

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 16 April 2008

Session 3

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2008.

Applications for reproduction should be made in writing to the Licensing Division,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by RR
Donnelley.

CONTENTS

Wednesday 16 April 2008

Col.

DECISIONS ON TAKING BUSINESS IN PRIVATE	749
SUBORDINATE LEGISLATION.....	750
Non-Domestic Rating (Telecommunications and Canals) (Scotland) Amendment Order 2008 (SSI 2008/84)	750
Town and Country Planning (General Permitted Development) (Avian Influenza) (Scotland) Amendment Order 2008 (SSI 2008/74).....	771
Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2008 (SSI 2008/83) ..	771
Non-Domestic Rates (Licensing) (Scotland) Regulations 2008 (SSI 2008/85)	771

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

11th Meeting 2008, Session 3

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

COMMITTEE MEMBERS

*Alasdair Allan (Western Isles) (SNP)

*Bob Doris (Glasgow) (SNP)

*Patricia Ferguson (Glasgow Maryhill) (Lab)

*Johann Lamont (Glasgow Pollok) (Lab)

*David McLetchie (Edinburgh Pentlands) (Con)

*Jim Tolson (Dunfermline West) (LD)

COMMITTEE SUBSTITUTES

Robert Brown (Glasgow) (LD)

Rhoda Grant (Highlands and Islands) (Lab)

Tricia Marwick (Central Fife) (SNP)

Margaret Mitchell (Central Scotland) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Robin Benn (Scottish Government Public Service Reform Directorate)

Laura Sexton (Scottish Government Public Service Reform Directorate)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Jane-Claire Judson

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 5

Scottish Parliament

Local Government and Communities Committee

Wednesday 16 April 2008

[THE CONVENER *opened the meeting at 10:00*]

Decisions on Taking Business in Private

The Convener (Duncan McNeil): Welcome to the 11th meeting in 2008 of the Local Government and Communities Committee.

Under agenda item 1, the committee is invited to take items 4, 5 and 6 in private. Item 4 involves consideration of an updated version of our work programme, and such business is normally dealt with in private.

Item 5 involves consideration of a draft report of the summary of evidence relating to the committee's work on the 2007 elections, and a discussion of the possible contents of the report. Again, such business is normally dealt with in private.

Item 6 involves consideration of a draft approach paper in relation to the committee's work on child poverty. Once again, such business is normally dealt with in private.

Do we agree to take the items in private?

Members *indicated agreement.*

Subordinate Legislation

Non-Domestic Rating (Telecommunications and Canals) (Scotland) Amendment Order 2008 (SSI 2008/84)

10:01

The Convener: Item 2 is consideration of a Scottish statutory instrument. SSI 2008/84 is subject to the negative procedure, which means that it will come into force unless a motion to annul is lodged in the Parliament. The Subordinate Legislation Committee has raised no points on the instrument and no motion to annul has been lodged.

In light of the interest in the instrument that some members of the committee have shown, we will take evidence from Scottish Government officials. I welcome Robin Benn, the team leader in the non-domestic rates team; Laura Sexton, the senior policy adviser in that team; and Elspeth MacDonald, the head of the solicitors, development and local government division.

I will give the witnesses the opportunity to make introductory remarks before I invite questions from members.

Laura Sexton (Scottish Government Public Service Reform Directorate): Committee members should have received our Executive note that explains the rationale behind the order.

The Scottish Government believes that the proposal to make BT the rateable occupier of the local loop on an indefinite basis is the most practical, administratively straightforward and cost-effective long-term arrangement for the rating of local loops in Scotland. Similar legislation came into force in England on 1 April 2008, and should complete its passage through the United Kingdom Parliament under the 40-day rule before the end of April.

We consulted widely on the order and took account of the views that were submitted to us. For example, the Scottish Assessors Association has told us that it is not possible to value BT's network in Scotland as a separate entity, as BT is unable to disaggregate the information that is necessary for the assessors to carry out a separate and robust valuation of BT's network in Scotland. That means that, for rating purposes, BT's network has to be assessed across the UK as a whole and apportioned geographically among the four countries in the UK. BT's network is then apportioned among the 32 areas in Scotland, with an entry in each valuation roll.

So, what does all that mean? If the order did not come into effect and Scotland adopted a different approach to the valuation of local loops from the one in England, there could be significant difficulties for the assessors in valuing the Scottish element of the BT network.

In response to our consultation, the Confederation of British Industry Scotland indicated that it did not wish the possibility to be opened up of different approaches being applied north and south of the border, as that could cause businesses operating across the UK unnecessary confusion and complication.

We also took evidence from the Office of Communications, which said that, as the regulator, it sets a charge ceiling for the amount an unbundler is required to pay to BT for access to an unbundled loop. That charge allows a regulated return on the BT assets used in unbundling and covers overheads such as rates paid by BT. Ofcom's view is that making BT the rateable occupier of the local loop indefinitely ensures the efficient collection of rates and the competitive provision of broadband services in Scotland and England.

The rating arrangements exist in a wider regulatory context, and the Ofcom regime is designed to and should be capable of ensuring that both BT and the local loop operators pay their fair share of the costs. Ofcom is reviewing the charges for local loop unbundling to ensure that those charges are correct. The remit for the review includes business rate charges. We understand that BT is closely involved in those discussions. Ofcom tells us that the business rate charge can be fully recouped under the charging regime. If BT has concerns about the network charges, including the recovery of rates, that review would be the appropriate forum in which to raise such concerns.

There are rating precedents. In the rail industry, in certain instances, Network Rail, rather than the individual train operating companies, is deemed to be the rateable occupier. Also, the gas and electricity distribution operators are deemed to be in rateable occupation of gas and electricity meters. The purpose of that is to encourage competition in the utilities.

