EXPLANATORY MEMORANDUM TO THE

CENTRAL RATING LIST (AMENDMENT) (ENGLAND) REGULATIONS

2006 No. 495

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Central Rating List (Amendment) (England) Regulations 2006 ("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 First Secretary of State. Regulation 8 is concerned with the telecommunications industry and, amongst other things, makes arrangements, which are due to come to an end on 1st April 2006, for the rating treatment of particular telephone lines ("unbundled local loops"). The amending regulations allow for the continuation of those arrangements until 1st April 2008.

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 First Secretary of State.

4.2 The 2005 Regulations are made under sections 53, 64(3) and 65(4) of the Local Government Finance Act 1988. They stipulate those hereditaments which must appear on the central list rather than any local list and the person who is in occupation of them for the purposes of rating. Sections 64(3) and 65(4) provide that regulations may provide 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, the power has been exercised so that British Telecommunications plc is treated as being the occupier of all of its own property and telephone wires, which are classed as a single hereditament. Added to that single hereditament are the telephone wires that are used by other telecommunications providers ("unbundled local loops") – see regulation 8(1), (3) (4) and (6). BT pays the rates in respect of this collective hereditament.

4.4. Regulation 8(3) provides that these arrangements come to an end on 1st April 2006. The default position as of that date is that BT will be responsible for its own property and telephone wires only. The telephone wires used by other providers will, unless the provider is listed in Part 3 of the Schedule to the Regulations (which many are not), fall to be individually listed on the local list for every area they pass through.

4.5 The amending regulations will allow the current arrangements to continue until 1st April 2008.

5. Extent

5.1 This instrument applies to England.

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

7.1 An unbundled local loop exists where the copper wire connection between the local telephone exchange and the customer's premises is disconnected from BT's network and connected to an alternative provider's network.

7.2 OPDM agreed with telecoms operators in January 2005 that BT would continue to be treated as the occupier of unbundled local loops for rating purposes and therefore pay the business rates for them. This arrangement was intended to continue up to and including 31st March 2006 to allow time to consider the options and determine how these loops should be treated for rating purposes in the long term.

7.3 Four options were identified and discussed with BT, other telecoms operators that occupy unbundled local loops ("other operators") and stakeholder representatives, including the United Kingdom Competitive Telecommunication Association (UKCTA) and the Broadband Stakeholder Group (BSG). These options included making

permanent the short term solution provided for by the 2005 Regulations and the default position which is described below. Each of these four options gives rise to significant issues in the context of rating and there was no consensus on which of the options should be adopted as a long term solution.

7.4 If the current arrangements came to end on 1st April 2006, the default position would be that each individual unbundled local loop (there are potentially millions) would have to be identified, valued by the Valuation Office Agency and placed on the rating list of the relevant billing authority(ies) through whose area it passes. The administrative burden and cost of this would be considerable and cannot be warranted when the eventual long term solution may involve a different approach. ODPM therefore published a consultation paper in December 2005 which proposed to continue the current arrangement for a further two years to allow more detailed consultation on a long term approach in 2006 and invited views on the four long term options.

7.5 A two year extension was proposed to balance the desire for certainty and stability for other operators with BT's concerns, that over time the short term solution may begin to place them at a financial disadvantage. BT accepts that a short term continuation of the current arrangements may minimise any disadvantage but feel this could become a problem in the longer term.

7.6 The consultation ended on 26th January 2006. There were 12 respondents to the consultation. Of the 6 other operators that responded, all were in favour of BT continuing to be treated as the rateable occupier of unbundled local loops. Some thought that the proposed two-year extension would not provide enough stability to the market and that the current arrangements should be extended beyond 31st March 2008. The majority of these respondents, along with UCKTA thought the current arrangement should be made permanent or at the very least extended until the current rating lists cease to have effect on 1st April 2010 on the grounds that operators would be able to make more confident investment decisions, particularly on roll out of broadband services to rural or suburban areas. The Royal Institute for Chartered Surveyors (RICS) also thought the current arrangements should continue to have effect up to and including 31st March 2010.

7.7 Ofcom, the telecommunications industry regulator, supported a two year extension to allow time for the financial and operational implications of the long term options to be properly analysed, but urged that the decision on the long term solution be taken as soon as possible to minimise future uncertainty. BT argued that the current arrangements should be extended for only one and not two years. This was on the grounds that a one-year extension would allow enough time for decisions on and implementation of a permanent option.

