



House of Commons

Thursday 20 October 2016

PUBLIC BILL COMMITTEE PROCEEDINGS

DIGITAL ECONOMY BILL

[FIFTH AND SIXTH SITTINGS]

GLOSSARY

This document shows the fate of each clause, schedule, amendment and new clause.

The following terms are used:

Agreed to: agreed without a vote.

Agreed to on division: agreed following a vote.

Negatived: rejected without a vote.

Negatived on division: rejected following a vote.

Not called: debated in a group of amendments, but not put to a decision.

Not moved: not debated or put to a decision.

Withdrawn after debate: moved and debated but then withdrawn, so not put to a decision.

Not selected: not chosen for debate by the Chair.

Matt Hancock

That the Order of the Committee of 11 October be amended as follows—
 (1) In paragraph (1), after sub-paragraph (f) insert—

“(g) at 9.25 am on Tuesday 1 November;”.

(2) In paragraph (4), for “5.00 pm on Thursday 27 October” substitute “11.25 am on Tuesday 1 November”.

Agreed to

Digital Economy Bill, *continued*

Calum Kerr

Negatived on division **60**

Clause 3, page 2, line 35, at end insert—
“(db) require a communications provider to allow an end-user to terminate a contract on repeatedly failing to meet a specific standard or obligation;”

Louise Haigh
Kevin Brennan

Not called **84**

Clause 3, page 2, line 35, after “obligation”, add “within reasonable timescales” insert”

Clause agreed to.

Clause 4 agreed to.

Matt Hancock

Agreed to **12**

Schedule 1, page 82, line 29, leave out “and keep”

Matt Hancock

Agreed to **13**

Schedule 1, page 82, line 30, at end insert—
“(aa) to keep installed electronic communications apparatus which is on, under or over the land,”

Matt Hancock

Agreed to **14**

Schedule 1, page 83, line 2, leave out from “installation” to end of line 4 and insert “of electronic communications apparatus on, under or over the land or elsewhere;
(ca) to carry out any works on the land for or in connection with the maintenance, adjustment, alteration, repair, upgrading or operation of electronic communications apparatus which is on, under or over the land or elsewhere,”

Matt Hancock

Agreed to **15**

Schedule 1, page 86, line 26, leave out “The reference in sub-paragraph (2)” and insert “A reference in this code”

Matt Hancock

Agreed to **16**

Schedule 1, page 95, line 2, after “36” insert “or as mentioned in paragraph 38A(1)”

Matt Hancock

Agreed to **17**

Schedule 1, page 95, line 10, leave out “or” and insert “and”

Digital Economy Bill, continued

Matt Hancock

Schedule 1, page 102, line 1, leave out “with an interest in land” *Agreed to* 18

Matt Hancock

Schedule 1, page 102, line 3, at end insert “or the restoration of land,” *Agreed to* 19

Matt Hancock

Schedule 1, page 102, line 6, after “removal” insert “of apparatus or restoration of land” *Agreed to* 20

Matt Hancock

Schedule 1, page 102, line 14, after “never” insert “since the coming into force of this code” *Agreed to* 21

Matt Hancock

Schedule 1, page 102, line 24, at end insert “, or
() where the right was granted by a lease to which Part 5 of this code does not apply.” *Agreed to* 22

Matt Hancock

Schedule 1, page 103, line 17, at end insert—
“() This paragraph does not affect rights to require the removal of apparatus under another enactment (see paragraph 38A).” *Agreed to* 23

Matt Hancock

Schedule 1, page 103, line 17, at end insert— *Agreed to* 24

“When does a landowner or occupier of neighbouring land have the right to require removal of electronic communications apparatus?”

