

Digital Economy Bill

REVISED
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

The amendments have been marshalled in accordance with the Order of 20th February 2017, as follows –

Clauses 1 to 4	Clauses 31 to 94
Schedules 1 to 3	Schedule 4
Clauses 5 to 14	Clauses 95 to 99
Clauses 28 to 30	Title
Clauses 15 to 27	

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

Clause 1

LORD MENDELSON
LORD STEVENSON OF BALMACARA
LORD FOX
LORD CLEMENT-JONES

- 1** Page 2, leave out lines 4 and 5 and insert –
- “(2B) The universal service order must specify that the target for broadband connections and services to be provided before 2020 must have –
- (a) speeds of 2 gigabits or more;
 - (b) 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;
 - (d) appropriate measures to ensure service providers run low latency networks.
- (2BA) The universal service order must specify as soon as reasonably practicable that, by 2020, the following will be available in every household in the United Kingdom –
- (a) download speeds of 30 megabits per second;
 - (b) upload speeds of 6 megabits per second;
 - (c) fast response times;
 - (d) committed information rates of 10 megabits per second;
 - (e) an unlimited usage cap.

Clause 1 - continued

- (2BB) In meeting the obligations set out in subsection (1), internet service providers have a duty to ensure that their networks offer at least the minimum standards specified in subsection (2BA) to every household in areas of low population density, before deploying their networks in urban areas.
- (2BC) The Secretary of State must ensure that—
- (a) the premises of small and medium-sized enterprises are prioritised in the roll-out of the universal service broadband obligation;
 - (b) rollout of universal service broadband obligations is delivered on a fair and competitive basis.
- (2BD) The universal service order shall, in particular, say that mobile network coverage must be provided to the whole of the United Kingdom.”

LORD FOX

LORD CLEMENT-JONES

2 Page 2, leave out lines 4 and 5 and insert—

- “(2B) The United Kingdom’s broadband network has a medium term objective of full fibre to the premises and gigabit levels of connectivity.
- (2BA) OFCOM is instructed to deliver a universal service order that, by 2020, delivers at least the following connectivity to every household in the United Kingdom—
- (a) download speeds of 30 megabits per second;
 - (b) upload speeds of 6 megabits per second;
 - (c) committed information rates of 10 megabits per second;
 - (d) an unlimited usage cap.”

BARONESS JANKE

LORD FOX

LORD CLEMENT-JONES

3 Page 2, line 5, at end insert—

- “(2BA) If the universal service order says that broadband connections and services must be provided to any extent, it must require the provision of a social tariff for broadband services which has the aim of preventing digital exclusion.”

After Clause 1

LORD FOX

LORD FOSTER OF BATH

4 Insert the following new Clause—

“Annual report to Parliament

The Secretary of State must produce an annual report to Parliament which includes the following information—

- (a) the full details of the annual report by OFCOM on progress towards delivering the universal service order;

After Clause 1 - continued

- (b) the percentage of premises nationally connected via fibre to the premises;
- (c) the take up of superfast broadband as a percentage of connected households;
- (d) the measures taken by OFCOM, Government and others to increase take up of superfast broadband;
- (e) the number of premises that have been required to cover some of the cost of connection;
- (f) the number of community schemes set up in that year and the level of subsidy required to achieve this; and
- (g) the extent to which the rights of consumers are explained to them, in particular their right to switch.”

After Clause 2

LORD FOX
LORD STEVENSON OF BALMACARA
LORD MENDELSON
LORD CLEMENT-JONES

5 Insert the following new Clause—

“Bill limits for mobile phone contracts

- (1) A telecommunications service provider supplying a contract relating to a handheld mobile telephone must, at the time of entering into such a contract—
 - (a) allow the end-user the opportunity to place a financial cap on the monthly bill under that contract;
 - (b) allow the end-user to switch (at no extra charge) to another provider, which meets the specified standards or obligation as provided for in section 3, or to deem the contract to have been terminated by a consistent breach of the standards or obligation as provided for in section 3;
 - (c) allow the end-user to switch mobile providers according to rules set out by OFCOM in accordance with the following principles—
 - (i) that switching must be free to the consumer, unless the consumer is aware of and has consented to fair and reasonable restrictions and charges to do so;
 - (ii) that the switching process itself must be quick, and on an agreed date;
 - (iii) that consumers must have access to their consumption or transaction data, and this must be in a format that can be easily reused and they must be able to authorise third parties such as comparison sites to access their data to help them to switch;
 - (iv) that sites and tools providing comparisons to consumers that receive payments from suppliers must make clear where the payments affect the presentation of results; and
 - (v) that there must be an effective process for consumers to receive redress if there are any problems with the service.

