

**EXPLANATORY MEMORANDUM TO
THE CENTRAL RATING LIST (ENGLAND) (AMENDMENT) REGULATIONS**

2008 No. 429

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 Central Rating List (England) (Amendment) Regulations 2008 (“the Amending Regulations”) amend the Central Rating List (England) Regulations 2005 (“the 2005 Regulations”), which describe the properties to be listed on the central rating list and in respect of which non-domestic rates are paid to the Secretary of State for Communities and Local Government. They also designate the persons who are treated as occupying (or, if unoccupied, owning) centrally listed hereditaments. The Amending Regulations are concerned with the description of the centrally listed hereditament that British Telecommunications plc is designated as occupying, and those businesses which are designated as occupying long-distance pipe-line hereditaments.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

The central rating list

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 for Communities and Local Government.

4.2 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.

Telecommunications hereditaments

4.3 In the context of telecommunications, these powers have been exercised so that British Telecommunications plc (“BT”) is treated as the occupier of all of its telecommunications equipment, which is classed as a single hereditament. Regulation 8(1)(b) provides that certain telephone wires that are used by other telecommunications providers (“unbundled

local loops”¹) are added to that single hereditament. BT pays the rates in respect of this collective hereditament.

- 4.4. Regulation 8(3) of the 2005 Regulations provides that these arrangements come to an end on 1st April 2008. The default position as of that date is that BT will be responsible for its own telecommunications equipment only. Unbundled local loops will fall to be individually listed on the local rating list for every area they pass through. Regulation 2(a) of the Amending Regulations will allow the current arrangements to continue indefinitely.

Long-distance pipe-lines

- 4.5 Regulation 2(b) of the Amending Regulations adds to the list of designated persons in respect of centrally listed long-distance pipe-lines, which appears in Part 12 of the Schedule to the 2005 Regulations, to reflect changes in that business sector.
- 4.6 Section 53(4) of the 1988 Act gives the Secretary of State the power to make changes to the lists of designated persons in the 2005 Regulations with retrospective effect – so that the central rating list can be changed with effect from a date earlier than the date the Amending Regulations are made. Pursuant to that power, the Amending Regulations provide that the amendment in regulation 2(b)(i) shall have effect from 22nd July 2005 and that the amendment in regulation 2(b)(ii) shall have effect from 16th June 2006.

5. Extent

- 5.1 This instrument applies to England only.

6. European Convention on Human Rights

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

7. Policy background

Telecommunications hereditaments

- 7.1 A local loop is a single pair of copper wires which connect a customer’s premises to the local telephone exchange and through which telephone and broadband services are supplied.
- 7.2 The Department for Communities and Local Government (“CLG”) issued a consultation paper on 16th July 2007 outlining four options for the long term rating of local loops. An archived copy is available at <http://www.local.communities.gov.uk/finance/busrats/localloop.pdf>. The paper proposed that the current temporary arrangements, where BT is deemed to be in rateable occupation of all unbundled local loops, should be continued indefinitely. BT recovers a contribution to its rates bill through the Ofcom-regulated charge paid to it by the company that supplies broadband and telephone services using the local loop. The consultation paper made clear that the options had to be considered in terms of the sensible administration of the rating system and not as a means of regulating competition in the telecoms industry or of producing a particular cost outcome for individual, or groups of, providers.
- 7.3 The consultation closed on 16th October 2007 and a summary of responses was published on the CLG website

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

(<http://www.communities.gov.uk/publications/localgovernment/localloopresponses1>) on 14th January 2008. There were 22 responses, of which 12 were in favour of the preferred option, 9 against and one expressed no view.

