

Digital Economy Bill

AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

Clause 1

BARONESS BYFORD

Page 2, line 15, leave out “may” and insert “must”

After Clause 1

LORD MENDELSON
LORD STEVENSON OF BALMACARA

Insert the following new Clause—

“Duties to progress universal service broadband obligation

Within 12 months of the passing of this Act, the Secretary of State must take steps to ensure that—

- (a) sufficient progress has been made on the universal service broadband obligation to place the United Kingdom in the top decile of countries internationally in respect of broadband speeds;
- (b) a minimum of 90% of United Kingdom premises have access to superfast broadband speeds as defined by OFCOM;
- (c) communications providers deliver the service they have advertised to consumers;
- (d) where a broadband provider fails to supply a user with the broadband speeds it has promised through its advertising, the provider must reimburse the user with appropriate compensation.”

Insert the following new Clause—

“Universal service broadband obligation: fair and competitive market

The Secretary of State must ensure that rollout of universal service broadband obligations is delivered on a fair and competitive basis.”

Clause 8

BARONESS BYFORD

Page 5, line 9, leave out “may” and insert “must”

Clause 29

LORD FOSTER OF BATH

Page 29, line 32, leave out subsections (3) to (5)

After Clause 29

LORD FOSTER OF BATH

Insert the following new Clause—

“Copyright and the role of active hosts

- (1) The Electronic Commerce (EC Directive) Regulations 2002 are amended as follows.
- (2) At the end of Regulation 19 insert—
 - “(2) Where an information society service is storing and providing access to the public copyright protected works, and is playing an active role, including the promotion and optimising the presentation of those works, sub-paragraph (1) shall not apply.
 - (3) The service provider of an active host under sub-paragraph (2) is required to secure licensing agreements with rightsholders.”

LORD CLEMENT-JONES

Insert the following new Clause—

“Transparency and fairness obligations

- (1) Authors, artists and performers (“creators”) shall receive on a regular basis timely, adequate and sufficient information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights as well as subsequent transferees or licensees, and the information shall include information on modes of exploitation, revenues generated and remuneration due.
- (2) The obligation in subsection (1) may be met by complying with a code of practice collectively bargained between relevant representative organisations of creators and the representative organisations of those who exploit their works, taking into account the characteristics of each sector for the exploitation of works.
- (3) Any such code of practice is to provide that each creator is to be entitled to a statement of income generated under such licence or transfer arrangements at regular intervals during each annual accounting period, and provide an explanation as to how the creator’s remuneration has been calculated referencing any contract terms relevant to the calculation.

After Clause 29 - continued

- (4) In the event of failure of a transferee or licensee mentioned in subsection (1) to comply with a code of practice, or in the absence of such a code of practice, the creator shall be entitled to apply to the Intellectual Property Enterprise Court for a detailed account of revenues due to the creator generated from the modes of exploitation referred to in subsection (1), and in the event of failure, the Court may award damages in the amount of any shortfall in the total amount due to him.”

Clause 33

BARONESS BYFORD

Page 32, line 21, leave out paragraphs (c) to (f)

LORD COLLINS OF HIGHBURY
LORD STEVENSON OF BALMACARA

Page 33, line 7, leave out subsection (7)

LORD KIRKWOOD OF KIRKHOPE

Page 33, line 18, at end insert –

- “() Disclosures under section 30, 31 or 32 may be made in order to share the information needed to provide a Warm Home Discount to any Universal Credit or Tax Credit claimant who –
- (a) is entitled to receive a Warm Home Discount; and
 - (b) has a gross annual household income of less than £16,105, and is in receipt of –
 - (i) Child Tax Credit, or
 - (ii) a child element of Universal Credit.”

LORD COLLINS OF HIGHBURY
LORD STEVENSON OF BALMACARA

Page 33, line 18, at end insert –

- “() In its application to a specified person with functions relating to the provision of health services, section 30 does not authorise the disclosure of identifiable health information held by the person in connection with such functions.”

Clause 34

BARONESS BYFORD

Page 34, line 21, leave out subsection (8)

Clause 36

LORD CLEMENT-JONES

Page 35, line 7, leave out subsection (4) and insert –

- “(4) As soon as reasonably practicable after issuing or reissuing the code of practice, the relevant Minister must arrange for a copy of it to be laid before, and approved by, a resolution of both Houses of Parliament.”

Clause 39

LORD CLEMENT-JONES

Page 38, line 23, leave out from “that” to end of line 26 and insert –

- “(a) the authority or civil registration official to whom it is disclosed (the “recipient”) requires the information to enable the recipient to exercise one or more of the recipient’s functions, and
(b) the data subjects whose information is being disclosed have given valid consent under data protection legislation.”

Page 40, line 7, leave out “have regard to” and insert “comply with”

Page 40, line 18, after “before” insert “, and approved by a resolution of both Houses of,”

BARONESS BYFORD

Baroness Byford gives notice of her intention to oppose the Question that Clause 39 stand part of the Bill.

