

IRRV Conference Wales

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Check, Challenge and Appeal

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Business Rates Stakes



LOSERS

WINNERS

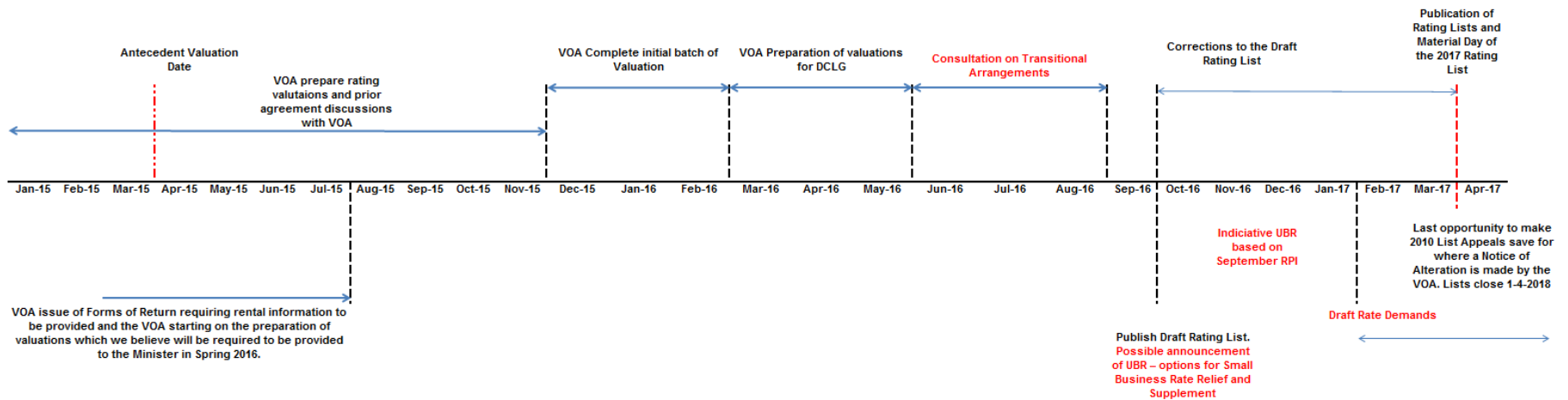


Agenda

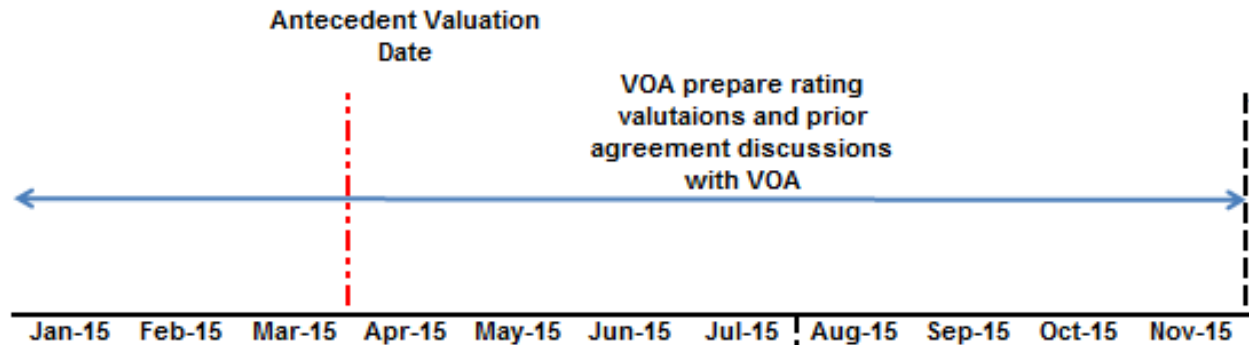
- Timetable
- Market Changes
- Assumptions
- Possible Outcomes
 - Values in Wales
 - Decap Rate
- Legislation – Enterprise Act
 - Check, Challenge
 - Appeal
- Strategic Review
- Conclusions / Questions