- 36A (1) A landowner or occupier of any land (“neighbouring land”) has the right to require the removal of electronic communications apparatus on, under or over other land if both of the following conditions are met.
- (2) The first condition is that the exercise by an operator in relation to the apparatus of a right mentioned in paragraph 13(1) interferes with or obstructs a means of access to or from the neighbouring land.
 - (3) The second condition is that the landowner or occupier of the neighbouring land is not bound by a code right within paragraph 3(f) entitling an operator to cause the interference or obstruction.
 - (4) A landowner of neighbouring land who is not the occupier of the land does not meet the second condition if—
 - (a) the land is occupied by a person who—
 - (i) conferred a code right (which is in force) entitling an operator to cause the interference or obstruction, or
 - (ii) is otherwise bound by such a right, and

Digital Economy Bill, continued

- (b) that code right was not conferred in breach of a covenant enforceable by the landowner.
- (5) In the application of sub-paragraph (4)(b) to Scotland the reference to a covenant enforceable by the landowner is to be read as a reference to a contractual term which is so enforceable.”

Matt Hancock

Agreed to 25

Schedule 1, page 103, line 27, at end insert—

“(1A) A landowner or occupier of neighbouring land may by notice require an operator to disclose whether—

- (a) the operator owns electronic communications apparatus on, under or over land that forms (or, but for the apparatus, would form) a means of access to the neighbouring land, or uses such apparatus for the purposes of the operator’s network, or
- (b) the operator has the benefit of a code right entitling the operator to keep electronic communications apparatus on, under or over land that forms (or, but for the apparatus, would form) a means of access to the neighbouring land.”

Matt Hancock

Agreed to 26

Schedule 1, page 103, line 33, after “(1)” insert “or (1A)”

Matt Hancock

Agreed to 27

Schedule 1, page 103, line 34, after “landowner” insert “or occupier”

Matt Hancock

Agreed to 28

Schedule 1, page 103, line 37, after “landowner” insert “or occupier”

Matt Hancock

Agreed to 29

Schedule 1, page 103, line 38, after “landowner” insert “or occupier”

Matt Hancock

Agreed to 30

Schedule 1, page 103, line 47, after “landowner” insert “or occupier”

Matt Hancock

Agreed to 31

Schedule 1, page 104, line 2, leave out from beginning to “requiring” in line 9 and insert—

- “(1) The right of a landowner or occupier to require the removal of electronic communications apparatus on, under or over land, under paragraph 36 or 36A, is exercisable only in accordance with this paragraph.
- (2) The landowner or occupier may give a notice to the operator whose apparatus it is”

Matt Hancock

Agreed to 32

Schedule 1, page 104, line 23, after “landowner” insert “or occupier”

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Matt Hancock

Schedule 1, page 104, line 33, after “landowner” insert “or occupier” *Agreed to* 33

Matt Hancock

Schedule 1, page 104, line 40, after “landowner” insert “or occupier” *Agreed to* 34

Matt Hancock

Schedule 1, page 104, line 41, after “landowner” insert “or occupier” *Agreed to* 35

Matt Hancock

Schedule 1, page 104, line 42, at end insert— *Agreed to* 36
 “() On an application under sub-paragraph (6) or (7) the court may not make an order in relation to apparatus if an application under paragraph 19(3) has been made in relation to the apparatus and has not been determined.”

Matt Hancock

Schedule 1, page 104, line 42, at end insert— *Agreed to* 37

“How are other rights to require removal of apparatus enforced?”

- 38A (1) The right of a person (a “third party”) under an enactment other than this code, or otherwise than under an enactment, to require the removal of electronic communications apparatus on, under or over land is exercisable only in accordance with this paragraph.
- (2) The third party may give a notice to the operator whose apparatus it is, requiring the operator—
- (a) to remove the apparatus, and
 - (b) to restore the land to its condition before the apparatus was placed on, under or over the land.
- (3) The notice must—
- (a) comply with paragraph 85 (notices given by persons other than operators), and
 - (b) specify the period within which the operator must complete the works.
- (4) The period specified under sub-paragraph (3) must be a reasonable one.
- (5) Within the period of 28 days beginning with the day on which notice under sub-paragraph (2) is given, the operator may give the third party notice (“counter-notice”)—
- (a) stating that the third party is not entitled to require the removal of the apparatus, or
 - (b) specifying the steps which the operator proposes to take for the purpose of securing a right as against the third party to keep the apparatus on the land.
- (6) If the operator does not give counter-notice within that period, the third party is entitled to enforce the removal of the apparatus.
- (7) If the operator gives the third party counter-notice within that period, the third party may enforce the removal of the apparatus only in pursuance of an order of the court that the third party is entitled to enforce the removal of the apparatus.

