

DIGITAL ECONOMY BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the Digital Economy Bill as brought from the House of Lords on 5 April 2017.
- 2 These Explanatory Notes have been prepared by the Department for Culture, Media and Sport in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 80 the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 Lords Amendments 3 to 39, 41 to 44, 46 to 214, 216 to 236, 243 to 245, and 247 to 289 were tabled in the name of the Minister.
- 6 Lords Amendments 1 and 2 were tabled by Lord Mendelsohn, 40 and 45 by Baroness Jones of Whitchurch, 237, 238 and 239 by Lord Best, 242 by Lord Wood of Anfield, and 246 by Lord Moynihan, and were opposed by the Government.
- 7 Lords Amendment 215 was tabled by Lord Hunt of Wirral, Lords Amendments 240 and 256 were tabled by Baroness Benjamin, and Lords Amendment 241 was tabled by Lord Borwick. These Lords Amendments were supported by the Government.
- 8 In the following Commentary, an asterisk(*) appears in the heading of any paragraph that deals with a non-Government amendment.

Commentary on Lords amendments

Part 1: Access to digital services

*Lords Amendments to clause 1: Universal service broadband obligations

*Lords Amendment 1

- 9 **Lords Amendment 1** would require the universal service order to specify, as soon as reasonably possible, that by 2020 a broadband connection with download speeds of 30 Mbps, upload speeds of 6 Mbps, fast response times, committed information rates of 10 Mbps and an unlimited usage cap must be available to every household in the UK.
- 10 It would also require the USO to specify that “the target for broadband connections and

services to be provided before 2020 must have (a) speeds of 2 gigabits or more; fibre to the premises (FTTP) as a minimum standard; (c) appropriate measures to ensure that internet speed levels are not affected by high contention ratios; and (d) appropriate measures to ensure service providers run low latency networks”.

- 11 In addition, the amendment would place a duty on “internet service providers” to ensure that their networks offer the standard set out in the target to “every household in areas of low population density, before deploying their network in urban areas”.
- 12 The amendment would also require the Secretary of State to ensure that the roll out of the broadband universal service obligation prioritises SME’s premises and is delivered on a “fair and competitive basis”.
- 13 Lastly, the amendment would require the universal service order to provide that “mobile network coverage must be provided to the whole of the United Kingdom”.

***New clause: Bill limits for mobile phone contracts**

***Lords Amendment 2**

- 14 **Lords Amendment 2** would require mobile service providers to offer customers entering into a mobile phone contract the option of placing a limit on their monthly bill. Providers would also have to allow their customers to switch in accordance with rules set by Ofcom and those rules would follow the principles about switching set out in the amendment.

Part 2: Digital infrastructure

Lords Amendments to clause 9: statement of strategic priorities

Lords Amendment 3

- 15 **Lords Amendment 3** would remove clause 9 from the Bill. This is consequence of Lords Amendment 245, described below, which provides the Secretary of State with a wider power making clause 9 redundant.

Part 3: Online pornography

Lords Amendments to clauses 15 to 26

Lords Amendments 4, 21 and 30

- 16 These amendments would improve the clarity of drafting. **Lords Amendment 4** clarifies the wording of clause 15(1). **Lords Amendments 21 and 30** are amendments to clarify wording.

Lords Amendments 5, 6, 8, 9 and 25

- 17 **Lords Amendments 6 and 9** would provide for the Secretary of State to make regulations specifying the circumstances in which pornographic material is or is not to be regarded as made available on a commercial basis. **Lords Amendment 5** would remove clause 15(2) as this will be dealt with in the regulations.
- 18 **Lords Amendment 8** would remove ‘a means of accessing the internet does not include any device or other equipment for doing so’ but this text would be re-inserted by **Lords Amendment 25**. This is consequential on Lords Amendment 5 which removed clause 15(2); as a result, the phrase ‘a means of accessing the internet’ no longer appears in clause 15, but it is used in clause 22 and so Lords Amendment 25 would insert the definition into that clause.

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Lords Amendments 12, 15, 16 and 17

- 19 **Lords Amendment 12** would clarify that different persons may be designated for the purposes of different functions of the age-verification regulator. **Lords Amendment 15** would provide that an affirmative Parliamentary procedure will apply for the first designation of a regulator in relation to any regulatory function. **Lords Amendment 16** is consequential. **Lords Amendment 17** would replace 'the House of Commons and the House of Lords' with 'each House of Parliament', consistent with uses in other provisions in Part 3.

Lords Amendments 13, 14, 31 and 33

- 20 **Lords Amendments 13 and 14** would require the Secretary of State to be satisfied that any person hearing an appeal (under the arrangements that the regulator must maintain) will be 'sufficiently independent' before designating the regulator. Further, when designating the regulator, the Secretary of State would have to accompany that designation with a statement of the reasons as to why she is satisfied about the proposed regulator's arrangements for appeals. **Lords Amendments 31 and 33** would be consequential amendments to these amendments on appeals.

Lords Amendment 18

- 21 **Lords Amendment 18** is a technical correction.

Lords Amendment 19

- 22 **Lords Amendment 19** would provide for the Secretary of State to lay in Parliament the regulator's guidelines on financial penalties.

