

EXPLANATORY MEMORANDUM & REGULATORY IMPACT ASSESSMENT

Explanatory Memorandum to the Central Rating List (Wales) (Amendment) Regulations 2008

This Explanatory Memorandum has been prepared by Local Government Finance Division and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

(i) **Description**

These regulations amend the Central Rating List (Wales) Regulations 2005 (No 422(W.40) so as to make British Telecommunications (“BT”) liable from the 1st April 2005 for non domestic rates in respect of unbundled local loops, so that any unbundled local loops which BT let or license to any person are to be treated as though they were occupied by BT

(ii) **Matters of special interest to the Subordinate Legislation Committee**

None

(iii) **Legislative Background**

These Regulations will be made under Sections 53(1), (2), (4) and (4A), 64(3), 65(4), 143(1) and (2) and 146(6) of the Local Government Finance Act 1988. These powers, so far as they are exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999. The functions have now been transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

The Regulations will follow the negative procedure.

(iv) **Purpose and intended effect of the legislation**

Local loops are the part of the telephone network connecting customers' premises and local telephone exchanges, each comprising two copper wires twisted together.

Local loop unbundling (“LLU”) involves disconnecting local loops from BT’s network and re-connecting them to a competing provider’s equipment. This enables operators other than BT to use the local loop to provide services directly to customers. LLU services allow competing providers to innovate, to differentiate their products, and to provide higher bandwidth services and a wider range of applications and service levels. Operators that buy LLU are known as LLU Operators.

BT is the only provider with an obligation to sell LLU across most of the UK. It is designated as being responsible for paying the rates of fully unbundled loops in England and Scotland. This is not currently the case in Wales.

These regulations will make BT liable from the 1st April 2005 for non domestic rates in respect of unbundled local loops, so that any unbundled local loops which BT let or license to any person are to be treated as though BT occupy them. BT have agreed with OFCOM a means of recovering sums in respect of the rating liability for those loops that they lease to other service providers.

(v) **Implementation**

If this legislation is not made, the only manner in which non-domestic rates can be demanded for fully unbundled loops would be for the Valuation Office Agency (“VOA”) to value each fully unbundled loop, place the loops on the local rating lists of local authorities, and for local authorities to raise individual rating bills for each of these loops.

If this happened, the VOA could potentially have to put the details of thousands of occupiers of individual loops on the central rating list, and local authorities issue bills for these, backdated to 1 April 2005, which would be costly and administratively cumbersome.

(vi) **Consultation**

A consultation was undertaken between 9 July and 21 August 2008.

Regulatory Impact Assessment –

(a) **Options (for achieving the policy objective – as set out in paragraph (iv) above) –**

Other options were to:

(i) make no regulatory change, in which case the only manner in which non-domestic rates can be demanded for fully unbundled loops would be for the Valuation Office Agency (“VOA”) to value each fully unbundled loop, place the loops on the local rating lists of local authorities, and for local authorities to raise individual rating bills for each of these loops.

If this happened, the VOA could potentially have to put the details of thousands of occupiers of individual loops on the central rating list, and local authorities issue bills for these which would be costly and administratively cumbersome.

ii)) Amend the Central Rating List (Wales) Regulations 2005 to assign LLU occupiers to the central list. This would add each

local loop operator to the central list and ensure they each have one assessment covering all of their local loops. This option would ensure that the operators were directly responsible for their own assessments. However, there are number of technical legal and policy issues that need to be considered in more detail before there can be certainty that this is a feasible solution. To implement this now could put at risk the timetable for the 2010 non domestic rating revaluation.

(b) **Benefits**

The proposed option will avoid the disadvantages of the two alternative options outlined in paragraph (a) above, and will continue the current operational arrangements.

(c) **Costs**

None.

(d) **Competition Assessment**

This has been scored against the competition filter test which indicated that there should be no detrimental effect on competition,

(e) **Consultation**

A consultation on these proposals was undertaken between 9 July and 21 August 2008.

OFCOM and the LLU operators supported making these regulations BT, the Confederation of Business Interests ("CBI") and the Royal Institute of Chartered Surveyors opposed them. However, BT indicated that they would participate in an Welsh Assembly Government led working group to consider the long term arrangements for the rating of LLU's, and requested that if these changes are implemented, regulations should also be made to expand the material change of circumstances so that the effects of LLU can be taken into account on the valuation of the BT hereditament. This is being done by the Non-Domestic Rating (Communications Hereditaments) (Valuation, Alteration of Lists and Appeals and Material Day) (Wales) Regulations 2008.

(f) **Post implementation review**

The Welsh Assembly Government will convene a working group including the VOA, BT, OFCOM, local authorities and other interested parties with a view, during 2012, to recommending a long term solution for the non domestic rating liability of local loops.