

# **Scottish Government response to consultation on the non-domestic rating valuation appeals system**

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**Scottish Government**  
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## **Ministerial foreword**

I am pleased to offer the Scottish Government's response to its consultation on the non-domestic rating valuation appeals system.

The Government's tax policies are of the utmost importance to our commitment to sustainable economic growth and, specifically, our Economic Strategy priorities of investment, innovation, internationalisation and inclusive growth. The valuation of the non-domestic property base is crucial to ensuring a proportionate basis for taxation, thus supporting public expenditure to help deliver these economic growth ambitions.

The longstanding right for all ratepayers to appeal their valuations and receive a fair and impartial hearing are an integral part of this. For these reasons we keep the valuation appeal arrangements under close review, and I am grateful to those who responded to this consultation and enabled an informed consideration of reform options.

I recognise the range of issues raised by respondents, many of which need to be balanced against each other in considering a fair, efficient and proportionate appeals system. I also recognise that the current arrangements are 'tried and tested' and have evolved over time in light of experience.

Accordingly I have considered potential reforms carefully, and my proposals are outlined in this document. I will bring forward legislation shortly to implement these in time for the 2017 revaluation. We will continue to engage stakeholders in respect of the later transfer of Valuation Appeal Committee functions to the Scottish Tribunals structure, exploring any associated opportunities for further substantive reforms.

Our longer-term strategic approach to business rates will be informed by the external review group led by Ken Barclay, which is due to report to me by next summer. I would encourage ratepayers to engage with that work, and help shape the wider policy direction.

**Derek Mackay MSP**  
**Cabinet Secretary for Finance and the Constitution**

## Introduction

1. In December 2014 the Scottish Government launched a consultation on the non-domestic rating valuation appeals system<sup>1</sup>. The consultation ran for 12 weeks and closed in March 2015, with 41 responses received. Individual responses were published, subject to permission, in April 2015<sup>2</sup>. An independent analysis of the responses was undertaken, and published in September 2015<sup>3</sup>.
2. Since the consultation period, the Scottish Government has established an external review of the non-domestic rates system, under a review group led by the former chair of RBS Scotland, Ken Barclay, to report by summer 2017. The group's remit is to explore ideas and options to improve the business rates system in Scotland to better support business growth that: consider how the system can respond to wider economic conditions and changing marketplaces; support long-term growth and investment; and are based on overall revenue neutrality and on maintaining the overall level of funding for local government.<sup>4</sup>

## Scottish Government response

3. The Scottish Government reiterates its commitment to fair taxation and workable arrangements across the non-domestic rates framework, including a valuation appeal system that is fair, efficient and proportionate.
4. The appeals system has to deal with a considerable caseload, with many cases comprising a high degree of complexity. The current arrangements have been developed over time, and are tried and tested. Case disposal deadlines are met, and the relatively low administration costs provide value for the public purse.
5. The Scottish Government is grateful for the time that individuals and organisations took to respond to the consultation. Stakeholder expertise and experience is vital to informing policy direction. The Government is also grateful to stakeholders for other informative discussions regarding valuation appeals.
6. On many of the issues addressed in the consultation responses, there was limited consensus. For many of the arguments submitted, however valid, there are valid counter-arguments. However, the Scottish Government after considering the consultation responses agrees that certain improvements can be made.
7. This response sets out changes to the valuation appeals system that the Scottish Government now wishes to pursue in time for the 2017 revaluation, having considered the consultation findings.
8. The Scottish Government acknowledges that other issues relating to the valuation appeals system may emerge from the work of the Barclay review and require due

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<sup>1</sup> [www.gov.scot/Publications/2014/12/1945](http://www.gov.scot/Publications/2014/12/1945)

<sup>2</sup> [www.gov.scot/Publications/2015/04/3197](http://www.gov.scot/Publications/2015/04/3197)

<sup>3</sup> [www.gov.scot/Publications/2015/09/1764](http://www.gov.scot/Publications/2015/09/1764)

<sup>4</sup> <http://blogs.scotland.gov.uk/scotlands-economy/2016/07/13/business-rates-review/>

consideration. This response therefore does not preclude subsequent change proposals in that respect.

9. Further consideration is also required in respect of the planned transfer of Valuation Appeal Committee (VAC) functions<sup>5</sup> into the Scottish Tribunals structure under the Tribunals (Scotland) Act 2014, which will not take effect in time for the 2017 revaluation. This paper also comments further on this issue, indicating the further work and engagement required.