One of the other options presented in the consultation was that the existing system should apply until 2010. The Scottish Government keeps its rating regulations under constant review in response to changing circumstances and in consultation with stakeholders. That can be demonstrated by our willingness to consider whether it is feasible to include fixed-line telecoms within the designated assessor regime for Scotland, as requested by BT. Making the arrangements under the order indefinite removes

an arbitrary time limit that could cause uncertainty for a number of key stakeholders, the assessors, local authorities, BT, local loop unbundling operators and, of course, Ofcom. The arrangement is not unusual; it is the standard approach that we adopt for a great majority of rating provisions. Such provisions do not normally have a time limit on them.

Jim Tolson (Dunfermline West) (LD): The direction in which the Government is considering going seems perverse. You said that the administration of the system would be straightforward and cost effective, and you claim to have consulted widely. However, there appears to have been consultation with quite a limited number of people, with a rather limited response. Further, the options in the consultation are extremely limited. The two options are to charge BT indefinitely or to charge it until 2010. What about the option of charging not BT but the people who are taking the profits from the local loops? We are not talking about small companies—these are large companies. Members have been lobbied by Orange and other multinational, multibillion dollar companies that are concerned that they are going to be landed with some of the taxation. I feel that that burden could be placed upon them, and I ask the Scottish Government to consider that third option.

Laura Sexton: We did not put the option of making rates liability the responsibility of the local loop unbundling operators in the consultation paper for two reasons. First, since 2004, we have been part of a UK-wide group. Secondly, we had to include feasible options, and we argue that, in the circumstances, it is not feasible to make local loop unbundling operators liable for the rates.

The network charge takes account of the rates. If the local loop unbundling operators were to be liable for the rates, that would cause overwhelming and significant administrative difficulties for the assessors, who would be required to put entries in all 32 valuation rolls in Scotland. In England, there are about 1.7 million local loops; the rough estimate is that, in Scotland, there are around 100,000. The assessors would face significant difficulties because they are simply not resourced to cope with such a large number of entries. In addition, local authorities would have to reissue rates bills to all the local loop unbundling operators. Furthermore, if the order was not in force, it would bring uncertainty to telecoms operators in Scotland. In England, the telecoms operators have certainty, but here they have no certainty. We want to encourage, not discourage, telecoms investment in Scotland. The ratings system should complement the telecoms policy here, which must be supported. Local loop unbundling is a process of encouraging competition in the telecoms market.

We are saying that the exceptional nature of the local loops is such that a special arrangement must be made to recover the rates. At the same time, BT will not be out of pocket because, according to Ofcom, BT is able to recover the rating cost through the network charge.

Jim Tolson: I respect those points, although I totally disagree with them. You are correct in saying that BT is able to recover the costs, but where are those costs recovered from? They are recovered from the customer. Ultimately, the customer will end up paying the bill no matter who is taxed on this. It is intrinsically unfair that the wrong corporation is taxed in the first place and then passes that cost on to the customer. By the right means, we should have a fair taxation system for local loop unbundling in Scotland. The Government's proposals simply do not represent that.

The Convener: I do not know whether that point needs an answer—it was more of a statement.

David McLetchie (Edinburgh Pentlands) (Con): Good morning. I would like the witnesses to put the matter into perspective by giving me some indication of the amounts of money that are involved in this exercise. What is the aggregate rateable value of all these local loops? Applying the appropriate non-domestic rate charge to those rateable values, what is the bill that will be sent to BT for all the unbundled local loops?

Laura Sexton: We do not have that information, but we will write to you after the meeting and give you that information.

David McLetchie: Okay. Before we consider the matter, it is important that we have an idea of the money that is involved. Is it a relatively modest—in the grand scheme of things, trivial—amount of money that would have a marginal impact on the operation of the marketplace, or is it a significant amount of money that would have a significant impact on how the marketplace is regarded by BT and other operators? It would be helpful to have that information before the instrument goes through the normal process, so that all members can consider it.

I understand that the existing order was temporary, which is why we are presented with this order, which makes the current arrangement indefinite. During the duration of the temporary order, what growth has there been in the market for such communications?

Laura Sexton: The number of local loops has risen. In England, the figure is around 1.7 million; our guesstimate is that, in Scotland, there are 100,000—BT knows how many local loops there are. There are partially unbundled local loops and fully unbundled local loops. We are talking about fully unbundled loops. We know that there are 1.7

million local loops in England, but because BT cannot disaggregate its UK network and draw a boundary around Scotland, the assessors cannot provide a separate value for BT's network in Scotland. Costs are apportioned to Scotland, so we can give you only a guesstimate, but we believe that if the order were annulled and the local loop operators became liable to pay the charge, there would be a £9 million one-off cost in Scotland and annual costs of around £1 million.

10:15

David McLetchie: A £9 million one-off cost for what? The assessment process?

Laura Sexton: Yes. There would also be an on-going maintenance cost for the assessors of £1 million a year.

Robin Benn (Scottish Government Public Service Reform Directorate): That figure is an estimate based on a published estimate by the Department of Communities and Local Government. If the order in England were to be annulled and the local loops added to the rating lists, DCLG estimated a maximum one-off cost for England, with 1.7 million loops, of about £145 million and annual on-going costs of about £16 million. On the basis of a very rough estimate of 100,000 local loops in Scotland, as Laura Sexton said, simple arithmetic suggests that the equivalent one-off cost for Scotland could be as much as around £9 million, with annual on-going costs of £1 million. Members should appreciate that those figures are only very rough estimates and should not be relied on.

