

Access to Information

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VO from the ratepayer

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- Local Government Finance Act 1988
 - Schedule 9 Non-Domestic Rating: Administration
 - Information:* paragraphs 5 to 5H
 - The valuation officer is given powers to serve notice on the owner or occupier requiring information
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- Para 5: VO **serves a notice**
 - On a person who is **an owner or occupier** of a hereditament
 - Requesting him to supply to the officer *information*
 - Specified in the notice and
 - Which the officer **reasonably believes** will assist him in carrying out functions conferred or imposed on him
 - The notice must state that the officer so believes
 - The person on whom the notice is served *shall* supply the information requested in the manner and form specified in the notice- with a *criminal* penalty for a *false statement*
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- “information ... which the officer reasonably believes will assist him”: NB the corresponding provision under the General Rate Act 1967 s82(1) was “such particulars as may be reasonably required” which was based on similar wording in s.58(1) of the Local Government Act 1948.
 - In ***Watney Mann Ltd v Langley* [1966] 1 QB 457** Thompson J. held that, in a true construction of s.58(1) of the 1948 Act, the words “reasonably required” meant “reasonably necessary” and not “reasonably demanded”: the test was whether the particulars were necessary to a prudent and reasonable valuation officer.
 - In the ***Watney Mann*** case the VO required particulars of the quantities of goods supplied by the brewers to their licensed premises for each of the three accounting years preceding service of the notice. It was held that those particulars were reasonably required since knowledge of the actual trade was necessary for the proper performance of the VO’s duty.
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- A **penalty** applies (see para 5A) for **failure to supply** the information within 56 days starting with the day the notice was served- the VO serves a penalty notice
 - The VO may mitigate or remit any penalty imposed (see para 5B)
 - It is also recoverable to the VO as a civil debt due to him, after the end of the appeal period/appeal:
 - **Right of appeal** (see para 5C) to the Valuation Tribunal *within 28 days of service of the penalty notice* if the person is aggrieved by the imposition of a penalty under para 5A, on the grounds that
 - There was a **reasonable excuse** for not complying with the information notice or
 - The information requested is **not in the possession or control** of the appellant
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- VO may also (see para 5H) serve a notice on the billing authority to supply him with the name or address of a person on whom a notice under para 5 or 5A is to be served
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- ***Allchin v Williamson (VO) [1966] R.A. 297***, the Lands Tribunal said that it would be an unreasonable requirement for a notice to require an occupier to give particulars of areas which the VO could obtain by means of his power of entry for survey.
- ***Bournemouth & West Hampshire Water Plc v Central Valuation Officer [2008] RVR***, a valuation tribunal upheld a penalty notice issued by the VO to a water company for non-compliance with the VO's request for information relating to repair, maintenance and renewal costs since:
 - (i) the company did not have a reasonable excuse for not complying because whilst there may have been information made available to the OFWAT regulator, it was in a different format to that requested by the VO, and it was not for the company to dictate the format of how information should be provided to the VO; and
 - (ii) the information would have at some point been in the ownership of the company, and it was irrelevant and not a consideration that the company did not have the resource to supply the information in a timely manner- it was the responsibility of a company to ensure that adequate records were retained in a manner that permitted information to be retrieved in such form and manner as was specified by a VO.

Use of information/confidentiality

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- Commissioners for Revenue and Customs Act 2005
- Use of information
 - Section 17- information acquired by R&C in connection with a function may be used by them in connection with any other function
 - Subject to any prohibition imposed by other enactments- includes the Data Protection Act 1998 and the Human Rights Act 1998
- As the explanatory note to the Act states, prior to the formation of HMRC information could be passed between the Inland Revenue and Customs and Excise through statutory gateways. This section enables the department to pool all its information, irrespective of the purpose for which it was originally obtained.

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- Confidentiality
 - Section 18- sets out the statutory duty of officers, Commissioners (and others acting on their behalf, and their committees) not to disclose information held by HMRC unless authorised to do so- and sets out the circumstances where disclosure may be allowed. Section 3 provides that Commissioners and officers newly appointed to HMRC shall make a declaration acknowledging this duty.
 - *Officials* may not disclose information which is held by them in connection with a *function of HMRC*
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- But that does not apply to a disclosure which is made
 - for the purposes of a function of HMRC and does not contravene any restrictions imposed by the Commissioners
 - in accordance with ss20/21
 - for the purposes of civil proceedings or a criminal investigation/proceedings (inside or outside the UK) relating to a matter in respect of which HMRC have functions
 - pursuant to an order of a court
 - to HM Inspectors of Constabulary for the purposes of an inspection under s27
 - to the Independent Police Complaints Commission for the purpose of the exercise of a function under s28
 - with the consent of each person to whom the information relates
 - And is subject to any other enactment permitting disclosure
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- Section 19- makes unauthorised disclosure of 'revenue and customs information' relating to an identifiable person (either **specified in the disclosure** or **can be deduced from it**) a criminal offence carrying a maximum penalty of imprisonment for up to 2 years and an unlimited fine. This widened the previous criminal offence of unauthorised disclosure of information held in relation to tax and other functions, which did not cover information obtained in the course of Customs' non-revenue functions.
- "*revenue and customs information relating to a person*" means information about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs in respect of the person; but does not include information about internal administrative arrangements of HMRC (relating to Commissioners/officers/others).
- Defence: proof of reasonable belief that
 - The disclosure was lawful
 - The information had already and lawfully been made available to the public