### **Information exchange**

10. Information is clearly key for the Assessors' valuations and for the appeals process. Many respondents suggested that better information flow ahead of valuation, in either or both directions between the Assessor and the ratepayer<sup>6</sup>, would mitigate the need for appeals. The Government agrees with this principle.
11. The Government recognises that transparency needs to be balanced by confidentiality, and as a matter of course urges ratepayers and Assessors to share information to inform and explain valuations insofar as is reasonably possible.
12. The Government notes the statutory requirement for proprietors, tenants and occupiers to provide information to the Assessor where requested, to inform valuations, and the associated criminal offence of failure to do so<sup>7</sup>. In practice, however, response rates are low, but criminal proceedings are rarely if ever pursued.
13. For the Assessors' part, valuations for individual properties are often informed by information relating to a number of other properties, for example having a similar type or location. Such information can be commercially sensitive, however, often meaning that relevant information in respect of other properties is not shared with the ratepayer in respect of the valuation of their own property.
14. The Government notes the benefit of the online portal facility<sup>8</sup> developed by the Scottish Assessors Association (SAA), including the availability of summary valuations for almost two-thirds of properties, and encourages the continued use and development of this facility to provide relevant information.
15. Limitations on information exchange ahead of valuation likely leads to more appeals. There is no legitimate reason for the withholding of information by failing to respond to the Assessors, and the Government urges parties to respond in line with the law to the Assessors' statutory requests for information to inform valuations. The Government is keeping under active review whether different sanctions, such as civil penalties, are required in respect of failure to provide information to the Assessor.

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<sup>5</sup> Valuation Appeal Committee members are drawn from the membership of the corresponding Valuation Appeal Panel (there being 13 such panels covering Scotland)

<sup>6</sup> "Ratepayers" is used as a shorthand in this document for the different classes of people who can appeal valuations.

<sup>7</sup> section 7 of the Lands Valuation (Scotland) Act 1854

<sup>8</sup> [www.saa.gov.uk](http://www.saa.gov.uk)

16. The Government is also sympathetic to the calls to extend the statutory 14-day information return period and to enable electronic communication in this respect, which would require primary legislation, and will re-visit this issue in time for the 2022 revaluation.
17. The Government has already committed that draft rateable values will be made available to ratepayers as far as possible in advance of the 2017 revaluation. This should enable greater dialogue between ratepayers and Assessors before valuations are finalised (new valuation rolls must statutorily be 'made up' by 15 March 2017), and should help mitigate against appeals.
18. Electronic communication in respect of lodging and withdrawing valuation appeals is already enabled, with the Assessors publishing email addresses and facilitating the lodging of appeals via the online portal facility. Consultation responses were supportive of the general enablement of electronic communications, notwithstanding which the Government supports non-electronic modes remaining available for reasons of inclusivity. The Government therefore proposes to clarify that electronic communications are admissible in respect of all exchanges relating to appeals to a Valuation Appeal Committee.
19. The Government acknowledges the importance of its own role in the promotion of general information for ratepayers, and will endeavour to provide improved information on its own websites, including in respect of valuation appeal processes.

### **Appeal rights, fees and penalties**

20. Broadly, the current statutory appeal rights relate to revaluation, to change of ownership, tenancy or occupation, to material change of circumstances, and to discovery of an error. The Government is not proposing any changes to these appeal rights for the 2017 revaluation cycle<sup>9</sup>.
21. There are currently no statutory fees or penalties in respect of appealing a valuation with the Assessor or proceeding to a Valuation Appeal Committee hearing. There are currently fees relating to a hearing at the Lands Tribunal or at the Lands Valuation Appeal Court (Court of Session). The Government has recently consulted on court fees, which includes those for the Lands Valuation Appeal Court<sup>10</sup>.
22. The Court of Session aside, the Government is not proposing any new fees, or any penalties, relating to appeals in respect of the 2017 revaluation cycle. However, associated options will be kept under review in relation to the subsequent transfer of VAC functions into the Scottish Tribunals structure.

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<sup>9</sup> "2017 revaluation cycle" in this document refers to the period over which the valuation rolls made up in 2017 remain in force, i.e. until the subsequent revaluation scheduled in legislation for 2022.

<sup>10</sup> <https://consult.scotland.gov.uk/courts-judicial-appointments-policy-unit/court-fees>

## Appeal processes

23. Processes relating to VAC functions continue to be subject to review ahead of their transferring into the Scottish Tribunals structure at a later date, which may take effect at the time of the 2022 revaluation. In the meantime, the Government proposes certain changes to take effect at the time of the 2017 revaluation.
24. The consideration of venues for appeal hearings must balance a number of considerations, such as cost, convenience and the perceived neutrality of the location, and in practice local hearings take place at a range of different venue types. The Scottish Government feels VAC hearings should not be located at offices of the Assessor, as this is not necessarily conducive to a neutral setting, and proposes to preclude this.
25. Panel secretaries are already required to notify parties of details of a hearing, and separately must advertise hearing details at certain locations and make available a list of appeals to be heard. In practice these are already often advertised online, and to consolidate this the Government proposes requiring that details of all hearings and associated lists of appeals be advertised online, and dispense with the need for in situ advertisements.
26. Some hearing decisions are already published online, but this practice varies between areas, there being no associated statutory requirement. To consolidate this good practice, the Government proposes to require that decisions and associated statements of reasons be published online in respect of all substantive Committee hearings (i.e. excluding dismissals).
27. Currently, once grounds are exchanged in advance of a hearing<sup>11</sup>, nothing in legislation prevents a party from founding on other grounds at the hearing. Such an arrangement is open to abuse, and indeed is abused by some parties. However, this is avoidable, and the Government therefore proposes that parties cannot at the hearing found on grounds other than those exchanged in advance, unless with the consent of the other party or at the discretion of the VAC.
28. Currently, in advance of a hearing either party may share with the other a list of properties on which they propose to found by way of comparison at the hearing, and when doing so may request such a list from the other party, in which case that party must share a list in return<sup>12</sup>.
29. The Government proposes amending this, so that any such comparisons to be referenced in evidence by a party at the hearing must have been shared in advance with the other party. The appellant will have to share a list of any comparisons with the assessor, and the assessor will have to reciprocate. The substance of the current provision relating to a party founding on comparisons other than those in its shared list,