New clause: Meaning of "extreme pornographic material"

Lords Amendments 10, 11, 20, 22, 23, 24, 27, 28, 29, 32, 34, 35, 38, 41, 42, 43 and 44

- 23 **Lords Amendment 28** would insert a new clause to set out the meaning of "extreme pornographic material". This replaces the definition of 'prohibited material', which is removed by **Lords Amendment 22**. **Lords Amendments 10, 20, 23, 24, 27, 29, 32, 34, 35, 38, 41 and 42** are consequential to these. **Lords Amendment 11** would amend the definition of 'pornographic material' to make clear that age verification must be in place for the material covered in (g) to (i), as would be inserted by that amendment. The definition of "extreme pornographic material" is based on the approach in section 63 of the Criminal Justice and Immigration Act 2008. **Lords Amendment 43** (which references section 22(3) of the Video Recordings Act 1984) would make provision that where any alteration is made to a video work in respect of which a classification certificate has been issued, the classification certificate is not to be treated for the purposes of Part 3 as issued in respect of the altered work. **Lords Amendment 44** would clarify that nothing in Part 3 affects the application of other legislation to pornographic material or extreme pornographic material.

New clause: No power to give notice under section 23(1) where detrimental to national security etc

Lords Amendment 36

- 24 **Lords Amendment 36** would insert a new clause that provides that the regulator may not give a notice to an ISP under clause 23(1) (Age-verification regulator's power to direct internet service providers to block access to material) if it appears to the regulator that the steps or arrangement that would be required of the ISP by the notice would be likely to be detrimental to national security, the prevention or detection of serious crime, or the prevention or detection of an offence listed in Schedule 3 to the Sexual Offences Act 2003.

New clause: Guidance to be published by age-verification regulator

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Lords Amendment 7, 26 and 37

- 25 Clause 15 (3) requires the age-verification regulator to publish guidance on certain matters. Lords Amendments have narrowed the scope of this guidance and inserted Parliamentary oversight of it. As above, **Lords Amendment 6** provides the Secretary of State with the power to make regulations specifying the circumstances in which pornographic material is or is not to be regarded as made available on a commercial basis, so this is no longer a matter on which the regulator must publish guidance. **Lords Amendment 37** would insert a new clause to require the regulator to publish guidance on what age-verification arrangements websites are required to make and on the circumstances in which the regulator will treat services as those provided by “ancillary service providers”.
- 26 The regulator’s guidance would be laid before Parliament subject to the affirmative procedure for first exercise of the power and the negative procedure thereafter. The guidance on ancillary service providers is also to be subject to approval by the Secretary of State before it is laid.
- 27 **Lords Amendments 7 and 26** would be consequential amendments removing guidance requirements now covered in this new clause.

New clause: Guidance by Secretary of State to regulator

Lords Amendment 39

- 28 **Lords Amendment 39** would insert a new clause that would provide the Secretary of State with the power to issue guidance to which the age-verification regulator must have regard. The guidance may cover, for example, the preparation, publication and content of guidance by the regulator. Guidance issued by the Secretary of State under this new power would need to be laid before Parliament.

*New clause: Code of practice for commercial social media platform providers on online abuse

*Lords Amendment 40

- 29 **Lords Amendment 40** would insert a new clause (Code of practice for commercial social media platform providers on online abuse) requiring the Secretary of State to publish a code of practice regarding the responsibilities of social media platform providers to protect certain individuals from abuse.

*New clause: Report on this Part

*Lords Amendment 45

- 30 **Lords Amendment 45** would require the Secretary of State to produce a report on the impact and effectiveness of the regulatory framework, within 18 months, but not before 12 months, of the coming into force of Part 3. Before publishing this report, the Secretary of State would have to consult on the definitions used within this Part and the report must be laid in each House.

Part 4: Intellectual Property

New clause: Lending of e-books by public libraries

Lords Amendment 46

- 31 The Public Libraries and Museums Act 1979 (“the 1979 Act”) provides a right for authors, known as the “public lending right”, to receive payments from a central fund in respect of

such of their books as are lent out to the public by local library authorities in the United Kingdom.

- 32 **Lords Amendment 46** would amend the definition of "lent out" in section 5 of the 1979 Act to extend the public lending right to include remote loans of e-books and audio-books from public libraries in the United Kingdom – that is, where those e-books or audio-books are communicated by means of electronic transmission to a place other than library premises.
- 33 The amendment would also amend section 40A of the Copyright, Designs and Patents Act 1988 so that copyright in an e-book or e-audio-book (as defined) within the public lending right scheme is not infringed by lending by a public library, provided that the e-book or e-audio-book has been lawfully acquired by the public library, and the lending of that work complies with any purchase or licensing terms that may have been applied to it.
- 34 This would maintain the right for copyright owners to authorise remote loans by public libraries of e-books and e-audio-books. This would reflect the differences between digital and physical books and enable copyright owners to include technological features and/or terms and conditions in respect of e-books and e-audio-books to mirror physical lending.

Lords Amendments to clause 29: Copyright etc where retransmitted by cable

Lords Amendment 47

- 35 **Lords Amendment 47** would delete the provision for transitional arrangements in relation to the repeal of section 73 of the Copyright, Designs and Patents Act 1988.