We can say with certainty that allowing the order to complete its parliamentary passage will have no financial implications, but failure to do so would increase hugely the costs to local authorities and the Scottish assessors who administer the business rates system. It would almost certainly lead to a lot of revenue spend. It is not simply a matter of the Government and agencies having to pay costs rather than BT; there would be wholly additional costs for the public sector. According to the consultation in England, the administrative burden on BT will continue regardless of whether it continues to be designated as the rateable occupier of the fully unbundled local loops, because BT has to ensure that the rental charge associated with the process of unbundling loops is paid by the relevant operator.

David McLetchie: So does it cost BT £9 million as a one-off cost and £1 million a year to charge everybody?

Robin Benn: No. BT's costs will remain whatever is decided about the rating treatment. We are talking about additional costs for rating.

Laura Sexton: So it would be a loss of non-domestic rates income to the Scottish Government.

David McLetchie: Effectively, it is all about cost transfers, is it not? It is about the cost of charging network users and who bears that cost. As I understand it, if we do not go down the route that the Government proposes, the cost of collecting taxes will fall on the Government—in other words, the taxpayer—whereas at the moment, it falls on BT, which then has to recover from its customers or other users of the network the tax that it is paying.

Robin Benn: BT recovers business rates as an element of the charge that is regulated by Ofcom. It will still recover such a charge from the local loop unbundling operators whether or not—

David McLetchie: Which it must apportion among all the users in the same way as a valuation would be apportioned among all the users if we did not have this system.

Robin Benn: Yes.

David McLetchie: So the methodology that enables BT to charge people is the same as the one that the valuers would use if they were to value and charge everybody separately.

Robin Benn: I guess that that would be the case. Whether or not rates are part of the unbundling charge, there remains an unbundling charge that BT must administer. There is no additional administrative charge for BT if the order proceeds.

David McLetchie: Presumably, if the lines were rated separately and BT did not have to carry out the apportioning exercise that it currently undertakes in order to charge people, all the costs that it incurs at present would disappear.

Robin Benn: Yes, but there are other elements of the unbundling charge that BT would still have to apportion among the operators of unbundled local loops.

David McLetchie: At the start of the meeting, you made the argument that failure to introduce this measure would impact on the growth and development of the telecoms market.

Laura Sexton: That is why we have laid the order. We have done so for two reasons—

David McLetchie: What growth has taken place in the market under the current temporary regime?

Laura Sexton: We will provide the committee with the figures in writing after the meeting. I know that in the past 18 months there has been a substantial increase in unbundling of local loops.

David McLetchie: It would be helpful if you could provide us with the figures. I understood you to be arguing that the order was needed to

encourage growth in the market, but it is growing anyway. The options that are available for consideration today and that were included in the consultation are to extend the present arrangement only to 2010 or to make it indefinite. The Government argues that the regime needs to be made indefinite, in order to generate growth in the market, but there has been substantial growth under the present temporary arrangement.

Laura Sexton: The preceding arrangement, which the instrument makes indefinite, was temporary and applied in both Scotland and England. If Orange, for example, was deciding whether to go to Scotland or to England, the arrangements were exactly the same in both countries. England has decided to make BT the rateable occupier for an indefinite period and that if BT is concerned about the charges, it should go to Ofcom and negotiate their recovery. If we in Scotland take a different approach, either by extending the temporary arrangement until 2010, or by charging the operators of unbundled local loops, that could affect the growth of the telecoms market and investment decisions by telecoms operators. Operators could decide not to take the risk of investing in Scotland and to take their business to England instead.

The Convener: I have a question about Scotland's needs for connectivity, as opposed to the needs of the UK in general. We know that in far-flung constituencies such as that of Alasdair Allan access to broadband and broadband speed are big issues. We have heard today that the costing regime will be negotiated between Ofcom and BT. Ultimately, will they make decisions about the viability of the market here in Scotland? Could they do a deal that becomes a disincentive to investment in certain areas of Scotland? Has the Government given up its influence on the process of achieving connectivity throughout Scotland? What influence will it have, if it hands over responsibility for barriers and costs to BT and Ofcom?

Laura Sexton: Ofcom is the telecoms regulator. It does not consider just BT, because its role is to ensure that the telecoms market remains competitive, with the ultimate aim of driving down telecoms costs. Most telecoms matters are reserved. The order will ensure that the rating system, for which we as officials are responsible, complements the Scottish Government's other policies. We have a responsibility to ensure that the rates can be collected and we do not want the collection of those rates to affect other policies adversely.

The Convener: I wonder about the outcome. We have discussed the fact that collecting the rates could cost tens of millions of pounds. We have given BT a great bargaining chip with Ofcom,

given not only the rates that must be paid but their collection. Governments could save X amount of money. I am worried about an unintended outcome, but that is just a thought.

I call Kenny Gibson, to be followed by Alasdair Allan—[*Interruption.*] I am sorry; I said that I would call Patricia Ferguson first. Mr McLetchie must have taken advantage of the chair and asked more questions.

Patricia Ferguson (Glasgow Maryhill) (Lab): I promise not to ask four questions, but I might nudge my total to three, if the convener does not mind.

Ms Sexton said that the measure was cost effective and straightforward and she elaborated by saying that it was one of the only feasible options in the consultation. However, does the Scottish Government think that it is fair?

Laura Sexton: Yes. We believe that solutions must be found. We have a duty to ensure that the rating system is simple to administer, cost effective and practical for all stakeholders. The arrangement is the most practical, simple to administer, straightforward and cost effective. We base our proposal on the evidence that assessors, Ofcom and local loop unbundling operators have presented, which argues that it is fair.

