in case law for the term.

To: Mr Mike Winter (Clerk)
Date: 15 February 2017
Page: 4

[(4A) In relation to an English list or a Welsh list, the provision that may be included in the regulations by virtue of subsection (4) includes—

(a) provision about the steps that must be taken before a person may make a proposal for an alteration of the list (which may include steps designed to ensure the person checks the accuracy and completeness of any information on which any decision by the valuation officer has been based and gives the valuation officer an opportunity to consider the results of those checks and alter the list)...

55(5) The regulations may include provision that, where there is a disagreement [between a valuation officer and another person making a proposal for the alteration of a list—

(a) about the validity of the proposal; or

(b) about the accuracy of the list],

an appeal may be made to a [valuation tribunal] ...

55(5A) In relation to a proposal made by a person to alter an English list or a Welsh list, the provision that may be included in regulations by virtue of subsection (5) includes provision—

(a) about the grounds on which an appeal may be made..."

- 5.3 The Act therefore entitles the DCLG to make regulations regarding when a proposal or an appeal may be made.
- 5.4 The Act does not, however, entitle the DCLG to make regulations regarding:
 - 5.4.1 the disposal of an appeal by the valuation tribunal where the list is inaccurate (within the ordinary meaning of the word);
 - 5.4.2 the meaning of accuracy/inaccuracy; or
 - 5.4.3 any qualification or restriction on the power to ensure that the entry in the rating list is accurate.
- 5.5 The test of accuracy is grounded in section 55 of the Act; accuracy has its normal, everyday meaning.
- 5.6 Furthermore, the overriding intention of section 55 of the Act is to ensure the accuracy of the list (within ordinary parlance). The effect of the 2017 Regulations is to secure the opposite.
- 5.7 Consequently, the provisions of the 2017 Regulations exceed the powers granted to the DCLG by the Act and would, if made, be ultra vires.

To: Mr Mike Winter (Clerk)
Date: 15 February 2017
Page: 5

6 **CONCLUSION**

- 6.1 We respectfully request that the Committee review the 2017 Regulations and invite the Minister to withdraw Regulation 5(b).
- 6.2 If we can assist your consideration of this letter, please let us know.
- 6.3 Please acknowledge receipt.

Yours faithfully


Berwin Leighton Paisner LLP

cfil\53587421.7

CC. Ms Liz Booth (Committee Assistant)

To: Mr Mike Winter (Clerk)
Date: 15 February 2017
Page: 6

Annex 1

"4 Circumstances in which proposals may be made

(1) The grounds for making a proposal are—

(a) the rateable value shown in the list for a hereditament was inaccurate on the day the list was compiled;

(b) the rateable value shown in the list for a hereditament is inaccurate by reason of a material change of circumstances which occurred on or after the day on which the list was compiled;

(c) the rateable value shown in the list for a hereditament is inaccurate by reason of an amendment to the classes of plant and machinery set out in the Schedule to the Valuation for Rating (Plant and Machinery) (England) Regulations 2000 which comes into force on or after the day on which the list was compiled;

(d) the rateable value shown in the list for a hereditament by reason of an alteration made by a VO is or has been inaccurate;

(e) the rateable value or any other information shown in the list for a hereditament is shown, by reason of a decision in relation to another hereditament of—

(i) the VTE,

(ii) a valuation tribunal, or

(iii) the Lands Tribunal, the Upper Tribunal or a court determining an appeal or application for review from the VTE, a valuation tribunal, the Lands Tribunal or the Upper Tribunal,

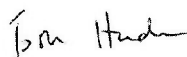
to be or to have been inaccurate..."

To: Mr Mike Winter (Clerk)
Date: 15 February 2017
Page: 7

Appendix 1

To: Mr Mike Winter (Clerk)
Date: 15 February 2017
Page: 8

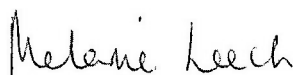
Trade Bodies



Josh Hardie
Deputy General Director
Confederation of British Industry



Martin McTague
National Policy Director
Federation of Small Businesses



Melanie Leech
Chief Executive
British Property Federation



Ufi Ibrahim
Chief Executive
British Hospitality Association



Helen Dickinson OBE
Chief Executive
British Retail Consortium



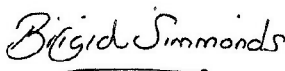
James Lowman
Chief Executive
Association of Convenience Stores