Part 5: Digital Government

Lords Amendments to Chapter 1: Public Service Delivery

Lords Amendments 48, 49, 50, 51, 52, 53, 54, 55, 56, 91, 92, 95, 96, 97, 102, 282, 283 and 284

- 36 Chapter 1 of Part 5 creates new gateways that allow "specified persons" to share information for the purposes of improving the delivery or targeting of public services or the provision of a benefit in order to improve the wellbeing of individuals or households.
- 37 **Lords Amendment 48** would provide that a person must be specified in relation to a particular specified objective in order to share information for that objective.
- 38 **Lords Amendments 49 to 55** would provide for the specified persons who are able to disclose and use information under these powers to be listed on the face of the Bill in three new schedules (for which see amendments 283, 284 and 285). These lists can be amended by regulations which are subject to the affirmative procedure in both Houses.
- 39 **Lords Amendment 51** introduces criteria for adding specified persons to the public services delivery schedule.
- 40 **Lords Amendment 56** would add a third condition that in order to become a specified objective, the objective must have as its purpose the supporting of the delivery of a specified person's functions, or the administration, monitoring or reinforcement of a specified person's functions.
- 41 **Lords Amendments 91, 92, 95, 96, 97, and 102** are consequential amendments which would relate to the insertion of new schedules of specified persons.

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- 42 **Lords Amendments 282, 283 and 284** would insert the schedules that list the initial “specified persons” for the purposes of the public service delivery clauses. There are three of these schedules: one each for clause 30 (Disclosure of information to improve public service delivery); clauses 31 and 32 (Disclosure of information to and by electricity and gas suppliers); and the new clauses on disclosure of information to and by water and sewerage undertakers (see amendments 65 and 66).
- 43 These amendments would respond to recommendations from the Delegated Powers and Regulatory Reform Committee.

Lords Amendments 57, 58, 59, 60, 61, 62, 63 and 64

- 44 Clause 31 permits the disclosure of information by specified persons to gas and electricity suppliers for the purposes of assisting people living in fuel poverty.
- 45 **Lords Amendment 57** would provide for the specified persons to be listed on the face of the Bill in a new Schedule. **Lords Amendment 58** would confer a power for the appropriate national authority to add, remove or modify the Schedule by regulations. **Lords Amendment 60** would introduce criteria for adding specified persons to the Schedule. **Lords Amendments 62 and 63** are consequential amendments.
- 46 **Lords Amendments 59 and 64** would restrict the power to amend the list of support measures in clause 31(3) so that only fuel poverty support measures could be added, modified or removed from the list.
- 47 The effect of **Lords Amendment 61** would be to restrict the power to add to the list of permitted recipients of information under the clause.
- 48 These amendments would respond to recommendations from the Delegated Powers and Regulatory Reform Committee.

Lords Amendments 65, 66, 67, 69, 70, 71, 72, 75, 76, 77, 78, 81, 82, 85, 86, 93, 94, 98, 99, 103, 259 and 264

- 49 **Lords Amendments 65 and 66** would insert two new clauses into the Bill, which would extend information-sharing provisions to water and sewerage undertakers, if certain conditions are met. The provisions are intended to enable data-matching to take place, in order that water and sewerage undertakers can more easily identify householders who may be eligible for assistance under the various “water poverty” support schemes that are available.
- 50 The clauses would largely mirror the provisions in the existing clauses 31 and 32 for gas and electricity companies. The provisions take account of the recommendations made by the Delegated Powers and Regulatory Reform Committee for those clauses, including providing that the “specified persons” who can use the information sharing powers be specified in a Schedule to the Bill. The power to amend the Schedule is restricted such that specified persons may only be added if they either provide or support the provision of water poverty assistance.
- 51 **Lords Amendments 67, 69, 70, 71, 72, 75, 76, 77, 78, 81, 82, 85, 86, 93, 94, 98, 99 and 103** would make consequential amendments.
- 52 **Lords Amendments 259 and 264** would provide that the new clauses extend only to England and Wales (in which water is devolved on a ‘wholly or mainly’ basis by appointment area).

Lords Amendments 68, 80, 119, 123, 152, 156 and 188

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53 Information received under a sharing-provision in chapters 1 (public service delivery), 3 (debt) and 4 (fraud) may only be used by the person who receives it for the purposes for which it was shared, and may not be further disclosed for another purpose, subject to specific exceptions. One of those exceptions is for the prevention of anti-social behaviour. In Chapter 5 (research), personal information may not be further disclosed at all, unless certain exceptions apply, including the prevention of anti-social behaviour. Different provisions apply to personal information disclosed by the revenue authorities. **Lords Amendments 68, 80, 119, 123, 152, 156 and 188** would adjust the definitions of “anti-social behaviour” in Part 5, so that the definitions would be capable of being applied in the whole of the UK.

Lords Amendments 100, 101, 104, 140, 173, 222 and 223

54 **Lords Amendments 100 and 104** would amend clause 38 to reflect aspects of the new devolution settlement set out in the Wales Act 2017.

55 **Lords Amendments 101, 140, 173, 222 and 223** would adjust the meaning of a “Welsh body” for the purposes of Part 5 to reflect the terminology used for Welsh public authorities in the Wales Act 2017.

Lords Amendments 87, 88, 105, 126, 127, 159, 160, 206, 207, 228, 229, 231 and 232

56 These amendments would respond to recommendations of the Delegated Powers and Regulatory Reform Committee. They would require a parliamentary procedure for the Codes of Practice which the relevant minister has to issue for chapters 1 (public service delivery), 2 (civil registration), 3 (debt), and 4 (fraud). They also apply to the Codes of Practice which the Statistics Board is required to issue in chapter 5 under clause 61 (research) and to publish in chapter 7 under clause 68 which inserts new section 45G(1) of the Statistics and Registration Service Act 2007.