Patricia Ferguson: BT has told us that Ofcom caps the costs that it can recover from other operators, so it cannot recover the full costs of the exercise. That does not seem particularly fair. Will the arrangement encourage other operators to enter less attractive areas that are more difficult to service?

I was intrigued that you could not tell Mr McLetchie how much revenue would be collected as a result of the order. England has already gone down this road. What revenue has the Treasury received there?

Laura Sexton: You said that BT could not recover its full costs, but Ofcom has never doubted that BT can recover its full costs. Ofcom says:

"Ofcom has always recognised BT's right to recover its legitimate costs, including business rates. Ofcom is currently in the midst of reviewing BT's charges for"

local loop unbundling

"(and other products) to ensure that these are correct. This review is taking business rates into account. BT is closely involved in these discussions."

Patricia Ferguson: Excuse me, but none of that says explicitly that BT can recover the full costs. If Ofcom is looking into BT's costs, including those for rating, that suggests that Ofcom recognises that a problem might exist.

Robin Benn: That is not the impression that we have gained from Ofcom. On the contrary, we

believe that Ofcom says that BT can recover its full costs.

Laura Sexton: Ofcom also states:

"BT does not calculate its business rates on a 'bottom-up' approach, i.e. there is no actual amount of business rates allocated per unbundled local loop. Any such figure is an artefact of BT's internal accounting methodology ... However, Ofcom has always recognised BT's right to recover its legitimate costs".

10:30

Robin Benn: That also explains why it is extremely hard to provide figures that would show the amount of rates for a single unbundled loop. That figure simply does not exist. BT is rated on the basis of its entire UK network. Because of the way in which it is rated, taking a single element of that network and trying to give it a separate value apart from the value of the network as a whole is not possible. That is one reason why the Government in England and the Scottish Government have determined that the only feasible options for rating are those which value BT's network as a whole, including its unbundled local loops. We are confident that that is the most efficient way to collect rates. In addition, Ofcom's regime means that the rating income is recovered by BT from the local loop unbundling operators.

Patricia Ferguson: I also asked what the revenue take was in England.

Robin Benn: As I said, because BT's network is valued as a whole, that single figure is not available in isolation.

Laura Sexton: We do not have that information to hand. If the information is available, we will include it in our response to the committee.

Kenneth Gibson (Cunninghame North) (SNP): I am surprised at some comments that members have made. Am I right in understanding that, if the provision is not made on an indefinite basis, not only will the Scottish taxpayer face a one-off cost of £9 million and an annual cost of £1 million but Scotland's telecommunications industry will be put at a competitive disadvantage?

Laura Sexton: The Scottish Government believes that that would be the case.

Kenneth Gibson: We have talked about how BT can recoup some of its charges. How does BT actually recover those charges? Is the Scottish Government aware of the specifics of that?

Laura Sexton: Ofcom has informed us that the price for local loop unbundling is set at £80 per line per annum excluding VAT. That price was agreed between Ofcom and BT in 2005. The charge takes account of the liability for business rates. Ofcom is currently reviewing the charges through a consultation. If members wish to see

that consultation, we will be happy to provide a copy.

Kenneth Gibson: The Scottish Assessors Association is clear that it wants the current arrangement to continue indefinitely. We have talked about the cost implications of any change, but what is the situation in terms of personnel? Do we have the personnel who could take on this additional work if the current arrangement were not to continue?

Laura Sexton: We do not have the personnel to include local loops in the local valuation rolls because of the number of entries that would be involved. Because of the way in which the BT network is valued and because BT cannot present the information that the assessors would require to value the local loops, the assessors tell us that it is impossible to value a local loop.

Kenneth Gibson: So the assessors cannot say how long it would take to carry out that valuation if they were required to do this additional work. They cannot say whether it would take one year or two years to assess all the loops.

Laura Sexton: Substantial resources would be required, in expertise and personnel. We must bear it in mind that the local loops change daily and that occupiers change frequently, because there is competition. Any change would also affect the appeals system. Each change in network value could be subject to an appeal against the valuation. If an agreement could not be reached with the assessor, the appeal would have to be heard by the Lands Tribunal for Scotland. Existing appeals that are in the system and that have not been disposed of under the 2005 revaluation would be affected. The Scottish courts administration, which administers the valuation appeal courts, and the Lands Tribunal would be affected. The assessors, the local authorities, the local loop unbundling operators and, ultimately, BT would all be affected.

Kenneth Gibson: So not having provision on an indefinite basis is, frankly, wholly impractical?

Laura Sexton: It would cause overwhelming chaos for assessors, local authorities and local loop unbundling operators and, ultimately, it could affect the whole rating system.

Kenneth Gibson: You said that there are about 1.7 million unbundled loops in the UK and 100,000 in Scotland. Given that we have about 8.8 per cent of the UK population and 28 per cent of the landmass, why are we so underrepresented? Why are there so few unbundled loops in Scotland relative to the rest of the UK?

Laura Sexton: I must make it clear that that is only a guesstimate. We know that there are 1.7 million in the UK. Ofcom says, as a guesstimate,

that there are 100,000 in Scotland. The figure is smaller than the 10 per cent that we might expect because the telecommunications market in Scotland is underdeveloped. Urban areas have more local loops than do rural areas. That contributes to the fact that there are fewer local loops in Scotland. Is it not the case that we want to encourage more telecommunications unbundling?

Kenneth Gibson: So if we do not have an indefinite provision, the disparity between the rest of the UK and Scotland will be exacerbated. Is that correct?

Laura Sexton: We believe that that would be the case.

