

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT NON-DOMESTIC RATING
(ALTERATION OF LISTS AND APPEALS)
(ENGLAND)(AMENDMENT)
(REGULATIONS) 2018

Tuesday 13 March 2018

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The Committee consisted of the following Members:

Chair: ANDREW ROSINDELL

- | | |
|--------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| † Beckett, Margaret (<i>Derby South</i>) (Lab) | † Spelman, Dame Caroline (<i>Meriden</i>) (Con) |
| Cooper, Rosie (<i>West Lancashire</i>) (Lab) | † Stevenson, John (<i>Carlisle</i>) (Con) |
| † Debbonaire, Thangam (<i>Bristol West</i>) (Lab) | † Sunak, Rishi (<i>Parliamentary Under-Secretary of State for Housing, Communities and Local Government</i>) |
| † Francois, Mr Mark (<i>Rayleigh and Wickford</i>) (Con) | † Tolhurst, Kelly (<i>Rochester and Strood</i>) (Con) |
| † Hendrick, Sir Mark (<i>Preston</i>) (Lab/Co-op) | † Turley, Anna (<i>Redcar</i>) (Lab/Co-op) |
| † Jones, Mr David (<i>Clwyd West</i>) (Con) | † Whittingdale, Mr John (<i>Maldon</i>) (Con) |
| † Lopresti, Jack (<i>Filton and Bradley Stoke</i>) (Con) | |
| † McMahon, Jim (<i>Oldham West and Royton</i>) (Lab/Co-op) | Sean Kinsey, Mems Ayinla, <i>Committee Clerks</i> |
| † Mills, Nigel (<i>Amber Valley</i>) (Con) | |
| † Morgan, Stephen (<i>Portsmouth South</i>) (Lab) | |
| † Rashid, Faisal (<i>Warrington South</i>) (Lab) | † attended the Committee |

First Delegated Legislation Committee

Tuesday 13 March 2018

[ANDREW ROSINDELL *in the Chair*]

Draft Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2018

8.55 am

The Parliamentary Under-Secretary of State for Housing, Communities and Local Government (Rishi Sunak): I beg to move,

That the Committee has considered the draft Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2018.

It is a pleasure to serve under your chairmanship, Mr Rosindell, in my first Delegated Legislation Committee as a Minister. The draft regulations, which were laid before the House on 21 December, will give the Valuation Office Agency the power to impose a penalty on a person who provides false information knowingly, recklessly or carelessly in the business rates appeals process. They will set the level of such penalties for small and larger businesses and will make provision for ratepayers to appeal to the independent valuation tribunal if they disagree with the imposition of a penalty.

Introducing penalties for the provision of false information is an important part of the wider reforms to the system through which businesses may challenge, and appeal against, the valuation of their property. The Government introduced the majority of those reforms in April 2017; the enabling legislation for the draft regulations was approved by the House in the Enterprise Act 2016. As the Committee may be aware, prior to the changes introduced last year, we had a flawed and inefficient system that caused uncertainty both for businesses and for local government. Appeals were made almost as a matter of routine, whether or not there was a clear case that the valuation was wrong. Encouraged by a no win, no fee agent system, this resulted in large numbers of speculative appeals that were backed with little or no evidence. More than 1 million appeals were made against the 2010 ratings list, covering a huge proportion of the total number of properties liable for rates. A significant number were made with the spurious claim that the rateable value should be just £1, and although 1 million appeals have been made, as of December 2017, 72% had led to no change to the ratings list.

The volume of speculative appeals and the frequent lack of supporting evidence made it extremely difficult for the Valuation Office Agency and the valuation tribunal to prioritise appeals and focus on ratepayers with a valid case. The result was delays for ratepayers due a refund, and significant public resources wasted on dealing with speculative appeals. We are still dealing with the consequences: a large number of appeals to the 2010 list are still outstanding.