7.8 Given the concerns of all respondents and the fact that very little evidence was provided by respondents to support the arguments either for a further extension of, or for a reduction of, the proposed two year period, the decision was taken that the best balance between the competing concerns and the need to have the time to find the right long term solution is achieved by retaining the two year extension as the short term solution. Accordingly, the amending regulations extend the current arrangement of designating British Telecommunications Ltd as the rateable occupier of fully unbundled local loops up to and including 31st March 2008.

7.9 A summary of responses to the consultation on extending the short term solution will be published on the ODPM website by 19th April 2006. A further consultation on a long term solution will commence during the course of 2006.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

Relwyn Reffell at the Office of the Deputy Prime Minister Tel: (020) 7944 3810 or e-mail: relwyn.reffell@odpm.gsi.gov.uk can answer any queries regarding the instrument.

FINAL REGULATORY IMPACT ASSESSMENT (RIA)

PROPOSED AMENDMENTS TO THE CENTRAL LIST REGULATIONS

NATIONAL NON-DOMESTIC RATES AND LOCAL LOOP UNBUNDLING

Consultation on the rating treatment of unbundled local loops.

The objective

1. The objective is to develop a short term solution to the treatment of fully unbundled local loops for non-domestic rating purposes from 1 April 2006. Comments on the options presented here will inform the further consultation on the long term solution.

The background

2. The local loop is the access network connection between the customer's premises and the local serving telephone exchange, usually comprising two copper wires twisted together.

3. Local loop unbundling (LLU) is a process by which a provider's local loops are physically disconnected from its network and connected to competing providers' networks. This enables operators other than the incumbent to use the local loop to provide services directly to customers. In the UK, the only provider with a specific obligation to provide LLU is British Telecommunications plc (BT). Operators that use LLU to offer services to customers are known as LLU Operators (LLUOs).

4. There are two forms of LLU.

   4.1. Shared metallic path facility (SMPF) is the provision of access to the copper wires from the customer's premises to a BT Main Distribution Frame (MDF) – part of the BT local telephone exchange - that allows the LLUO to provide the customer with broadband services, while BT continues to provide the customer with conventional narrowband communications. This is also known as "shared access", "partially unbundled" or "partial LLU"; and

   4.2. Metallic Path Facilities (MPF) is the provision of access to the copper wires from the customer's premises to a BT MDF that covers the full available frequency range, including both narrowband and broadband channels, allowing the LLUO to provide the customer with both voice and / or data services over such copper wires. This is also known as "fully unbundled" or "full LLU".

5. In accordance with ordinary rating principles, LLUOs are considered to be in rateable occupation of fully unbundled local loops. (see Annex) LLUOs are in actual occupation of the loops and enjoy the beneficial interest. However, in the case of partially unbundled local loops, there is a degree of ambiguity about occupation to the extent that the same loop is used by both BT and the LLUO. Following ordinary rating principles, it is therefore correct to look to ownership of the loops to decide in whose hands rateable occupation lies. On that basis, BT is considered to be in rateable occupation of partially unbundled local loops.

Rationale for Government Intervention

6. As explained above, in accordance with ordinary rating principles, LLUOs are considered to be in rateable occupation of fully unbundled local loops, however they are currently included in the rateable value of BT which appears in the central rating list for England held by the Secretary of State. This is because in December 2004, the ODPM sought agreement from telecoms operators that in the short term, the rates liability for unbundled local loops in England would remain with BT. Using his powers in sections 53 and 64 of the Local Government Finance Act 1988 the Central Rating List (England) Regulations 2005 ("the Regulations") provide for this. For telecommunications, regulation 8 treats all local loops in England as part of BT's single hereditament. This latter arrangement is however due to lapse on 31 March 2006.

7. The immediate requirement is to find a solution for the rating treatment of fully unbundled local loops in England from 1 April 2006. However, there is a more strategic requirement to develop a long term solution that will provide a fair approach that is consistent with the whole of the rating system. A fuller consultation on a long-term solution will take place in 2006. The long-term solution will also consider opportunities for harmonising the principles in operation in the devolved administrations of Wales and Scotland.