After Clause 2 - continued

- (2) A telecommunications service provider under subsection (1) must not begin to supply a contracted service to an end-user unless the end-user has either –
- (a) requested the monthly cap be put in place and agreed the amount of that cap, or
 - (b) decided, with the decision recorded on a durable medium, not to put a monthly cap in place.
- (3) An end-user may, after the start of the contracted service –
- (a) contact the service provider to require a cap to be put in place and agree the amount of that cap, or
 - (b) require a cap to be removed, with the requirement recorded on a durable medium.
- (4) The end-user should bear no cost for the supply of any service above the cap if the provider has –
- (a) failed to impose a cap agreed under subsection (2)(a) or (3)(a); or
 - (b) removed the cap without the end-user’s express consent, provided on a durable medium as required under subsection (2)(b) or (3)(b).”

Schedule 1

LORD ASHTON OF HYDE

- 6 Page 107, line 41, at end insert –
“Code rights and land registration
- 13A Where an enactment requires interests, charges or other obligations affecting land to be registered, the provisions of this code about who is bound by a code right have effect whether or not that right is registered.”
- 7 Page 108, line 33, leave out “90(2)(b)” and insert “90(2)(a)”
- 8 Page 113, line 31, after “is” insert “, subject to sub-paragraph (3A),”
- 9 Page 113, line 37, leave out “as if the transaction were” and insert “on the basis that the transaction was”
- 10 Page 113, line 39, leave out from beginning to end of line 7 on page 114 and insert –
 “(3A) The market value must be assessed on these assumptions –
- (a) that the right that the transaction relates to does not relate to the provision or use of an electronic communications network;
 - (b) that paragraphs 15 and 16 (assignment, and upgrading and sharing) do not apply to the right or any apparatus to which it could apply;
 - (c) that the right in all other respects corresponds to the code right;
 - (d) that there is more than one site which the buyer could use for the purpose for which the buyer seeks the right.”
- 11 Page 140, line 22, after “is” insert “, subject to sub-paragraph (7A),”

Schedule 1 - continued

- 12 Page 140, leave out lines 30 to 40 and insert –
 “(7A) The market value must be assessed on these assumptions –
 (a) that the right that the transaction relates to does not relate to the provision or use of an electronic communications network;
 (b) that the right in all other respects corresponds to the tidal water right;
 (c) that there is more than one site which the buyer could use for the purpose for which the buyer seeks the right.”

- 13 Page 157, line 12, leave out “and Wales”

LORD GRANTCHESTER
 LORD STEVENSON OF BALMACARA

- 14 Page 159, line 35, at end insert –

“Duties for OFCOM to regulate codes of practice

- (1) OFCOM shall be the regulator for the purposes of the code of practice.
 (2) OFCOM must appoint an expert to undertake the role of adjudicating on the code of practice.”

LORD ASHTON OF HYDE

- 15 Page 160, line 22, after “Commissioners” insert “or the relevant person”

- 16 Page 160, line 43, at end insert –

“() In sub-paragraph (6)(a) “relevant person”, in relation to land to which section 90B(5) of the Scotland Act 1998 applies, means the person having the management of that land.”

After Clause 8

LORD STEVENSON OF BALMACARA
 LORD GRANTCHESTER
 LORD FOX
 LORD CLEMENT-JONES

- 17 Insert the following new Clause –

“OFCOM power to impose caps upon wireless telegraphy licenses

In Schedule 1 to the Wireless Telegraphy Act 2006, for paragraph 3 (information to be provided in connection with applications) substitute –

“3 The grounds on which a licence may be refused by OFCOM include –

- (a) a failure by the applicant to provide information which OFCOM reasonably require in order to satisfy themselves that the applicant is able to comply with terms, provisions or limitations to which the licence may be made subject,
 or