- 7.4 Respondents in favour of the proposal pointed to what they considered to be precedents for the proposed arrangements and its significant administrative advantages over the other options. Fibre operator respondents opposing the proposal argued that it would treat local loop operators more favourably than fibre operators in rating terms, giving the former a competitive advantage and, some claimed, contravening European rules on technological neutrality. Two respondents opposed the proposal on the grounds that it was a special arrangement which could therefore lead to distortions in the market. One of those respondents went on to argue that the preferred option risked granting state aid to local loop operators. The consultation responses did not reveal a viable alternative approach that could be implemented without imposing a significant administrative burden. A minority of respondents thought that local loops and fibres should both be exempt from business rates.
- 7.5 Local loops are rateable property and a practical way to collect rates has to be found. In rating terms, local loops are exceptional in nature because the number of hereditaments that fall within this category of property exceeds the total number of all other hereditaments in the UK. Local loops are also very small in comparison with most other more conventional hereditaments, making it difficult to identify and keep track of the occupier, who, because of the operation of the broadband market, can change regularly. Furthermore, given its nature, valuing an individual local loop as a stand alone hereditament using standard valuation principles is an impossible task.
- 7.6 It is in this highly unusual and difficult combination of circumstances that the decision on the long-term rating treatment of loops has had to be taken.
- 7.7 All of the points raised by respondents to the consultation have been carefully considered in the context of both the Government's domestic and European obligations. The view has been reached that the most practical, administratively straightforward and cost-effective long-term arrangement for the rating of unbundled local loops is for BT to remain as the rateable occupier and that the unique nature of local loops, as outlined above, justifies such treatment. It is not considered that, as a long-term solution, this will be in breach of either domestic or European law.
- 7.8 In light of the above issues, the decision has been reached that, on balance, the most practical option is to proceed with BT remaining as the rateable occupier of all unbundled local loops. Accordingly the Amending Regulations extend the current arrangements indefinitely.

Long-distance pipe-lines

- 7.9 The Amending Regulations add to the list of designated persons in respect of centrally listed long-distance pipe-lines, which appears in Part 12 of the Schedule to the 2005 Regulations, to reflect changes in that business sector. As a result, long-distance pipe-line hereditaments occupied or, if unoccupied, owned by Cemex UK Cement Limited and Ineos Manufacturing Scotland Limited can be shown on the central rating list for England. This is consistent with the position for similar businesses operating long-distance pipe-lines.
- 7.10 The Amending Regulations provide that these new entries on the central rating list will take effect from dates earlier than the date the Amending Regulations come into force. This reflects the fact that Cemex UK Cement Limited and Ineos Manufacturing Scotland Limited are already operating long distance pipelines. With the agreement of those

businesses, the effective dates of the amendments are, in both cases, the date they adopted their current operating name.

8. Impact

8.1 An Impact Assessment has been prepared for this instrument and is reproduced in the Annex to this memorandum.

9. Contact

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

Summary: Intervention & Options

Stage: Final	Version: One	Date: 4 March 2008
Department /Agency: Communities and Local Government	Title: Impact Assessment of the long term listing and occupation of fully unbundled local loops.	
Related Publications: Proposed Amendments to the Central List Regulations: National Non-domestic Rates and Local Loop Unbundling		

Available to view or download at:

<http://www.communities.gov.uk>

Contact for enquiries: Relwyn Reffell

Telephone: 0207 944 3810

What is the problem under consideration? Why is government intervention necessary?

Local Loops connect customers' premises to local telephone exchanges and are used by BT and other telecommunications companies to provide telephone and broadband services. As of 1 April 2008, unbundled local loops will cease to be treated as part of BT's central list hereditament. Rateable occupation of fully unbundled local loops will shift from BT to the Local Loop Unbundling Operators and each loop may be listed as a separate hereditament on local rating lists. This would require potentially millions of fully unbundled local loop assessments to be individually listed on local rating lists.

What are the policy objectives and the intended effects?

The objective is to devise long-term arrangements for the listing and rateable occupation of fully unbundled local loops. The arrangements must cater for the large number of frequent changes in the operators using fully unbundled local loops to supply broadband and telephone services to customers, minimise administrative costs to stakeholders including billing authorities and the Valuation Office Agency, allow the independent valuation officer to carry out his statutory duties and recognise the independent regulator's role in regulating the telecommunications market.

What policy options have been considered? Please justify any preferred option.