Digital Economy Bill, continued

- (8) If the counter-notice specifies steps under paragraph (5)(b), the court may make an order under sub-paragraph (7) only if it is satisfied—
 - (a) that the operator is not intending to take those steps or is being unreasonably dilatory in taking them; or
 - (b) that taking those steps has not secured, or will not secure, for the operator as against the third party any right to keep the apparatus installed on, under or over the land or to re-install it if it is removed.
- (9) Where the third party is entitled to enforce the removal of the apparatus, under sub-paragraph (6) or under an order under sub-paragraph (7), the third party may make an application to the court for—
 - (a) an order under paragraph 39(1) (order requiring operator to remove apparatus etc), or
 - (b) an order under paragraph 39(2) (order enabling third party to sell apparatus etc).
- (10) If the court makes an order under paragraph 39(1), but the operator does not comply with the agreement imposed on the operator and the third party by virtue of paragraph 39(5), the third party may make an application to the court for an order under paragraph 39(2).
- (11) An order made on an application under this paragraph need not include provision within paragraph 39(1)(b) or (2)(d) unless the court thinks it appropriate.
- (12) Sub-paragraph (9) is without prejudice to any other method available to the third party for enforcing the removal of the apparatus.

How does paragraph 38A apply if a person is entitled to require apparatus to be altered in consequence of street works?

- 38B
- (1) This paragraph applies where the third party's right in relation to which paragraph 38A applies is a right to require the alteration of the apparatus in consequence of the stopping up, closure, change or diversion of a street or road or the extinguishment or alteration of a public right of way.
 - (2) The removal of the apparatus in pursuance of paragraph 38A constitutes compliance with a requirement to make any other alteration.
 - (3) A counter-notice under paragraph 38A(5) may state (in addition to, or instead of, any of the matters mentioned in paragraph 38A(5)(b)) that the operator requires the third party to reimburse the operator in respect of any expenses incurred by the operator in or in connection with the making of any alteration in compliance with the requirements of the third party.
 - (4) An order made under paragraph 38A on an application by the third party in respect of a counter-notice containing a statement under sub-paragraph (3) must, unless the court otherwise thinks fit, require the third party to reimburse the operator in respect of the expenses referred to in the statement.
 - (5) Paragraph 39(2)(b) to (e) do not apply.
 - (6) In this paragraph—
 - “road” means a road in Scotland;
 - “street” means a street in England and Wales or Northern Ireland.”

Digital Economy Bill, continued

Matt Hancock

Agreed to 38

Schedule 1, page 104, line 42, at end insert—

“When can a separate application for restoration of land be made?”

- 38C (1) This paragraph applies if—
- (a) the condition of the land has been affected by the exercise of a code right, and
 - (b) restoration of the land to its condition before the code right was exercised does not involve the removal of electronic communications apparatus from any land.
- (2) The occupier of the land, the owner of the freehold estate in the land or the lessee of the land (“the relevant person”) has the right to require the operator to restore the land if the relevant person is not for the time being bound by the code right.
- This is subject to sub-paragraph (3).
- (3) The relevant person does not have that right if—
- (a) the land is occupied by a person who—
 - (i) conferred a code right (which is in force) entitling the operator to affect the condition of the land in the same way as the right mentioned in sub-paragraph (1), or
 - (ii) is otherwise bound by such a right, and
 - (b) that code right was not conferred in breach of a covenant enforceable by the relevant person.
- (4) In the application of sub-paragraph (3)(b) to Scotland the reference to a covenant enforceable by the relevant person is to be read as a reference to a contractual term which is so enforceable.
- (5) A person who has the right conferred by this paragraph may give a notice to the operator requiring the operator to restore the land to its condition before the code right was exercised.
- (6) The notice must—
- (a) comply with paragraph 85 (notices given by persons other than operators), and
 - (b) specify the period within which the operator must complete the works.
- (7) The period specified under sub-paragraph (6) must be a reasonable one.
- (8) Sub-paragraph (9) applies if, within the period of 28 days beginning with the day on which the notice was given, the landowner and the operator do not reach agreement on any of the following matters—
- (a) that the operator will restore the land to its condition before the code right was exercised;
 - (b) the time at which or period within which the land will be restored.
- (9) The landowner may make an application to the court for—
- (a) an order under paragraph 39(1A) (order requiring operator to restore land), or
 - (b) an order under paragraph 39(2A) (order enabling landowner to recover cost of restoring land).
- (10) If the court makes an order under paragraph 39(1A), but the operator does not comply with the agreement imposed on the operator and the landowner by virtue of paragraph 39(5), the landowner may make an application to the court for an order under paragraph 39(2A).