After Clause 8 - continued

- (b) where the applicant owns more than 30% of the total useable mobile phone spectrum in the UK and OFCOM has a reasonable belief that the award of further licences would have a damaging impact upon competition in a given electronic communications market.
- 3A Where an applicant already owns more than 30% of the total usable mobile phone spectrum in the UK, and OFCOM has a reasonable belief that the holding of these licences may have a damaging impact upon competition in a given electronic communications market, OFCOM may request that the holder of the spectrum must divest a proportion of its spectrum holdings until such a competition issue no longer exists.
- 3B Within six months of the day on which the Digital Economy Act 2017 is passed, OFCOM must commission an evaluation of the distribution of radio spectrum suitable for use for the purpose of mobile telephony and present a report to the Secretary of State.
- 3C The evaluation under subsection (3B) must consider –
 - (a) the impact on competition in the mobile telephony market of the current distribution of spectrum;
 - (b) the impact on consumers, both financial and in terms of coverage;
 - (c) the efficiency of current spectrum usage; and
 - (d) the impact of preventing any one licence holder from owning more than 30% of the total spectrum useable for mobile telephony.
- 3D The Secretary of State must lay the report of the review before each House of Parliament by 1 July 2018.”

18 [Withdrawn]

Before Clause 28

LORD ASHTON OF HYDE

19 Insert the following new Clause –

“Lending of e-books by public libraries

- (1) In section 5(2) of the Public Lending Right Act 1979 (interpretation) for the definition of “lent out” substitute –
 - ““lent out” means made available to a member of the public for use away from library premises for a limited time (including by being communicated by means of electronic transmission to a place other than library premises) and “loan” and “borrowed” are to be read accordingly;”
- (2) Section 40A of the Copyright, Designs and Patents Act 1988 (lending of copies by libraries or archives) is amended as follows.
- (3) After subsection (1) insert –
 - “(1ZA) Subsection (1) applies to an e-book or an e-audio-book only if –
 - (a) the book has been lawfully acquired by the library, and
 - (b) the lending is in compliance with any purchase or licensing terms to which the book is subject.”

Before Clause 28 - continued

- (4) In subsection (1A) –
- (a) for “subsection (1)” substitute “subsections (1) and (1ZA)”;
 - (b) after paragraph (a) insert –
 - “(aa) “e-audio-book” means an audio-book (as defined in paragraph (a)) in a form enabling lending of the book by electronic transmission.””

Clause 28

LORD STEVENSON OF BALMACARA
LORD FOSTER OF BATH
LORD CLEMENT-JONES

20 Page 29, line 23, at end insert –

- “(7) If it appears to the Secretary of State that the extent of the manufacture of unauthorised decoders or similar equipment for sale or hire imported into the United Kingdom (otherwise than for private and domestic use) or distribution otherwise than in the course of a business has reached a level which is likely to affect prejudicially the owners of copyright works, the Secretary of State may bring forward regulations made by statutory instrument which prohibit such activities.
- (8) A statutory instrument containing regulations made under subsection (7) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

Clause 30

LORD CLEMENT-JONES

21 Page 29, line 38, at beginning insert –

- “() Any creator who has transferred his or her cable retransmission right to a broadcaster shall retain the unwaivable right to receive equitable remuneration for the exercise of the retransmission right.”

LORD CLEMENT-JONES
LORD FOSTER OF BATH

22 Page 30, line 10, leave out subsections (3) to (5)

After Clause 30

LORD CLEMENT-JONES
LORD FOSTER OF BATH

23 Insert the following new Clause –

“Remote e-lending

- (1) Section 5 of the Public Lending Right Act 1979 (citation, etc.) is amended as follows.
- (2) In subsection (2) –
 - (a) in the definition of “book” –

After Clause 30 - continued

- (i) after “(an “audio book”)” insert “which has been licensed by the publisher on agreed terms for library lending”,
- (ii) after “(an “e-book”)” insert “which has been licensed by the publisher on agreed terms for library lending”;
- (b) in the definition of “lent out”, for paragraph (b) substitute—
 - “(b) includes communicating by means of electronic transmission to a place other than library premises”.”

24 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.
- (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.”