Four options were identified for consultation, with option 4 as the preferred approach

Option 1: Do nothing

Option 2: Designate Local Loop Unbundling Operators (LLUOs) on local lists

Option 3: Designate LLUOs on the central list

Option 4: Maintain BT as the rateable occupier of fully unbundled local loops.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Business rates lists are reviewed every five years as part of a general revaluation. This is a long-term arrangement to which no practicable alternative is available.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

John Healey

Date 20th February 2008

Summary: Analysis & Evidence

Policy Option: 4

Description: BT to remain in rateable occupation of local loops

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' None. The measure continues the existing arrangements.
	One-off (Transition)	Yrs	
	£ 0	2	
	Average Annual Cost (excluding one-off)		
£ 0		Total Cost (PV)	£
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Failure to implement the measure would entail significant costs for the VOA (listing and appeals) and billing authorities (billing, collection and enforcement) as well as potential small-scale loss of business rates revenue.
	One-off	Yrs	
	£ 144.5m	10	
	Average Annual Benefit (excluding one-off)		
£ 16.6m		Total Benefit (PV)	£ 285m
Other key non-monetised benefits by 'main affected groups' The current arrangements for regulating the broadband market will not be disrupted. Consumers may benefit from the certainty of a long-term arrangement for rating. There would be a saving of additional future costs of maintaining the lists and revaluations due to vastly increased number of hereditaments.			

Key Assumptions/Sensitivities/Risks

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £ £285m
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What is the geographic coverage of the policy/option?	England			
On what date will the policy be implemented?	1 April 2008			
Which organisation(s) will enforce the policy?	N/A			
What is the total annual cost of enforcement for these organisations?	£ N/A			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of £	Decrease of £	Net Impact	£ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

THE OBJECTIVE

1. The objective of this measure is to put in place long-term arrangements for the listing and rateable occupation of fully unbundled local loops that:
 - cater for the large number of frequent changes in the operators that are using fully unbundled local loops to supply broadband and telephone services to customers
 - minimise administrative costs to stakeholders including billing authorities and the Valuation Office Agency
 - allow the independent valuation officer to carry out his statutory duties
 - recognise the independent regulator's role in regulating the telecommunications market.

BACKGROUND

2. Local loops are the part of the telephone network connecting customers' premises and local telephone exchanges, each comprising two copper wires twisted together.
3. The process of local loop unbundling (LLU) involves disconnecting local loops from British Telecommunication Plc's (BT) network and re-connecting them to a competing provider's network. This enables operators other than BT to use the local loop to provide services directly to customers.
4. The provision of LLU services is aimed at stimulating provision of new broadband and voice services. LLU services are important because they allow competing providers to innovate, to differentiate their products, and to provide higher bandwidth services and a wider range of applications and service levels.
5. BT is the only provider with an obligation to sell LLU across most of the UK. Operators that buy LLU are known as LLU Operators (LLUOs).
6. There are two forms of LLU.
 - a. A shared metallic path facility (SMPF) enables the LLUO to provide broadband services, while BT continues to provide conventional voice services. This is also known as "shared access", "partially unbundled local loops" or "partial LLU".
 - b. A metallic path facility (MPF) enables the LLUO to provide the customer with both voice and / or data services. This is also known as "fully unbundled local loops" or "full LLU".
7. This measure is concerned with the treatment of fully unbundled local loops.

Current position

8. For the purposes of non-domestic rating, regulation 8 of the Central Rating List (England) Regulations 2005 (SI 2005/551) (as amended) ("the Regulations") provides that all unbundled local loops are included in, and valued as part of, BT's centrally listed hereditament². The Secretary of State's powers to make this arrangement are in sections 53, 64 and 65 of the Local Government Finance Act 1988. The arrangement is time-limited to end on 31 March 2008 after which all unbundled loops will fall to be rated in the usual way, which is to say they will be valued and shown individually on local rating lists and will be occupied by the LLUO which provides broadband services through them.

² The central rating list is maintained by the central valuation officer and is held by the Secretary of State. Local rating lists are maintained by local valuation officers and held by the billing authority whose area they relate to.

