

Limited appeal

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The new 'Check, Challenge, Appeal' system for business rates is now active ? but it has significant shortcomings, argues Blake Penfold

New rateable values for all non-domestic properties in England, Wales and Scotland came into force on 1 April. This was the first rating revaluation for 7 years and has seen some significant changes in rateable values, reflecting changes in the property market over that period.

Any contesting of these rating list entries in England will have to be done through a new system known as 'Check, Challenge, Appeal.' This replaces the former system of making a proposal to the [Valuation Office Agency](#) (VOA) to alter the rating list; if this was not agreed, then it was automatically referred to the [Valuation Tribunal for England](#) (VTE) as an appeal. This system will continue, for the time being at least, in Wales, while in Scotland the previous appeal arrangements will also continue, pending a full review of the rating process now being undertaken.

Despite having undergone a lengthy consultation process, the regulations that bring the new system into force in England were only finally laid before parliament on 17 March. These comprise the [Non-Domestic Rating \(Alteration of Lists and Appeals\) \(England\) \(Amendment\) Regulations](#) , along with the [Valuation Tribunal for England \(Council Tax and Rating Appeals\) \(Procedure\) \(Amendment\) Regulations](#) .

Registering

Anyone wishing to use the new system, whether a ratepayer or an agent, will first have to register on the [Government Gateway](#) web portal. The registration process has to start with the property occupier or owner registering themselves with their personal details, as well as registering their business.

Once this is done, they can 'claim' properties that they own or occupy by uploading proof of ownership or occupation, such as a rate demand or lease documents. When a property has been claimed in this way, the owner or occupier can appoint an agent to deal with checks, challenges or both in relation to that property. The agent will need to have registered themselves on the portal as well, and provided authentication.

The check stage

The check process can then commence with a request by or on behalf of the ratepayer, or any person having a legal interest in the property concerned, to the VOA to check the information it holds on the property. On receiving such a request, the VOA must supply the information requested, and may also specify any details that are still to be provided.

The information required as part of a check will vary from property to property, but is likely to include confirmation of tenure and of physical details of the premises ? not just floor areas but

also details of services such as heating or air conditioning. For properties that have not been valued on the basis of rents, the information could include receipts and expenditure information or building costs.

This information, and any requested details that are missing, must be confirmed by the person making the check. This stage is completed when:

- either the VOA notifies the ratepayer that the check is complete, and informs them of any changes made to the facts on which the rateable value is based and revisions to be made to the rating list; or
- if the VOA makes no notification, when 12 months have elapsed since the return of the information.

The check stage is vital because it will define the facts to be used in the rest of the process. The return of the check to the VOA also sets the material day for any proposal to alter the rating list: that is, the date of the physical circumstances that may be taken into account in the challenge or appeal stages.

The government has proposed introducing penalties for providing inaccurate information 'knowingly, recklessly or carelessly' at the check stage. These penalties had to be dropped from the first 2 sets of regulations because they would have breached the rule that statutory instruments should lie before parliament for 21 days, so the intention is to introduce these through later secondary legislation.

If penalties are introduced they are likely to be set at ?500, with a reduced rate of ?200 for businesses qualifying as small proposers, defined as individuals or micro businesses under the [Small Business, Enterprise and Employment Act 2015](#) .

Challenge: altering the list

Only once the check stage is complete will it be possible to make a proposal to alter the rating list. A proposal must be made online through the Government Gateway, unless the VOA agrees otherwise. It must be made within 4 months of the completion of the check stage, or up to 16 months for a material change proposal, relating to changes that have occurred in the locality of the property. For most cases, if more than 4 months have elapsed it will be necessary to carry out a new check.

The grounds on which a proposal may be made are the same as under the previous system, but any proposal will now need to include:

- the grounds of the proposal including 'particulars of the grounds';
- evidence to support the grounds;
- a statement of how the evidence supports the grounds; and
- details of the proposed alteration to the rating list.

The phrase 'particulars of the grounds' is only broadly defined in the regulations, but appears to require much more detail than the present 'incorrect, excessive and bad in law.' Likewise, the draft regulations do not define 'details of the proposed alteration of the list', but it seems likely that these will have to be specific valuations or alterations, rather than the current 'reduction to Rateable Value ?1.'

Once a proposal is accepted by the VOA as 'complete' ? that is to say, it includes all the required information ? the agency will respond. There will then be the opportunity to discuss the proposal and agree an alteration to the rating list, or agree that the proposal should be

withdrawn. If the VOA considers the proposal is incomplete it must state what information it considers missing, and the ratepayer will have the opportunity to resubmit the proposal with that information within 4 months of completing the check.

Appealing

If no agreement is reached on the proposal, the VOA will issue a notice setting out its considered decision and the reasons for it. Only once a decision notice is issued ? or if 18 months have elapsed from the date of the proposal without a notice being issued ? will it be possible to appeal to the VTE. An appeal must be made within 4 months of the date of the decision notice or the expiry of the time limit, and can only be made against either the decision notice itself or the failure to issue a notice.

An appeal will involve payment of a fee of ?300, or ?150 if the appellant is a small proposer. The appeal will also have to include a copy of the decision notice, if one has been issued, as well as a copy of the proposal, any evidence forming part of it and any information provided by the VOA as part of the check stage. The VTE will be restricted to considering this or further evidence if it relates to the grounds of the proposal and was not and could not reasonably have been known at the end of the challenge stage.

The VTE must not take into account matters that did not form part of the proposal or were not raised in evidence or submissions, and appeals can only be made on grounds that the valuation decided by the VOA is not 'reasonable.'

Rushed introduction

The new system has been introduced in a very hurried way. As mentioned above, the regulations breached the rule that statutory instruments should normally lie before parliament for 21 days, and they are in any event incomplete. The web portal is still also under construction.

There is widespread agreement that the business rate appeals system needs reform

Therefore, although there is widespread agreement that the business rate appeals system needs reform, the new regime seems largely designed to create such an obstacle course as to deter ratepayers from making any challenge to their assessment. Ratepayers should be entitled to know the evidence on which their assessment is based, but the new system requires them to state their case before they are even allowed to know this.

The system will be burdensome, and initially very confusing, for ratepayers, so business rates appeals are likely to remain in the news for some time.

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Further information

- Guidance on the appeals process is available [here](#) .
- Related competencies include: [Property management](#) , [Taxation](#)
- This feature is taken from the RICS *Property journal* (July/August 2017)