Kenneth Gibson: If BT gets £80 for each loop and there are 100,000 of them, it receives an income of around £8 million a year from that. Obviously, you do not know the exact figures. Some of us have concerns that we do not have greater information and more facts and figures.

Robin Benn: The £80 does not merely include—

Kenneth Gibson: I know that it is not only the rated value.

Robin Benn: You mentioned the situation in Scotland. We have had representation from Ofcom on the situation in remote and rural areas. Ofcom's general concern is that

"any uncertainty regarding the costs of offering services and the resulting revenue streams could have a major impact on investment plans by Local Loop Unbundling operators."

It continues:

"It is possible that additional cost and uncertainty could lead to companies reducing their roll-out".

As Laura Sexton said, Ofcom's remit covers the entire United Kingdom. It states that a reduction in roll-out

"is likely to have a particular impact on those areas with lower population densities."

Kenneth Gibson: Apart from BT, who is opposed to making indefinite provision? The UK Government clearly has an indefinite basis south of the border. Scottish assessors, the Scottish Government, Ofcom and everyone else seems to be in favour of making indefinite provision, apart from BT. Is that the case?

Robin Benn: BT is the only telecommunications operator that wrote to us that was not in favour of the indefinite option. We have published the consultation responses—I can find the list if that would be helpful.

Kenneth Gibson: I think that the Confederation of British Industry was the only other respondent that was not in favour. Is that correct?

Robin Benn: It was the CBI, the Rating Surveyors Association and Perth and Kinross Council. We consulted 107 organisations. We tried to consult as widely as possible.

Kenneth Gibson: How many responses did you get in favour of indefinite provision?

Laura Sexton: We have the information to hand, if you would like to hold on.

Robin Benn: I think that 14 were in favour. I think that there were 18 substantive responses.

The Convener: You could write to us.

Kenneth Gibson: So 14 were in favour and four were against?

Robin Benn: Yes, that is correct.

Laura Sexton: We will confirm the figures in writing.

The Convener: I return to my previous point. What do we expect from the negotiation between BT and Ofcom? Do we expect it to increase the costs of collection and rates to others? Is that consistent with the Government's policy of reducing burdens on business? E-commerce is important to us here in Scotland, particularly in certain areas. How is handing over the negotiations on costs to Ofcom and BT consistent with a policy of reducing costs for e-commerce businesses in Scotland? There will be a consultation, almost a negotiation, about the collection costs plus the increased rates.

Robin Benn: It is important to be clear that responsibility is not being handed over to Ofcom. It is the telecommunications regulator for the United Kingdom and, as my colleague has pointed out, a number of telecoms matters are reserved.

The Convener: The Scottish Government has been passive in the process. You have said on several occasions that the Government's policy is to grow business and reduce barriers to connectability throughout Scotland but, on the other hand, you are saying that it does not accept any responsibility for the collection of charges and, in fact, its policy is that that should be dealt with by BT and Ofcom. What is the Scottish Government's view? How will it ensure that there is no increased rates burden on e-commerce business in Scotland and that connectability is achieved? Somebody pointed out to me that one of the options in relation to BT is that those rates should be abolished. That would save everybody all round.

Robin Benn: We have no power not to rate any part of the lands and heritages. We cannot exempt those local loops from rates simply because they are complicated to rate. Our telecommunications colleagues will be fully engaged with Ofcom as part of the UK negotiations on telecoms tariffs. You will appreciate that this is a reserved matter

and I am afraid that it is not a matter on which we are policy experts. The measure is intended to ensure the proper rating of BT's network in as practical a way as possible. We certainly do not intend the rating treatment to distort the market in any way.

10:45

Laura Sexton: Ofcom states:

"The Ofcom regime is designed to and should be capable of ensuring that both BT and the local loop operators pay their fair share of the costs."

The rating arrangements that we propose will ensure that the rates are collected and that competition exists in the telecoms market.

Alasdair Allan (Western Isles) (SNP): A couple of members have touched on the implications for remote areas and areas of low population. I would be grateful if you could expand on that. My understanding is that the roll-out of broadband in areas such as mine is determined largely by the provision of state assistance in some shape or form. In some parts of the country, that has led to broadband being supplied wirelessly by other providers.

Robin Benn: We asked roughly that question of our telecommunications policy colleagues. They believe that failure to adopt the order could affect the level of local loop unbundling—and therefore the development of broadband—throughout Scotland. Higher broadband speeds and the lowest prices are being offered by unbundlers in urban areas. We believe that local loop unbundlers might reduce their investment in Scotland if BT is not retained as the rateable occupier, and that the spread of higher broadband speeds and lower prices could be inhibited as a consequence.

Local loop unbundling has been one of the major success stories in telecoms. Throughout the UK, thousands of exchanges and millions of lines have been unbundled, which has increased bandwidths, increased competition and lowered broadband prices. If Scotland takes a divergent position on rating from the rest of the UK, local loop unbundlers might find the difference an additional financial and administrative burden and reduce their planned investment here. That might mean that Scotland loses out in relative terms.

I take your point about remote areas. I refer to what Ofcom told us:

"additional cost and uncertainty could ... have a particular impact on those areas with lower population densities."

Alasdair Allan: What assessment have you made of the potential economic impact on Scotland if the measures are not adopted?

Robin Benn: Our assessment is based on the additional cost to the public purse of rating the local loops separately. As we said, the cost would be considerable.

Alasdair Allan: In practical terms, what would the Government have to do to cope if the measures were not adopted? What would you have to do to make things work?

Robin Benn: The main burden would fall on the Scottish assessors. They would be required to find some means of valuing each of the local loops and placing an entry for them on the valuation roll.

