



Department for
Communities and
Local Government

Check, challenge, appeal Reforming business rates appeals - consultation on statutory implementation

Summary of consultation responses and Government
response



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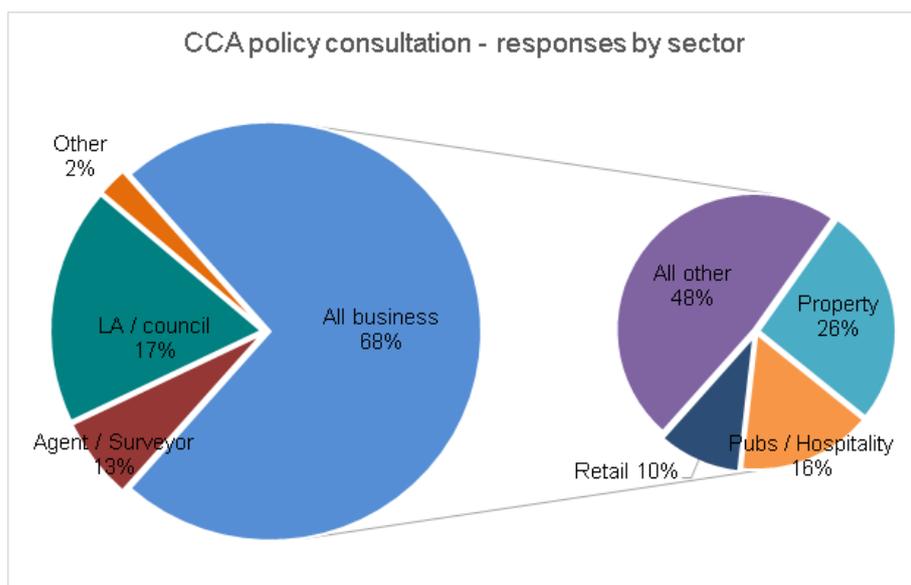
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Introduction

1. The Department for Communities and Local Government (DCLG) consultation “Check, challenge, appeal: Reforming business rates appeals - consultation on statutory implementation” sought views on draft regulations to implement the three-stage approach to resolving business rates appeals. This followed an earlier consultation on the policy approach and the subsequent publication of a Government policy statement confirming the overall policy intention. The consultation on the draft regulations sought views on some specific further elements of the reform package that remained outstanding.
2. The consultation closed on 11 October 2016. As part of the consultation process, three roundtable discussions were held with a range of stakeholders. Comments made in the roundtables were reflected in the responses to this consultation paper.
3. A total of 287 responses to the consultation were received. A breakdown of these responses is shown below.



4. The Government is grateful for the views shared during the consultation process and has considered all views in developing the Government response. This document sets out a summary of the responses and an outline of decisions made by Government. As a summary, this paper does not attempt to capture every point made in those responses.
5. The consultation document confirmed that the Government would be considering the approach on ‘end of list’ arrangements. Building on views gathered in earlier proposals, the Government is of the view that there are clear benefits to introducing a cut-off date for appeals before the end of the list, and that there is scope to implement this in a way which also enables ratepayers sufficient time to launch an appeal. We intend to review the early implementation of the new system before bringing forward proposals by April 2018 for setting a fixed time limit for appeals.

Summary of responses

Q1. Do you agree that the draft regulations put in practice the agreed policy intention as set out in the Government policy statement?

6. 251 respondents commented on Q1. The great majority of respondents recognised that the system needs reform. Businesses, surveyors and agents raised a number of concerns about the statutory implementation of the reformed business rates appeals system and local authorities were mostly in favour of the draft regulations.
7. Responses from businesses and rating agents were sceptical about the extent to which the draft regulations would achieve the wider aims of the reforms. They repeated some concerns from earlier consultations that changes would not provide sufficient transparency, and reiterated their preference for the full disclosure of all information (including rental evidence) from the Valuation Officer to ratepayers at the earliest stages in the process. A number of respondents also reiterated concerns around the limitations on the introduction of new evidence after the submission of a proposal.
8. Many respondents stated that regulation 9, which updates the procedure to be followed after a proposal has been made, was difficult to follow and would benefit from less complexity.
9. A number of respondents emphasised the need for a digital system which can serve the needs of multi-site occupiers. Some businesses also suggested that they would like the ability to opt-out of receiving notices or copy documentation throughout the appeals process where they have appointed representatives to manage the appeal. A number of respondents raised a specific concern that potentially sensitive commercial information that businesses provided to the Valuation Officer to support their Challenge could be available in the public domain, as a result of the existing public right to inspect proposals.