Digital Economy Bill, *continued*

- (11) In the application of sub-paragraph (2) to Scotland the reference to a person who is the owner of the freehold estate in the land is to be read as a reference to a person who is the owner of the land.”

Matt Hancock

Agreed to 39

Schedule 1, page 105, line 2, at end insert—

- “(1A) An order under this sub-paragraph is an order that the operator must, within the period specified in the order, restore the land to its condition before the code right was exercised.”

Matt Hancock

Agreed to 40

Schedule 1, page 105, line 3, after “landowner” insert “, occupier or third party”

Matt Hancock

Agreed to 41

Schedule 1, page 105, line 15, after “landowner” insert “, occupier or third party”

Matt Hancock

Agreed to 42

Schedule 1, page 105, line 15, at end insert—

- “(1A) An order under this sub-paragraph is an order that the landowner may recover from the operator the costs of restoring the land to its condition before the code right was exercised.”

Matt Hancock

Agreed to 43

Schedule 1, page 105, line 16, after “paragraph” insert “on an application under paragraph 38”

Matt Hancock

Agreed to 44

Schedule 1, page 105, line 24, after “(1)” insert “or (1A)”

Matt Hancock

Agreed to 45

Schedule 1, page 105, line 25, after “landowner” insert “, occupier or third party”

Schedule, as amended, agreed to.

Matt Hancock

Agreed to 46

Schedule 2, page 138, line 17, leave out “under paragraph 2(1)” and insert “for the purposes of paragraph 2 or 3”

Digital Economy Bill, continued

Matt Hancock

Agreed to 47

Schedule 2, page 138, line 28, at end insert—

- “(2) A person who is bound by a right by virtue of paragraph 2(4) of the existing code in consequence of a subsisting agreement is, after the new code comes into force, treated as bound pursuant to Part 2 of the new code.”

Matt Hancock

Agreed to 48

Schedule 2, page 138, line 31, after “are” insert “— (a)”

Matt Hancock

Agreed to 49

Schedule 2, page 138, line 31, leave out “the agreement” and insert “an agreement for the purposes of paragraph 2 of the existing code”

Matt Hancock

Agreed to 50

Schedule 2, page 138, line 33, at end insert—

- “(b) in relation to land to which an agreement for the purposes of paragraph 3 of the existing code relates, a right to do the things mentioned in that paragraph.”

Matt Hancock

Agreed to 51

Schedule 2, page 139, line 11, leave out sub-paragraph (1) and insert—

- “5A (1) This paragraph applies in relation to a subsisting agreement, in place of paragraph 28(2) to (4) of the new code.
- (2) Part 5 of the new code (termination and modification of agreements) does not apply to a subsisting agreement that is a lease of land in England and Wales, if—
- (a) it is a lease to which Part 2 of the Landlord and Tenant Act 1954 applies, and
 - (b) there is no agreement under section 38A of that Act (agreements to exclude provisions of Part 2) in relation the tenancy.
- (3) Part 5 of the new code does not apply to a subsisting agreement that is a lease of land in England and Wales, if—
- (a) the primary purpose of the lease is not to grant code rights (the rights referred to in paragraph 3 of this Schedule), and
 - (b) there is an agreement under section 38A of the 1954 Act in relation the tenancy.
- (4) Part 5 of the new code does not apply to a subsisting agreement that is a lease of land in Northern Ireland, if it is a lease to which the Business Tenancies (Northern Ireland) Order 1996 (SI 1996/725 (NI 5)) applies.
- 6 (1) Subject to paragraph 5A, Part 5 of the new code applies to a subsisting agreement with the following modifications.”