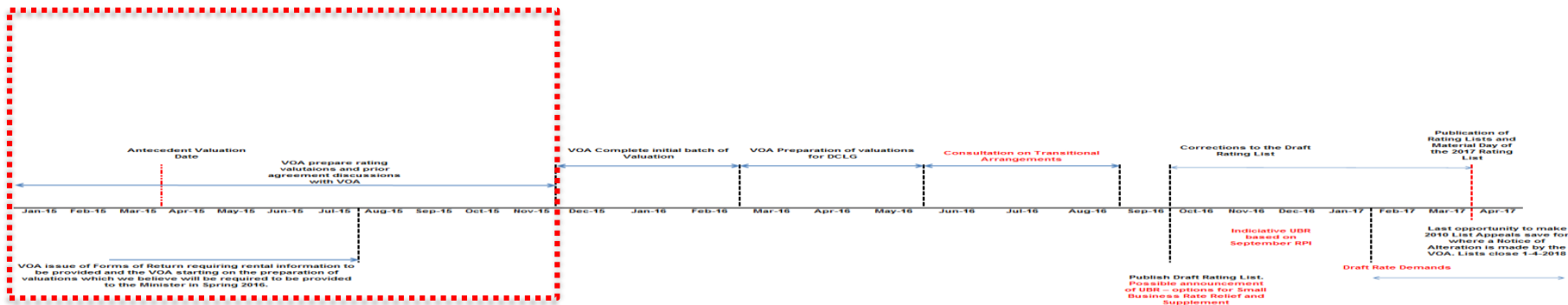
Revaluation Timetable for 2017



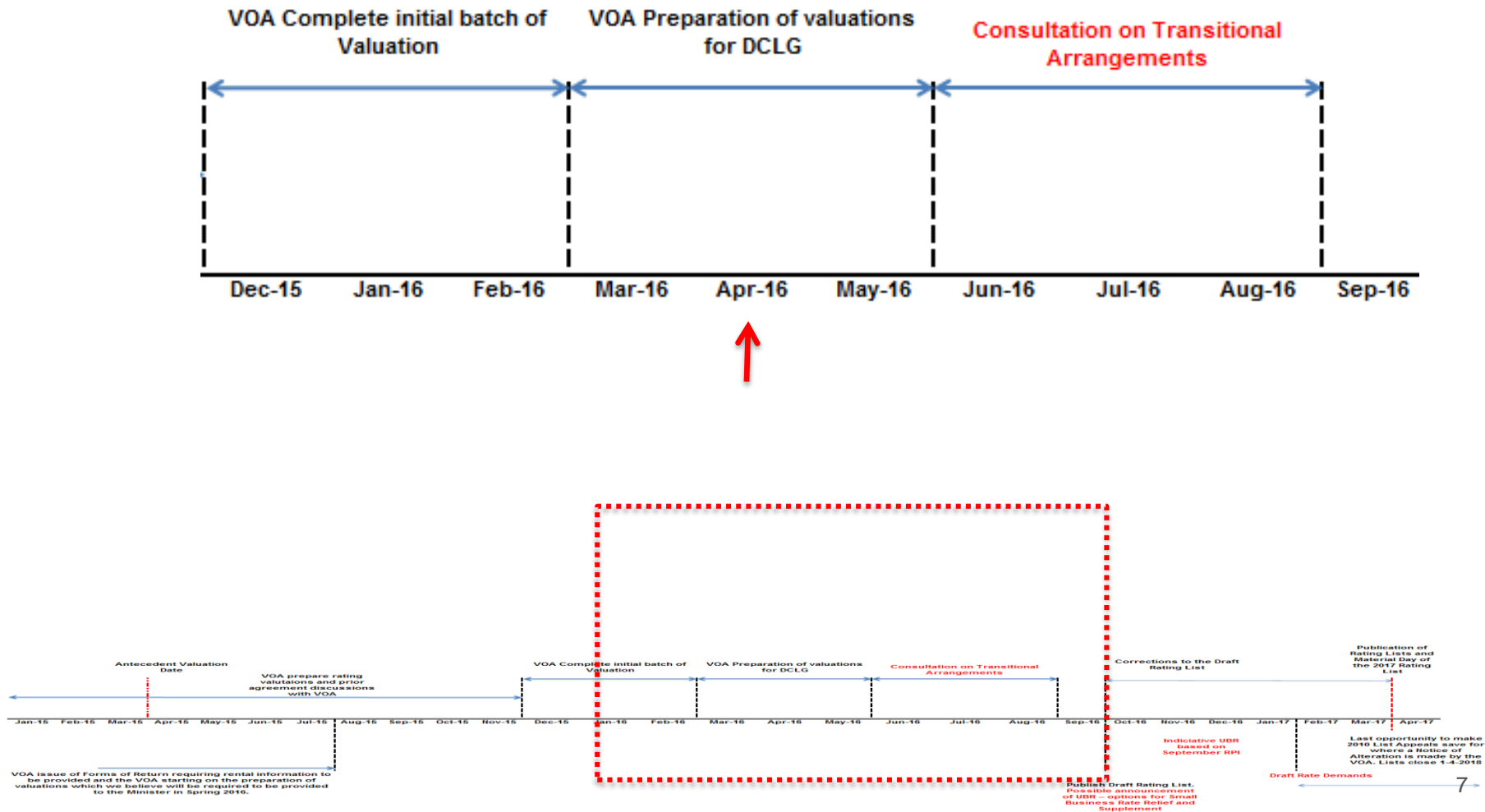
Revaluation Timetable



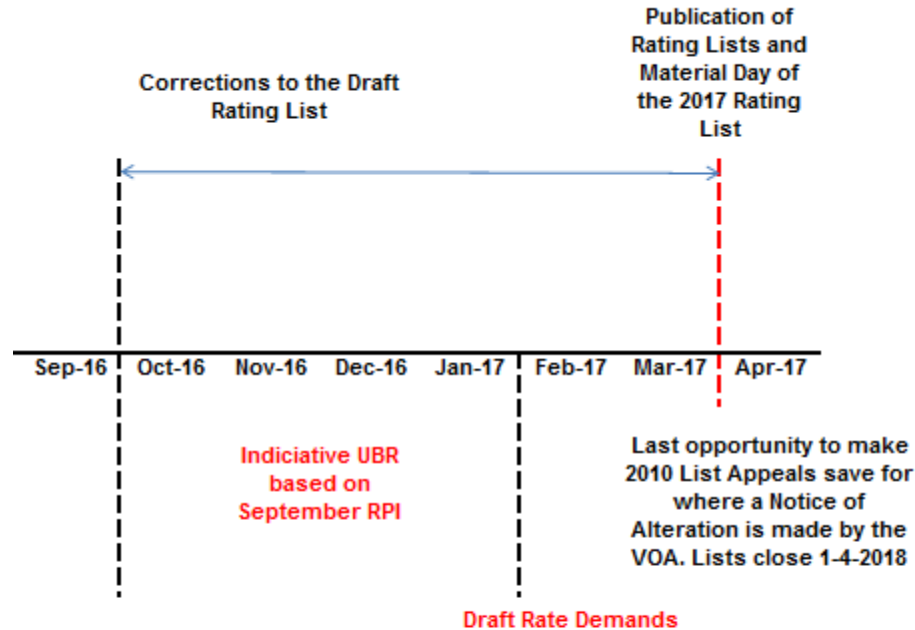
VOA issue of Forms of Return requiring rental information to be provided and the VOA starting on the preparation of valuations which we