9. Under Ofcom's requirement for BT to offer fully unbundled local loops, BT is able to charge for this service at a level that reflects the costs it incurs in supplying LLU. Business rates are currently a cost incurred in supplying LLU and therefore are included in the costs which the Office of Communications (Ofcom) takes into account in setting the ceiling for costs oriented charges and included by BT in its assessment of the appropriate LLU charge.
10. BT determines how much of its rates bill relates to LLU. Currently BT does this by attributing its rates bill to its relevant network assets. BT's current method for attributing its business rates is set out in its *Detailed Methods (DAM)* document³. In summary, this method is based on attributing the rates bill to assets on an asset-value basis. These assets are then used as building blocks to determine the cost-oriented charges or regulated BT products, including LLU. BT currently charges LLUOs rent at £80 pa for each loop it unbundles.
11. On 30 November 2005, Ofcom published the document *Local Loop Unbundling: setting the fully unbundled rental charge ceiling and minor amendment to SMP conditions FA6 and FB6*⁴. The document set the rental charge ceiling for fully unbundled local loops at £81.69pa per loop from 1 January 2006.
12. Ofcom sets a charge ceiling to provide certainty to potential investors in local loop unbundling. LLU is still a relatively new market and as such any uncertainty regarding the rental costs of offering services and the resulting revenue streams is likely to have a major impact on investment plans by LLUOs. Determining charge ceilings for specific LLU services will constrain BT's ability to set charges that could hinder the development of competition. Despite BT's rental charge reductions, Ofcom still considers it appropriate to set charge ceilings in order to ensure that BT charges are not excessive and are also both certain and transparent.
13. The non-domestic rating solution set out in this paper will not affect BT's current ability to recover costs within the charge ceiling set by Ofcom for providing LLU.

RATIONALE FOR GOVERNMENT INTERVENTION

14. The current special arrangement for the rating of unbundled local loops will lapse on 31 March 2008. We do not consider that unbundled local loops are apt to be rated in the usual way and there is, therefore, a strategic requirement to develop a long-term solution that will provide a fair and sensible approach that is consistent with the whole of the rating system.

WALES

15. The Welsh Assembly Government has no plans to change the existing arrangement in Wales in advance of the 2010 revaluation. It will consider future rating treatment of local loops in the light of the solution put in place in England.

SCOTLAND

16. Rating in Scotland is a devolved matter and the Scottish Executive will be bringing forward their own proposals in due course.

NORTHERN IRELAND

17. As with other developments around the assessment of business properties (and particularly in the case of the treatment of former public utilities) there is a convention of harmonisation with the rest of the UK. It is expected, therefore, that any changes affecting GB will be given serious consideration in an NI context and this may be the subject of further consultation with stakeholders and Assembly approval.

OPTIONS

18. In deciding the long term strategy for the listing and rateable occupation of fully unbundled local loops following options have been identified:

Option 1: Do nothing

Option 2: Designate LLUOs on local lists

Option 3: Designate LLUOs on the central list

Option 4: Maintain BT as in rateable occupation of fully unbundled local loops

³ <http://www.btplc.com/Thegroup/Regulatoryinformation/Financialstatements/2006/Regulatoryfinancialstatements2006.htm>

⁴ http://www.ofcom.org.uk/consult/condocs/llu/statement/llu_statement.pdf

19. This paper will consider option 4, with option 1 as a comparator. In practice options 1, 2 and 3 are not feasible because they present insuperable problems of valuing individual loops and administration. Options 2 and 3 are not therefore considered further.

Option 1: Do nothing

20. All BT's rateable communications hereditaments in England, including local lines and telephone exchanges, are defined by the Regulations as a single hereditament. Local loops in England are also included in that hereditament so that, for rating purposes, BT is currently designated⁵ as the rateable occupier of all local loops regardless of whether they have been unbundled or not.

21. As of 1 April 2008, unbundled local loops will cease to be treated as part of BT's central list hereditament. Rateable occupation of fully unbundled local loops will shift from BT to the LLUO and each loop may be listed as a separate hereditament (others may merge with "backhaul" hereditaments⁶) on local rating lists. This would require potentially millions of fully unbundled local loop assessments to be made on local lists. BT Openreach predicted 2m unbundled loops by the end of May 2007. There are no figures available to show exactly how many of these loops have been "fully" unbundled but it is likely to be large proportion. By way of illustration, Carphone Warehouse PLC currently has the highest number of unbundled loops (655,000) as part of its Talk Talk Free service. 375,000 of these have been "fully" unbundled⁷, while it is expected that the vast majority of the remaining Talk Talk Free customers will be transferred to fully unbundled loops in the near future.

22. To meet their duty to compile and maintain local rating lists, valuation officers would have to identify and value every unbundled local loop in their area. Billing authorities would have to identify which LLUO was providing broadband services through each loop for the purposes of billing.

Option 4: Designate BT as being in rateable occupation of all local loops.

23. This option continues the current arrangements.

24. We consider this option to be the most straightforward to administer as the VOA has to assess just a single BT hereditament which would include all local loops. In contrast to option 1, only a single rate bill would have to be issued and BT, as the ratepayer, would not be faced with the administrative burden of managing a number of different rate bills coming from a variety of billing authorities as would be the case for LLUOs under option 1.