57 **Lords Amendments 87, 88, 105, 126, 127, 159, 160, 206, 207, 231 and 232** would require the Codes of Practice for these Chapters to be laid before, and approved by a resolution of, each House of Parliament before they are first issued. All subsequent revisions of the Codes would have to be laid in draft before Parliament for 40 days (draft negative procedure).

58 **Lords Amendments 228 and 229** would require the same procedures for the Statement of Principles which must be published by the Statistics Board in Chapter 7 under clause 68 which inserts new section 45E(5) of the Statistics and Registration Service Act 2007.

Lords Amendments 90, 133 and 166

59 **Lords Amendments 90, 133 and 166** would respond to a recommendation of the Delegated Powers and Regulatory Reform Committee by removing the Henry VIII powers set out in clauses 37(3), 47(3) and 55(3). They would mean that the relevant Minister would no longer have those powers to make amendments to other primary legislation or the Bill itself in chapters 1 (public service delivery), 3 (debt) and 4 (fraud) respectively.

Lords Amendments 79, 83, 84, 122, 124, 125, 155, 157, 158, 187 and 195

60 Chapters 1, 3, 4 and 5 of Part 5 each introduce an offence if personal information which has been received directly or indirectly under the respective power is further disclosed, subject to specific exceptions.

61 **Lords Amendments 79, 122, 155 and 187** would provide that “protected disclosures” made by whistleblowers and disclosures for journalistic purposes in the public interest would not be subject to the criminal sanctions that are contained in Part 5 of the Bill.

62 **Lords Amendments 83, 84, 124, 125, 157, 158 and 195** would remove the ‘secondary disclosure’ offence for information disclosed by HMRC. This would mean that only the person receiving information directly from HMRC under the relevant power who further disclosed that information would be subject to the criminal sanctions contained in clauses 35, 44, 52.

63 When it comes to clause 60, this would mean that all those whom Chapter 5 envisages will handle or use information disclosed by HMRC under clause 57(1) would be subject to that criminal sanction. Such disclosures would also be caught by the offences contained in the new clauses inserted by amendments 200 and 201. None of these offences would apply to a third party who came into possession of that information and further disclosed it.

Lords Amendments 73, 74, 120, 121, 153, 154, 179, 180, 218, 219, 220, 221, 224, 225, 226, 227, 235 and 236

64 **Lords Amendments 73, 74, 120, 121, 153, 154, 179, 180, 218, 219, 220, 221, 224, 225, 226, 227, 235 and 236** would replace the references in Part 5 of the Bill to Part 1 of the Regulation of Investigatory Powers Act 2000 with references to the equivalent provisions in the Investigatory Powers Act 2016, with a saving provision for the former until the latter provisions are fully in force.

Lords Amendments 177, 191, 199 and 200

65 **Lords Amendments 199 and 200** would insert new clauses to provide for personal information disclosed by Revenue Scotland and the Welsh Revenue Authority to be protected by the same protections as apply to such information when disclosed by HMRC.

66 **Lords Amendments 177** would remove repetition of wording which could have caused confusion. They would make clearer that a disclosure under clause 57(5)(b) of information which originates from HMRC, the Welsh Revenue Authority or Revenue Scotland cannot be made without the consent of the relevant body.

67 **Lords Amendment 191** would make a consequential amendment to provide that the disclosure offence in clause 59 does not apply to personal information disclosed by Revenue Scotland and the Welsh Revenue Authority as well as personal information disclosed by HMRC.

Lords Amendments 89, 106, 128, 161, 208, 216, 217, 230 and 234

68 **Lords Amendments 89, 106, 128, 161, 208, 216, 217, 230 and 234** would require persons using the powers conferred by Part 5 of the Bill to have regard to the Information Commissioner’s codes of practice on (i) identifying and reducing risks to privacy and (ii) the information that should be given to data subjects, where such Codes are relevant.

69 This requirement would not apply to Chapter 5 because that Chapter focuses on the sharing of non-personal data.

Lords Amendments to Chapter 3: Debt Owed to the Public Sector

Lords Amendments 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 130, 131, 132, 134, 135, 136, 137, 138, 139, 141, 142, 143 and 285

70 Chapter 3 sets out a power for specified persons to disclose information to another specified person for the purposes of taking action in connection with debts owed to the public sector.

71 **Lords Amendment 113** and the consequential amendments listed below would provide for the specified persons permitted to make use of the power to be listed on the face of the Bill in a new schedule (for which see amendment 286). This Schedule could be amended by

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regulations which would be subject to the affirmative procedure.

- 72 The amendments would respond to recommendations from the Delegated Powers and Regulatory Reform Committee.
- 73 **Lords Amendments 107, 109, 110, 112** would correct the existing drafting to clarify that information may be shared under this power in connection with debt owed to any public authority
- 74 **Lords Amendment 114** would set out more specific criteria relating to the identification, management and recovery of debt owed to a public authority which a body must meet before it can be added to the list of bodies permitted to make use of the debt power.
- 75 **Lords Amendments 108, 111, 115, 116, 117, 118, 130, 131, 132, 134, 135, 136, 137, 138, 139, 141, 142, 143** are consequential on the proposed addition of the schedule of specified persons to the face of the Bill.
- 76 **Lords Amendment 285** would insert the new schedule of specified persons for the purposes of the debt provisions in Chapter 3. This is in response to the DPRRC recommendations.