believe will be required to be provided to the Minister in Spring 2016.



Revaluation Timetable

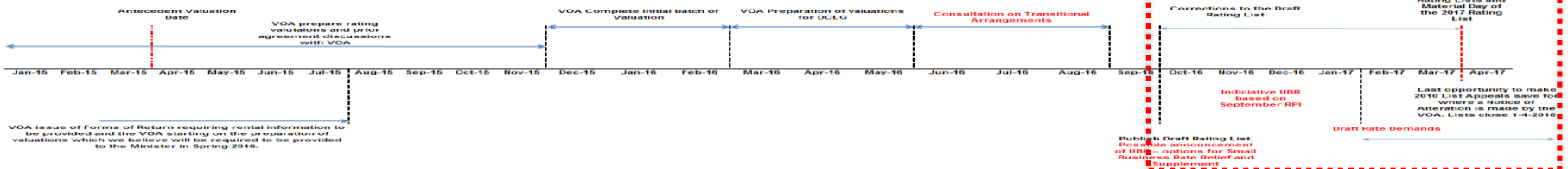


Revaluation Timetable



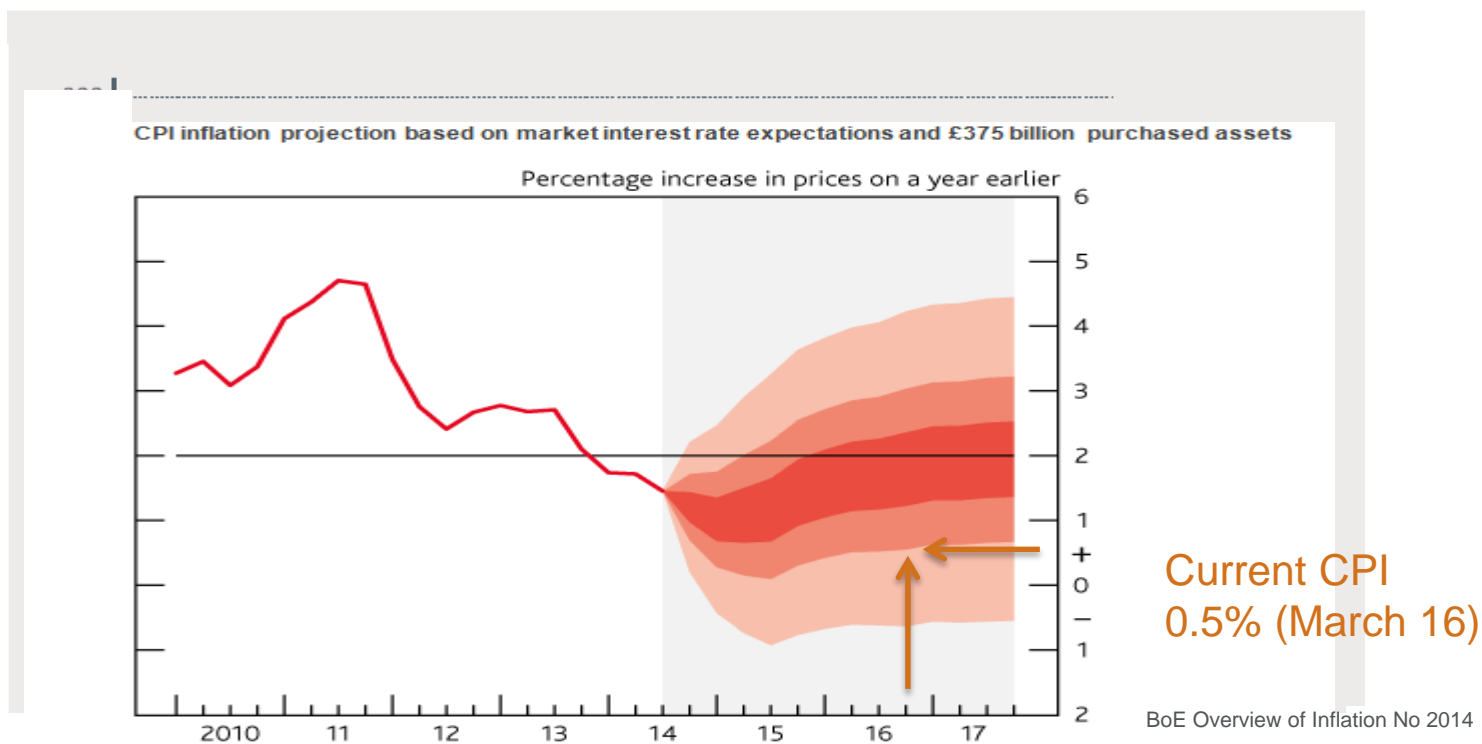
Publish Draft Rating List.
Possible announcement of UBR – options for Small Business Rate Relief and Supplement