Jennifer Brooke
Executive Director
The Business Centre Association Limited



Kate Nicholls
Chief Executive Officer
The Association of Licensed Multiple Retailers



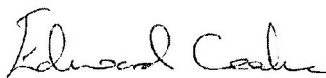
Brigid Simmonds
Chief Executive
British Beer & Pub Association



Dr David Lutton
Executive Director – Policy
London First



Dr Adam Marshall
Director General
British Chamber of Commerce



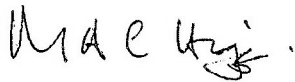
Edward Cooke
Chief Executive
REVO



William McKee
CEO
Accessible Retail

To: Mr Mike Winter (Clerk)
Date: 15 February 2017
Page: 9

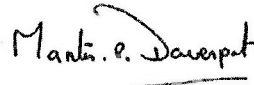
Professional Bodies



Mark Higgin
Chair – Rating & Local Taxation Policy Panel
Royal Institution of Chartered Surveyors



David Magor
Chief Executive
Institute of Revenues Rating & Valuation



Martin Davenport
President
Rating Surveyors' Association



Bryan Johnston
On behalf of
Property Litigation Association

To: Mr Mike Winter (Clerk)
Date: 15 February 2017
Page: 10

Private practice firms

Berwin Leighton Paisner LLP

CBRE Limited

CMS Cameron McKenna LLP

Cushman & Wakefield

Daniel Watney LLP

Gerald Eve LLP

Jones Lang Lasalle

Montagu Evans LLP

Olswang LLP

To: Mr Mike Winter (Clerk)
Date: 15 February 2017
Page: 11

Appendix 2

2017 Regulations

Consultation Draft 16/08/16

STATUTORY INSTRUMENTS

2016 No.

RATING AND VALUATION, ENGLAND

The Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2016

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

The Secretary of State, in exercise of the powers conferred by sections 55(2) to (6) and (7A) and 143(1) and (2) of the Local Government Finance Act 1988(a), makes the following Regulations.

Citation and commencement

1.—(1) These Regulations may be cited as the Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2016.

(2) These Regulations come into force on [XX XXX] 2016.

Application

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

Interpretation

3. In these Regulations, “2009 Regulations” means the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009(b).

Amendment of regulation 2

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

- (a) in paragraph (1) at the appropriate place insert—

““Schedule 9 penalty” means a penalty imposed under paragraph 5A of Schedule 9 to the Act”;
- (b) in paragraph (1), in the definition of “appeal”—
 - (i) for sub-paragraph (a) substitute—

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

(b) S.I. 2009/2268. Relevant amendments were made to the 2009 Regulations by S.I. 2011/434 and S.I. 2015/424.

To: Mr Mike Winter (Clerk)
 Date: 15 February 2017
 Page: 12

- “(a) regulation 9C or 13A.”;
- (ii) in sub-paragraph (c) before “penalty” insert “Schedule 9”;
- (c) in paragraph (3)(a) for “regulation 8 or an appeal against imposition of a penalty” substitute “regulation 9C or an appeal against imposition of a Schedule 9 penalty”;
- (d) in paragraph (3)(b) for “regulation 13” substitute “regulation 13A”.

Amendment of regulation 3

5. In regulation 3 (interpretation of Part 2) of the 2009 Regulations—

- (a) before “In this Part” insert “(1)”;
- (b) in paragraph (1), at the appropriate places insert—
 - ““check” means a check under regulation 4A of information relating to a hereditament;
 - “grounds of the proposal”, means a ground or grounds set out in regulation 4 on which a proposal is made;
 - “inaccurate”, in relation to rateable value, means outside the bounds of reasonable professional judgement;
 - “smaller proposer” means a person mentioned in regulation 4(2)(a) or (c) who [...]”;
 - [DN: see paragraphs 22 and 23 of the consultation document]
- (c) in paragraph (1), in the definition of “list” for “1st April 2005” substitute “1st April 2017”;
- (d) in paragraph 9(1), in the definition of “the Procedure Regulations” at the end insert “as amended by the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) (Amendment) Regulations 2016”; and
- (e) after paragraph (1) insert—
 - “(2) For the purpose of this Part, a proposal is “determined” if—
 - (a) it is withdrawn under regulation 11;
 - (b) it is treated as withdrawn under regulation 12; or
 - (c) a decision is given under regulation 10 or 13 in relation to the proposal.”.