Clause 41

LORD CLEMENT-JONES

Page 41, line 41, leave out “had regard to” and insert “complied with”

Clause 42

LORD CLEMENT-JONES

Page 43, line 2, at the end insert –

- “() In addition, in determining whether to make regulations under section 41, the appropriate national authority must ensure that –
- (a) the sharing of information authorised by the regulations is minimised to what is strictly necessary on grounds falling within subsections (2) and (3),
 - (b) the conduct authorised by the regulations to achieve the “specified objective” is proportionate to what is sought to be achieved by that conduct,
 - (c) a Privacy Impact Assessment compliant with the relevant code of practice of the Information Commissioner’s Office has taken place and been made publicly available,

Clause 42 - continued

- (d) the proposed measures have been subject to public consultation for a minimum of 12 weeks, and responses have been given conscientious consideration.”

Clause 43

LORD CLEMENT-JONES

Page 43, line 20, leave out “or permitted”

Page 43, line 27, leave out “made” and insert “necessary”

Page 43, line 28, leave out “made” and insert “necessary”

Page 43, line 31, leave out “made” and insert “necessary”

Page 43, line 33, leave out “made” and insert “necessary”

Clause 45

LORD CLEMENT-JONES

Page 44, line 38, leave out “have regard to” and insert “comply with”

Page 44, line 41, leave out subsection (4) and insert –

- “(4) Before issuing or reissuing the code of practice, the relevant Minister must arrange for a draft to be laid before, and approved by a resolution of, both Houses of Parliament.”

Page 44, line 42, at end insert –

- “(4A) The code of practice must be subjected to public consultation for a minimum of 12 weeks, and the relevant Minister must demonstrate that responses have been given conscientious consideration.”

Clause 49

LORD CLEMENT-JONES

Page 49, line 32, leave out “had regard to” and insert “complied with”

Page 49, line 43, at the end insert –

- “() In determining whether to make regulations under subsection (5), the appropriate national authority must ensure that –
 - (a) the sharing of information authorised by the regulations is minimised to what is strictly necessary on grounds falling within subsections (2) and (3),

Clause 49 - continued

- (b) the conduct authorised by the regulations to achieve the “specified objective” is proportionate to what is sought to be achieved by that conduct,
- (c) a Privacy Impact Assessment compliant with the relevant Code of Practice of the Information Commissioner’s Office has taken place and been made publicly available,
- (d) the proposed measures have been subject to public consultation for a minimum of 12 weeks, and responses have been given conscientious consideration.”

Clause 51

LORD CLEMENT-JONES

Page 51, line 18, leave out “or permitted”

Page 51, line 25, leave out “made” and insert “necessary”

Page 51, line 26, leave out “made” and insert “necessary”

Page 51, line 29, leave out “made” and insert “necessary”

Clause 53

LORD CLEMENT-JONES

Page 52, line 41, leave out “have regard to” and insert “comply with”

Page 53, line 1, leave out subsection (4) and insert –

- “(4) Before issuing or reissuing the code of practice, the relevant Minister must arrange for a draft to be laid before, and approved by a resolution of, both Houses of Parliament.”

Page 53, line 2, at end insert –

- “() The code of practice must be subjected to public consultation for a minimum of 12 weeks, and the relevant Minister must demonstrate that responses have been given conscientious consideration.”

Clause 57

LORD CLEMENT-JONES

Page 57, line 34, leave out “has regard to” and insert “comply with”

Clause 59

LORD CLEMENT-JONES

Page 58, line 37, leave out “or permitted”

Clause 59 - continued

Page 58, line 40, leave out “made” and insert “necessary”

Page 59, line 1, leave out “made” and insert “necessary”

Page 59, line 3, leave out “made” and insert “necessary”

Clause 61

LORD CLEMENT-JONES

Page 60, line 24, leave out “have regard to” and insert “comply with”

Page 60, line 26, leave out “have regard to” and insert “comply with”

Page 60, line 41, at end insert –

“() The code of practice must be subjected to public consultation for a minimum of 12 weeks, and the relevant Minister must demonstrate that responses have been given conscientious consideration.”

Clause 62

LORD CLEMENT-JONES

Page 61, line 36, leave out “have regard to” and insert “comply with”

Clause 65

BARONESS BYFORD

Page 63, line 18, leave out “A Revenue and Customs official” and insert “The Executive Chair and First Permanent Secretary of HMRC”

Clause 68

BARONESS BYFORD

Page 69, line 30, leave out “any” and insert “a qualifying”

Page 69, line 36, at end insert –

“(d) a charity with annual income of less than £2.5 million;
(e) a charity which employs fewer than 10 people.”

Clause 75

LORD FOSTER OF BATH

Page 78, line 10, leave out from “, by” to end of line 12 and insert “by reference to the grounds of appeal set out in the notice of appeal and taking due account of the merits of the case.”