Wales

8. Very few unbundled loops in Wales are anticipated in the foreseeable future. The long-term options available are similar to those presented in this paper and, while there is a desire to harmonise approaches, the preferred solution might be different as the power in respect of rating is devolved to the Welsh Assembly Government. Wales did not introduce any amending legislation in 2004 and from 1 April 2005 any unbundled local loop should appear on the local list as a separate hereditament.

Scotland

9. In Scotland local loops are currently included in the rateable value of BT. The network value is apportioned between the local government areas within which parts are located. In practice, this means that there are 32 entries in 32 local Valuation Rolls. As this is a devolved issue, the Scottish Executive may follow their different processes.

Northern Ireland

10. This matter is a devolved issue and Northern Ireland rating policy has evolved in a different way.

Consultation

11. In early 2005, the ODPM invited a number of LLUOs and industry stakeholders to a meeting to discuss the options presented below. Those invited also included representative bodies such as the UK Competitive Telecommunications Association (UKCTA) and the Broadband Stakeholder Group (BSG). A second meeting was arranged to discuss the options with BT. It was felt by the ODPM that separate meetings would be more useful in understanding the competing concerns of the LLUOs and BT as the options affect them in different ways.

12. The Valuation Office Agency (VOA), Department of Trade and Industry (DTI) and the Office of Communications (Ofcom), as regulators of the telecommunications industry, attended both meetings and have all been consulted at each stage of the process.

13. The ODPM has also engaged with the devolved administrations of Scottish Executive (SE) and Welsh Assembly Government (WAG).

14. This RIA formed part of the formal consultation with stakeholders that took place from 2 December 2005 to 26 January 2006. The consultation recommended, as a short term solution, BT should continue to be designated as the rateable occupier of unbundled local loops for the next two years. The consultation also set out the long term options for the rating treatment of fully unbundled local loops and welcomed views on them.

15. There were 12 respondents to the consultation including LLUOs, BT and also representative bodies such as the United Kingdom Competitive Telecommunications Association (UKCTA), the Royal Institute of Chartered Surveyors (RICS) and Ofcom, the industry regulator.

16. 10 of the 12 respondents were in favour of the BT remaining as the rateable occupier of fully unbundled local loops for the proposed period of 1 April 2006 until 31 March 2008. Many of those in favour suggested the proposed short term solution should be extended either indefinitely or at the very least until the next revaluation i.e. March 2010. There were general concerns that a short term solution may undermine investor confidence.

17. Of the two that did not agree with the recommended proposal, one simply expressed their dissatisfaction that the consultation did not consider the long term solution, the other, BT, agreed that further evaluation of options 1-3 is necessary and that this work could not be completed before 1 April 2006. BT supported an extension of the current arrangement however they suggested the extension should only apply for one year until 31 March 2007. Their argument was that a one year extension would give the Government ample opportunity to consider and implement alternative arrangements.

RISK ASSESSMENT

OPTIONS

18. In deciding the immediate strategy for the rateable value of unbundled local loops a number of options have been identified:

    18.1. Option 1 - Do nothing.

18.2. Option 2 - Designate LLUOs on local lists.
18.3. Option 3 - Designate LLUOs on the central list.
18.4. Option 4 - Designate BT as being in rateable occupation of unbundled local loops.

19. BT is subject to the obligation of cost orientation for LLU services. This means that BT's charges for LLU services should be based on the costs incurred in providing the services. Ofcom is currently in the process of setting a new rental charge for LLU. BT's rates liability is a legitimate cost and therefore, where incurred, should be included in any cost oriented charge. Conversely, if BT gains benefits from the offering of a service these should also be factored into the cost oriented charge. Ofcom's role is to ensure that the charges for LLU (and any other service covered by cost orientation obligations) are fair and cost based.

20. In deciding on any of the above options, it is important to bear in mind the nature of the current market and as far as possible the long term conditions. The current number of unbundled local loops stands at around 70,000[1]. However, it is projected that approximately 1.5m local loops will be unbundled by the end of 2007, so it is important that the chosen option can deal with projected changes in the market fairly and neutrally for both BT and LLUOs.

21. This paper considers the options based on these tests of long and short-term viability.

Option 1: Do nothing

22. For rating purposes, BT is currently considered to be in rateable occupation of all local loops regardless of whether they have been unbundled or not. BT's rateable hereditaments are defined by the Regulations as a single assessment for England. Local lines and telephone exchanges are included in BTs central rating list hereditaments. The Regulations specify that any (designated) person[2] who occupies or owns any hereditament which is an unbundled loop which would normally be more than one hereditament, shall, for the purposes of the Regulations, be treated as one hereditament. In other words all unbundled loops are treated as part of BT's hereditament. This arrangement is due to end on 31 March 2006.