The Government are committed to delivering a fair and effective appeals system for business rates that provides an efficient means for ratepayers to challenge the valuation of non-domestic properties. That is why, from April 2017, we introduced the check, challenge, appeal framework, which is being implemented by the Valuation Office Agency and the valuation tribunal for England. The reforms are designed to tackle some of the flaws of the previous framework and deliver a more efficient system that is grounded in early engagement and sharing of evidence. Under the new system, challenges to the list will—quite rightly—need to be backed by clear arguments and supporting evidence. This will support proper engagement with the Valuation Office Agency and, where possible, resolution of cases before they reach the tribunal. Restrictions have been placed on introducing evidence at the tribunal stage that could reasonably have been disclosed earlier to prevent ratepayers from withholding evidence and—as we saw under the old system—attempting last-minute negotiations on the steps of the tribunal. Quite rightly, those restrictions will be subject to a right for ratepayers to bring forward any genuinely new evidence that they could not previously have obtained.

Penalties for false information, which are the subject of the draft regulations, are a key part of our reforms. They will act as an important deterrent to providing false information and will help to maintain the integrity of the appeals process and the wider business rates system. Under the check, challenge, appeal framework, ratepayers are required to provide information to the valuation officer both at the check stage, when underlying facts are confirmed, and throughout the challenge stage, when more detailed evidence may be exchanged. In common with in other parts of our tax system, penalties will be an important mechanism to support the submission of accurate information.

Specifically, the regulations will, if approved and made, give the VOA the power to impose a penalty on a person who provides false information knowingly, recklessly or carelessly. The regulations specify the level of the penalty, which will be £200 for small businesses and £500 for all others. The £500 maximum penalty was specified in the Enterprise Act 2016, which provides the enabling powers for penalties in the business rates appeals system.

A person may, of course, wish to challenge the imposition of a penalty. The regulations therefore also provide a right of appeal. Any person subject to a penalty may, within 28 days of receiving a penalty notice, appeal to the independent valuation tribunal for England. If the tribunal finds in favour of the appellant it will be able to order the valuation officer to refund the penalty. It is clearly important that there is no financial incentive for the valuation officer to impose a penalty. The regulations therefore also require that any sum received by the VOA by way of a penalty must be paid into the Government's consolidated fund, which will ensure that the VOA does not benefit financially from the imposition of penalties.

As part of the wider consultation on the new appeals system, the Government sought views on the implementation of penalties. More than 280 submissions were received and the Government's response was published in March 2017. As set out in that response, many stakeholders accepted the need for penalties but expressed concern that they could be imposed where ratepayers

had made a genuine mistake. In light of that, the Government's response confirmed that the VOA would provide clear guidance to support ratepayers in the provision of information and on the application of penalties. The agency has recently assured my Department that that guidance will be available before any penalties are applied. If a ratepayer feels that a penalty has been unfairly imposed, they will, as I have already outlined, have the right of appeal to the independent valuation tribunal. Although it is important that guidance is available and that ratepayers have a right of appeal, the consultation also confirmed the Government's clear view that ratepayers have a duty to take reasonable care in providing information on their tax affairs.

The Committee will be aware that the wider reforms to the appeals system are not without their critics. In particular, there have been issues with the introduction of the VOA's new online system and concerns that it is not working effectively or is lacking some key functionality that stakeholders want. On the stability of the current IT system, my understanding is that the portal is fully functional and my Department is not aware of any recent major system issues. On the wider functionality, ensuring that the new system works for ratepayers is critical and, as a Department, we have been extremely clear to the VOA that we expect it to work closely with stakeholders to achieve exactly that. Given this debate's focus on penalties, I do not propose to go into more detail on those issues. Suffice to say that the Government remain of the view that the reforms were an important and necessary step towards fixing what was clearly a flawed and inefficient system for all involved.

I hope that the Committee will agree that it is entirely right that the system is supported by appropriate powers to penalise the provision of false information and that such powers are accompanied by appropriate safeguards, such as the right of appeal, to ensure that the system operates fairly and effectively. On that basis, I commend the regulations to the Committee.

9.4 am

Jim McMahon (Oldham West and Royton) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Mr Rosindell. I congratulate the Minister on his 10-minute speech on what is, essentially, narrow legislation. Nevertheless, it is important that we make progress and resolve the business rates issue.

Rather than give a set speech, I want to try to probe some areas where the Government have not been clear about what capacity and resources have been provided to make sure that the appeal system can work effectively.

