

Part 6 Enterprise Bill 2015-16 Non-Domestic Rating

7. Non-domestic rating (Part 6)

Part 6 of the Bill would introduce two minor adjustments to business rates legislation. The first amends the **Commissioners for Revenue and Customs Act 2005** to facilitate the sharing of information between the Valuation Office Agency and local authorities. The second arises from the Government's review of business rates. This review has been under way since April 2014, with a final outcome expected at the 2016 Budget.⁹⁶ The clauses in the Bill provide powers to give effect to recent consultation proposals to introduce a new appeals system, **Check, challenge, appeal**: reforming business rates appeals, published in October 2015.

7.1 Disclosure of information

Sections 18 and 19 of the **Commissioners for Revenue and Customs Act 2005** introduced a requirement for staff of HMRC to keep customer details confidential. They may disclose information which relates to a function of HMRC; or in other specified circumstances, including when the person to whom the information relates consents. A member of staff who disclosed confidential information would be guilty of a criminal offence. This requirement also covers the staff of the Valuation Office Agency (VOA).

The VOA demands information from business rate-payers in order to inform the assessment of rateable values of non-domestic properties. Billing authorities frequently seek similar information from the same businesses in relation to business rate bills. Under the 2005 Act, information can only be shared between the VOA and billing authorities in limited circumstances, mainly to support one of the VOA's functions. Before 2005, it was common for the VOA to share rate-payer names and property details with billing authorities (the local councils responsible for collecting business rates). The consequences of this were noted in the Government's interim findings of the Business Rates Review:

As a result, it is common for ratepayers to have to provide the same information about their business or property to both the Valuation Office Agency and the local authority. It is also possible for a business to be inspected twice for business rates in a short time frame by both the Valuation Office Agency and the local authority.⁹⁷

...the government will look for a suitable legislative opportunity to allow greater sharing of information on non-domestic properties between the Valuation Office Agency and local authorities.⁹⁸

Clause 25 seeks to remedy this by introducing **new sections 63A and 63B** into the **Local Government Finance Act 1988**.

⁹⁶ See links to the Government's March 2015 terms of reference and discussion paper; the December 2014 interim findings document; and the April 2014 discussion paper.

⁹⁷ DCLG, Administration of Business Rates Review: Interim Findings, December 2014, p. 26-7

⁹⁸ Ibid., p. 29

New section 63A provides that VOA staff may provide information to a 'qualifying person' for a 'qualifying purpose'. A 'qualifying person' includes billing authorities, major precepting authorities,⁹⁹ the Secretary of State and the Welsh Ministers. It also includes any person exercising the functions of, or providing services to, billing authorities or major precepting authorities: this ensures that information can be provided to any private contractors undertaking work that is a 'qualifying purpose' (sub-section (3c-d)). A 'qualifying purpose' is the purpose of carrying out the functions associated with the non-domestic rating system, in Part 3 of the 1988 Act (sub-section (4)). Sub-sections (5) and (6) permit the Secretary of State to prescribe additional qualifying persons and purposes.

New section 63B (1) provides that information provided under section 63A or B cannot be further disclosed unless this is done for a 'qualifying purpose' under new section 63A (4); or for court proceedings or a court order. However, information may be disclosed with the consent of the person to which it relates. Information that is disclosed must not contain a person's identity, nor must it be possible to deduce their identity (subsection (4)).¹⁰⁰

Sub-sections (4) to (10) specify that disclosing information relating to a person which specifies their identity, or which can be deduced from it, would be a criminal offence. Sub-section (5) provides that a belief that the information was already public, or a reasonable belief that its publication was lawful, are defences.

New section 63C provides that revenue and customs information disclosed under new sections 63A or 63B that identifies the person to whom the information relates, or enables their identity to be deduced, is exempt from the Freedom of Information Act.

These new provisions apply only to England and Wales, where the VOA is responsible for rateable values. Its counterparts in Scotland and Northern Ireland are not affected.

7.2 Business rates appeals

Clause 26 would enable the implementation of some of the proposals in the consultation document **Check, challenge, appeal**: reforming business rates appeals, published in October 2015.¹⁰¹ This followed proposals in the Government document Administration of Business Rates Review: Interim Findings, published in December 2014. The consultation concerns the operation of the business rates appeals system by the Valuation Tribunal for England.