Transitional Relief Scheme confirmed ?

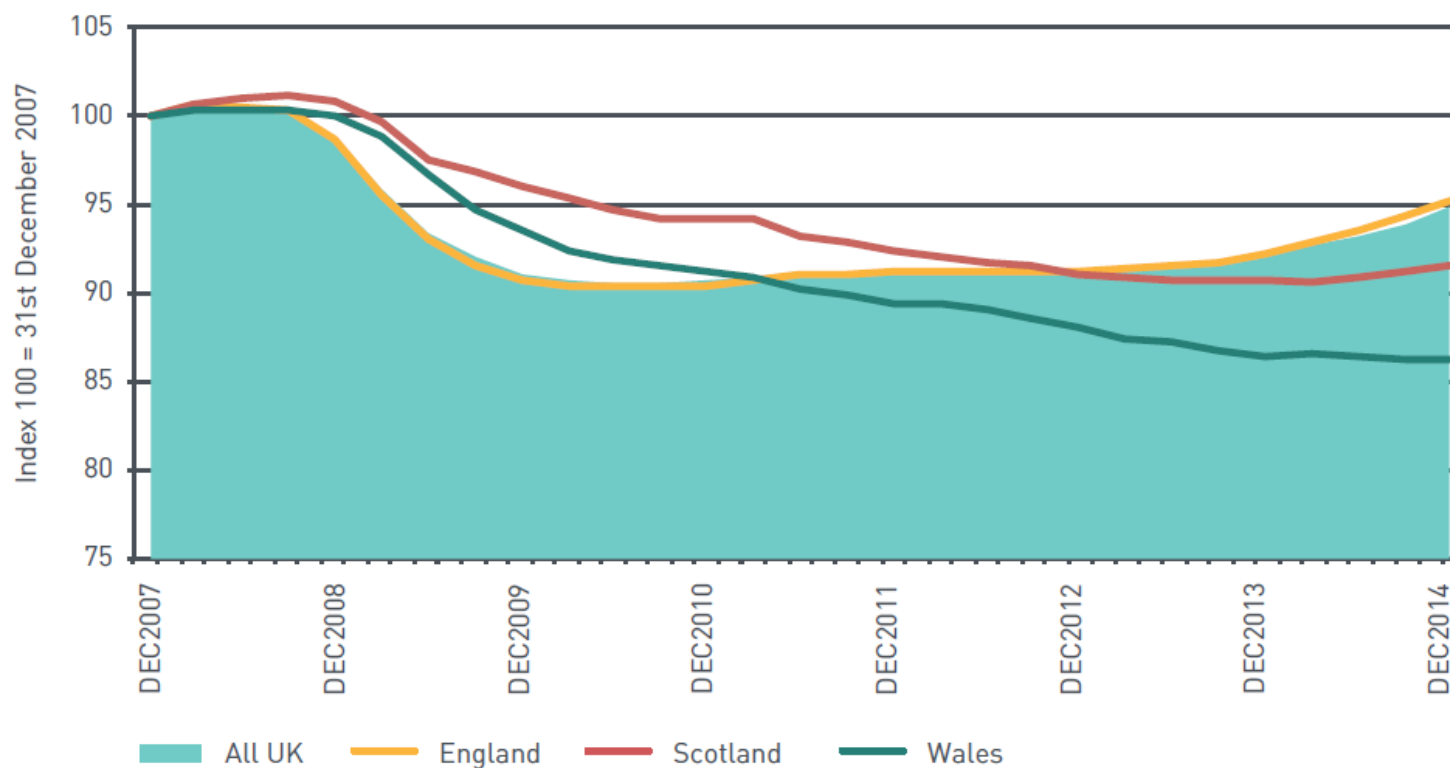


Inflation

- Overall amount of business rates levied has increased yearly in line with RPI inflation until recently
 - RPI is the current indicator and the maximum allowed by legislation, a lower rate can be adopted
 - CPI or an average might be a better indicator
 - September 2015 at 0.8% but..... what will it be in September 2016 ready for 2017?