Secondly, local authorities would be required to issue and reissue rates bills every time something changed. We must remember that it is a fluid market. Whenever a user decided to switch between one broadband provider and another, the real rateable occupier of that local loop would change. That would result in thousands of changes in any year. The appeals system could also be involved, because each change in network value could give rise to an appeal against the valuation. It would also impose a burden on BT and local loop operators, because they would have to design and maintain a system of notifying the assessors of changes to the occupation of the local loop. They do not currently have that and we understand that there is currently no statutory provision to require that information.

There would be considerable difficulties.

Bob Doris (Glasgow) (SNP): Sometimes, the simplest things can appear quite complex. Will you confirm for me that we are talking about a rateable value that BT currently pays for copper wires and that it passes on a variety of charges to other companies in the market, an element of which is based on the rates that it pays for those copper wires?

Robin Benn: Indeed.

Bob Doris: So BT will continue with the bureaucracy of charging other unbundled suppliers anyway but, in essence, it wishes to pass one element of that bureaucracy on to the Scottish taxpayer?

Robin Benn: Yes.

Bob Doris: And that would involve councils billing, the Scottish assessors, a set-up cost of £9 million and a cost of £1 million per year?

Laura Sexton: Yes.

Bob Doris: So we are talking about a charge that will shift from the consumer, who makes a conscious choice to have internet in their home, to the Scottish taxpayer in general?

Laura Sexton: Yes.

Bob Doris: If we move in that direction, we will shift from charging the customer to charging the whole population of Scotland.

Robin Benn: We are talking about shifting the collection of business rates from a practical approach that allows for rates on the unbundled local loops to be considered as part of the BT network valuation and then to be passed on as they would be in the case of a shopping centre, where the landlords pass the rates bill on to individual shops, to a situation in which each of the local loop operators would have to pay a separate rates bill as well as the unbundling charge to BT. The unbundling regime is regulated and would continue. We are talking simply about changing the way in which rates are passed on, not the global amount of rates that is collected or the people who will ultimately be liable for the rates. Ofcom has assured us that BT can and does recover the rates from the unbundled local loop operators.

Bob Doris: I currently have BT broadband and Virgin in my property. That attracts rates for BT, which it passes on to the unbundled provider. Under the new system, there would be a knock-on effect on the rateable value every time a consumer made a switch and assessors would have to divvy up rates for each provider. If we move to the new system, rather than Bob Doris and BT paying all the rates, the person next door who does not have broadband would have to pay part of the rateable value as part of the assessors' role.

Laura Sexton: Ultimately, yes. We propose a cost-effective solution that takes account of administrative arrangements. They are complex, but we must find a pragmatic solution that collects the rates and ensures that there is a mechanism for access to the network. Our two-pronged approach does both.

At the same time, the Government has to find a cost-effective solution that reduces the burden on the taxpayer and the consumer. Again, our solution takes account of such issues. It might not be ideal, but in an ideal world the local loop unbundling operators would have been made the rateable occupiers. We feel that there is another way of meeting the objective that takes into account all parties and stakeholders, and it is the most pragmatic and cost-effective approach that we can find. Without it, there will be havoc in the rating system.

Bob Doris: I agree that big business and the customer, not the general taxpayer, should pay and I am happy that this proposal is the fairest way of doing things.

Companies such as BT, Orange and Sky obviously have a vested interest in the marketplace and want to secure the best possible

result for themselves. What have consumer patterns been like over the couple of years for which this system has been in place? Is it not the case that, even though it does not agree with the current regime, BT has in fact flourished under it to become the top broadband provider in the United Kingdom?

Robin Benn: That is true. In the opinion of our telecoms colleagues, the current arrangements do not appear to have disadvantaged BT in its attempts to increase its broadband customer base. Apparently, with more than 4 million subscribers, it has overtaken Virgin to become the largest broadband provider. It could be argued that, if unbundlers are doing well in the marketplace under the current regime, so, too, is BT. According to the *Financial Times*, between 2005 and 2007, the number of BT subscribers rose from just over 2 million to just over 4 million, and there have been equal increases for Virgin, Carphone Warehouse, Tiscali and Sky.

Bob Doris: So there is no evidence that by agreeing to this amendment order we will disadvantage BT in any way.

Robin Benn: No. Indeed, as I have pointed out, BT's administrative cost burden should not change, as it will still have to collect unbundling charges from local loop unbundling operators, no matter whether those charges include a business rates element.

Johann Lamont (Glasgow Pollok) (Lab): I find it difficult to understand how you can say that this proposal is the most cost-effective approach, given that it does not seem to be possible to carry out any cost benefit analysis of collecting the tax and given that you have not told us how much it will raise.

I am also intrigued by Bob Doris's argument. If we followed his logic, all tax collection would be privatised. After all, it is cheaper, safer and easier to get someone else to do it; it saves time and the public purse does not have to pay for it. On the other hand, however, it might be argued that if we had to collect the tax, we might be able to create incentives, for example to develop in remote areas. We would not necessarily allow a free market, but we would condition the market in the interests of Scottish consumers.

The problem, though, is that, although I am open to persuasion, you have presented very conflicting arguments and, in some cases, insufficient information to allow us to take a view. One would expect BT to take one position and the other operators to take the opposing position, given that it would not be in their interests to side with BT. That said, I would be surprised if people were actually arguing that BT, with its reputation, was seeking to cause chaos by making its case. As far as I can see, BT does not operate like that.

Your basic argument is that the proposed approach is convenient. After all, it is already being done; it saves the public purse from picking up the tab; and it does not require any change to be made. The straightforward argument is that it is, on balance, the most convenient way to do it. BT knows how to do it—it knows where the bodies are buried—so why would we pick it up? That is an argument that people can understand. You said, secondly, that we need certainty, and that there is a danger that the pricing would be different, but that is illogical as you say that BT already passes on the costs. How can there be a different pricing regime if you are saying that that is what BT does anyway?