Amendment of regulation 4

6. Regulation 4 (circumstances in which proposals may be made) of the 2009 Regulations is amended as follows—

- (a) omit paragraph (2)(b);
- (b) in paragraph (3)(c) for “in question” substitute “was made as a result of a proposal relating to that hereditament or”.

Insertion of regulation 4A

7. After regulation 4 (circumstances in which proposals may be made) of the 2009 Regulations insert—

“Check before proposal

4A.—(1) A person mentioned in regulation 4(2)(a) or (c) may not make a proposal in relation to a hereditament unless the person has requested from the VO information about the hereditament (“a request”).

(2) After receiving a request, the VO must, if it considers it reasonable to do so, provide the person with information that reasonably relates to any of the grounds set out in regulation 4.

To: Mr Mike Winter (Clerk)
Date: 15 February 2017
Page: 13

- (3) The person must review the information provided and confirm in writing to the VO which information is accurate and which is inaccurate.
- (4) The VO must serve a written acknowledgement of receipt of the confirmation on the person.
- (5) The acknowledgement must include—
 - (a) the date the VO received the confirmation; and
 - (b) the date of the acknowledgement.
- (6) If the person confirms any information is inaccurate, the VO must—
 - (a) review the accuracy of the information; and
 - (b) alter the list to correct any inaccuracy.
- (7) A check is completed when the steps in paragraphs (1) to (6) have been taken.
- (8) As soon as reasonably practicable after completing a check the VO must serve a notification in writing on the person that a check has been completed.
- (9) The notification must include the following—
 - (a) the name of the person;
 - (b) the date the VO received the request;
 - (c) the address of the hereditament;
 - (d) the date the check was completed;
 - (e) details of any alteration made under paragraph (6)(b);
 - (f) if, as a result of a check, the VO has changed the facts on which the rateable value is based, details of those changes;
 - (g) a statement of the person's right to make a proposal.
- (10) A check is taken to be completed if the VO has not sent a notification within 12 months after the date the confirmation under paragraph (3) is received.
- (11) The VO and the person may agree in writing to extend the time limit in paragraph (10)."

Amendment of regulation 6

- 8.—(1) Regulation 6 (proposals: general) of the 2009 Regulations is amended as follows.
- (2) For paragraphs (1) to (3) substitute—
 - "(1) A proposal in relation to a hereditament must be made within the period of 4 months beginning with the date on which the check in relation to that hereditament is completed.
 - (2) A proposal may be made—
 - (a) online, using the electronic portal provided by the Valuation Office Agency ("the VOA") for that purpose (which is substantially in the form provided by the VOA on 1st April 2017); or
 - (b) in such other manner as may be agreed with the VO.
 - (3) A proposal must include—
 - (a) the name, address and contact details of the proposer;
 - (b) a statement setting out—
 - (i) the grounds of the proposal including particulars of the grounds of the proposal;
 - (ii) evidence to support the grounds of the proposal; and
 - (iii) how the evidence supports the grounds of the proposal;
 - (c) details of the proposed alteration of the list; and

To: Mr Mike Winter (Clerk)
Date: 15 February 2017
Page: 14

(d) the date from which the proposer asserts the proposed alteration should have effect.”.

(3) After paragraph (5) insert—

“(6) For a proposal made on the ground set out in regulation 4(1)(e) the proposer must provide the following additional information—

- (a) the date of the decision relating to the other hereditament;
- (b) the name of the tribunal or court which made the decision;
- (c) information to identify the other hereditament;
- (d) the reasons the proposer believes that the decision is relevant to the rateable value or other information shown in the list for the hereditament; and
- (e) the reasons the proposer believes that, by reason of the decision, the rateable value or other information shown in the list for the hereditament is inaccurate.

(7) If a proposal is made on one or more of the grounds set out in regulation 4(1)(a) to (g) and (i) to (l) and the hereditament is occupied under a lease, easement or licence to occupy, the proposer must provide the following additional information—

- (a) where the proposer is the occupier, the amount payable each year by the proposer, as at the date the proposal is made, in respect of the lease, easement or licence to occupy, the date at which that amount first became payable and details of any rent-free periods; or
- (b) where the proposer is not the occupier, the amount payable each year to the proposer, as at the date the proposal is made, in respect of the lease, easement or licence to occupy, the date at which that amount first became payable and details of any rent-free periods.

(8) The date a proposal is made is the date on which it is served on the VO.”.

