

The Tribunal's powers under regulation 38 of the Valuation Tribunal for England Regulations 2009

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Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009

- Regulation 35: enables the VTE to make an order in the terms agreed by the parties
- Regulations 36 and 37: provide for the giving of notice of, and reasons for, appeal decisions
- Regulation 37A: matters which must not be taken into account in NDR appeals
- Regulation 38: deals with the making of orders other than those made with the parties' consent.

Regulation 38: The Framework

- (1) - (3): appeals in relation to Council Tax
- (4): NDR appeals
- (5) – (6): sets out powers where VTE determines that a disputed rateable value should be an amount greater than both the amount shown in the list at the date of the proposal and the amount proposed by the appellant
- (7): sets out the powers where it appears that circumstances giving rise to an alteration ordered by the VTE have ceased to exist

Regulation 38: The Framework

- (7A) – (8C): powers in respect of penalties
- (9): time-limit for compliance
- (10): ancillary matters

The Proposal



The Proposal

- The circumstances in which a proposal to alter a valuation list may be made are prescribed by Reg 4 of the NDR Regs. The same regulation also sets down who may make a proposal, and in what circumstances.
- Regs 9-12 deal with the procedure to be followed where the VO is in receipt of a valid proposal.
- This includes procedures for the VO's acceptance of the proposal (Reg 10), for the withdrawal of the proposal (Reg 11), and for agreed alterations outside of the terms of the proposal (Reg 12).

Regulation 38(4) / Regulation 13A

- On dealing with an NDR appeal, the VTE has the power to “require a VO to alter a list in accordance with any provision made by or under the 1988 Act.”
- Pursuant to Regulation 13A of the NDR Regs, a proposer may appeal to the VTE in circumstances where the Valuation Officer has:
 - decided under regulation 13 of the NDR Regs not to alter the list or to alter it otherwise than in accordance with the proposal; or
 - the VO has not made a decision under regulation 10 or 13 and—
 - the proposal is not withdrawn under regulation 11;
 - there is no agreement under regulation 12; and
 - 18 months has elapsed.

Regulation 38(7): Building Works

Avison Young Ltd v Jackson (Valuation Officer) Moore v Great Bear Distribution Ltd [2021] EWCA Civ 969

Avison Young

- Works: Carried out between 1 September 2014 and 23 January 2015
- VTE: Ordered VO to amend rating list to enter a rateable value of nil for the period of works.
- Effect: Hereditament remained in the list with its original rateable value of £1,830 from 23 January 2015 to 31 March 2015.

Great Bear Distribution Ltd

- Alterations: Carried out between 23 June and 3 October 2014.
- VTE: Ordered that the entry be deleted from 23 June. Declined to restore the entry in the list from 3 October.
- Reason: Effect of doing so would be to return the hereditament to the list at its previous rateable value whereas it had now reduced.



- For the purposes of these appeals, there was no difference between a valuation officer reducing the rateable value of a property to a nominal value and removing the property from the list: at [28].
- The purpose of reg.38(7) was to enable the VTE to ensure that its order for alteration of the list had effect only for the duration of the circumstances which justified the alteration, but also to give the VTE a discretion not to do so: at [67].
- The VTE exercise of its discretion is subject to control by the Court which will not hesitate to intervene where it is exercised in a flawed manner: at 81.

Regulation 38(7): Mistakes

Andrew Ricketts (Valuation Officer) v Cyxtera Technology UK Ltd [2021] UKUT 0265 (LC)

- VOA argued that the circumstances giving rise to an alteration by the VTE in relation to 13 March 2013, namely the fact that 631 was incomplete, have ceased to exist, which meant the had power under reg 38(7) to determine that 631 became part of the hereditament on a later date, and to order that the rating list should be altered at that date.
- Cyxtera argued that the Tribunal does not have jurisdiction to do this because the circumstance giving rise to an alteration on 13 March 2013 is that the VOA made a mistake and entered the wrong value, and that circumstance has not changed.
- UT declined to exercise its jurisdiction.

Saved by the Regulation 38(10)?

- Regulation 38(10): “An order under this regulation may require **any matter ancillary** to its subject matter to be attended to.”
- Where premises were entered in the 2005 and 2010 rating lists in reliance on completion notices which were found to be invalid after the 2005 rating list was closed to the owner and proposals for deletion from the 2010 list were upheld by the Valuation Tribunal for England, reg.38(10) did not give the Valuation Tribunal power to alter the 2005 rating list: Metis Apartments Ltd v Grace (VO) and Sheffield CC [2014] R.A. 222.



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