Lords Amendments 129 and 162

- 77 Clauses 46 and 54 require the relevant Minister to review the operation of Chapter 3 (debt) and Chapter 4 (fraud) three years after they come into force. If, as a result of the review, the relevant Minister decided that the corresponding Chapter should be amended or repealed, clauses 46(5) and 54(5) would allow the relevant Minister to do so by regulations.
- 78 **Lords Amendments 129 and 162** would narrow the scope of clauses 46(5) and 54(5) by providing that the power to amend the Chapter following the Minister's review may be exercised only for the purposes of improving the effectiveness of the operation of the powers and that they may not be used to remove any safeguards relating to the use or disclosure of information. These amendments would address recommendations of the Delegated Powers and Regulatory Reform Committee.

Lords Amendments to Chapter 4: Fraud against the Public Sector

Lords Amendments 144, 145, 146, 147, 148, 149, 150, 151, 163, 164, 165, 167, 168, 169, 170, 171, 172, 174, 175, 176 and 286

- 79 Clause 49 sets out a power for specified persons to disclose information to other specified persons for the purposes of taking action in connection with fraud against a public authority.
- 80 **Lords Amendment 146** and the consequential **amendments 144, 145, 148, 149, 150, 151, 163, 164, 165, 167, 168, 169, 170, 171, 172, 174, 175 and 176** would provide for the specified persons to be listed on the face of the Bill in a new schedule (for which see amendment 287). This schedule could be amended by regulations which would be subject to the affirmative procedure. These amendments would respond to recommendations from the Delegated Powers and Regulatory Reform Committee.
- 81 **Lords Amendment 147** would set out more specific criteria relating to a body's ability to identify or reduce the risk of fraud against a public authority which must be met before a new body can be added to the fraud schedule.
- 82 **Lords Amendment 286** would insert the new schedule of specified persons for the purposes of the fraud provisions in Chapter 4.

Lords Amendments to Chapter 5: Sharing for Research Purposes

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[Lords Amendments 178, 181, 182, 183, 184, 185, 186, 189, 190, 192, 193, 194, 196, 197, 198, 201, 202, 203, 204, 205, 209, 210, 211 and 212](#)

- 83 Chapter 5 contains provisions regarding disclosure of information for research purposes. The Bill provides for information to be processed to remove identifying characteristics before being shared with researchers. The UK Statistics Authority, which is referred to as the Statistics Board in the clauses, will oversee this process by accrediting all participants in this processing, including those who process the information, researchers and peer reviewers.
- 84 Clause 57 outlines the conditions for disclosure of personal information held by a public authority in connection with their functions to another person, for the purposes of research.
- 85 **Lords Amendment 179** would clarify that a public authority processing another public authority's information must be accredited to do so (as must a public authority processing its own information).
- 86 Clause 59 prohibits the disclosure of personal information which identifies a particular person and is received by a person under clause 57(5).
- 87 **Lords Amendments 181 and 192** would extend protection beyond the processing stage for personal information which has been 'de-identified' and disclosed under clause 57(1), but from which a person's identity could potentially still be deduced. It would also cure a defect in the drafting of the criminal offences by ensuring that personal information disclosed under clause 57(1) can be disclosed for the purposes of peer review, and in the case of information obtained from a revenue authority such as HMRC, without needing to seek that authority's further consent.
- 88 **Lords Amendments 182, 183, 184, 185, 186, 189, 190, 193, 194, 196, 197, 198, 209, 210, 211 and 212** are consequential on amendments 181 and 192.
- 89 **Lords Amendments 201, 202, 203, 204 and 205** would provide that the Code of Practice for Chapter 5 only applies to the disclosure, processing, holding or use of personal information.

[Lords Amendments to Chapter 6: HMRC](#)

[Lords Amendments 213 and 214](#)

- 90 Clause 65 provides that a Revenue and Customs official may disclose non-identifying information in connection with a function of the Revenue and Customs, provided the official thinks that the disclosure would be in the public interest.
- 91 **Lords Amendments 213 and 214** would insert new clauses to allow disclosure of such information in the public interest by the Welsh Revenue Authority and Revenue Scotland respectively. This would ensure that all UK revenue authorities would have the same information-sharing provisions.

[*Lords Amendment 215](#)

- 92 The Employer Liability Tracing Office (ELTO) is a non-profit making company which maintains a database of insurance policies to enable employees to trace relevant persons in order to obtain compensation for workplace injuries.
- 93 **Lords Amendment 215** would create a permissive information gateway allowing HMRC to share the name and address of an employer and associated reference numbers with ELTO, for the purpose of improving the quality of the ELTO databases.

[Lords Amendments 260 and 261](#)

- 94 These Amendments relate to commencement by Welsh Ministers.

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- 95 **Lords Amendments 260 and 261** would provide that the Welsh Ministers commence the provisions of Chapter 5 (research) which relate to disclosure of information by the new Welsh Revenue Authority and the new clause inserted by Lords Amendment 214. The Authority is not yet operational.