Government response

10. As set out in the previous policy statement, the Government continues to take the view that ratepayers should initiate a Challenge by providing details about why it is being made, so that the issues under dispute can be established early on. This will allow the Valuation Officer to respond with a tailored package of information and will allow the VOA (Valuation Office Agency) to deploy resources more efficiently than it is able to do at present and provide an improved service. Under the proposed regulations, on receipt of a proposal the Valuation Office Agency will be required to provide relevant information they hold in response to the particulars of grounds set out in the proposal.
11. The majority of ratepayers will experience the reformed system through the VOA's new digital platform and associated guidance. The VOA is in the process of

building this digital system for ratepayers and owners to submit Checks and Challenges. This will support a clear and straightforward process and no detailed knowledge of the regulations will be needed to access and use the system.

12. The VOA is aware of the differing needs of those with multiple properties and / or multiple clients. They are continuing to engage with businesses, agents, and IT firms to explore how the system can be best designed to accommodate these – for example, how businesses can claim and confirm their interest in properties, and how they can easily download details of multiple properties and submit confirmations or proposals on those properties. In terms of the ability to opt-out of receipt of notices, the Government continues to believe that it is essential that ratepayers should be fully aware of progress and key decisions on appeals, even where they have appointed an agent. There are a limited number of specific points at which formal notices will be issued and shared with the ratepayer.
13. We have also noted concerns raised by a number of respondents in relation to the disclosure of sensitive commercial information as a result of the public right to inspect proposals. There are safeguards within existing legislation that will help to protect sensitive information where necessary. However, in light of ratepayers' concerns, the Government will consider the need for any further action to strengthen these existing protections.

Q2. We would welcome your views on the approach to implementing fees for the appeal stage.

14. 251 respondents commented on Q2. A significant number of local councils supported the introduction of fees. Of those who expressed a clear view on the implementation of fees, a significant number suggested that they could be linked to the rateable value of the property subject to appeal. Respondents agreed with the proposal that the fees should be refundable where the appeal is successful.
15. Many respondents commented that ratepayers with large portfolios will be disadvantaged as they will be required to pay large fees for every property they would like to appeal.

Government response

16. The regulations provide for a refundable fee to be charged at Appeal stage and determine the structure and level of the fee. Government is content that respondents supported the introduction of refundable fees. In relation to the fee structure, the Government wants to keep the fee regime simple and straightforward. Therefore, we do not currently intend to link the fee charge to the rateable value. The Government believes that fees are an important part of the reform programme, which will increase the incentives for early and full engagement. On this basis we intend to continue with the approach that each appeal case will be subject to a separate fee. However, as the new system beds in we will review whether the fees are providing the incentives for early and full engagement.

Q3. We would welcome your views on the approach to implementing penalties for false information.

17. 241 respondents commented on Q3. The majority of local councils supported the introduction of penalties. Of those who expressed a clear view on the details of implementing penalties, a significant number suggested that penalties could be linked to the rateable value in dispute, as this would be a more effective disincentive for large businesses appeals while not disproportionately deterring small businesses from making legitimate appeals.
18. Many businesses accepted that penalties are appropriate, especially where false information have been provided knowingly. However, a number of respondents raised concerns that the regulations also allow the imposition of a penalty where false information is provided 'carelessly' or 'recklessly' – and suggested the need to allow for instances where the ratepayer has made a genuine mistake.
19. Respondents also raised the issue that ratepayers may submit information incorrectly because of their limited knowledge of the rating system or because they have been provided with untrue information by a third party. A number of respondents highlighted that it will be important for penalties to be applied consistently and reasonably to avoid them being seen as a negotiation tool.

Government response

20. The Government continues to be of the view that, in line with other parts of the tax system, ratepayers have a responsibility to take reasonable care when providing information in relation to their tax affairs. The Government has noted concerns about the consistency of applying penalties and the provision of incorrect information because of ratepayer's limited knowledge of the rating system. We want to ensure ratepayers will be treated fairly in all cases and we expect there to be clear guidance for VOA officials in applying penalties. The VOA will also provide guidance to support ratepayers with the provision of information and about the application of penalties. In cases where ratepayers disagree with the imposition of a penalty they will have the right to appeal.
21. In relation to the penalty structure, the Government wants the penalty regime to be simple and straightforward. Therefore, we have no intention to link the penalty charge to the rateable value. However, as the new system beds in we will review whether the penalty structure is ensuring the provision of correct information.