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<sup>11</sup> regulations 10(1) and 10(2) of the Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995, the latter hereafter referred to as “the 1995 regulations”

<sup>12</sup> regulation 10(5) of the 1995 regulations

either with the consent of the other party or at the discretion of the Committee, will remain.

30. So that no extra time pressure is generated for appellants by the proposed changes regarding grounds and comparisons, and also to extend the period for negotiation and preparation, the Government proposes extending the current 70-day notice period for a VAC hearing to 105 days.
31. The Government is considering whether any productions (such as maps, photographs, or other materials) on which a party proposes to found at a hearing must be shared in advance with the other party. Currently the VAC may require a party to furnish the other with productions by a certain date, in which case it is not competent for evidence to be led at a hearing other than in accordance with the material provided<sup>13</sup>.
32. The current deadline by which the Assessor must provide a written statement of grounds to the appellant, and may request confirmation of intent to proceed, is within 14 days of receiving the appellant's statement<sup>14</sup>. The Government proposes amending this deadline to 21 days before the hearing. In practice this will often be the same date, but it provides a more reasonable deadline for the Assessor in cases where the appellant's statement is submitted early.
33. The Government is considering whether confirmation of intent to proceed should instead be required as part of the appellant's statement specifying grounds and any alternative value<sup>15</sup>, rather than in response to any subsequent request from the assessor for such confirmation, as is currently the case<sup>16</sup>.
34. The Government will finalise its decisions on productions and on confirmation of intent to proceed when bringing forward legislation.

### **Tribunals agenda**

35. The Tribunals (Scotland) Act 2014 (the 2014 Act) creates two new tribunals, the First-tier Tribunal for Scotland (generally hearing cases at first instance) and the Upper Tribunal for Scotland (primarily for appeals), known collectively as the Scottish Tribunals. Existing tribunals will transfer into the Scottish Tribunals in a phased process commencing in December 2016.
36. The main aim of the 2014 Act is to create a simplified framework that will provide coherence across the current disparate tribunals landscape. It will bring improvements to the structure, management and organisation of tribunals, introducing a common system of appointments, practices and procedures, and bringing judicial leadership under the Lord President.

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<sup>13</sup> regulations 11(1) and 11(2) of the 1995 regulations

<sup>14</sup> regulation 10(2) of the 1995 regulations

<sup>15</sup> regulation 10(1) of the 1995 regulations

<sup>16</sup> regulations 10(2) and 10(3) of the 1995 regulations

37. The transfer of VAC functions will not happen in time for the 2017 revaluation. Given the cyclical nature of the VACs' workload in respect of valuation appeals, it would be administratively convenient to time the transfer to coincide with a subsequent revaluation, notwithstanding that VACs have other jurisdictions and caseloads relating to council tax appeals which must be borne in mind. Under current legislation, the revaluation cycle will revert to five-yearly after 2017, meaning the next revaluation will be in 2022 – and this may be the most appropriate time for the transfer.
38. In light of this future transfer, the Government is not proposing any reforms in respect of Valuation Appeal Panel recruitment, membership, remuneration and training to take effect for the 2017 revaluation cycle. Such issues will be considered as part of the planning to transfer VAC functions to the Scottish Tribunals. In the meantime, the Government is discussing funding for training with the Scottish Valuation Appeal Committee Forum.
39. The Government recognises the valuable work of the many Valuation Appeal Panel members around the country, as well as the potential uncertainty generated by the tribunals agenda. Accordingly the Government will continue to work closely with the Scottish Valuation Appeal Committee Forum to fully consider the issues in respect of the planned transfer of functions to the Scottish Tribunals structure, and will endeavour to clarify the prospects for existing and potential new panel members timeously.

## **Conclusion**

40. The Scottish Government will bring forward legislation to implement the changes proposed in this document, in time for the 2017 revaluation cycle. The Government reiterates its gratitude to those who responded to the consultation, and will continue to seek engagement with stakeholders on its approach to non-domestic rating.

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