25. The Regulations would need to be amended to remove the end date of '1 April 2008'.

26. If, as proposed in the consultation paper, regulations are made to allow BT to make a proposal to alter its rateable value on the grounds of a "material change of circumstances" as a result of progressive local loop unbundling, we consider that one of the key concerns expressed to the Department by BT about the long term application of option 4 would be addressed.

⁵ A "designated person" refers to the company or body registered by or bearing that name on a specified date.

⁶ A backhaul hereditament is a system of fibres together with ducts or supports, which convey telecommunications signals between points of presence in BT exchanges or elsewhere. A call originating on an unbundled local loop and terminating on another local loop in a different exchange area may be conveyed between exchanges over such a "backhaul hereditament", rather than over BT's core network.

⁷ <http://www.cpwplc.com/phoenix.zhtml?c=123964&p=irol-newsArticle&ID=989010&highlight=>

Costs and Benefits

Sectors and groups affected (see also paragraphs 36 to 48)

27. The consultation paper proposed that LLUOs, BT, local authorities and VOA would be directly affected by the Department's proposals. However a number of respondents to the consultation suggested that our proposals would also affect fibre operators and the former cable companies as these companies compete with LLUOs in the wider telecommunications market. The Government's view is that these issues are separate from the decision faced by the Secretary of State in determining the long-term listing and occupation of unbundled local loops.

Race Equality Assessment

28. There are no racial equality issues in relation to the proposed changes.

Health Impact Assessment

29. There are no health impact issues in relation to the proposed changes.

Rural Impacts

30. Some respondents to the 2005 consultation suggested that introducing a short term solution would foster uncertainty in the broadband market and result in reduced investment in rural areas. Our proposed long term solution will allow stakeholders to plan their long term investment strategies.

Benefits

31. The aim of the Government is to ensure that the long term solution is administratively straightforward for those involved with LLU. This includes ratepayers and billing officers.

32. Option 1: Do Nothing

- 32.1. Option 1 produces an outcome consistent with the principles of rateable occupation. This is because LLUOs would be liable for rates on each hereditament and would have the right to appeal the rateable value of LLU.
- 32.2. The Secretary of State would not exercise her power to designate the rateable occupier and therefore no legislative action would be required.

33. Option 4: Maintain BT as in rateable occupation of local loops.

- 33.1. This option would avoid the need to separately assess fully unbundled local loops and would eliminate the considerable administrative costs generated by option 1.
- 33.2. It offers a pragmatic way of dealing with the complexity and administrative burden associated with the other options. A similar approach has been successfully adopted in the Regulations for the rating of gas and electricity meters.
- 33.3. Moreover, if BT's hereditament is split or, as favoured in the consultation paper, a regulation is made, BT will have the right to make a proposal to alter its rateable value on the grounds of a material change of circumstance when a loop is unbundled. Under the split hereditament arrangement BT would have the right to appeal against the local loop hereditament and against the hereditament comprising the rest of its network.
- 33.4. If the material change of circumstances provisions are opened up to BT the consequential impact on the appeals system would be lower than under option 1. This is because just BT would have the right to appeal as a result of local loop unbundling whereas under option 1 both BT and LLUOs have the right to make a proposal therefore potentially doubling the impact on the appeals system.