We know that the SI is about the financial penalty and that it is a split payment of £200 or £500 depending on the size of the applicant. First, what consideration was given to a different schedule for levying penalty fees? For instance, for a large business rate occupier such as a big supermarket, whose rating could be £1 million a year, will probably be paying £500 a day for their consultant to lodge the application. If that consultant is giving false or misleading information on their behalf, it seems slightly out of kilter for the penalty to be what is effectively their day rate. Compare that to a small business, which would pay the £200 penalty, and is trying to navigate the system alone. It could make a

very genuine mistake but be found by the office to be perhaps misleading, and that would be a significant and disproportionate penalty.

The question is less about the principle of bringing in penalties, which is now very commonplace across Government Departments. However, an explanation of the rationale behind the split payment would be welcome. By that, I mean that we should move beyond referring back to the Enterprise Act 2016 as a reference point and make the case for why £500 is appropriate.

The second point refers to capacity in the valuation office. We know that there have been IT problems and gremlins in the system, but we cannot get away from the fact that the office has had significant staffing reduction since 2010. In terms of head count, the number of people working for the valuation office now is 546 lower than in 2010, when they are expected to implement a brand new system. We all know that the introduction of a new system requires a double run—existing creaky old systems need to be run, and the capacity is also needed to bring in a new system and implement it. I am not sure that the Government have provided the adequate resource to do that when 500 fewer people are working for the valuation office today than in 2010.

I also wonder whether the Government have reflected on other Government Departments making appeals against their rating valuation. For instance, up to 100 NHS hospital trusts are appealing their ratings liability to their local authorities. At the moment, they are being supported by a company called Bilfinger GVA, which is being paid a percentage fee of whatever is saved in that potential successful appeal. At the moment, councils have had to put £1.6 billion to one side in the likelihood that those appeals are successful, and face an ongoing pressure of £250 million a year. So, £1.6 billion a year is potentially needed for back-dated payments over six years and £250 million every year going forward if they are successful. On the back of that, a company that will be taking a percentage fee from the potential saving.

We know that Government money is Government money. Wherever it is placed within different Departments, it is still public money that will be used for public good. When the Treasury give the NHS money to pay its business rate bills and it is transferred to the local authority, that is still Treasury money that is being funnelled through to fund public services at a local level. If a private company is taking a percentage fee of 5%, 10% or even 20%, that is a net reduction in the money that is available to fund public services in an area, whether it is at local government level or within the NHS.

Have the Government given any thought to having a different approach for Government Departments that make ratings appeals to the valuations office? How can it be right that we are having a net reduction in the money that will be available for public services because money is going out to consultants? Surely a better way of doing that would be either to have a restriction on the ability to use external consultants charging a percentage fee on any potential savings, or to have some kind of mediation service within Government to resolve these issues between different Departments. That would, for me, feel like a potential way forward.

Have the Government considered that? When I first raised the question in November 2016, although I had a holding reply quite soon after that, it took six months

[*Jim McMahon*]

for the Government to come back with their substantive reply, which said only that they were looking into it. I am still no clearer about what action they are taking, and whether they consider this to be a significant issue, both in terms of the principle behind it and the particular issue of NHS trusts making appeals. If the Government believe that it is an issue, will they support the Local Government Association and its campaign to make sure that the issue is addressed? I should declare an interest as vice-president of the LGA.

Finally, we know that the gremlins in the system are still there. I respect the Minister for acknowledging some of the technical issues that have occurred, but I come back to the capacity issue. If the Government really want this to work, they need to present an invest-to-save model. If they are going to put a new system in place, which they believe will be fundamentally more efficient and deliver a better service, they ought to be able to provide the upfront capacity to deliver that on the ground, and ensure that it comes in in a smooth and managed way. At the moment, the evidence does not support that.

9.11 am

Dame Caroline Spelman (Meriden) (Con): The rating revaluation has thrown up a number of anomalies. As chair of the all-party parliamentary group for the horse, I draw the Minister's attention to the anomaly that riding schools are facing up to a 356% increase in their business rates. There is now hard evidence from the British Horse Society that riding schools are closing as a consequence. The Treasury is aware of that anomaly, and at a meeting with the Chancellor he indicated that the problem may be that the Valuation Office Agency lumps private livery yards with property together with little riding schools. As property has gone up in price, that has apparently driven up the value.