⁹⁹ These include county councils, fire and rescue authorities, and the GLA i.e. other local authorities which receive part of their income from business rates revenue.

¹⁰⁰ This could apply in instances where the name and address of a property is withheld, but where it is sufficiently unique that it can be identified by its other characteristics: for instance, the only large hotel near a particular village. Anonymised information of this kind can often be used as evidence within the business rate appeals process.

¹⁰¹ See also DCLG, Administration of Business Rates Review: Interim Findings, December 2014, p. 19

Concerns have been expressed since 2011 at the Valuation Tribunal's backlog of cases and the time taken to hear appeals.¹⁰²

The consultation applies to England only, as business rates are devolved to Scotland, Wales and Northern Ireland. It closed on 4 January 2016.

The consultation proposes to introduce a new three-stage appeal process, entitled 'check, challenge, appeal'. The 'check' stage is intended to enable the VOA and the ratepayer to reach agreement on a rateable value. The intention is that the majority of proposals will be resolved quickly at this stage: the consultation states "Routine or speculative challenges which are not supported by a robust case will be identified and dealt with swiftly, and this will have benefits for ratepayers who raise genuine issues...".¹⁰³

If the ratepayer still disagrees with their rateable value, they may initiate the 'challenge' stage. This must be done within four months of the end of the 'check' stage. Any appeal that has spent more than twelve months at 'check' stage is to move on automatically to the 'challenge' stage.

At the 'challenge' stage, the ratepayer must set out the points on which they have been unable to agree at 'check' stage, and they must propose an alternative rateable value, with supporting evidence. Currently, ratepayers are not required to propose an alternative value when challenging their rateable value:

3.19 When ratepayers make an appeal against their rateable value, the law requires them to include a statement of why they believe the rateable value is inaccurate.⁴ However, the system allows ratepayers to lodge challenges with little or no investigation or explanation of why they think the rateable value is wrong. Normally a ratepayer need only claim that their rateable value is 'incorrect and excessive' to be able to make a challenge.

3.20 As a result the Valuation Office Agency receives a large number of appeals on which it can take no action until it has held discussions with ratepayers..... Most appeals are in some way seeking a reduction in the rateable value either for a physical change or to correct the level of value.

Therefore, the alternative valuation of the property should be the key part of any formal challenge. Other appeals may concern the size of the property or how it is occupied. But at the moment very few challenges include a valuation or an explanation or what changes are needed to the assessment.¹⁰⁴

A challenge which does not include an alternative rateable value and supporting evidence will be returned as invalid (though it can be resubmitted within the four-month time limit).¹⁰⁵ The VOA must then issue a decision notice or reach agreement with the ratepayer.

¹⁰² For instance, see HC Deb 28 November 2013 c387W; HL Deb 28 October 2015 c51

¹⁰³ DCLG, Check, challenge, appeal: reforming business rates appeals, 2015, p. 7

¹⁰⁴ DCLG, Administration of Business Rates Review: Interim Findings, 2014, p. 21

¹⁰⁵ DCLG, Check, challenge, appeal: reforming business rates appeals, 2015, p. 12. The time limit pauses whilst the VOA is deciding whether to accept the challenge as valid.

The 'appeal' stage is the third stage. If the ratepayer is still unhappy with their rateable value following the decision notice issued under the 'challenge' stage, or the case has been at 'challenge' stage for 18 months, they may appeal to the Valuation Tribunal for England, as at present.

An appeal must be made within four months of the decision notice at 'challenge' stage (or within four months of the case having remained at 'challenge' stage for 18 months). The ratepayer must give a substantive explanation of why they still disagree with the VOA's valuation.

The Government proposes to restrict the introduction of substantial new evidence at this stage by either party to the appeal, save at the mutual agreement of the parties.¹⁰⁶ It also proposes to introduce civil penalties of up to £500 for the provision of false information, with a right of appeal.

