

EXPLANATORY MEMORANDUM TO
THE NON-DOMESTIC RATING (COMMUNICATIONS HEREDITAMENTS)
(VALUATION, ALTERATION OF LISTS AND APPEALS AND MATERIAL
DAY) (ENGLAND) REGULATIONS 2008

2008 No. 2333

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 The Non-Domestic Rating (Communications Hereditaments) (Valuation, Alteration of Lists and Appeals and Material Day) (England) Regulations 2008 (“the Communications Hereditaments Regulations”) put in place arrangements which will allow British Telecommunications plc (“BT”) to make a proposal to alter the value of their property for the purposes of rates on the grounds of a material change of circumstances (“MCC”) as a consequence of the progressive full unbundling of local loops (see paragraphs 4.5 and 7.1 below for an explanation of the full unbundling of local loops).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 Most non-domestic hereditaments (broadly speaking, properties in respect of which rates are payable) in England appear on the local rating list for the local authority area in which they are situated and rates are paid to that local authority. However, some hereditaments are national in character and cannot be sensibly listed on local lists. These hereditaments include canals, railways and telephone lines. These hereditaments therefore appear on a central rating list and rates are paid to the Secretary of State (in practice currently the Secretary of State for Communities and Local Government).
 - 4.2 The Central Rating List (England) Regulations 2005 (S.I. 2005/551) (“the 2005 Regulations”) stipulate those hereditaments which must appear on the central list rather than any local list and designate the person who is in occupation of them for the purposes of rating. Sections 64(3) and 65(4) of the Local Government Finance Act 1988 (“the 1988 Act”) provide that

regulations may specify that several hereditaments which would otherwise be separate are to be treated as a single hereditament and that a single body may be treated as the occupier of that combined hereditament. This is a convenient mechanism in the context of railways, for example, where the individual value of a track may be small but the collective value of the network is substantial.

- 4.3 In the context of telecommunications, these powers have been exercised so that BT is treated as the sole occupier of its own telecommunications equipment and also of certain other telephone wires used by other telecommunications providers (“unbundled local loops”) ¹, the totality being classed as a single hereditament (regulation 8(1)(b) of the 2005 Regulations). BT pays the rates in respect of this collective hereditament. These previously temporary arrangements were made permanent by the Central Rating List (England) (Amendment) Regulations 2008 (S.I. 2008/429).
- 4.4 Valuation for the purposes of rates is governed by Schedule 6 to the 1988 Act and proposals to alter rateable values are governed by the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2005 (S.I. 2005/659) (“the ALA Regulations”), read with the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (S.I. 1992/556). Under these provisions, the progressive full unbundling of local loops does not allow BT to make a proposal to the Central Valuation Officer to alter the rateable value of its single hereditament or allow the Central Valuation Officer to make a change pursuant to his duty to maintain the central rating list.
- 4.5 “Progressive unbundling” is a technical expression for the process by which other telecommunications providers become able to use local loops to provide services to customers. The new arrangements described in paragraph 4.6 apply to “fully unbundled local loops” – that is the unbundled local loops through which an operator other than BT provides both voice and broadband services.
- 4.6 The Communications Hereditaments Regulations modify the application of the provisions mentioned in paragraph 4.4 in relation to BT’s collective hereditament so that progressive full unbundling can give rise to a proposal from BT to alter the list. It is a necessary part of this process to provide in the statutory scheme that the full unbundling of local loops constitutes a matter affecting the physical state or physical enjoyment of the hereditament. The Regulations have no direct impact on the rateable

¹ The full definition of “unbundled local loop” is in regulation 8(6) of the 2005 Regulations and includes cables, fibres, wires and conductors, and related equipment and land, which is let or licensed by BT to another person.

value of BT's hereditament but they do empower the Central Valuation Officer to alter BT's list entry if (s)he is satisfied that progressive full unbundling of local loops has had an impact.

- 4.7 The Regulations apply in relation to BT's central rating list entry in the current (2005) and subsequent rating lists, with the effect that a proposal can be made with respect to entries from 1st April 2005 onwards. This provision is made in reliance on the powers conferred by section 55 of the 1988 Act.