I wonder if the Minister could comment on the fact that the Valuation Office Agency refuses to share the evidence base for such an increase with stakeholders such as the British Horse Society. Does he agree that it is unfair to penalise people for the evidence that they bring to support their claim if, in return, the Valuation Office Agency will not explain to the ratepayers what the evidence base is for the calculation of their rates?

9.12 am

Nigel Mills (Amber Valley) (Con): I have a couple of questions about the order, which I broadly welcome. I think we have all seen constituency cases where businesses have an assessment for business rates that are far higher than they can afford, and seem to be based on historical, inaccurate levels of turnover or profitability. We would all like those businesses to be able to appeal and reach a more sensible rating valuation as quickly and reasonably as possible.

I happily welcome all measures to take away frivolous appeals, but will the Minister confirm that there will be no penalty for making a frivolous business rate appeal and then not providing any supporting information? He used the example of making an appeal and saying that the right value should be £1. In the legislation, I can see penalties only for incorrect information, not for frivolous appeals. We probably have to strike a balance between

not taking away someone's right to appeal, or scaring them out of making the appeal in the first place, and asking the office to decide whether the appeal is really worth having. That puts the office in the rather strange position of having to assess every appeal to see whether it is reasonable. I suppose the real question is how we can discourage pointless appeals if there is no sanction for making one.

Secondly, the Minister will perhaps realise, if he is in his role for a while, that I like to ask drafting questions about such orders. I am intrigued by the fact that someone can get a penalty for providing false information "knowingly, recklessly or carelessly." I understand that knowingly means deliberately providing incorrect financial information, for example, and that carelessly means not checking, or providing information that is out of date or inaccurate, but what does reckless mean in this situation? The normal dictionary definition of reckless is not caring about danger. I cannot quite see what the danger is of providing false information to a business rates appeal. Perhaps he could give us an example of how behaviour could be reckless but not knowing or careless in this situation. I assume that it is a phrase that we always use in this kind of thing, but I cannot work out what it means in this instance.

9.14 am

Mr Mark Francois (Rayleigh and Wickford) (Con): Mine is a very brief contribution. Can I lend weight to the very good point made by my right hon. Friend the Member for Meriden? I, too, have some equestrian centres in my constituency, and I have received representations from them on exactly the same point. The Minister will know that the British Horse Society is quite exercised about this matter. I do not know how much he can say about that today, but will he undertake to take the point away and enter into discussions with the Valuation Office Agency to see whether something can be done to unpick that rather difficult and, I think, unintended consequence of the Government's action?

9.15 am

Mr John Whittingdale (Maldon) (Con): I had not intended to speak, but I am spurred to do so by my right hon. Friends the Members for Meriden and for Rayleigh and Wickford. I represent the Chelmsford equestrian centre, which has been to see me about this very point. The fact that three members of a fairly small Committee have raised this issue indicates that there is a serious problem. I am sure that the Minister did not come here fully briefed to talk about equestrian centres, but we would appreciate it if he could look into the issue and let us know about it in due course.

Mr Francois: And thus avert a major rebellion.

The Chair: If I were allowed to raise the issue, I would do so too.

9.16 am

Rishi Sunak: From my perspective, this has been a good and helpful debate. I was grateful to receive so many contributions which, to be honest, I did not expect at 9 o'clock on a Tuesday morning. I shall briefly turn to the various points raised, starting with those of the hon. Member for Oldham West and Royton.

The hon. Gentleman talked about the schedule of fees, which is £200 for smaller businesses and £500 for larger ones. That approach was taken in the first instance for reasons of simplicity. He will know that HMRC's penalty system is relatively complicated and works on a sliding scale as a percentage of the potentially lost revenue. The decision in this instance was to start with a simple, fixed system. On the £500 maximum penalty, I appreciate his point about that perhaps not being a huge amount for a large company and the Government are committed to reviewing the limits over time. In the short term, as he rightly pointed out, the limits are fixed in primary legislation—in the Enterprise Act 2016.