The Government also proposes to introduce fees for the appeal stage, either in the range of £100-300 as with other tribunals, or fees related to rateable value. The consultation document said:

The current business rates appeals system allows ratepayers to challenge their rateable value and proceed to an independent Tribunal at no charge. In contrast, charges are common in other Tribunals. The government would welcome views on whether introducing a charge could help to reduce the number of speculative appeals in the system.¹⁰⁷

7.3 The Bill

Clause 26 would allow these suggestions to be given effect through regulations made by the Secretary of State, by introducing some new sub-sections into **section 55 of the Local Government Finance Act 1988**. They apply only to valuation lists in England. New sub-section 55 (4A) permits regulations to be made specifying what steps must be taken before the ratepayer can make a proposal. This will allow the introduction of the three stages of the new appeal process.¹⁰⁸

The regulations may also define the length of time and circumstances in which any of the steps may be taken (new sub-section (4A) (b)). The Government's intention is to permit ratepayers to move from the 'check' stage to the 'challenge' stage after twelve months if the appellant and the VOA have been unable to agree; and to move from the 'challenge' stage to the 'appeal' stage after eighteen months if no decision has been issued. ¹⁰⁹ The regulations may also permit valuation officers to impose a fine of up to £500 on any person who knowingly, recklessly or carelessly gives false information as part of this process, as proposed by the 2015 consultation paper. ¹¹⁰

New sub-section 55(5A) would permit regulations to be made covering the appeal process, specifically regarding the grounds on which an appeal may be made; matters which cannot be taken into account by the Valuation Tribunal; when new evidence may be admitted; and to permit the establishment of a regime of fees for tribunal appeals, including circumstances in which those fees are to be refunded.

¹⁰⁶ Ibid., p. 16

¹⁰⁷ Ibid., p. 23

¹⁰⁸ See DCLG, Check, challenge, appeal: reforming business rates appeals, 2015, p. 8

¹⁰⁹ Ibid., p. 10-11.

¹¹⁰ Ibid., p. 11

In debate on the Bill in the House of Lords, the Earl of Lytton stated that the clause did not provide a level playing field between businesses and the Valuation Office Agency, and suggested that the VOA's practices were partly responsible for this situation:

...one would suppose that in responding to a business that has started the appeal process ultimately leading to appeal, the valuation office would be happy to discuss the basis of the valuation underlying a property tax at an early stage. However, I am informed that there has been an increasing reluctance by the agency to divulge anything until the matter is literally listed before the valuation tribunal. That is merely adding to the problem and the likelihood of sustained appeals. To say that Clause .. [23] is unwelcome is an understatement. Admittedly, it facilitates the sharing of revenue information with certain other bodies, but it also makes clear what it does not permit—in this case the sharing of information with the ratepayer and his professional valuer. This is an impediment to progress. 111

The Earl of Lytton and others made similar points at Report stage in the House of Lords. Lord Mendelsohn suggested that the large number of appeals received by the VOA reflected the lack of information made available to ratepayers unless they pursued an appeal. Lord Stoneham of Droxford quoted Professor Graham Zellick, until recently president of the Valuation Tribunal for England:

...the ratepayer is never given the full explanation for the valuation. As a result, every time there is a new rating list, ratepayers initiate a challenge ... partly to protect their position but chiefly to 'flush out' more information ... Unless information is given up front, the system will remain defective and unsatisfactory and unjust. I don't know any other tax that can be levied where the taxpayer doesn't understand in full down to the last detail the basis on which the taxman has calculated the tax due. It's unprecedented, it's unique and it's wrong.112

The Minister, Baroness Neville-Rolfe responded that:

The reforms promote full and early engagement between parties. Factual information will be established during check stage, with arguments and evidence exchanged at the beginning of the second challenge stage—far earlier than happens at present. This significantly brings forward the point at which the Valuation Office Agency is able to provide information to address the ratepayer's case.113

On a more technical matter, Alistair Townsend of the IRRV has suggested that the provisions as drawn will not apply to information used to set up or administer a Business Improvement District. 114

111 HLDeb 12 Oct 2015 c51-2

112 HLDeb 25 Nov 2015 c793

113 Ibid., c. 798

114 Alistair Townsend, "Causing more problems than it solves", Insight, December 2015, p.15