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PROPERTY LITIGATION ASSOCIATION

**By Email Only** (winterm@parliament.uk; boothl@parliament.uk)

Joint Committee for Statutory Instruments
House of Commons
London
SW1A 0AA

**For the Attention of Mike Winter and Liz Booth**

27 March 2017

Dear Mr. Winter and Ms. Booth,

**Representation regarding The Non-Domestic Rating (Alteration of Lists and Appeals)(England)(Amendment) Regulations 2007 SI 2017 No. 155 (the "SI")**

***'Reasonable Valuation'***

We refer to the correspondence dated 15 February 2017 and 23 March 2017 sent to you by Berwin Leighton Paisner LLP concerning the above. The Property Litigation Association is referred to in the letter dated 15 February and endorsed its contents.

The PLA also endorses the contents of the 23 March 2017 letter.

The new provision in the SI replaces the 'outside the bounds of reasonable professional judgment' wording in the original proposal. The replacement wording requires the VTE to instead consider whether the valuation the subject of the appeal is a reasonable valuation.

The change made is not substantive and does not address the fundamental issues arising from the original proposed wording.

Our concerns reflect those originally made and those referred to in the 23 March letter. These are:

1. There is clear inconsistency between a proposal to reduce an assessment being made on the basis that the list is inaccurate and a ground for appeal being that the valuation is not reasonable. An inaccurate valuation may be determined a reasonable valuation.

2. If an accurate rating list is a paramount principle of property taxation, then it is fundamentally objectionable for the ratepayer to face liability based on an inaccurate valuation, but one which the VTE may consider to be reasonable.

3. In response to the Consultation, DCLG was not prepared to set down any criteria for the assessment of whether or not a valuation is reasonable. This is inherently uncertain and confusing, both for ratepayers and the VTE.

4. Given the Check, Challenge, Appeal ("CCA") changes, the ratepayer is already expected to expend time and money in complying with the new process before any appeal commences. There is no clarity on the circumstances upon which a valuation will be considered reasonable or unreasonable. Accordingly, it will be more difficult to be able to properly advise ratepayers in respect of the appeal process, and their prospects in respect of it, leading to additional cost being incurred and a strain on VTE resources.

Based on the above, we further endorse the conclusions in the 23 March 2017 letter.

***Impact of the SI***

The reasonable valuation issue referred to above is of paramount concern. However, the impact of the SI more generally is of equal concern.

Para 10.1 of the Explanatory Memorandum to the SI claims that '*under the reforms it will be easier to navigate through the new process and engage earlier in the process with the VO.*' From the responses to the consultation we have seen we are aware that this suggestion was resoundingly rejected by businesses and trade organisations. We understand that the Government has not made all responses available and has refused FoI requests for the supply of these.

The obligations and information requirements which the SI imposes upon ratepayers will likely lead to a far more complex and less transparent system as is readily apparent from reading new regulations 4A to 4F. All these steps will need to be undertaken through a new VOA online portal for which businesses have had no visibility as we understand it will only be made available on 1 April 2017 (in public beta mode) and for only certain categories of property.

Businesses have made clear that the new SI will fail to deliver the requirements identified in para 7.4 of the Explanatory Memorandum. They will not deliver '*a better understanding of how their properties have been valued*' nor provide confidence '*that their valuations are correct and that they are paying the right amount of business rates*'.

The Explanatory Memorandum identifies that '*where this is not the case, it needs to be put right quickly*', but the complex process requirements and inherent delays imposed by these regulations will deny speedy corrections and indeed will probably prevent them occurring at all if businesses are deterred by the opaque and onerous requirements of these regulations. They provide for the opposite of the needs of the

appeals system identified in para 7.4 which states '*The system needs to be clear and easy to navigate so that businesses of all sizes can easily use it*'.

***Breach of 21 day rule***

We do not accept the suggested reasons provided to the JCSI by DCLG (para 3.1 of the Explanatory Memorandum) for its failure to lay the Regulations sooner.

The consultation regarding statutory implementation of the new CCA scheme closed on 11 October 2016 allowing more than adequate time for DCLG to consider responses and determine the way forward. The recent scrutiny in the media and Parliament referred to related principally to the impact on businesses of the 2017 rating revaluation and not to the detail of CCA. Whilst business organisations have continued to criticise the proposals to restrict appeal reductions to those instances where the original valuation was 'outside the bounds of reasonable professional judgment', this was no more than repetition of their formal responses to the consultation last Autumn.

Para 3.2 of the Explanatory Memorandum identifies that delaying implementation of the SI would lead to a two-tier system. We should point out however that a two tier system will persist in any event for a number of years as the new processes will apply only to 2017 revaluation challenges. The circa 250,000 outstanding appeals relating to the 2005 and 2010 revaluations will continue to be handled by VOA and businesses under previous scheme rules and it is likely that it will take well over 2 years until all these are cleared. It is not unusual for different regulations to apply depending upon when a proposal has been served.

The Explanatory Memorandum suggests that delay in implementation could lead to possible unfairness because appeals under the new regulations would be subject to fees. We would note, however, that such fees would only be applicable after both Check Stage (for which 12 months is allowed) and Challenge Stage (a further 18 month period) and there is therefore ample time for regulations to be amended to provide for a fee to be payable well before any appeal originating prior to the implementation of these regulations reaches the Valuation Tribunal for England.

Should you wish to discuss any of the above, please contact Bryan Johnston of the Property Litigation Association on 020 7320 4059 or bryan.johnston@dentons.com.

Yours sincerely,

**Bryan Johnston**
**Property Litigation Association**