23. As of 1 April 2006, the person/s in ownership or occupation of unbundled loops will cease to be treated as part of BT's central list hereditament. Rateable occupation of fully unbundled local loops will automatically shift from BT to the LLUO and would be listed as separate hereditaments on the local lists. This would result in thousands (and potentially millions) of fully unbundled local loop assessments on the local list. This is the situation in Wales but at this present time and for the near future the numbers involved there are small.

24. The VOA would need to identify the owner/occupiers of the unbundled loops to ensure business rates continue to be collected and there are no losses to the rating pool. The administrative impact of this on the VOA in listing each LLU, on the billing authority in issuing demands for each LLU and on the LLUOs in paying (or questioning) the separate liabilities would be considerable. Individual assessments would be of very low value and it is clear that the administrative cost would be disproportionate to the benefit.

Option 2: Designate the local loop unbundling operators (LLUO) on the local lists

25. A more practical way of handling fully unbundled local loops listed on local lists would be to aggregate all local loops occupied by the same operator in each area as one hereditament and designate the aggregated hereditament on each local list. The most obvious way of doing this would be by exchange rather than by billing authority. All local loops start from a particular exchange and BT would be able to provide a list of fully unbundled loops per exchange. It would be difficult to determine unbundled local loops by billing authority area, as many lines will cross billing authority boundaries. However, it would be possible to aggregate all unbundled local loops

[1] Ofcom: Broadband Regulation statement, 30 June 2005
[2] A "designated person" refers to the company or body registered by or bearing that name on a specified date.

from each exchange within one billing authority area by listing each exchange in that billing authority area.

26. In line with valuation practice, it would be necessary to identify the backbone infrastructure of the LLUO and include this in the LLUO hereditament. This might create a problem in that the unbundled local loops that are connected through the same operator's backbone network would under normal rating principles be considered to be one contiguous hereditament. We could end up with unbundled local loops all over England being connected by a fibre-optic backbone network occupied by the same operator having to go in one billing authority list. A solution to this would be to make unbundled local loops separately rateable from the rest of the network (such as fibre backbone) occupied by the same operator. This would in turn have to be translated from BT's central list assessment.

27. This option may also require formalising the requirement for all operators to provide regular returns to the VOA to enable them to manage the assessments.

Option 3: Designate LLUOs on the central rating list

28. This option would entail creating a single central list hereditament for each LLUO on their unbundled local loops. Under this option the VOA could include the entire operator's network, including fibre backbone. Operators would be designated on the central list and would use the same description as for BT. This would automatically include their fully unbundled local loops.

29. The VOA would have to identify all LLUOs and their respective fully unbundled local loops. The Regulations would need to be amended whenever new LLUOs entered the market. There would also need to be an agreed pragmatic approach to material changes in circumstance[3] (MCCs) and potential revisions in rateable value (RV). This option may also require formalising the requirement for all operators to provide regular returns to the VOA to enable them to manage the assessments.

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

30. This option would extend the status quo and is the easiest to administer. The Regulations would need to be amended to remove the end date of '1 April 2006'.

31. As noted above, the charges for LLU are required by Ofcom to be cost-oriented, and therefore will include all legitimate costs incurred by BT and also take into account benefits gained by BT in the provision of LLU services. Therefore, Ofcom will ensure that the LLU charges will be fair and cost based.

Costs and Benefits

Sectors and groups affected

32. The proposed changes will affect those in the unbundling local loop industry i.e. LLUOs and BT. We do not consider the proposals affect any other sectors.

Race Equality Assessment

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

Health Impact Assessment

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

[3] Schedule 6, paragraph 7 of the Local Government Finance Act 1988 set out the matters to be considered as material change of circumstances.

Rural Impacts

35. A number of respondents to the consultation suggested the introduction of a further short term solution would negatively affect investment decisions, particularly on the roll-out of broadband services to rural or suburban areas. No evidence as to the extent to which rural areas would be affected was provided by any of the respondents however the ODPM has noted this point.