Market Rental Value Index, UK, by Country 2008 - 2015



Source: MSCI

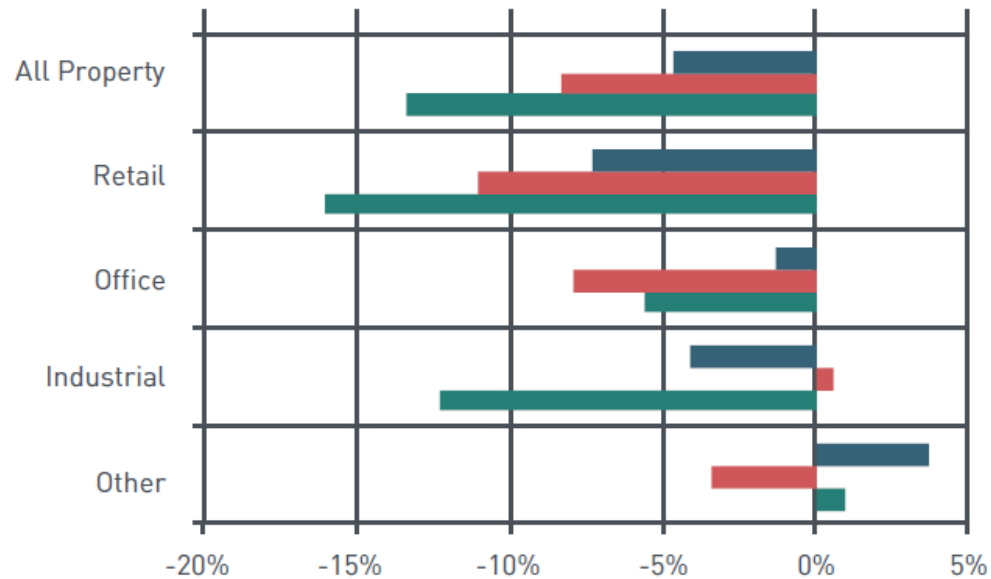
Estimated Multiplier for Business Rates 2017/18

- Legislation currently prevents an overall increase in rate liability because of a Revaluation
- So if RV's increase by 20% then UBR should come down by 20%
- But UBR will increase by RPI inflation unless Ministers adopt a lower rate
- Assume that the Government will allow for losses on appeal based on 2%
- Assumptions for inflation at 2%

Country	Size	2015/6	2016/7	2017/8
England	Small	48.0p	48.4p	53.1p
	Large	49.3p	49.7p	54.4p
Scotland	Small	48.0p	48.4p	53.1p
	Large	49.3p	51.0p	55.7p
Wales	All	48.2p	48.6p	58.0p

Source: GL Hearn in association with MSCl

Rental Value Change, 2008 – 2015, by Sector and Country



	OTHER	INDUSTRIAL	OFFICE	RETAIL	ALL PROPERTY
● ENGLAND	3.7%	-4.2%	-1.3%	-7.5%	-4.8%
● SCOTLAND	-3.5%	0.6%	-8.1%	-11.3%	-8.5%
● WALES	0.9%	-12.6%	-5.8%	-16.4%	-13.7%

Source: MSCI

Effects in Wales



- From 1st April 2015 Business Rates devolved to Welsh Assembly
- We have for the first time modelled the effect of the Revaluation in the same way as we have done for England, albeit the sample size is smaller
- Most noticeable is the significant fall in values
- Rental changes suggest an average fall in values in Wales overall of **11.8%**
- As compared with 40.9 pence for 2010/11 and 48.2 pence in 2015/16, the UBR for Wales for 2017/18 could become **58.0** pence.
- This would be 4 to 5 pence higher than in England. The Welsh Government has a decision to take about the advisability of such a high rate poundage
- There has been no Transitional Scheme in Wales since 2005
- Considering a different approach to reliefs and exemption
 - Will it / can it continue to do so?

Other Factors

- Rate liabilities will also be affected by:
 - Small hereditament rate relief (Small Business Rate Relief)
 - The supplement to pay for this will continue
 - This is currently 1.3 pence in England; now 2.6 pence in Scotland
 - Effects of any BID schemes, Business Rates Supplements (Crossrail or other Infrastructure Projects)
- Impact of “Localism”
 - Additional Powers to Cities and the Regions
 - Pressure from Billing Authorities to identify “missing” assessments
 - Billing Authorities potentially an interested party to proposals / appeals and, in some instances, even proposing increases
- Impact of Devolution and Localism
 - Wales and Scotland may decide on alternative approaches
 - Different multipliers, exemptions or even a different system altogether!
 - Different approaches across a range of areas within England too !