Lords Amendments to Chapter 7: Statistics

Lords Amendment 233

- 96 New section 53A, which is inserted into the Statistics and Registration Service Act 2007 by clause 69, gives the UK Statistics Authority the right to disclose information to a devolved authority. **Lords Amendment 233** would add to the definition of “devolved authority” “the Registrar General for Northern Ireland”. The Registrar General has specific statistical functions not shared by the Department of Finance in Northern Ireland. This amendment would allow UKSA to share information with the Registrar General, for example to enable the Registrar General to produce statistics in between censuses.

Part 6: Miscellaneous

*New clause: BBC Licence Fee Commission

*Lords Amendment 237

- 97 **Lords Amendment 237** inserts a new clause that would require the Secretary of State to establish “the BBC Licence Fee Commission” to make recommendations on the level of the licence fee. **Lords Amendment 239** is consequential, and would insert a new clause to require the Secretary of State, when determining the financial settlement, to consider the BBC Licence Fee Commission’s recommendation.

*New clause: Duty of the Secretary of State to consult and lay recommendation before Parliament

*Lords Amendment 238

- 98 **Lords Amendment 238** inserts a new clause that would require the Secretary of State to conduct a full public consultation on appropriate levels of BBC funding.

*New clause: Provision of children’s programmes

*Lords Amendments 240 and 256

- 99 **Lords Amendment 240** would confer a power on Ofcom, if it thinks fit, to publish criteria relating to the provision of children’s programmes on licensed public service channels (i.e. Channel 3, Channel 4 and Channel 5) and services related to those channels. The amendment would also confer a power on Ofcom to impose, if it considers necessary, conditions (quotas) that it deems appropriate for securing that the provision of children’s programmes meets any such criteria.

- 100 The Lords Amendment would require Ofcom to publish any criteria relating to the provision of children’s programmes in a statement that sets out the criteria and how it proposes to apply them. Before publishing or reviewing any statement, Ofcom would have to carry out a public consultation. After any review, Ofcom would revise or withdraw the criteria by publishing a further statement. Where Ofcom publishes criteria, it may from time to time assess the provision of children’s programmes in relation to any licensed public service channel. For the purposes of that assessment, Ofcom must take into account the provision of children’s programmes on all “related services” and draw no distinction between whether a programme is provided on a licenced public service channel or on another service.

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101 **Lords Amendment 256** is consequential, bringing the provision into force two months after Royal Assent.

***New clause: On-demand programme services: accessibility for people with disabilities**

***Lords Amendment 241**

102 **Lords Amendment 241** would allow the Secretary of State to require providers of video on-demand programme services to provide designated levels of subtitling, signing and audio-description. In the government's view this would improve accessibility to such services for people with disabilities affecting hearing and/or sight in a similar way to the provisions in the Communications Act 2003 requiring linear broadcasters to comply with accessibility requirements.

103 Section 303 of the Communications Act 2003 sets out specific targets for broadcasters in relation to access services and requires Ofcom to publish a Code. Ofcom published its Code on Television Access Services in July 2004. The Code sets out the obligations on domestic licensed TV channels to provide subtitles, signing and audio description, collectively known as access services, on a gradually increasing proportion of their programmes. The obligations were initially placed on 70 domestic TV licensed channels. From 2016 the number of domestic licensed TV channels required to provide access services increased from 75 to 83. This figure which has taken in excess of 10 years to achieve, accounts for over 90% of the audience share for television watching in the UK.

104 For video on demand services such a Code does not exist and Ofcom lack the power to require compliance with accessibility requirements. Since 2010, the Communications Act 2003 has stated the appropriate regulatory authority must encourage providers of on demand programme services to ensure that their services are progressively made more accessible. The Lords Amendment creates parity in the regulatory regime between broadcast and video on demand services.

***New clause: Public sector broadcasting prominence**

***Lords Amendment 242**

105 **Lords Amendment 242** inserts a new clause that would extend the regulatory regime for the electronic programme guide on linear services to catch-up on-demand services.

New clause: Televising events of national interest: power to amend qualifying conditions

Lords Amendment 243

106 **Lords Amendment 243** would give a power to the Secretary of State to amend the conditions in section 98(2) of the Broadcasting Act 1996 which a television channel must meet in order to be a qualifying service for the purposes of the listed events regime.

107 New subsection (5A) would enable the Secretary of State to lower by regulations the percentage of the population by which a channel must be received in order to be a qualifying service. The other condition, that a channel must be received without charge, would be unaffected.

108 New subsection (5B) would prevent a change made by regulations under this section from altering the validity of pre-existing contracts between broadcasters and holders of rights to listed events. This means that existing television rights agreements, which can last for several years, would not be rendered void by a change to the percentage. Further to that objective,

new subsection (5C) would enable the inclusion of transitional, transitory, or saving provisions in regulations under this section.

109 New subsection (5D) would require regulations made under this section to be subject to the affirmative resolution procedure of both Houses of Parliament.

New clause: Strategic priorities and provision of information

Lords Amendment 244

110 The power for the Secretary of State to set strategic policy statements now applies to a number of regulators. The Water Services Regulatory Authority (“Ofwat”) has this provided for in section 2A of the Water Industry Act 1991. The Office of Gas and Electricity Markets (“Ofgem”) has this provided for in s.131 of the Energy Act 2013. There is no equivalent provision for Ofcom.

111 The government’s view is that in order not to compromise Ofcom’s independence and reputation, that a clear and transparent mechanism is needed to set strategic direction.