Costs

ECONOMIC

34. Option 1: Do Nothing

- 34.1. Each new LLUO and LLU would need to be identified and listed and this would create a significant increased administrative burden to the VOA. It would involve the creation of potentially millions of extra assessments, which may require individual valuations requiring complex analysis of usage levels of the individual loops. It will also be necessary for valuation officers to establish whether the unbundled loops are occupied together with existing backhaul fibres, in order to define the hereditament, and to establish into which list the hereditament(s) should be entered. The cost of entering these assessments into rating lists, including the cost of information gathering, and establishing a valuation approach is estimated by the Valuation Office Agency to be in the region of £80 per hereditament, plus initial costs of £64,000.
- 34.2. Significant work would be created for billing authorities and the LLUOs. A separate rate bill would be issued for each unbundled local loop. In each case the cost for the billing authority and the LLUO might exceed the rates demand itself. It is very difficult to estimate how much costs would increase for billing authorities particularly as there are no firm figures available to show exactly how many of the estimated 1.7m unbundled loops have been fully unbundled (although, as indicated above, the proportion is high, and rising). However if we assume - for the purposes of illustration - that all the 1.7m unbundled local loops were fully unbundled and separately listed on local rating lists, the number of hereditaments would double to 3.4m. In that particular case it might further be assumed that the cost of administering the system, which currently stands at £83m per year, could potentially also as much as double to £166m. This is an extreme example but even if we were to conservatively estimate that the cost of administering the system increased by 20 per cent, this would still amount to an additional administrative cost of almost £17m a year.
- 34.3. Some LLUOs could escape paying business rates because their new unbundled loops had not been identified. This could result in a loss to the rating pool and some unfairness between LLUOs.
- 34.4. This option is likely to lead to an increase in costs related to proposals by ratepayers. Approximately 50 per cent of the compiled list entries in the 2000 lists have been challenged and, so far, around 20 per cent of the 2005 list entries. Although there is considerable variation in the complexity and costs of individual appeals, a very rough estimate would be around £200 per appeal for the VOA, excluding costs arising in the Lands Tribunal (and possibly superior courts). Again for illustrative purposes, in the extreme case that a proposal were made against every unbundled local loop, given that each loop would carry with it the right to make an appeal for both the operator losing the loop and the operator gaining the loop, this would amount to an additional 3.4m proposals over the five-year life of the rating lists on the basis of the 1.7m unbundled local loop connections. Even if only 50 per cent of operators with the right to make a proposal did so, this would still amount to 1.7m proposals over the life of the rating list. Similarly if 1 per cent of local loop values were challenged, this would amount to some 34,000 extra proposals at a total cost of around £8.5m. In practice it might be the case that some sort of arrangements would be required for grouping appeals relating to similar cases, but although it is equally hard to estimate how that might be done and what the effect would be on the number and total cost of appeals, the point remains that a potentially large increase in the number of appeals might occur.
- 34.5. There would also be considerable additional costs for billing authorities who would have to adjust LLUO's liability and send out revised rates bills.
- 34.6. There was criticism from one consultation respondent that the partial regulatory impact assessment (PRIA) did not include an assessment of what the rates cost would be to BT or LLUOs for individual local loops. It was suggested that the failure of the Government to include this information hindered any proper analysis of the potential cost and benefits of the four identified options. Paragraphs 25-27 of the consultation paper clarified that administrative costs would be the basis for an analysis of the options. Moreover, given its nature, valuing an individual local loop as a stand-alone hereditament using standard valuation principles is an impossible task.

35. Option 4: BT remaining in rateable occupation of all local loops

- 35.1. This approach requires an amendment to the Regulations so that the 31 March 2008 expiry date for the current short term arrangements is revoked.
- 35.2. This option would have the least administrative impact on stakeholders involved in LLU as it continues the current arrangements.

- 35.3. This option will impact least on the rating appeals system. The proposal is that the loops - irrespective of the operator actually occupying them - would remain within the BT hereditament and BT would continue in overall occupation of that hereditament. In practice, this would mean that, despite the many thousands of actual changes in the occupation of LLUs expected between operators, the position regarding rating would remain stable.
- 35.4. If BT was to be given the right to make a proposal in respect of unbundling, either by splitting BT's hereditament or making regulations to allow MCC's to apply to BT, there would be a potential rise in the number of appeals, albeit at a lower level compared with option 1. For example if proposals were made against 50 per cent of all unbundled local loops, this would amount to an additional 850,000 proposals over the five-year life of the rating list. Although this increase would be undesirable it is significantly less than it would otherwise be under option 1.
- 35.5. To alleviate the potential impact of an increase in the number of proposals it may be necessary to introduce a pragmatic approach to capturing the large number of material changes of circumstances local loop unbundling is expected to cause. This would be similar to the arrangements already in place to capture the many material changes of circumstances experienced by BT on the rest of its network.
- 35.6. If BT's hereditament is split, LLUOs would not have the right to appeal the value of the fully unbundled local loop hereditament. This may concern LLUOs as there could be the suspicion that BT would not be incentivised to keep the value of the fully unbundled local loop hereditament low because they would simply pass the cost on to LLUOs through the annual rental charge.
- 35.7. Those respondents to the consultation who commented preferred giving BT the right to MCC rights to appeal, rather than splitting all loops into a separate BT occupied hereditament which is the other possible way to do this. It is clear from the various responses that putting such a mechanism in place raises some drafting and practical problems that will need to be overcome. The Department therefore proposes to undertake a short technical consultation on how the measure should be given effect in secondary legislation.