Substitution of regulation 8

9. For regulation 8 (disputes as to validity of proposals) of the 2009 Regulations substitute—

“Incomplete proposals

8.—(1) The VO must refuse a proposal which does not meet the requirements of regulation 6(3), (6) and (7).

(2) If the VO refuses a proposal, it must serve on the proposer a notice of refusal specifying—

- (a) the information which is missing; and
- (b) the date the notice is served.

(3) If a proposal is refused, the proposer may make a further proposal under regulation 6 within the period of 4 months beginning with the date on which the check was completed.

(4) In calculating the 4 month period, any days after the proposal was made and before the notice of refusal was served do not count.

(5) Paragraph (4) does not apply where a second or subsequent notice of refusal is served in relation to the further proposal.”.

Substitution of regulation 9

10.—(1) For regulation 9 (procedure after making of proposals) of the 2009 Regulations substitute—

To: Mr Mike Winter (Clerk)
Date: 15 February 2017
Page: 15

“Procedure after a proposal is made

9.—(1) Within the period of six weeks beginning with the date a proposal is received, the VO must serve a copy of it on each of the following—

- (a) any ratepayer in relation to any hereditament to which the proposal relates unless that person is the proposer;
- (b) the relevant authority, where that authority has served notice on the VO that it wishes to receive a copy of a class or classes of proposal, and the proposal falls within that class.

(2) Each copy of a proposal served on a ratepayer must be accompanied by a statement of the effect of regulations 10 to 13.

(3) On receipt of a proposal, the VO must if it considers it reasonable to do so provide the proposer with any information the VO holds in response to the particulars of grounds set out in the proposal.

(4) Before the proposal is determined, the proposer in response to the information provided under paragraph (3) may provide the VO with further evidence to support the grounds of the proposal.

(5) Before the VO determines a proposal, if the VO comes into the possession of any further information that responds to the particulars of grounds set out in the proposal—

- (a) the VO must provide the proposer with that information; and
- (b) the proposer may provide the VO with further evidence in response to that information.

(6) Before a proposal is determined, the proposer may provide the VO with further evidence relating to the grounds of the proposal if that evidence was not known to the proposer and could not reasonably have been known to the proposer before the proposal was made.

(7) The proposer and the VO may agree in writing that the proposer may provide further evidence in circumstances not mentioned in paragraphs (4) to (6).

(8) Any evidence provided by the proposer under this regulation forms part of the proposal.

(9) If the relevant authority has served a notice under paragraph (1)(b) and the proposal falls within the class or classes specified in that notice, the relevant authority may provide the VO and the proposer with evidence relating to the proposal.”.

Insertion of regulations 9A to 9D

11. After regulation 9 of the 2009 Regulations insert—

“Imposition of a penalty under this Part

9A.—(1) This regulation applies in relation to a person mentioned in regulation 4(2)(a) or (c).

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

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

(3) The penalty payable under this regulation is—

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

(4) If the VO imposes a penalty under this Part, the VO must serve a notice on the person specifying—

To: Mr Mike Winter (Clerk)
Date: 15 February 2017
Page: 16

- (a) the penalty imposed;
 - (b) the date the notice is served;
 - (c) the date the check was completed;
 - (d) if a proposal has been made, the date it was made;
 - (e) the information found to be false; and
 - (f) the person's right to appeal the imposition of the penalty.
- (5) The VO may remit in full a penalty imposed under this Part.
- (6) In this regulation, information in connection with the proposal includes a confirmation under regulation 4A(3).

Payment of a penalty under this Part

- 9B.—(1) Any penalties paid to the VO under this Part must be paid into the Consolidated Fund.
- (2) The VO may recover any outstanding penalty under this Part as a civil debt due to the VO.
- (3) A claim to recover a penalty under this Part may not be made—
- (a) until the end of the period for making an appeal under regulation 9C(2); or
 - (b) if an appeal is made under regulation 9C, until the appeal is decided.

Appeal against a penalty under this Part

- 9C.—(1) This regulation applies if a person has been served a notice under regulation 9A(4).
- (2) A person who wishes to appeal against the imposition of the penalty must serve a notice of appeal on the VTE so that it is received within the period of 28 days beginning with the date on which the appellant received the notice that a penalty had been imposed ("penalty notice").
- (3) The notice of appeal must be accompanied by—
- (a) a copy of the penalty notice; and
 - (b) a statement as to whether the appeal is against—
 - (i) the imposition of the penalty; or
 - (ii) the amount of the penalty.
- (4) If a person serves a notice of appeal on the VTE later than the time required by paragraph (2) 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.