Clause 75 - continued

Page 78, line 11, leave out from “appeal,” to end of line 12 and insert “only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds –

- (a) that the decision was based, wholly or partly, on an error of fact;
- (b) that the decision was wrong in law;
- (c) that an error was made in the exercise of a discretion;
- (d) that the decision failed to achieve, in whole or in part, its intended effects;
- (e) that the decision was based on a judgment or a prediction which OFCOM could not reasonably make; or
- (f) that a material procedural error was made in the taking of the decision.”

After Clause 84

LORD ASHTON OF HYDE

Insert the following new Clause –

“Communication devices used for drug dealing

Prevention or restriction of use of communication devices for drug dealing

After section 80 of the Serious Crime Act 2015 insert –

“80A Prevention or restriction of use of communication devices for drug dealing

- (1) Regulations may make provision conferring power on a court to make a drug dealing telecommunications restriction order.
- (2) “Drug dealing telecommunications restriction order” means an order requiring a 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.
- (3) Without limiting the action that may be specified, it includes –
 - (a) action that relates to a specified device;
 - (b) action that relates to a specified phone number or something else that may be used with a device.
- (4) In this section “drug dealing offence” means an offence under section 4(3) of the Misuse of Drugs Act 1971 or section 5 of the Psychoactive Substances Act 2016; and a communication device is used in connection with a drug dealing offence if it is used by a person (“the user”) in the course of –
 - (a) the user committing a drug dealing offence,
 - (b) the user facilitating the commission by the user or another person of a drug dealing offence, or
 - (c) conduct of the user that is likely to facilitate the commission by the user or another person of a drug dealing offence (whether or not an offence is committed).
- (5) Regulations under this section must provide for drug dealing telecommunications restriction orders to be made only on the application of –

After Clause 84 - continued

- (a) the Director General or Deputy Director General of the National Crime Agency, or
 - (b) a police officer of the rank of superintendent or above.
- (6) Regulations under this section must –
- (a) specify the matters about which the court must be satisfied if it is to make an order;
 - (b) make provision about the duration of orders (which may include provision for orders of indefinite duration);
 - (c) make provision about the giving (by a communications provider or any other person) of notice of the making of an order;
 - (d) make provision about variation (including extension) and discharge of orders;
 - (e) make provision about appeals.
- (7) Regulations under this section must provide –
- (a) for applications for drug dealing telecommunications restriction orders to be made and heard without notice of the application or hearing having been given to persons affected (or their legal representatives), subject to subsection (9)(a);
 - (b) for applications to be heard and determined in the absence of persons affected (and their legal representatives), subject to subsection (9)(b);
 - (c) for applications to be heard and determined in private.
- (8) Regulations under this section must provide for a court hearing an application or an appeal to have power to restrict disclosure of information submitted in connection with the application or appeal if satisfied that it is necessary to do so in the public interest.
- (9) Regulations under this section may –
- (a) make provision for a communications provider affected by an application to be given notice of the application or hearing;
 - (b) make provision for a communications provider affected by an application to be present or represented at the hearing and determination of the application;
 - (c) in connection with any provision under paragraph (b), make provision for a communications provider to have a right to make representations;
 - (d) make provision for a drug dealing telecommunications restriction order to specify that a requirement of the order is not to apply in particular circumstances;
 - (e) make provision authorising a court to include in an order a requirement for the person applying for the order to pay any or all of the costs of complying with it;
 - (f) make provision about time limits for complying with orders;
 - (g) make provision about enforcement of orders (which may include provision creating offences);
 - (h) make provision about costs (or, in Scotland, expenses) in respect of legal proceedings;
 - (i) make provision about compensation;
 - (j) make different provision for different purposes or areas;

After Clause 84 - continued

- (k) make incidental, consequential, supplementary or transitional provision, including provision applying any enactment (with or without modifications).
- (10) The power to make regulations under this section is exercisable by statutory instrument made by the Secretary of State.
- (11) A statutory instrument containing regulations under this section is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (12) In this section—
- “communication device” means an item specified in section 1(3) of the Prisons (Interference with Wireless Telegraphy) Act 2012 (mobile telephones etc);
- “communications provider” means a person providing a telecommunications service;
- “court” means—
- (a) in relation to England and Wales, the county court;
 - (b) in relation to Scotland, the sheriff;
 - (c) in relation to Northern Ireland, a county court;
- “enactment” includes—
- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
 - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
 - (c) Northern Ireland legislation;
- “telecommunications service” has the meaning given by section 261 of the Investigatory Powers Act 2016.”

Clause 89

LORD CLEMENT-JONES

Page 90, line 10, at end insert—

“() section 29”

LORD ASHTON OF HYDE

Page 90, line 12, at end insert—

“() section (*Prevention or restriction of use of communication devices for drug dealing*);”**Schedule 1**

BARONESS BYFORD

Page 93, leave out lines 17 to 19

Page 135, line 19, leave out “three” and insert “eight”

Page 135, line 19, leave out “two” and insert “four”

In the Title

LORD ASHTON OF HYDE

Line 8, after “functions;” insert “to make provision about preventing or restricting the use of communication devices in connection with drug dealing offences;”

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24 January 2017