Environmental and Social

36. There are no environmental or social impacts associated with the identified options. There was a suggestion from some LLUO respondents to the consultation that the adoption of any of options 1-3 would result in increased prices for customers. No evidence was produced to substantiate this view.

Benefits

37. The Government's ultimate aim is to ensure that the business rate cost for unbundled local loops are fair and equitable regardless of the ratepayer and does not hinder the rollout of broadband in the UK. Whatever option is chosen must meet this test.

38. **Option 1: Do Nothing**

38.1. Option 1 would produce an outcome consistent with normal rating principles. In other words the rateable occupier (the LLUO) would be liable for rates on each hereditament and would have rights of appeal.

38.2. Any changes would be captured as soon as they were identified by the VOA.

38.3. This would be the default position if no other option could be agreed and therefore no legislative action would be required.

39. **Option 2: Designate LLUOs on local lists**

39.1. Compared with Option 1, this would have the advantage of keeping the number of hereditaments on the local lists to a reasonable level.

39.2. This would follow some existing conventions in rating although it contravenes the treatment of contiguous hereditaments outlined before. ODPM designated a number of fibre-optic network operator's assessments to remain in a specified billing authority list for 2005 (the same billing authority list they were in for the 2000 list).

40. **Option 3: Designate LLUOs on central rating list**

40.1. Option 3 would provide a more administratively practical way of dealing with fully unbundled loops than both options 1 and option 2.

40.2. This approach more closely follows general rating practice as all LLU and the fibre backbone could be considered as one contiguous hereditament. This would also be consistent with the treatment of other similar networks.

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

41.1. This option would avoid the need, for the time being, to separately assess fully unbundled local loops and would eliminate the additional administrative costs generated by options 1, 2 and 3.

41.2. This would have the advantage, at least in the short term, of providing continuity by maintaining the current position. Ofcom ensures that the LLU charges are fair and cost orientated. The relatively small numbers involved in the short term mean that continuing with the status quo is not unreasonable. The financial impact in the short term is equally limited.

41.3. A similar approach has been adopted for the rating of meters**.** Gas and Electricity meters are treated separately under the Regulations: regulation 11 & regulation 14.

Costs

ECONOMIC

42. **Option 1: Do Nothing**

42.1. There would be a significant and growing increase in administration costs for the VOA in identifying LLUOs and unbundled local loops as each new LLUO and LLU would need to be identified and listed.

42.2. Significant work would be created for billing authorities and the LLUOs. A separate rate bill would have to 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.

42.3. Some LLUOs could escape paying business rates if their new unbundled loops were not identified. This could result in a loss to the non-domestic rates pool and some unfairness between LLUOs.

42.4. LLUOs' business plans reflect the current situation where they do not have to account for separate business rate liabilities for unbundled loops. Under this option (and options 2 and 3) LLUOs would immediately incur the rates liability for unbundled local loops which could lead to increased prices to consumers and consequently hinder the roll-out of broadband in the UK. That said, Ofcom would need to take these additional costs into account in order to set a fair, cost-based charge for LLU.

43. **Option 2: Designate LLUOs on local lists**

43.1. This option would result in an increase in costs for billing authorities, BT and the VOA in particular, in keeping track of the changes in occupation of unbundled local loops. LLUOs are not required to notify the VOA when unbundling a local loop.

43.2. The VOA and billing authorities would be faced with the added burdens of identifying new operators and the local loops being unbundled or changing hands.

43.3. This option would need a formal procedure requiring all operators to provide regular returns to the VOA to be able to manage the assessments. The returns would have to be provided already analysed by BT exchange area.

43.4. As with option 1, LLUOs would incur additional costs for unbundled local loops not previously accounted for. Ofcom would need to take these into account in order to set a fair, cost-based charge for LLU.

44. **Option 3: Designate LLUOs on the central rating list**

44.1. Although this option should produce a lower burden on the VOA and billing authorities, the problem of the additional burden of keeping track of new LLUOs and the unbundled local loops still remains to a degree.

44.2. As with option 2, this option would need a formal procedure requiring all operators to provide regular returns to the VOA to be able to manage the assessments.

44.3. New LLUOs would have to be designated on the Central List. This would require secondary legislation and would have to be administered at intervals. Parliament would not be content to see frequent amendments to the legislation so there might be a need to wait for a suitable number of new LLUOs before making the necessary amendments. This would only be a problem if there are frequent new entrants to the market.