Matt Hancock

Agreed to 52

Schedule 2, page 140, line 17, leave out “the following provisions of this paragraph” and insert “sub-paragraph (3)”

Digital Economy Bill, *continued*

Matt Hancock

Schedule 2, page 140, line 21, leave out sub-paragraphs (4) to (10) *Agreed to* **53**

Matt Hancock

Schedule 2, page 142, line 7, leave out paragraphs 19 to 22 and insert— *Agreed to* **54**

- “19A(1) This paragraph applies where before the repeal of the existing code comes into force a person has given notice under paragraph 21(2) of that code requiring the removal of apparatus.
- (2) The repeal does not affect the operation of paragraph 21 in relation to anything done or that may be done under that paragraph following the giving of the notice.
- (3) For the purposes of applying that paragraph after the repeal comes into force, steps specified in a counter-notice under sub-paragraph (4)(b) of that paragraph as steps which the operator proposes to take under the existing code are to be read as including any corresponding steps that the operator could take under the new code or by virtue of this Schedule.”

Schedule, as amended, agreed to.

Matt Hancock

Page 143, line 27, leave out Schedule 3 *Not selected* **55**

Schedule 3 negatived.

Matt Hancock

Clause 5, page 3, line 23, leave out “or transitory” and insert “, transitory or saving” *Agreed to* **1**

Clause, as amended, agreed to.

Calum Kerr

Clause 6, page 3, after line 35, add— *Withdrawn* **61**

- “(1A) Prior to the introduction of regulations made under subsection (1), the Secretary of State must consult—
- (a) Scottish Ministers if the regulations, or any part of the regulations, extend to Scotland;
- (b) Welsh Ministers if the regulations, or any part of the regulations, extend to Wales; and

Digital Economy Bill, continued

- (c) Northern Ireland Ministers if the regulations, or any part of the regulations, extend to Northern Ireland.”

Clause agreed to.

Clause 7 agreed to.

Matt Hancock

Clause 8, page 8, line 16, leave out “imposed” and insert “specified”. *Agreed to 2*

Matt Hancock

Clause 8, page 8, line 19, at end insert— *Agreed to 3*
 “() The amount of any other penalty specified under this section is to be such amount, not exceeding 10% of the relevant amount of gross revenue, as OFCOM think—
 (a) appropriate, and
 (b) proportionate to the contravention in respect of which it is imposed.”

Matt Hancock

Clause 8, page 9, line 21, leave out subsection (1). *Agreed to 4*

Matt Hancock

Clause 8, page 9, line 25, leave out “this section” and insert “section 53F”. *Agreed to 5*

Matt Hancock

Clause 8, page 12, line 21, after “penalty” insert “specified”. *Agreed to 6*

Clause, as amended, agreed to.

Clause 9 agreed to.

Matt Hancock

Clause 10, page 16, line 7, at end insert— *Agreed to 7*
 “() In Schedule 8 to that Act (decisions not subject to appeal), at the end of paragraph 44 insert “for a relevant multiplex contravention”.

Clause, as amended, agreed to.

Clauses 11 to 13 agreed to.

Digital Economy Bill, *continued*

Matt Hancock

Agreed to **8**

Clause **14**, page **17**, line **10**, leave out “and (8)”

Matt Hancock

Agreed to **9**

Clause **14**, page **17**, line **18**, leave out “Subsections (3A) and (3B)” and insert “Section 41(7) and subsection (3B) above”

Matt Hancock

Agreed to **10**

Clause **14**, page **17**, line **26**, at end insert—

“(3D) In relation to proceedings in Scotland, subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995 (date when proceedings deemed to be commenced for the purposes of that section) applies also for the purposes of section 41(7) and subsection (3B) above.”

Matt Hancock

Agreed to **11**

Clause **14**, page **17**, line **31**, at end insert—

“() for subsection (8) substitute—

“(8) For further provision about prosecutions see section 107.”

Clause, as amended, agreed to.