The third point that you made was that the situation is continuously monitored anyway. Although we are making the term indefinite, we would be monitoring the situation all the time. That, frankly, blows out your argument about uncertainty—it does not seem to be a logical position. Is it not the case that it is about, first, convenience, and, secondly, the fact that England has already decided and we do not want to be at a disadvantage by diverging from what is happening in England? That might be a logical position, but we should then interrogate that argument, which we have not had the opportunity to do.

11:00

Robin Benn: It is certainly more than the most convenient option. We have been advised by the Scottish assessors that it is the only feasible option for the rating of local loops. You mentioned—

Johann Lamont: With respect, is the other option not feasible or is it too costly? Is it not able to be done? That is not what you argued earlier.

Laura Sexton: I said that the Scottish assessors have told us, first, that it is not possible to value a local loop and, secondly, that it is impossible to value BT's Scottish network as a separate entity. What happens is that the BT network gets valued as a whole across the UK, and there is an apportionment of that value for Scotland.

Johann Lamont: So it is not just about convenience, to save us from having to collect the rates. It is also a matter of having to trust BT to do it because it knows about it and its organisation is UK-wide so the network cannot be disaggregated geographically or to a local level. If that is the argument, it makes some sense, but it is not what was being presented to us—that was something quite different.

Robin Benn: It is a highly complex area, and I apologise if we find difficulty in expressing that complexity. The assessors who specialise in telecommunications have explained to us—and in

their response to the consultation, which the clerks circulated to members of the committee in advance of today's meeting—the basis for rating of the BT network, and why it is not possible, on the basis of the information that is available to the assessors, to disaggregate a separate value for BT. We are talking about convenience, but we are also talking about feasibility. As I said, we have been advised that it is not feasible to rate it in a different way.

You spoke about how the regime might—

Johann Lamont: I asked about the issue of continuous monitoring. Why does that give more certainty? There is no difference—or is there?

Robin Benn: The uncertainty that is spoken of is caused by having a fixed time limit at which the regime will definitely have to be re-examined. That is the cause of uncertainty and that has nothing to do with Ofcom or the pricing regime.

Laura Sexton: Businesses like to be certain of their costs and they like to plan ahead. If we chose option 1 and responded with an order that covered only up to 2010, businesses in Scotland would have certainty of planning only for two years, whereas in England businesses would know that BT would be the rateable occupier for an indefinite period.

Johann Lamont: With respect, you said that the argument about uncertainty was answered by the fact that the situation was continuously monitored. How much monitoring is carried out? If, in response to the argument about the term being indefinite, what is supposed to give us comfort is the fact that the situation is continuously monitored, I would have thought that that sounds every bit as uncertain.

Laura Sexton: We continuously monitor the rating legislation and the rating relief system. We have received representations from many areas. We constantly monitor our rating legislation to ensure that it is relevant. It is only right and proper that we have a rating system that is designed to meet the needs of, first, ratepayers and, secondly, Scotland.

In terms of certainty, we must ensure that the rating system complements our other policies. The policy that we are proposing, first, ensures the collection of rates and, secondly, gives certainty to telecoms operators to decide to invest in Scotland and not take their business to England where they know that local loop unbundling is the responsibility of BT and will be negotiated through the—

Johann Lamont: Where is the evidence that businesses would make that commercial decision not to invest in Scotland?

Laura Sexton: In some of the confidential responses, several of the operators, which we

cannot name, have said that they would take their business elsewhere.

David McLetchie: Does that mean that the respondents that were happy to put themselves on the record did not make that point? Was it only the ones that wanted their replies to be kept confidential that made the point?

Robin Benn: It is true that all the broadband operators that responded, which would be those that are local loop unbundlers, requested that their replies remain confidential, for obvious reasons of confidentiality.

David McLetchie: There were broadband operators that responded to the consultation that were happy for the information to be published. Was it only the ones that wanted the replies kept confidential that made that objection?

Robin Benn: I believe that all the broadband operators requested that their replies would remain confidential. The operators that responded and did not call for confidentiality were fibre operators. We take considerable comfort from Ofcom's opinion on this issue. Ofcom said in its consultation reply that it believes that local loop unbundling is still a relatively new market and that therefore

"Ofcom's concern is that any uncertainty regarding the costs of offering services and the resulting revenue streams could have a major impact on investment plans by Local Loop Unbundling operators."

We are not experts. As the regulator, Ofcom is responsible for the pricing and competition regime for telecoms.

Kenneth Gibson: We have talked about, on the one hand, a one-off cost of £9 million plus an annual cost and, on the other hand, the costs being passed on to the consumer. Given that BT does not price differently in Scotland and England we could have a double whammy, whereby we would pay as consumers through BT across the UK but we would then also have to pay the £9 million set-up costs plus £1 million a year. BT would not say that the cost of rates had been passed on to taxpayers in Scotland and that it would, accordingly, slightly reduce the prices in Scotland. Is it not the case that we would still have to pay the same amount but the Scottish taxpayer would have to pay that additional burden?

Robin Benn: That is true. The additional administration costs would fall wholly on the public purse in Scotland. Hence, we would have to decide in what other programmes we could save money in order to meet those administration costs. I stress the fact that the figures of £9 million and £1 million are arithmetical estimates, not necessarily reliable figures. However, we have been told by the assessors and others that the administrative difficulties and the consequent costs would be considerable.