44.4. For all options, it is important to gain information on the costing of the option. This is particularly important for this option as it will involve the VOA valuing a significantly different hereditament.

44.5. It will take some time to resolve the issues identified under this option. This makes this option impossible in the short term as we could not achieve this outcome by 1 April 2006.

44.6. As with options 1 and 2, LLUOs would incur additional costs if the rates liability shifted and Ofcom would need to take these into account in order to set a fair, cost-based charge for LLU.

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

45.1. If BT is to remain liable for business rates in the short term it is important that the charge for LLU (which is not necessarily an annual charge) is based on clear cost orientation principles. Ofcom sets the charge for LLU so there is no opportunity for the dominant provider to somehow dictate terms.

45.2. This approach would require an amendment to the Regulations.

45.3. The Regulations under this option would stipulate unbundled local loops as part of BT's hereditament and an adjustment to take into account the lost lines and downstreams in customer revenues to LLUOs when a local loop is unbundled cannot be reflected in a reduction in value of BT's hereditament. By its very nature regulation 8 of the Regulations means it is impossible under the current MCC rules to allow changes to the value of BT's hereditament based on losses of lines through the unbundling process. This might not represent a major cost to BT in the short term while the numbers of unbundled local loops are at a relatively low level, but in the long term, it could be a problem if the projected 1.5m loops were to be unbundled by the end of 2007. This would represent a loss to BT that could not be discounted from BT's hereditament.

EQUITY AND FAIRNESS

46. The overall aim of the consultation is to ensure the chosen option provides equity and fairness regardless of the ratepayer.

47. Under options 1 to 3, the LLU charge set by Ofcom should reflect the fact that BT would no longer be liable for fully unbundled local loops they do not occupy. As previously stated, option 4 would be the most practical in the short term because it would continue the current practice of treating BT as the rateable occupier. Neither BT nor LLUOs would incur any direct additional costs. However, in the long term, there could be issues of equity and fairness as BT would not be able to seek alterations to their valuation based on losses incurred through more and more loops being unbundled.

48. The second proposed consultation seeks to investigate this potential problem.

SMALL FIRMS IMPACT TEST

49. Option 4 would not place any additional costs on small businesses and would simply extend the current arrangement. As option 4 is the preferred option for the short term it is not envisaged that the proposed change will significantly or disproportionately impact on small businesses.

50. Options 1 to 3 would have an impact on all LLUOs as they would incur costs (business rates liability for unbundled local loops) they had previously not had to face. At this stage further analysis on the cost implications are needed so ODPM intend to fully consider the cost implications to small businesses in a further consultation on the long term solution for fully unbundled local loops. We intend to consult small firms at an early stage in developing the long term proposals so as to minimise impact. We have consulted the Small Business Service who is content with our approach.

COMPETITION ASSESSMENT

51. The competition filter test has been applied and there is nothing to suggest the current rating treatment of unbundled local loops negatively impacts on any particular area of the market. As the preferred option is to extend the status quo, we do not envisage this will create complications for LLUOs.

52. BT is currently the single largest occupier of local loops but the more loops that are unbundled, the more effect it has on BT's hereditament that cannot be reflected in reductions of their rateable value. This will be considered in more detail in the further consultation.

53. The designation of LLUOs as rateable occupiers could present a barrier to entry into the LLU market that is not currently present. If this approach were to be introduced in future years potential new LLUOs would have time to factor unbundled local loop costs into their business plans before entering the market. If options 1 - 3 were introduced from 1 April 2006, LLUOs would have very little time to consider the implications and costs to their businesses.

ENFORCEMENT, SANCTIONS AND MONITORING

Enforcement and Sanctions

54. The Local Government Finance Act 1988, as amended, establishes the main structure of the rating system. If the preferred option is chosen, the Regulations will be amended accordingly and the wider rating system, including in relation to enforcement and sanctions, will remain untouched. The consultation is concerned only with the liability for unbundled local loops and not the rating mechanism itself.

Monitoring and Review

55. The VOA are responsible for carrying out all non-domestic rating valuations and will be able to monitor the effect the chosen option has on the rateable values of LLUOs and BT.

