

EXPLANATORY MEMORANDUM TO

Valuation (Telecommunications, Natural Gas and Water) Regulations (Northern Ireland) 2010

S.R. 2010 No. 431

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Finance and Personnel to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under paragraph (4) and (5) of Article 37 of, and paragraph 5 of Part 1 of Schedule 12 to, the Rates (Northern Ireland) Order 1977 (S.I. 1977/2157 (N.I. 28)) and is subject to the negative resolution procedure.

2. Purpose

- 2.1. These Regulations prescribe the way in which specified property comprising telecommunications and natural gas hereditaments should be treated for the purposes of rating.
- 2.2. In particular the Regulations deal with the rating treatment of unbundled local loops; a system that allows multiple telecommunications operators to take on lease or licence from British Telecommunications plc. (BT) individual connections to customers' premises. The physical wire connection between customer and exchange is known as a "local loop". The Regulations allow it to be assumed for rating purposes that the local loops are occupied by BT.
- 2.3. Regulation 1 contains the citation and commencement provisions.
- 2.4. Regulation 2 clarifies certain expressions which are used in the Regulations.
- 2.5. Regulation 3 prescribes how telecommunications hereditaments should be treated for the purposes of rating.
- 2.6. Paragraph (1) provides that certain types of property occupied or owned by BT together with local loops let out or licensed by BT shall be treated as a single hereditament.
- 2.7. Paragraph (2) provides that certain types of property occupied by a company listed in Part 1 of the Schedule shall be treated as a single hereditament.
- 2.8. Paragraph (3) states that BT shall be the occupier of the hereditament described in regulation 3(1) (including the unbundled local loop system).
- 2.9. Paragraph (4) states that the hereditament described in regulation 3(2) shall be treated as occupied by the relevant company listed in Part 1 of the Schedule.
- 2.10. Paragraph (5) provides that the letting or licensing by British Telecommunications plc. of a fully unbundled local loop to any person is

to be assumed for valuation purposes to be a matter affecting the physical state or physical enjoyment of the hereditament.

- 2.11. Paragraph (6) determines what is to be considered a "fully unbundled local loop", and an "unbundled local loop" respectively for the purposes of regulation 3.
- 2.12. Regulation 4 prescribes that if a company listed in Part 2 of the Schedule occupies or owns a number of hereditaments used for the transportation of gas then those hereditaments shall be treated as a single hereditament. Hereditaments used as office premises which are not situated on operational land of the company are excluded from the single hereditament. Paragraph (4) of the regulation states that the relevant company listed in Part 2 of the Schedule shall be treated as the occupier of the single hereditament.
- 2.13. Regulation 5 makes a minor amendment to the Valuation (Water Undertaking) Regulations (Northern Ireland) 2008.
- 2.14. Regulation 6 revokes the Valuation (Telecommunications) Regulations (Northern Ireland) 2003 and the Valuation (Natural Gas Undertaking) Regulations (Northern Ireland) 2004.
- 2.15. Parts 1 and 2 of the Schedule list the relevant companies to be treated as occupiers of the various hereditaments described in the Regulations.

3. Background

- 3.1. For the purposes of calculating rates a unit of property is described as a hereditament with each hereditament appearing separately on a valuation list. The nature of telecommunications and natural gas undertakings requires companies working in these fields to occupy or own various properties in more than one place. Paragraph (4) of Article 37 of the Rates (Northern Ireland) Order 1977 empowers the Department to prescribe, by Regulations, that anything which would (apart from the Regulations) be more than one hereditament shall be treated as one hereditament. In this way the various properties occupied or owned by any one company can be treated as one hereditament for the purposes of valuing the utility's network for rating purposes.
- 3.2. Paragraph (5) of Article 37 of the Rates (Northern Ireland) Order 1977 was introduced by paragraph 3 of Schedule 1 to the Rates (Amendment) Act 2009 (c.8) and empowers the Department to include certain rules in any Regulations made under Article 37(4). The Department may prescribe whether the single hereditament may be treated as occupied or unoccupied and who shall be treated as the owner or occupier of the hereditament.
- 3.3. Unbundling is a process by which other telecommunications operators can, at the invitation of individual subscribers, take over the use of BT's "local loops"; i.e. the individual copper pairs leading from BT exchanges to subscribers' premises. In practical terms assessing this value separately presents major difficulties for the Department, as does aggregating, because of the frequency of changes that occur.

4. Consultation

- 4.1. Consultations on the issue of the rating of unbundled local loops took place in England, Scotland and Wales in 2007 and 2008. The Department intends to adopt the amendments made in the rest of the UK, within a Northern Ireland rating context on foot of these consultations. For this reason, and given that the consultees were the same bodies already contacted in the 2007/2008 consultations, it was decided to send letters to the GB consultees and others informing them of our intention to mirror the GB amendments and invite further comment within a six week period if desired. This targeted consultation did not result in any departure from the policy as adopted in GB and the approach was supported by OFCOM in their response to the Department.
- 4.2. In light of the Department's consideration of comments made in the course of the consultation, the Regulations (combined with valuation practice) give effect to the position as it is applicable elsewhere in the UK. That position is that BT shall be treated as the rateable occupier of unbundled local loops, that full unbundling is a matter to be taken into account when valuing the BT hereditament, and that BT can make an application for a revision to the rating list as a consequence of full unbundling.
- 4.3. Other provisions within the Regulations consolidate and update some aspects of existing legislation. The Department did not consider it necessary to consult on these aspects of the legislation. The new legislation simply reflects the long established approach taken in assessing relevant companies for rating purposes.

5. Equality Impact

- 5.1. There are no equality impact implications as this rule is technical.

6. Regulatory Impact

- 6.1. A Regulatory Impact Assessment was not carried out as this is a technical market device linked to rating valuation assessment. The policy development was cognisant of the findings of the associated processes which accompanied the introduction of the measure in a wider GB context.

7. Financial Implications

- 7.1. The changes to the treatment of unbundled local loops contained in the Regulations, will ensure the same treatment for BT throughout the UK. While the changes will lead to savings for the Department on an annual basis, the exact level of savings to be obtained is dependent on the district valuer's assessment.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. As the Regulations are technical and are unrelated to Community law, there are no section 24 implications.

9. EU Implications

- 9.1. There are no relevant European Regulations or Directives.

10. Parity or Replicatory Measure

- 10.1. Provision is made for the treatment of unbundled local loops in the rest of the UK through the Non-Domestic Rating (Telecommunications and Canals) (Scotland) Order 1995 (S.I. 1995/239) (as amended by S.I. 2006/557 and S.I. 2008/84), the Central Rating List (Wales) Regulations 2005 (S.I. 2005/422 (W.40)) (as amended by S.I. 2008/2672 (W.236)) and the Central Rating List (England) Regulations 2005 (S.I. 2005/551) (as amended by S.I. 2006/495 and S.I. 2008/429). These statutory instruments also provide that the many hereditaments of a named utility company shall be treated as one hereditament for the purposes of rating. These Regulations achieve parity, within a Northern Ireland rating context, with the rest of the UK.

11. Additional Information

- 11.1. Not applicable.