112 The Lords Amendment would provide the Secretary of State with the power to set out a statement of strategic priorities which Ofcom must have regard to on: telecommunications, the management of the radio spectrum, and postal services.

113 This would have to be consulted on (including with Ofcom) and laid before Parliament and subject to an annulment by either House within 40 days.

114 Ofcom would also be required to share with the Secretary of State documents it is about to publish - there would be a regulation making power (negative procedure) for the Secretary of State to exclude certain publications.

115 This would ensure that government is better informed of key research, developments and decisions, and through this aid the government’s development of policy. Finally, it would also serve to create greater transparency in the working relationship between government and Ofcom.

New clause: Internet filters

Lords Amendment 245 and 288

116 **Lords Amendment 245** inserts a new clause that would provide that an internet service provider, may restrict access to information, content, applications or services, where that is in accordance with the terms of service agreed by the end-user.

117 **Lords Amendment 288** makes consequential amendment to the Bill’s long title.

***New clause: Duty to provide information about tickets**

***Lords Amendment 246**

118 **Lords Amendment 246** would amend the Consumer Rights Act 2015 by inserting additional requirements to provide the ticket reference or booking number and any specific condition attached to the resale of the ticket to subsection (4) of section 90 of the Act.

New clause: Power to create offence of breaching limits on internet and other ticket sales

Lords Amendment 247

119 **Lords Amendment 247** would introduce a new clause designed to regulate the bulk purchase of tickets online by the use of ‘bots’. The amendment would provide the power for Government to introduce a criminal offence of using bots to purchase tickets for a

recreational, sporting or cultural event in excess of the maximum permitted. The intended offence would apply only to tickets for events in the UK, but cover activity to obtain tickets that occurs outside the UK.

- 120 The offence would be summary only, with a maximum punishment of an unlimited fine in England and Wales, and an exceptional summary maxima in Scotland. The penalty in relation to Northern Ireland would be clarified once the Executive is in place.
- 121 The offence would be enacted by regulations, which would be introduced via affirmative procedure as soon as practicable, once relevant Technical Standards Directive processes have been completed.

New clause: Prevention or restriction of use of communication devices for drug dealing

Lords Amendment 248

- 122 **Lords Amendment 248** would provide the Secretary of State with a power to make UK-wide regulations, subject to the affirmative procedure (new subsection 11), which would, in turn, confer power on the civil courts to make a drug dealing telecommunication restriction order ('DDTRO') on application by the police or NCA.
- 123 The effect of such an order would be to require the relevant communications provider to take whatever action the order specifies for the purpose of preventing or restricting the use of communication devices in connection with drug dealing offences, such as closing down mobile phone handsets, blocking SIM cards (and the associated phone number), and preventing the portability of phone numbers to another mobile network. New subsections (5) to (8) sets out the matters that must be addressed in any regulations, including who can make applications for such orders and provision about appeals. New subsection (9) sets out the matters that may be addressed in any regulations, for example, provision about time limits and costs. New subsections 4 and 12 would provide definitions of certain terms, including "drug dealing offence" and "communications provider".

New clauses: Charges payable to the Information Commissioner

Lords Amendments 249, 250, 251 and 252

- 124 **Lords Amendments 249 to 252** would create a charging power to enable the collection of charges by the Information Commissioner to fund its data protection and privacy and electronic communications regulatory functions.
- 125 The amendments would replace the Information Commissioner's current fees charging powers under Section 18 and 26 of the Data Protection Act 1998 as it will be necessary to repeal these provisions as part of implementation of the EU General Data Protection Regulation which will become part of UK law on 25 May 2018.
- 126 The amendments would also repeal Part 3 of the Data Protection Act. Part 3 imposes an obligation on data controllers to notify the Information Commissioner of certain types of data processing and the Commissioner maintains a register of all data controllers. The General Data Protection Regulation (GDPR) removes the obligation on data controllers to notify the Commissioner and so it is necessary to repeal Part 3. The GDPR will become part of UK law on 25 May 2018.
- 127 The amendments seek to replicate the substance of the fee raising powers in the Data Protection Act 1998. Charges would continue to be based on the principle of full cost-recovery; and although it would no longer be a requirement for organisations to notify the

Information Commissioner that they are processing personal data, organisations would continue to receive the same broad range of services from the Information Commissioner's Office. This includes good practice guidance on organisations' obligations under the data protection framework and how to comply; online training videos; free voluntary audits of an organisation's data protection practices to support improved compliance; and advisory visits.

New clauses: Guarantee of pension liabilities under Telecommunications Act 1984

Lords Amendments 253, 254, 255 and 287

128 **Lords Amendment 234 and 254** would confer a power on the Secretary of State to modify or supplement provision in section 68 of the Telecommunications Act 1984 as to the Secretary of State's liability in respect of BT plc's liabilities to the BT Pension Scheme.

129 **Lords Amendments 255 and 287** would make consequential amendment to the commencement provisions and the Bill's long title.

Lords Amendments to clause 89: Commencement

Lords Amendments 262, 263 and 264

130 Most Lords Amendments to clause 89 are consequential on other amendments and are described above. **Lords Amendment 262** would enable commencement of measures by area. The government's intention behind this amendment is that the government can ensure that measures are not commenced for Northern Ireland in the event that the Northern Ireland Assembly has not given legislative consent. Necessary consents from the Scottish Parliament and the National Assembly for Wales have already been given.