His second point was about the VOA's capacity. In the first instance, I believe it is right for any agencies of the state to ensure that they make the best use of their resources and organise themselves as efficiently as possible for the benefit of all our constituents who work hard to pay the taxes that fund them. That said, the hon. Gentleman is right that with the introduction of a new system the appropriate capacity must be there to deliver the smooth transition we would all like to see. Part of the reason for the reforms to the business rates system is to reduce the volume of speculative appeals. As I mentioned, 70% of appeals under the previous system were denied in the end, so we clearly had the balance wrong. The new system should reduce the amount of burden for things that are, frankly, a waste of time for the VOA and, in time, the benefits of that will come through. In the short term, I assure the hon. Gentleman and the Committee that I will hold the VOA to the strongest possible account for delivery against the targets and will shortly meet the agency's director to discuss exactly that.

On his third point, NHS trusts are independent of my Department and of the Government in general, as he will be aware. That said, the scale of the challenge he talked about has reached my desk. I am monitoring it and am in discussions about it with the LGA. I think I agree with his broad point that if there are to be large transfers of financial resources between different parts of Government, it is appropriate that that is done through the Government and the normal matter of a spending review, with the priorities being worked out through Parliament rather than through ad hoc decisions of courts. We will keep the matter under review.

On the points raised by my right hon. Friends the Members for Meriden, for Rayleigh and Wickford and for Maldon, as I probably come from one of the most rural constituencies in the country—certainly among those in this room—I am personally aware of the issue with riding schools, spending, as I do, most of my Saturday mornings with my daughters at the Northallerton equestrian centre. I would be delighted to take up the issue directly with the VOA, to ensure that appropriate information flows properly between the various claimants and the VOA and to see whether there is a broader system issue that has not been picked up by the regulations.

Mr Francois: May I take this opportunity to congratulate the Minister on a very polished debut? I knew today was going to be an interesting day when I went down to

the Tea Room and found it in darkness—clearly the victim of a Russian cyber-attack. I am grateful that he said he would look into that point with the VOA, but I would like to charge him to do slightly more. When he has done so, will he write to members of the Committee, including the Chair, who obviously has an interest, to let us know whether it is possible to make any progress?

Rishi Sunak: I would be delighted to write to you, Mr Rosindell, and to other members of the Committee on that point. Before I confirm that, however, in the short term, I urge hon. Members to ensure that riding stables in their constituencies appeal to their local authorities for discretionary relief, as I have encouraged my auction marts and riding stables to do. The Chancellor announced a £325 million fund to deal with cases that were not captured by the other reliefs put in place around the time of the revaluation.

Jim McMahon: On the unintended consequences of the revaluation, the Association of Convenience Stores has raised the matter of the introduction of cash machines in convenience stores. When high street banks close in a precinct, village or town centre, so there is no cash machine, and a convenience store steps up to provide one, the turnover of that cash machine goes towards its rateable value. Will the Government look at that as part of their review?

Rishi Sunak: I do not have the full details on that issue, but I would be happy to look into it. As the hon. Gentleman will know, the VOA makes decisions independently of Government, according to its guidelines, so it would be inappropriate for a Minister to interfere on an individual case. On his broader point, however, if the system is not picking something up properly, I would be happy to look at that.

My hon. Friend the Member for Amber Valley talked about the appeals process and how exactly it will work. In the old system, everything automatically turned into an appeal. In the new system, there will be two stages before an appeal—check and challenge—which anybody can avail themselves of. First, the appellant will ensure that the basic details of their business rates valuation are correct. Secondly, they will engage with the VOA to discuss that. Those two stages will hopefully mean that there is less reason to go to a formal appeal—although the appellant will still have the right to do that—which should reduce the incidence of spurious appeals.

I hope that I have covered all the points made by hon. Members and that I have assured the Committee that the Government are providing appropriate safeguards to ensure the fair operation of penalties, particularly through the right of appeal. It is clearly in everyone's interest to ensure that the appeals system is underpinned by accurate information. I commend the regulations to the Committee.

Question put and agreed to.

9.23 am

Committee rose.