Q4. We would welcome your views on the approach to implementing the package for small businesses and small organisations.

22. 169 respondents commented on Q4. A number of respondents (of which the majority were businesses) suggested that all businesses should be treated equally and that a two-tier service between small and other businesses wouldn't be appropriate.
23. In terms of how a smaller proposer should be defined, there was a mix of responses. Many local authorities agreed with the proposed approach as set out in the consultation paper. A number of respondents were of the view that a definition attached to the business itself will be difficult to operate, adding a layer of complication and confusion to the process. Some respondents argued that turnover can be high but business profitability can be low. Some respondents suggested that the eligibility criteria used for either Small Business Rate Relief (SBRR) or the small business multiplier would be more appropriate.
24. Many respondents raised concerns that small businesses and particularly the unrepresented ratepayers will find it difficult to provide evidence.

Government response

25. The Government wishes to provide a fair opportunity to all businesses to enter the appeals system, including small businesses. In earlier consultations on the CCA policy framework, many respondents drew Government's attention to the particular needs of small businesses; and called for a faster, simpler approach and exemptions from penalties and fees. Government still believes that the proposed system will provide a tailored package for small businesses which will meet their needs without dissuading them from appealing.
26. In terms of the criteria for defining a smaller proposer, Government intends to proceed with basing the definition on that for "micro business" used in the Small Business, Enterprise and Employment Act 2015. This will provide a clear, consistent definition that is used widely across Government. While some respondents suggested linking the criteria to SBRR, the Government considers that this is likely to be more complicated to implement given the nature of the SBRR eligibility framework.

Q5. We would welcome your views on the approach to dealing with Material Changes in Circumstances.

27. 235 respondents commented on Q5. A significant number of respondents agreed with the approach to dealing with Material Changes in Circumstances (MCC) and many viewed the proposed process as an improvement to the current one.
28. Many businesses and agents argued that it can be difficult to determine the effect of an MCC until after the event and suggested that ratepayers should be able to make a Challenge after the event has ended, and that in these instances the

material day should still be the date of commencement of the MCC. Other views were that ratepayers should be able to submit a Challenge at any time with the material day being the effective date of the MCC.

29. Some respondents suggested that the proposal to set the material day as the date the Check is submitted would result in ratepayers instigating 'protective' Checks – leading to activity that could be proved to be unnecessary.
30. Some respondents commented on the 16 months time scale of the proposed process. Mainly local authorities felt that this was a long period before VOA could assess the case. Businesses suggested that this period was not enough and that ratepayers should have the option to extend this timeframe if needed. They also suggested that Challenges in relation to the basis of valuation should be prioritised and resolved ahead of MCC cases.

Government response

31. In terms of setting the material day the Government intends to proceed with the proposed approach. We believe that this is the best way to implement MCC arrangements as this aligns most closely with the arrangements in place currently – and supports a more efficient system by providing a clear incentive for ratepayers to submit Checks as soon as possible after an event has occurred.
32. The Government accepts the fact that sufficient time is needed before ratepayers are able to establish the impact of a MCC. We continue to consider that 16 months should provide enough time for ratepayers to gather the necessary evidence to submit a Challenge.

Q6. We would welcome your views on the amended approach to determining appeals against valuations.

33. 260 respondents commented on question 6. A significant number of respondents raised concerns about the proposed approach. The most common reason was that it was unclear how reasonable professional judgement would be defined in practice and, for example, whether the approach would mean a fixed percentage margin below which changes to valuations could not be made. A large number of respondents expressed concern that this provision could lead to businesses unfairly paying excessive levels of tax, where the VTE think the valuation is too high but is prevented from ordering a change.
34. Some respondents suggested that it would be challenging for lay VTE panels to reach a view on what was within the bounds of reasonable professional judgement. Some suggested that the new approach could lead to large differences between similar properties, where two valuations were at the opposing ends of the bounds of reasonable professional judgement. A number of respondents were concerned that the new approach would influence the Valuation Officer's approach to negotiating with ratepayers ahead of hearings at the VTE.

35. A number of respondents supported the new approach, and agreed that it would better reflect the level of judgement involved in assessing rateable values and help to focus limited VTE resources on cases where there are significant disagreements.