131 In consequence of the potential need to commence the Bill by area, **Lords Amendment 263** would also provide the power to make necessary transitional provision. The transitional powers would also be used to define small and micro businesses in the statistics chapter of Part 5 until definitions in the Small Business, Enterprise and Employment Act 2015 come into force.

132 **Lords Amendment 264** would provide that the new provisions relating to water poverty, inserted by Lords Amendments 65 and 66, extend to England and Wales only.

Lords Amendments to Schedule 1: The electronic communication code

Lords Amendment 265

133 **Lords Amendment 265** would insert Paragraph 13A into Schedule 1 to clarify the relationship between code rights and land registration rules. The amendment confirms that Code rights will bind successors in title to the land they relate to, in accordance with paragraph 10 of the Code, and independently of land registration rules. In short, code rights will bind successors in title whether they are registered or not.

Lords Amendment 266

134 Paragraph 15 of Schedule 1 provides that an operator may assign an agreement under which code rights are conferred to another operator, enabling the second operator to 'stand in the shoes' of the first. The landowner cannot make the assignment subject to consent or conditions but may require the first operator to guarantee the obligations of the assignee operator.

135 **Lords Amendment 266** would amend paragraph 15 so that it would ensure that the new
These Explanatory Notes relate to the Lords Amendments to the Digital Economy Bill as brought from the House of Lords on 5 April 2017 (Bill 166)

electronic communications code provides landowners in Scotland with the same right (as was intended by the previous drafting to apply in England, Wales and Northern Ireland) to be able to require an operator to guarantee the obligations of an assignee operator.

Lords Amendments 267, 268 and 269

136 Paragraph 23 of Schedule 1 makes provision for payment of consideration for code rights to be assessed at market value on a “no-scheme” basis. **Lords Amendments 269** would amend part of paragraph 23 to clarify that the new valuation approach is based on four assumptions. **Lords Amendments 267 and 268** are consequential. These amendments would not change the “no-scheme” basis of valuation and therefore do not alter the effect of paragraph 23.

Lords Amendments 271 and 272

137 An owner or occupier whose access to their land is obstructed by electronic communications apparatus without their agreement has the right to require the removal of that apparatus. **Lords Amendments 271 and 272** make clear that this right only arises where the apparatus itself interferes with access by adjusting the first condition that must be met for an owner or occupier of neighbouring land to have a right to require the removal of apparatus. The Bill as drafted expressed the condition as requiring the operator to obstruct or interfere with access ‘in the exercise of a right mentioned in paragraph 13(1)’. The rights mentioned in paragraph 13(1) include activities other than the installation of apparatus, such as rights to enter land to inspect or repair equipment.

Lords Amendment 270 and 273

138 Paragraph 59 of Schedule 1 made provision regarding code rights when a public road is decommissioned (“stopped up”).

139 **Lords Amendment 273** would remove paragraph 59, which in the government’s view, after further stakeholder consultation, is unnecessary as the matter is covered in existing statutory provisions (see for example section 334 Highways Act 1980). **Lords Amendment 270** is consequential.

Lords Amendments 274 and 275

140 Paragraph 64 concerns Crown Tidal Land. **Lords Amendments 274 and 275** would amend paragraph 64 to align its provisions so that they are consistent with the amendments made to paragraph 23. The amendments would not change the “no-scheme” basis of valuation.

Lords Amendment 276

141 Part 13 of Schedule 1 provides rights for operators to require the cutting back of trees or vegetation which interfere, or potentially interfere, with electronic communications apparatus. These rights require the operator to serve a notice on the occupier of land on which such trees or vegetation are growing, and is subject to a counter notice procedure. The code as drafted states a counter notice can be served by ‘the occupier of land on which the tree is growing’, erroneously omitting occupiers of land on which vegetation is growing. **Lords Amendment 276** would correct this omission, making it clear a right to serve a counter notice arises wherever a notice requiring trees or vegetation to be cutback has been served.

Lords Amendment 277

142 Paragraph 95 of Schedule 1 gives the Secretary of State the power to make regulations to confer jurisdiction on the First-tier Tribunal and Upper Tribunal (in England and Wales). **Lords Amendment 277** would correct paragraph 94(1)(a) to reflect that there is no First-tier Tribunal in Wales.

Lords Amendments 278 and 279

143 Paragraph 104 of Schedule 1 sets out who has the authority to enter into agreements or grant code rights over various different categories of Crown land. **Lords Amendments 278 and 279** would make consequential changes as a result of the transfer of the management functions of the Crown Estate Commissioners under the terms of the Crown Estate Transfer Scheme 2017, which is made under section 90B of the Scotland Act 1998.

Lords Amendments to Schedule 2: The electronic communication code: transitional provision

Lords Amendments 280 and 281

144 **Lords Amendments 280 and 281** would correct minor omissions and referencing errors.

Financial Effects of Lords Amendments

145 Lords Amendments 249 to 252 would create a charging power to enable the collection of charges by the Information Commissioner to fund her data protection regulatory functions. The charges will be subject to a Ways and Means Resolution. Before considering Lords Amendments the House of Commons will be asked to authorise the imposition of charges which are payable to the Information Commissioner.

DIGITAL ECONOMY BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

These Explanatory Notes relate to the Lords Amendments to the Digital Economy Bill as brought from the House of Lords on 5 April 2017.

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