Decap Rates

Decapitalisation Rates

- CLG consulted on the issue of the Decapitalisation Rates in September 2015
- Separate consultations have taken place

Region	2010 Upper	2017 Upper	2010 Lower	2017 Lower
England	5.00%	4.40%	3.30%	2.60%
Scotland	Due to Elections rate not expected until May / June			
Wales	4.50%	3.80%	2.97%	2.10%
	2003 Upper	2015 Upper	2003 Lower	2015 Lower
Northern Ireland	5.50%	4.00%	3.67%	2.67%

- Revenue for the revaluation should be neutral but changes to these figures would potentially increase the multiplier contribution from other categories
- Change in rate between rates Upper (-12%) and Lower (-21%)
- Who will benefit from this ?

Legislation

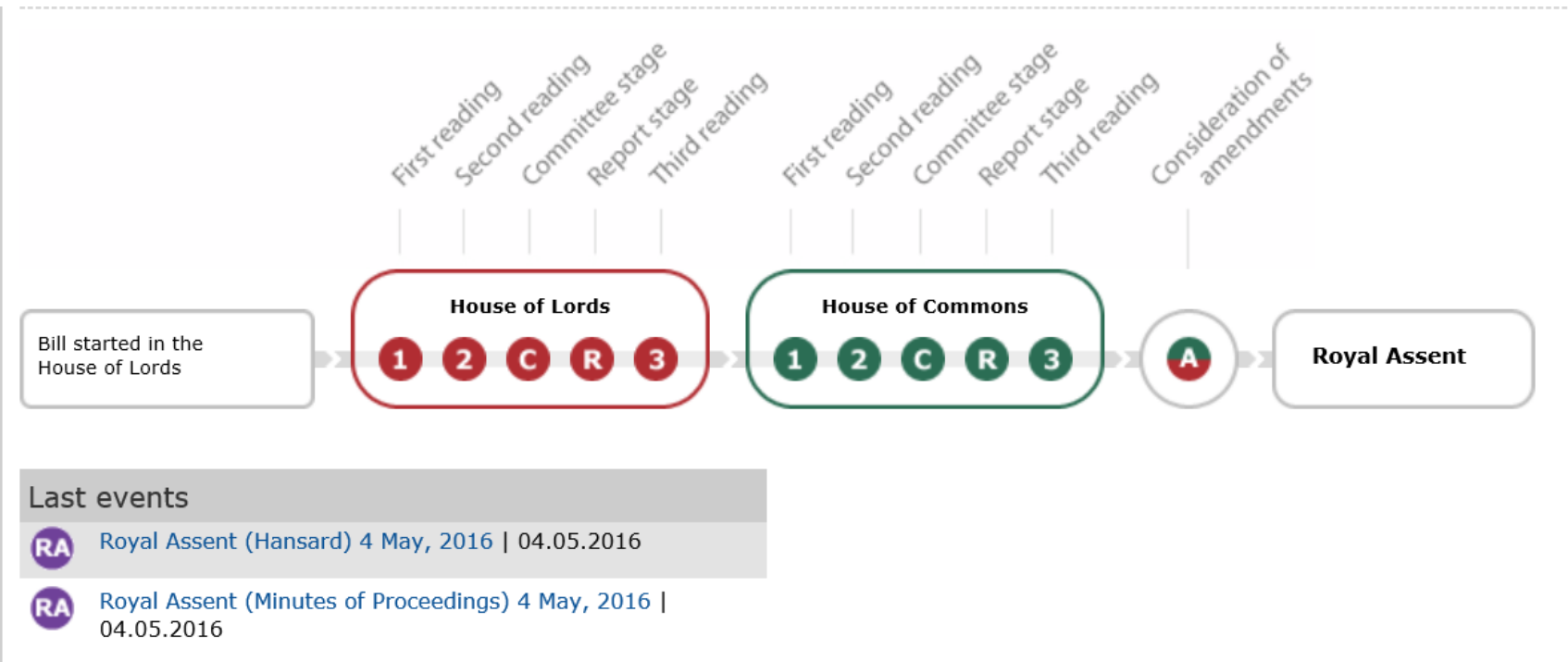


Current Issues – Government Legislation

- **Enterprise Bill**

- A bill to make provision relating to the promotion of enterprise and economic growth; and provision restricting exit payments in relation to public sector employment.