Claire Perry

Withdrawn **65**

Clause **15**, page **18**, line **15**, at end insert—

“(d) how persons can make a report to the age-verification regulator about pornographic material available on the internet on a commercial basis that is not complying with subsection (1).”

Louise Haigh
Kevin Brennan

Withdrawn **85**

Clause **15**, page **18**, line **20**, leave out subsection (5)(a).

Claire Perry

Withdrawn **66**

Clause **15**, page **18**, line **24**, at end insert “or an internet service provider.”

Digital Economy Bill, continued

Louise Haigh
Kevin Brennan

Not called 87

Clause 15, page 18, line 25, leave out subsection 6.

Clause agreed to.

Clauses 16 to 19 agreed to.

Claire Perry

Withdrawn 68

Clause 20, page 21, line 5, at beginning insert “If the person in contravention of section 15(1) is resident in the United Kingdom,”

Claire Perry

Not called 69

Clause 20, page 21, line 5, leave out “may” and insert “must”

Claire Perry

Not called 70

Clause 20, page 21, line 7, after “15(1)”, insert “, unless subsection (5) applies”

Claire Perry

Not called 71

Clause 20, page 21, line 10, at beginning insert “If the person in contravention of section 15(1) is not resident in the United Kingdom,”

Claire Perry

Not called 72

Clause 20, page 21, line 10, leave out “may” and insert “must”

Claire Perry

Not called 73

Clause 20, page 21, line 16, leave out subsection (4)

Louise Haigh
Kevin Brennan

Withdrawn 86

Clause 20, page 21, line 40, leave out paragraph (b) and insert—
“(b) “during the initial determination period fix the date for ending the contravention of section 15(1) as the initial enforcement date.”

Louise Haigh
Kevin Brennan

Not called 88

Clause 20, page 21, line 40, at end insert—

“(c) after the initial determination period fix a period of one week for ending the contravention of section 15(1)”.

Digital Economy Bill, *continued*

Claire Perry

Not called 74

Clause 20, page 21, line 42, leave out “may” and insert “must”

Calum Kerr

Negatived on division 62

Clause 20, page 22, line 13, at end insert—

“(14) Within 12 months of this Act coming into force, the Secretary of State shall commission a review of the effectiveness of the enforcement of sections 15 and 19 and shall lay the report of the review before each House of Parliament.”

Louise Haigh
Kevin Brennan

Not called 89

Clause 20, page 22, line 13, at end insert—

“(14) In this section, “initial determination period” means a period of 12 months from the date of the passing of this Act to the initial enforcement date.”

Clause agreed to.

Clause 21 agreed to.

Claire Perry

Withdrawn 75

Clause 22, page 23, line 28, at end insert; “and

(c) the person has been the subject of a enforcement notice under section 20(2) and the contravention has not ceased.”

Claire Perry

Not called 76

Clause 22, page 23, line 29, leave out “may” and insert “must”

Louise Haigh
Kevin Brennan

Not called 90

Clause 22, page 23, line 29, leave out “or ancillary service provider” and insert “, ancillary service provider, or internet service provider.”.

Claire Perry

Not called 77

Clause 22, page 24, line 23, at end insert “or

(c) an internet service provider.”

Digital Economy Bill, *continued*

Louise Haigh
Kevin Brennan

Not called 91

Clause 22, page 24, line 23, at end insert—

“(6A) In this section an “ancillary service provider” includes, but is not limited to, domain name registrars, social media platforms, internet service providers, and search engines.”

Clause agreed to.

Claire Perry

Not called 79

Clause 22, page 24, line 24, leave out “may” and insert “must”

Clause agreed to.

Claire Perry

Withdrawn 80

Clause 23, page 25, line 1, at end insert—

“(3) The age-verification regulator must consult with any persons it considers appropriate, about the option to restrict the use of its powers to large pornography websites only.”

Clause agreed to on division.

Clause 24 agreed to.

Claire Perry

Not called 67

Clause 25, page 26, line 2, at end insert—

““internet service provider” has the same meaning as in section 124N of the Communications Act 2003 (interpretation);”.

Clause agreed to.

[Adjourned until Tuesday 25 October at 9.25 am