Determination of proposal following appeal against a penalty under this Part

- 9D.—(1) This regulation applies in relation to the determination of a proposal if a penalty is imposed under this Part.
- (2) The VO may not determine a proposal until the expiry of the time limit for making an appeal against a penalty imposed under this Part.
- (3) If an appeal is made, the VO must not determine the proposal until the VTE has decided the appeal."

Substitution of regulation 10

12. For regulation 10 (proposals agreed by VO) of the 2009 Regulations substitute—

To: Mr Mike Winter (Clerk)
 Date: 15 February 2017
 Page: 17

“Proposals agreed by VO

- 10.—(1) This regulation applies if the VO decides that a proposal is well-founded.
 (2) The VO must as soon as reasonably practicable—
 (a) alter the list accordingly; and
 (b) serve a copy of the decision on—
 (i) the proposer; and
 (ii) if the proposer is not the ratepayer, the ratepayer.”.

Amendment of regulation 12

13. Paragraph (2)(e) of regulation 12 (agreed alterations following proposals) of the 2009 Regulations is amended as follows—

- (a) in the opening words, omit “or relevant authority”;
 (b) in paragraph (ii), omit “or the authority (as the case may be)”.

Substitution of regulation 13

14. For regulation 13 (disagreement as to proposed alteration) of the 2009 Regulations substitute—

“Disagreement as to proposed alteration

- 13.—(1) This regulation applies if—
 (a) the VO decides that a proposal is not well-founded;
 (b) the proposal is not withdrawn under regulation 11; and
 (c) there is no agreement under regulation 12.
 (2) The VO must as soon as reasonably practicable serve a notice of the decision under paragraph (1) on the following—
 (a) the proposer;
 (b) if the proposer is not the ratepayer, the ratepayer;
 (c) the relevant authority, if the proposal falls within a class specified by that authority in a notice served under regulation 9(1)(b);
 (d) any IP mentioned in regulation 12(2)(e).
 (3) The notice of decision must contain—
 (a) a statement that the VO is of the opinion that the proposal is not well-founded, that it disagrees with the proposed alteration to the list and that it has decided—
 (i) not to alter the list according to the proposal; or
 (ii) to alter the list otherwise than in accordance with the proposal;
 (b) the reasons for that decision, including a statement of the evidence used to make the decision;
 (c) a statement in relation to each of the grounds of the proposal setting out why in the opinion of the VO the ground is not made out, including a summary of any particulars by reason of which the ground is not made out; and
 (d) details of the proposer’s right to appeal against the decision.

Making an appeal to the VTE

- 13A.—(1) A proposer may appeal to the VTE on any of the following grounds—

To: Mr Mike Winter (Clerk)
Date: 15 February 2017
Page: 18

- (a) that the VO has decided under regulation 13 not to alter the list and the list remains inaccurate;
 - (b) that the VO has decided under regulation 13 to alter the list otherwise than in accordance with the proposal and the list remains inaccurate;
 - (c) that a decision has not been made under regulation 10 or 13, and the period of 18 months beginning with the date on which the proposal was made has elapsed.
- (2) A proposer and the VO may agree in writing to extend the period in paragraph (1)(c) in order to allow the VO to make a decision under regulation 10 or 13.
- (3) An appeal on the ground set out in paragraph (1)(a) or (b) must be made within the period of 4 months beginning with the date of the decision notice under regulation 13.
- (4) An appeal on the ground set out in paragraph (1)(c) must be made within the period of 4 months, or any longer period agreed under paragraph (2), beginning with the date on which the period in that paragraph has elapsed.
- (5) A proposer who wishes to appeal on a ground set out in paragraph (1) must serve a notice of appeal to the VTE so that it is received within the time for making an appeal specified in paragraph (3) or (4).
- (6) A notice of appeal must be accompanied by—
- (a) if a decision has been given under regulation 13, a copy of that decision;
 - (b) a copy of the proposal and any evidence forming part of the proposal;
 - (c) any information provided to the proposer by the VO under regulation 9; and
 - (d) the fee (if any) payable under regulation 13B(1).
- (7) If a proposer serves the notice of appeal on the VTE later than the time for making the appeal specified in paragraph (3) or (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.