The Convener: The other part of that answer is that we do not know the total value of the rates that we are collecting. It would not make any sense to ask the Government to spend £9 million to collect £8 million. How much does the imposition of rates generate for local government or the Scottish Government? How much do we collect?

Robin Benn: As we have explained, BT is rated as a whole, so it is not possible to say how much the rating income relating to the local loops is. It is important to emphasise that the rates will be collected whatever happens. They will either be collected from BT and recharged—

The Convener: In total from BT?

Robin Benn: They will be collected from BT which, as part of the local loop unbundling charge, will pass them on to the local loop unbundling operators, or they will be collected from the local loop unbundling operators separately. The additional costs—the £9 million set-up cost and the £1 million annual cost—are the estimated costs of the additional complexity of collection. Either way, the rates will be collected.

The Convener: Let us get to the crux of the matter. Is it fair or unfair to ask another organisation to pay disproportionate costs to raise X amount of money? From our point of view, that would be correct because we are not spending anything—we are getting BT to do it. However, if it fell to the Government and local authorities to spend that amount of money on the collection of a negative amount of tax, we would not do it. It is a good idea only if we get somebody else to do it. As far as I am concerned, we need to get that figure.

Robin Benn: It is necessary to collect the rates. We cannot simply say that those rates cannot be collected.

The Convener: Why not?

Laura Sexton: We will be able to give you the figure for the total rateable value of BT's network in Scotland. We can give you the rates bill for BT. However, we are unable to disaggregate that figure and give you the value of the local loop network in Scotland because local loops are not valued separately—the assessors cannot do that. We can give you the figure for BT's total estate in Scotland—all the buildings that it occupies, all its lines, and so on—but a separate figure does not exist for all the local loops.

The Convener: Well, see what you can come up with.

Laura Sexton: We can come up with the total rateable value of BT's network in Scotland—how much it is paying in rates in Scotland—but we are unable to tell you what portion of that relates to

local loops because it is not possible to value those loops separately. It is not possible to do that in England, either.

The Convener: I do not know whether having another round of questions will take us anywhere or whether we will be repeating ourselves. We have a number of options. We can decide whether the committee wants to report on the order or whether any member intends to lodge a motion to annul the order. We could produce a report from this meeting.

Johann Lamont: Can we get a minister in? It seems to me that, by charging BT—which can be done at a UK level, but the figure cannot be disaggregated—the Scottish Government has decided that, in this area of work, it will not use the tax regime to create a competitive edge, for example by creating incentives for companies to go into remote areas. The Government has made a decision on that. It might be the right decision; as I have said, I am neutral on it. However, that is not a matter to discuss with officials. It is the political policy behind the decision that I am interested in.

11:15

The Convener: With the committee's co-operation, I am trying to move us to a situation in which we can make up our minds. The lodging of a motion to annul the order would have the effect of getting the minister to appear before the committee. If anyone intends to lodge such a motion, it would be useful to know that now, as it would save us having another round of questions. If that is the case, I will defer our consideration of the item until next week, when we could hear from the minister.

Jim Tolson: If it would help the convener and other members, I state my intention to lodge a motion to annul the order. With all due respect to the officials who have given evidence, I am unhappy that they have not been able to answer many of members' questions. A great deal of uncertainty surrounds the order. I would be happy to seek to annul the order today, but if members were minded to delay and to give the minister the opportunity to answer our questions—

The Convener: No. As I understand it, it is your right as a member of the committee to lodge a motion to annul the order. You must lodge it with the chamber desk. The consequence of your deciding to do so would be that I would defer consideration of the item until next week, when the minister would come to the committee. If it is your intention to lodge such a motion, it is not for the committee to make a decision.

Jim Tolson: Right. My understanding of the procedure is not as good as yours, convener.

The Convener: If you intend to lodge a motion to annul the order, we can cut to the chase. If you confirm that that is your intention, I will defer consideration of the item until next week.

Jim Tolson: I am happy to confirm that I intend to lodge such a motion today.

The Convener: We thank the witnesses for their time. We will defer our consideration of the item until next week.

Patricia Ferguson: I have one further point. As a committee, could we write to Ofcom to ask it whether it is the case that BT can recover the full cost of the rates in charges to the operators of unbundled local loops? It is clear that BT is of the opinion that that is not the case, and the officials' evidence did not clarify to my satisfaction whether it was Ofcom's view that BT could recover the full costs.

The Convener: Yes, we can write to Ofcom for further information.

11:17

Meeting suspended.

11:21

On resuming—

Town and Country Planning (General Permitted Development) (Avian Influenza) (Scotland) Amendment Order 2008 (SSI 2008/74)

Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2008 (SSI 2008/83)

Non-Domestic Rates (Levying) (Scotland) Regulations 2008 (SSI 2008/85)

The Convener: Item 3 is consideration of three negative instruments. Members have received copies of the three instruments and have raised no concerns about them. No motion to annul any of the instruments has been lodged. Do members confirm that they have nothing to report to Parliament on the instruments?

Members *indicated agreement.*

11:23

Meeting continued in private until 12:45.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Friday 25 April 2008

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00

Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by RR Donnelley and available from:

Blackwell's Bookshop

**53 South Bridge
Edinburgh EH1 1YS
0131 622 8222**

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh.

Blackwell's Scottish Parliament Documentation

Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries

**0131 622 8283 or
0131 622 8258**

Fax orders

0131 557 8149

E-mail orders

business.edinburgh@blackwell.co.uk

Subscriptions & Standing Orders

business.edinburgh@blackwell.co.uk

Scottish Parliament

**RNID Typetalk calls welcome on
18001 0131 348 5000
Textphone 0845 270 0152**

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents

(see Yellow Pages)

and through good booksellers