Government Response

36. The Government has carefully considered the concerns raised by a number of respondents about the potential impacts of the new approach.
37. We continue to believe that VTE decisions should reflect the degree of judgement involved in the valuation process, and that we need to focus limited VTE resources on genuine cases rather than the speculative appeals backed by little evidence that clog up the system and cause delay and uncertainty for local government and business.
38. The Government will not impose an arbitrary fixed percentage boundary on decisions by the VTE. Instead it will be for the VTE to take a view, based on the available evidence, on whether they consider the valuation to be reasonable. Where they consider that the current list reflects a reasonable valuation, it is right that they should not order a change. Equally, where the VTE do not think it is a reasonable valuation they will continue to be able to make a change to the list.
39. In light of the concerns raised, the Government has decided to amend the proposed approach to more clearly reflect the policy intention above. Under the revised approach, on appeal the VTE will be required to decide whether they consider the extant valuation to be a reasonable valuation. This will now replace the original proposal of “outside the bounds of reasonable professional judgement”. The change reflects a specific proposal from the Valuation Tribunal Service in their consultation response that the wording should be amended.
40. The Government also intends to carry out a review of the implementation of the overall package of reforms under Check, Challenge and Appeal by 2019. This will enable us to consider the impact of this specific measure, and to assess the overall effectiveness of the new framework – including the Valuation Office Agency’s performance in delivering a more efficient and streamlined appeals system for ratepayers.

Q7. We would welcome your views on the role of local authorities in the reformed system.

41. 155 respondents commented on question 7. The majority of respondents, including a mixture of businesses and local authorities, were supportive of the overall approach. A large number of respondents (mainly from businesses or property organisations) stated a clear view that the appeals process should primarily be a matter between the ratepayer and the Valuation Officer, and that local authorities should not be given a more significant role (for example being able to initiate appeals). Some respondents felt that this was even more important in the context

of 100% local retention of business rates, given the increased financial interest local authorities will have in the outcome of appeals.

42. Conversely, a number of respondents from local government argued that local authorities should have the right to appeal and to become party to appeals in relation to properties that they do not occupy. Respondents generally agreed with the proposals to provide local authorities with improved information on appeals, particularly to support them to forecast the possible impact on business rates income. A number of respondents from local government suggested that it would be important that information they provide to the Valuation Officer to support them in resolving cases is also available to the VTE if the case results in a hearing.
43. A small number of respondents raised concerns about local authorities receiving copies of proposals, and whether there would be appropriate safeguards to protect any commercially sensitive information contained within them. Some respondents stated that it would be important that any information provided by a local authority to the Valuation Officer should also be shared with the ratepayer.

Government Response

44. Having considered the responses received, the Government continues to be of the view that the primary focus of Check, Challenge and Appeal should be the efficient transaction of business between the ratepayer, Valuation Officer and VTE. At the same time the Government recognises the need, as highlighted by responses, for local authorities to have sufficient information to assist them in forecasting impacts on income. In addition, given local authorities' intimate local knowledge of their areas and businesses, they are well placed to provide information on Challenges to support the VOA in resolving cases. This will ensure the Valuation Officer has as much information as possible in order to determine an accurate valuation.
45. In relation to information from local authorities being shared with ratepayers, the regulations require the VOA to share any further relevant information they receive during the Challenge stage with the proposer. The proposer will then have the opportunity to provide the VO with further evidence in response to that information.
46. In light of the responses, the Government has decided to implement the broad approach set out in the draft regulations, which we believe strikes the right balance between delivering an efficient process and giving local authorities the information that they need and the opportunity to support the resolution of cases.
47. As above, the Government thinks it is important that local authorities have the opportunity to provide relevant information that can support the resolution of cases. To ensure that any evidence supplied by local authorities at the challenge stage is considered as part of decisions made at appeal, we intend to amend the draft regulations to ensure that any evidence provided by the local authority is included in the overall package of information provided to the Valuation Tribunal, should the proposer decide to launch an appeal.
48. The Government has noted the concerns raised around safeguarding any information on individual proposals shared with local authorities. The Government

therefore intends to review the approach in the regulations to enable the VOA to provide any potentially sensitive information via the new statutory gateway established through the Enterprise Act 2016. This will ensure that the information provided is subject to additional safeguards built into the gateway, for example around the potential for any onward disclosure. The VOA will work with the sector to develop and put in place information sharing agreements with local government that will set out what information will be shared under the gateway, including copies of proposals on request, and how that information must be held. Alongside this, regulations will set out the key management information on proposals that the VOA will be required to routinely provide to local authorities, to support them in assessing the impact of on business rate receipts.

Next steps

49. The Government's intention is to implement the regulations as soon as possible. Subject to Parliamentary approval, the reformed system will come into force from 1 April 2017, to coincide with the national revaluation of rateable values. The amended regulations will apply only in relation to rating lists compiled on or after 1 April 2017.