Payment of fees

- 13B.—**(1) The fee payable on making an appeal on the ground set out in regulation 13A(1)(a) or (b) is—
- (a) for a smaller proposer, £150;
 - (b) for any other proposer, £300.
- (2) A fee is not payable for an appeal on the ground set out in regulation 13A(1)(c).
- (3) Any fees paid under this regulation must be paid into the Consolidated Fund.

Refund of appeal fees

- 13C.—**(1) If an appeal is decided under the Procedure Regulations without a hearing, part of the fee must be refunded in accordance with paragraph (2).
- (2) The amount of the refund is—
- (a) for a smaller proposer, £50;
 - (b) for any other proposer, £100.
- (3) A fee paid under regulation 13B must be refunded in full if the VTE orders the VO under regulation 38(4) of the Procedure Regulations to alter the list.”.

Amendment of regulation 14

15. [DN: Regulation 14 to be amended to reflect end of list policy - see paragraph 38 of the consultation document]

To: Mr Mike Winter (Clerk)
Date: 15 February 2017
Page: 19

Amendment of regulation 18

16. Regulation 18(2) (relevant hereditaments) of the 2009 Regulations is amended as follows—

- (a) for sub-paragraph (b) substitute “regulations 4A to 8A”;
- (b) for sub-paragraph (d) substitute “regulations 9A to 13C”.

Amendment of regulation 19

17. Regulation 19 (appeals against completion notices or imposition of penalties) of the 2009 Regulations is amended as follows—

- (a) in paragraph (1) before “penalty” each time it occurs insert “Schedule 9”;
- (b) in paragraph (2)(c) before “penalty” each time it occurs insert “Schedule 9”.

Amendment of regulation 22

18. Regulation 22 (notices) of the 2009 Regulations is amended as follows—

- (a) in paragraph (1) for “paragraphs (3) and (4)” substitute “paragraphs (3), (4) and (4A)”;
- (b) after paragraph (4) insert—

“(4A) If another person is authorised by X to act as X’s agent, a copy of any notice sent or served to X’s agent under the following provisions must be provided to X at the same time—

 - (a) regulation 4A(4);
 - (b) regulation 4A(7);
 - (c) regulation 7;
 - (d) regulation 8(2);
 - (e) regulation 9A(4);
 - (f) regulation 10;
 - (g) regulation 13.”;
- (c) in paragraph (5)(b) for the words “a proposal and any other document” substitute “any document, other than a proposal.”.

Saving

19. The 2009 Regulations as in force immediately before these Regulations come into force continue to have effect in relation to a non-domestic rating list compiled before 1st April 2017.

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

Name
Parliamentary Under Secretary of State
Department for Communities and Local Government

Date

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 (“the 2009 Regulations”).

The Regulations provide for the introduction of a new appeals system which is to have effect in relation to non-domestic rating lists compiled on or after 1st April 2017. This reflects the date of the next list following revaluation.

To: Mr Mike Winter (Clerk)
Date: 15 February 2017
Page: 20

Regulations 4 and 5 update a number of existing definitions and introduce further definitions.

Regulation 6 amends who may make proposals under the new appeals system.

Regulation 7 inserts new provisions setting out details of the steps which must be completed before a proposal may be made.

Regulation 8 amends regulation 6 of the 2009 Regulations to specify requirements for making a proposal including time limits and contents of a proposal.

Regulation 9 substitutes the existing regulation 8 of the 2009 Regulations, which contained the invalidity procedure, with provision setting out the steps to be taken by the VO and proposer when the requirements for a proposal are not met.

Regulation 10 amends the procedure to be followed after a proposal has been made and includes provision about the exchange of evidence and information between the VO and the proposer.

Regulation 11 inserts the new penalty for knowingly, recklessly or carelessly providing false information to the VO. It also provides for the payment and appeal of such a penalty which is imposed under the new regulation 9A.

Regulations 12 and 13 update existing provisions about the determination of proposals to account for the new appeals system.

Regulation 14 amends existing provision and inserts further provisions setting out the requirements of a decision by the VO where there is disagreement and provides for appeal to the VTE and appeal fees.

Regulation 16 updates the provisions to which the modification under regulation 18 of the 2009 Regulations applies.

Regulation 17 makes amendment to clarify the application of regulation 19 in light of the new penalties.

Regulation 18 inserts provision regarding notices where an agent has been appointed.

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.