Implementation and Delivery plan

56. The Central Rating List (Amendment) (England) Regulations 2006 will make the necessary amendments to the Regulations. It is envisaged these amendment regulations will come into force by 1 April 2006. Although this does not comply with the Common Commencement Dates policy of implementing business-impacting legislation on either 6 April or 1 October, the cost of doing this would be wholly disproportionate to the public purse given that National Non-Domestic Rates must be aligned with the Local Government financial year of 1 April to 31 March. We have discussed this with the Small Business Service who agrees with our approach in this matter.

Summary and Recommendation

Option	Benefit	Cost
1	No benefit	- Not suitable as a short term solution. - Additional administrative costs to the VOA, local billing authorities and LLUOs.
2	More practical than option 1 as loops occupied by the same operator in each area would be aggregated and designated on the local list of that area.	- Not suitable as a short term solution. Further work needed to establish whether this can be considered for the long term. - Opposed by most of the respondents due to concerns about additional rating costs to LLUOs over and above those currently recovered by BT. - No environmental costs identified. - LLUOs suggest prices for broadband services would increase if this option is adopted.
3	This would create a single hereditament more in line with normal rating practice.	- Not suitable as a short term solution. Further work needed establish whether this can be considered for the long term. - Opposed by most of the respondents over concerns about additional rating costs over and above those currently recovered by BT. - LLUOs suggest prices for broadband services would increase if this option is adopted.
4	Administratively easy to implement as this option continues the current arrangement.	- Further analysis on the potential long term costs to BT is needed. - No environmental costs identified.

Recommendation

57. We recommended the short term solution that BT should continue to be designated as the rateable occupier of those loops until 31 March 2008.

58. We consider this to be the best arrangement to deal with urgent requirement to seek a solution effective from 1 April 2006 and should provide a balance between the need for stability and also the concerns from BT that the current arrangement should not be in place longer they feel is necessary.

59. Before any decision to introduce any of options 1 - 3 or to adopt the arrangement in option 4 on a permanent basis, we feel that there should be a more detailed analysis on the individual rating cost of an unbundled local loop. A significant amount of the work would also need to be done for options 1-3 to value the designated hereditament, to pass the necessary regulations and for LLUOs to assess the financial or administrative consequences.

60. ODPM understands a further short term measure is not ideal. However given the competing concerns and interests expressed by respondents to the consultation, we remain convinced a decision on the long term solution cannot be taken without further detailed investigation and analysis of implications attached to each option.

61. The responses to this consultation will form a basis for consideration of the long term solution. ODPM therefore intends to consult on the long term approach in 2006.

Ministerial Declaration

"I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs"

Signed

Phil Woolas

27th February 2006

Phil Woolas, Minister for Local Government

Rateable occupation

1. The paragraphs below explain the interpretation of "rateable occupation" in the case of local loops and explains why fully unbundled loops are considered to be occupied by the LLUO while partially unbundled loops are considered to be in rateable occupation by BT.

2. Rateability is dependant on the beneficial occupation of land, which includes the occupation of land by telecommunications cables and ducts as well as buildings such as telephone exchanges. The rateable occupier is the person in actual occupation who derives benefit and retains paramount control over the land. The law on rateable occupation in England, Scotland and Wales is essentially the same.

3. The ingredients of rateable occupation were set out in *John Laing & Sons v Kingswood Assessment Committee 1KB344*. They are fourfold.

    3.1. There must be actual occupation.
    3.2. That occupation must be exclusive for the particular purposes of the possessor.
    3.3. The possession must be of some value or benefit to the possessor.
    3.4. The possession must not be for too transient a period.

4. LLUOs have actual, exclusive and beneficial occupation of fully unbundled local loops.

5. There is no reason to conclude that the occupation by LLUOs is too transient for rateable occupation. Although customers can terminate the unbundling arrangement at short notice, either by reverting to BT or by entering into an agreement with a different LLUO, this does not defeat the argument that they are in rateable occupation. In the event of a customer switching to a new LLUO, there need be no consequences for the rating assessment as the entry will remain unaltered in the rating list (ignoring the possibility of connection at the exchange end between the loop and other metallic paths); the consequences are for the billing authority in deciding who to bill for the separately assessed loop.

6. The conclusion is that LLUOs are in rateable occupation of fully unbundled local loops. In the case of partially unbundled loops, there is a degree of ambiguity about the acts of occupation and this means that it is correct to look to ownership to decide in whose hands rateable occupation lies. Therefore, the conclusion is that BT is in rateable occupation of partially unbundled local loops.