5. Territorial Extent and Application

- 5.1 This instrument applies to England.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The Central Rating List (England) (Amendment) Regulations 2008 made permanent the arrangements which prescribed BT as the rateable occupier of fully unbundled local loops. Local loops are the single pair of copper wires that connect a customer's premises to the local telephone exchange through which the customer can receive both telephone and broadband services. Local loops are "fully unbundled" when BT lets or licenses them to any person for all uses that comprise the monitoring, processing or transmission of communications or other signals for the provision of electronic communications services.
- 7.2 The consultation on these arrangements (see paragraph 7.6) discussed the supplementary measure now made by the Communications Hereditaments Regulations, which is the final element of the package implementing the long term rating treatment of fully unbundled local loops. The purpose of this supplementary measure is to enable BT to make proposals to have the rateable value of its collective telecommunications hereditament altered on the grounds of a material change of circumstances ("MCC") caused by unbundling in the same way it would be able to without the benefit of these arrangements if fully unbundled local loops were not prescribed as part of its central list hereditament.
- 7.3 The Communications Hereditaments Regulations put the full unbundling of local loops on an equal footing with other changes in terms of appeal rights. All ratepayers have the right, under the ALA Regulations, to make a proposal on the grounds of a MCC. What amounts to a MCC is defined

in regulation 3 of those Regulations, by reference to Schedule 6 to the 1988 Act. BT is already able to make proposals on the grounds of a MCC in relation to its central list hereditament, but because of the unique nature, in rating terms, of local loops, the process of full unbundling does not fall within the definition of a MCC.

- 7.4 One of the grounds giving rise to a right to make a MCC proposal is a change in the physical state or physical enjoyment of the hereditament in question. In the context of the uniqueness of local loops in rating terms, the Government considers that the process of unbundling should amount to such a change. The effect of the Communications Hereditaments Regulations is to provide that the process of progressive full unbundling will give rise to the right to make a proposal on the grounds of a MCC as a consequence of a change in the physical state or physical enjoyment of the property.
- 7.5 Such a proposal will fall to be considered by the Central Valuation Officer, who will determine whether the MCC justifies a change in the rateable value of BT's central list hereditament.
- 7.6 In practice, there is a large and unending volume of changes which entitle BT to make a proposal to alter the rateable value of its large and complex communications hereditament. Bringing progressive full unbundling of local loops within that process is administratively straightforward. As a result, the Communications Hereditaments Regulations will have a negligible or no impact on BT's administrative costs and no significant effect on the Central Valuation Officer's task.

Consultation

- 7.6 Prior to making the Central Rating List (England) (Amendment) Regulations 2008, the Department for Communities and Local Government published a consultation paper which discussed the long term rating treatment of local loops – *Proposed Amendments to the Central List Regulations: National Non-domestic Rates and Local Loop Unbundling*, July 2007. A copy of this is archived at <http://www.local.communities.gov.uk/finance/busrats/localloop.pdf>. In 2005, the Department's predecessor, the Office of the Deputy Prime Minister, had consulted on short term measures to be put in place pending further work on the long term solution. These were public consultations, directed in particular at the telecommunications and rating industries and rates billing authorities.
- 7.7 Paragraphs 50-61 of the 2007 consultation discussed the possibility of legislating so that BT would have the right to make a proposal in relation to their rateable value as a consequence of progressive unbundling. The

Department published a summary of consultation responses on 14th January 2008 and a copy is available at <http://www.communities.gov.uk/publications/localgovernment/localloopresponses1>.

Twenty-two consultation responses were received in all and a majority of those who responded on the issue supported the proposal that BT should be able to make a proposal against its rateable value as a consequence of progressive unbundling and that this should be done on the grounds of a MCC.

- 7.8 Subsequent to the 2007 consultation, the Department for Communities and Local Government engaged with the Valuation Office Agency, BT, Ofcom and the Department for Business, Enterprise and Regulatory Reform on the detail of the provisions which would be needed.

8. Impact

- 8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 The impact on the public sector is negligible. The Central Valuation Officer will have to consider proposals in relation to progressive unbundling as a consequence of these provisions, but in the context of the valuation of BT's hereditament overall, the additional costs will not be significant.

9. Contact

- 9.1. Relwyn Reffell at the Department for Communities and Local Government (telephone: 020 7944 3810 or email: relwyn.reffell@communities.gsi.gov.uk) can answer any queries regarding the instrument.