Current cost to local authorities of administering the rating system (based on current 1.7m hereditaments)	£83m
Potential additional cost to local authorities of administering the system if option 4 not implemented (based on an assumed 20% increase in administration costs)	£96.6m
<u>Annual cost savings if option 4 implemented</u>	£16.6m
Estimated cost of entering additional assessments on rating lists (figures provided by VOA)	£80 per hereditament
Estimated cost of additional appeals if only 1 per cent of local loop values were challenged under Option 1	£8.5m
<u>Estimated One off cost of not implementing option 4:</u>	£144.5m

SUSTAINABLE DEVELOPMENT, CARBON ASSESSMENT AND OTHER ENVIRONMENT

36. This measure has no sustainable development, carbon or environment impacts.

EQUITY AND FAIRNESS

37. The overall aim of the consultation was to ensure the chosen option provides equity and fairness to the ratepayer, be it BT or other telecommunications companies.

38. As stated we believe option 4 will provide the most practical solution in the long term as it is administratively straightforward for stakeholders involved in LLU.

SMALL FIRMS IMPACT TEST

39. It is envisaged that option 1 would have a significant impact on all LLUOs as they would directly incur business rates liability for LLU they had previously faced as part of the rental charge paid to BT. These costs are likely to be off-set by a reduction in BT's LLU rental charge but the LLUOs will face some additional administration costs as a result of having to administer payments and through making proposals in relation to the rateable value of their local loops.

40. It is therefore possible that under options 1, the additional costs incurred by LLUOs may filter down to small businesses more generally.

41. The Government's preferred option is for BT to remain in rateable occupation of fully unbundled local loops (option 4). Ofcom, as regulator of the market, have the clear view that this proposal is the approach most likely to result in a competitively neutral position and allay competition concerns. It is therefore not envisaged this will significantly or disproportionately impact directly on small businesses. United Kingdom Telecommunications Association, the trade association for telecoms companies previously supported this approach as the long term solution but gave no view on the proposals during the recent consultation.

COMPETITION ASSESSMENT

42. In accordance with the requirements of drafting a regulatory impact assessment, the Government has applied the competition filter test and concludes that there is nothing to suggest the proposed long term rating treatment of LLU negatively impacts on any particular area of the broadband/telephone market itself. The fact that the market for LLU has increased so significantly in the last two years in which this arrangement has been in place suggests that it is working. The preferred option is to maintain the status quo so we do not envisage this will create any new complications for LLUOs compared with BT. Any option that results in increased cost for LLUOs is likely to have a detrimental effect on their competitiveness in the market. It is likely that option 1 would lead to increased costs for LLUOs.

43. BT, on the other hand, has previously argued that the long term application of the current arrangements (option 4) would place them at a competitive disadvantage. Their argument is understood to be that the more loops that are unbundled, the more effect it has on their hereditament that cannot be reflected in reductions of their rateable value. This is because the central rating list regulations designate BT as the rateable occupiers of all local loops which acts as an unintentional barrier to BT appealing to reduce the rateable value of the rest of their network as a consequence of progressive unbundling. If the Regulations were not in place it would be open to BT to appeal, on the grounds of a material change of circumstance, each time a local loop was unbundled.

44. We recognise that this is an important issue for BT and we understand their concerns in this regard about adopting option 4 in the long term. To address this issue the consultation paper proposed either BT's hereditament is split to allow BT to appeal against the rateable value of the rest of their network, citing progressive unbundling as material change of circumstance **or** more favourably, a Regulation is made under the powers in paragraph 2(8) of Schedule 6 to the Local Government Finance Act 1988 to give the same effect.

45. If the MCCs are opened up to BT, LLUOs will continue, as now, to pay the regulated annual rental charge to BT as a contribution to the rate liability for local loops.

LEGAL AID

46. This measure will have no implications for legal aid.

DISABILITY, GENDER AND OTHER EQUALITY

47. This measure has no disability, gender or other equality impacts.

HUMAN RIGHTS

48. This measure does not impact on human rights.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

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