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- Section 20- Public Interest Disclosure (with reference to the s18 exceptions)
- Sets out the conditions and circumstances under which the Commissioners may if satisfied that it is in the public interest instruct, officers to disclose confidential information:
 - Of a kind to which any of ss20(2)-(7) apply, eg
 - Disclosure to a person exercising public functions/for the purposes of the prevention or detection of crime/comply with an obligation of the UK or HMG under an international/other agreement relating to the movement of persons, goods or services
 - Disclosure to a body which has responsibility for the regulation of a profession, relates to misconduct on the part of a member of that profession and relates to a function of HMRC
 - Or specified in regulations made by the Treasury- s20(8)
 - Relating to national security, public safety, public health or the prevention/detection of crime
- Section 21- Disclosure to a prosecuting authority for advice or for the commencement of criminal proceedings. Information disclosed in this way is subject to ongoing confidentiality safeguards .
- Section 22 confirms that nothing in sections 17-21 authorises the making of a disclosure which contravenes the Data Protection Act 1998 or prohibited by the Regulation of Investigatory Powers Act 2000. Similarly, section 23 clarifies the interaction between the confidentiality sections and the FOIA 2000 (information the disclosure of which is prohibited by s18 CRCA is *exempt information* under s44(1) FOIA if it would specify/enable the deduction of the identity of the person to whom it relates.

The new regulations: *Check, Challenge, appeal*



- Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2017/155, amending the 2009 Regulations SI 2268
 - From 1st April 2017
 - Apply only to the new 2017 rating lists
 - Insertion of new paragraphs 4A to 4F after Regulation 4 of the 2009 Regulations
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- A person cannot make a proposal in respect of a hereditament unless a check of information about the hereditament has been completed: Reg 4A
 - A check means the steps in Regs 4B to 4F
 - The check is completed on the date the VO serves a notice under Reg 4F(1) or the date the check is taken to be completed: see Reg 4F(3)
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- A person cannot make a proposal in relation to a hereditament before requesting from the VO, information which the VO holds about the hereditament: Reg 4B
 - That must be done using the VO's electronic portal (unless agreed otherwise)
 - On receiving the request, the VO must then provide the person with that information if it
 - Reasonably relates to any of the grounds set out in Reg 4 and
 - The VO considers it reasonable to provide the person with that information
 - When providing the person with the information, if the VO is missing any factual information about the hereditament the VO may ask the person to supply it
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- Reg 4C: When the information provided by the VO about the hereditament is received by the person, the person must:
 - If any of the information is inaccurate, provide the accurate information to the VO
 - Provide the VO with any missing information which has been asked for
 - **Confirm** to the VO which of the information provided by the VO is accurate, *and* that any information provided by the person is accurate
 - The VO, on receiving that confirmation, then serves on the person who made it a written **acknowledgment** of receipt: Reg 4D. That must state the date on which the confirmation was received and the date of the acknowledgment.
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- Reg 4E: when the VO receives any information provided under Reg 4C, the VO must
 - Decide if that information is accurate or inaccurate
 - Alter the list to correct any inaccuracy in relation to the RV of the hereditament or any other information shown in the list about the hereditament and
 - Update any other information the VO holds about the hereditament to correct any inaccuracy

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- Reg 4F: as soon as reasonably practicable after the steps in Regs 4B-4E have been carried out, the VO must serve on the person who made the request for information (under Reg 4B) a **notice** stating that a **check has been completed** in relation to the hereditament
- It must include
 - The date on which the notice is served
 - The name of the person
 - The identity of the hereditament
 - Details of any alteration the VO made to the list as a result of the check
 - A summary of any changes the VO made as a result of the check of information the VO holds about the hereditament
 - A statement of the person's right to make a proposal
- A check is *taken to be completed* if the VO has not served a notice before the end of 12 months beginning with the date the VO received the confirmation- at the end of that period (or before the end of any longer period agreed in writing by the VO and the person)

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- The check stage thus *frames the factual information* which will be used throughout the balance of the process
- There are as of yet no civil penalties for giving inaccurate information