Progress of the Bill



Current Issues – Enterprise Act

- **Appeals Reform**

- Too many appeals, little supporting evidence
- Based on Checking & Challenging your Rateable Value Consultation paper

- **Proposals**

- A new **Check** stage, between 4 and 12 months to complete;
- Penalties for provision of false information; and appeals against those penalties
- **Challenge** will require additional information
 - Expanded grounds for the challenge
 - Valuation and supporting evidence
 - Case Law and other argument to be provided in support of the challenge
- Could take up to 18 months to complete
- Decision Notice issued by the Valuation Officer
- **Appeal** separate process after the Decision Notice – possibly 4 to 6 months
- Payment fees may be required

- **Where Next ?**

- Due to purdah engagement meetings delayed
- Awaiting details of draft regulations and responses to consultation

Enterprise Act 2016

- **Section 32 – Alteration of non-domestic rating lists**

- **Provisions**

Allows regulations relating to proposals to include provisions about:

- The grounds on which proposals may be made
- Matters which are not to be taken into account by the Valuation Tribunal as part of an appeal
- Circumstances in which new evidence may be admitted as part of an appeal
- Payment of fees by ratepayers in relation to appeals and circumstances in which fees may be refunded

Concerns about the Enterprise Act

- Why not allow the VOA to share information with the taxpayer as well as with “qualifying persons”?
- This could save everybody a lot of wasted time and effort
- Why add a new requirement for ratepayers to provide information?
- The VOA already has powers under Schedule 9 LGFA 1988 to require supply of information
- And powers to impose penalties for failure to do so
- The new legislation does not seem to represent the “transparent approach” suggested at paragraph 7 of the consultation paper

Enterprise Act 2016

- Section 32 – Alteration of non-domestic rating lists
- Amends S.55 of LGFA 1988 and allows the Minister to make provision for:
 - Steps that must be taken before a person may make a proposal for alteration of a rating list, including checking accuracy and completeness of information held by the VO
 - Restricting the circumstances in which those steps may be taken and the timing of those steps
 - Valuation Officers to impose penalties on persons who knowingly, recklessly or carelessly provide false information

Enterprise Act 2016

- Royal Assent on 4 May 2016
- Section 31 – Disclosure of HMRC information
- Section 32 – Alteration of non-domestic rating lists
- Section 31 allows disclosure of “revenue and customs” information to “qualifying persons” for “qualifying purposes”
 - “Revenue and customs information” means information governed by the Commissioners of Revenue and Customs Act 2005
 - “Qualifying persons” are billing authorities, precepting authorities and central government
 - “Qualifying purposes” are functions connected with non-domestic rates

Enterprise Act 2016

- Section 32 – Alteration of non-domestic rating lists
- Proposed penalties for providing false information are:
 - Limited to a maximum of £500
 - Must be paid by the VO into the Consolidated Fund
 - Recoverable by the VO as a civil debt, and,
 - Subject to a right of appeal to the Valuation Tribunal
- Subject to secondary legislation
 - Details awaited

Concerns about the principles of Check, Challenge, and Appeal

- The proposed system starts from the assumption that the assessment is correct and it is for the ratepayer to prove it wrong
- But this is an assessed tax, not a self-assessed one
- So there should be a duty on the assessing body (in this case the VOA) to explain its assessment
 - and the evidence to support that assessment
- This is the fundamental flaw in the proposals at present
- and the reason why the proposals will do little or in deed nothing to improve transparency of a system that needs it
- nor will the proposals promote a feeling amongst taxpayers that they are being treated fairly and that the system is not fit for purpose

Benefits of Check, Challenge, Appeal

- Proposals to alter the rating list do not automatically become appeals
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Practical concerns - “Check” stage

- A 12 months’ period will be **far too long** for some cases
- But may not be long enough for very complex properties
- In any event most disputes concern a mixture of fact (“Check”) and valuation (“Challenge”) questions
- So will this stage really weed out many cases?
- How will ratepayers with large numbers of properties access the VOA database to check facts?
- And will unrepresented ratepayers manage to navigate through this?
- And understand the significance of it
- How do other interested parties fit into this stage?



Practical concerns - “Challenge” stage

- Requirement to provide **rather more** than the current Statement of Case material to initiate a “Challenge”
- Paragraph 32 of the consultation – *“The challenge must set out why the ratepayer believes the assessment is not correct – for example that the VOA has not taken into account specified relevant evidence”*
- But at this stage the ratepayer will have no idea of **what evidence the VOA has used!**
- No incentive for the Valuation Officer to provide anything other than a “proportionate” response
- And even then only to the specific issues raised

Practical concerns - “Challenge” stage

- The VO, who is a party to the dispute, will determine what constitutes a “valid” challenge
- Acting as judge, jury - and executioner too!
- What will happen where the ratepayer believes they have provided sufficient material for a valid challenge but the VO does not?
- Again, a fixed period of 18 months seems too long for some cases and could be too short for others
- How will the unrepresented ratepayer cope?



Practical concerns - “Appeal” stage

- How do appeal fees improve matters?
- They will not pay for the appeals system
- They will limit access to justice for some smaller businesses
- And will give rise to disputes over what constitutes a “successful” appeal
- Which will result in everybody spending further time and money disputing the appeal fee
- Rather than the substantive dispute
- In short they seem designed purely to deter

Practical concerns - “Appeal” stage

- The proposal to limit the Tribunal to considering only the original evidence seems ridiculous
- There might be very little evidence if there has been no Decision Notice
- In any event a Tribunal has a primary duty to determine disputes correctly
- And that means taking account of all relevant evidence
- It is also inimical to the position of an expert witness
- Who has a professional duty to make the Tribunal aware of all relevant evidence
- And restricting further appeal to points of law only seems even worse

What should be done?

- Require the VOA to explain how the assessment was arrived at, and the evidence on which it is based as a first step
 - Do away with the “Check” stage altogether - any factual matters will soon come out during the course of a challenge
 - Stop all challenges automatically becoming appeals
 - A challenge should become an appeal when the parties apply to the Tribunal for it to be treated as such, or when one party applies and the other does not object
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- Or at the discretion of the Tribunal in the event that one party applies and the other objects

What will be done?

S. I. 2017 No. 659

RATING AND VALUATION, WALES

**The Non-Domestic Rating (No Appeals) (Wales)
Regulations 2017**

Made	10th March 2017
Laid before Parliament	10th March 2017
Coming into force	1st April 2017

Check Challenge Appeal – Summary

- Enterprise Act provisions are flawed
- “Check Challenge Appeal” proposals are unwelcome
- A lack of transparency for the ratepayer
- Cumbersome and lengthy process
- Which unfairly favours the VOA against the ratepayer
- Appeal fees likely to obstruct access to justice
- The whole process will be very difficult for unrepresented ratepayers
- Restricting evidence that Tribunals may consider is unfair
- The whole seems designed to discourage appeals

Strategic Review



Outcomes from the Strategic Review

- **Review launched March 2015**

- **Not** about reform of appeals this is already being addressed through Check, Challenge and Appeal
- Any changes to be **fiscally neutral**
- Little supporting evidence provided by ratepayers

- **Changes to the Tax System**

- Provide stable and sustainable revenues to fund public services
- reflect changing property use and conditions

“ The next step is to improve the business rates system in England so that it **works better in the 21st century.**

We want to find way to make the business rate system **simpler**, more **transparent** and more **responsive** to economic circumstances ”

“There is agreement that across business sectors that the business rates system **is in need of reform** but no clear **consensus** on how to achieve this”



The responses:

- Majority in favour of a property based tax,
 - some alternative approaches provided, a tax on margins or Gross Value Added
 - Local Authorities strongly in favour of retaining a property based tax
- Understandably, most wanted a cut in their business rates
 - Widest support for small businesses and taking those with RV less than £12,000 out of business rates all together
- Most want an end to the link to RPI preferring a link to CPI
 - Concern on implications for local government financing
- More frequent revaluations
 - To be subject to a further discussion paper
- Local Authorities in favour of greater rates retention and devolution of rate setting and relief setting



Revaluation Frequency / Alternatives

- **Revaluation Options and Issues**
 - Valuation of 1.8 million properties (increasing numbers circa 2 million at present)
 - Collection of information, evidence in period prior to revaluation
 - Frequency options, yearly, every two or three years
 - Cost of operating more frequent revaluations
 - All the above would require reforms
- **A self assessment option**
 - Banding system similar to Council Tax ?
 - Adopting capital values
 - Formula approach to construction costs
 - HMRC have operated self assessment since 1996 for income tax
- **A formula option**
 - Changes needed to make the system simpler to apply
 - Challenging to deliver but could simplify the valuation process



Revaluation Frequency / Alternatives

- Revaluation Options and Issues

- Currently 900,000 plus appeals
- Collection of and analysis of information / evidence in period prior to revaluation
- Frequency options, yearly, every two or three years ?
- Cost of operating more frequent revaluations / operating multiple lists

Discussion Points on frequency of revaluations:

- particular stages of the valuation process where reforms would be needed to deliver more frequent valuations
- the effect of more frequent revaluations on appeals
- the increased risk of appeals and how could this be avoided or managed
- accessing the skills to deliver more frequent revaluations
- how the delivery of rating valuations could be reformed to support more frequent revaluations
- collection and analysis of information to support more frequent revaluations, including the role of ratepayers

Revaluation Frequency

Discussion Points on self assessment:

- The potential for compliance regime under self assessment
- The publication of rental information to assist ratepayers
- Publication of values of all properties
- The role for ratepayers
- How to deal with smaller businesses

Discussion Points on Formula approach:

- the associated move away from a link to market values
- the classes of property suitable for a formula approach
- the factors that would need to be included in the formula beyond class of the property, size of the property and location
- balance of efficiency, simplicity and certainty that a formula approach against any desire to retain valuations that take greater account of the individual characteristics
- the implications for businesses of different sizes

Revaluation Frequency / Alternatives

- Compliance
 - A key component to any self assessment process
 - A best practice approach drawn up by the VOA
 - Guidance and Support from the VOA for those less able to complete the process
 - Embracing digital services as part of compliance process
 - Pre-filing checks ?
 - A prior agreement process for certain classes
 - Use of risk rules, modelling and availability of third party data
 - Understanding of the obligations placed upon businesses and the penalties

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