LORD STEVENSON OF BALMACARA
 BARONESS JONES OF WHITCHURCH
 LORD CLEMENT-JONES
 LORD FOSTER OF BATH

25 Insert the following new Clause—

“Code of practice on search engines and copyright infringement

- (1) The Secretary of State may impose by order a code of practice (“the code”) for search engine providers with the purpose of minimising the availability and promotion of copyright infringing services, including those which facilitate copyright infringement by their users.
- (2) Any order made under subsection (1) must include appropriate provisions to ensure compliance with the code by the providers.

After Clause 30 - continued

- (3) Before imposing the code under subsection (1), the Secretary of State shall publish a draft of the code and consider any representations made to him or her by –
 - (a) search engine providers,
 - (b) rights-holders and their representatives, and
 - (c) any other interested parties.
- (4) The Secretary of State shall regularly review the code to ensure that it provides the most appropriate mechanism to satisfy the purposes set out in subsection (1).”

BARONESS JANKE

25A★ Insert the following new Clause –

“Review of sale on the internet of counterfeit electrical appliances

- (1) Within six months of the coming into force of this Act, the Secretary of State must commission a review of the sale on the internet of counterfeit electrical appliances.
- (2) The review must consider whether operators of trading websites that allow individual sellers to use those websites to sell electrical items should be required to report to the police and trading standards authorities any instances of the selling of counterfeit electrical appliances which are arranged through their website.
- (3) The Secretary of State must publish the report of the review, and lay a copy of the report before each House of Parliament.”

Clause 31

LORD WHITTY

26 Page 31, line 9, at end insert –

- “(c) the facilitation of improvements in health conditions which could be exacerbated by living in a cold home.”

Clause 32

LORD WHITTY

27 Page 31, line 22, at end insert –

- “(c) a licensed electricity distributor, or
(d) a licensed gas network distributor.”

28 Page 31, line 40, at end insert –

- “(e) the requirements of the Gas and Electricity Markets Authority for a licensed electricity distributor, or
(f) the requirements of the Gas and Electricity Markets Authority for a gas licensed network operator.”

Clause 80

LORD CLEMENT-JONES

- 29 Page 84, line 2, leave out from second “appeal,” to end of line 3 and insert “and taking due account of the merits of the case.”

After Clause 81

LORD LESTER OF HERNE HILL
LORD PANNICK
LORD INGLEWOOD

- 30 Insert the following new Clause—

“The BBC Charter: timing

- (1) The Communications Act 2003 is amended as follows.
- (2) After section 198ZA (inserted by section 81 of this Act) insert—

“198ZB The BBC Charter: timing

- (1) The first BBC Charter to be granted following the day on which this Act is passed must have effect for a term of 11 years beginning with the day on which it is granted, and each subsequent BBC Charter must have effect for a term of 10 years beginning with the day on which it is granted.
- (2) In this section “the BBC Charter” has the meaning given by section 362(1) of the Communications Act 2003.””

- 31 Insert the following new Clause—

“The independence and funding of the BBC

- (1) The Communications Act 2003 is amended as follows.
- (2) After section 198ZB (inserted by section *(The BBC Charter: timing)* of this Act) insert—

“198ZC The independence and funding of the BBC

- (1) The BBC is to be independent in all matters concerning the content of its output, the times and manner in which its output is supplied, and the governance and management of its affairs.
- (2) The Prime Minister, the Secretary of State, the BBC, OFCOM, and all other persons and bodies with responsibility for matters relating to the governance and establishment of the BBC must ensure that the BBC is able to operate independently from Ministers and other public authorities in the United Kingdom.
- (3) In carrying out the duty in subsection (2)—
 - (a) the Secretary of State and other Ministers of the Crown must not seek to influence the BBC’s decisions; and
 - (b) the Secretary of State must have regard to—
 - (i) the need to defend the BBC’s independence;
 - (ii) the need for the BBC to have the financial and non-financial support necessary to enable it to exercise its functions and its public purposes as a Public Service Broadcaster; and

After Clause 81 - continued

- (iii) the need for the public interest to be considered in regard to matters relating to the BBC.
- (4) The licence fee is to be for the exclusive benefit of and use by the BBC to fund the performance of the BBC's functions and public purposes.
- (5) Subject to sections 365 and 365A, the Secretary of State may not transfer to the BBC responsibility, including liability and costs, for any public expenditure.
- (6) Ofcom is to oversee the BBC's performance of its functions and any increase above the Consumer Price Index in the licence fee.”

32 Insert the following new Clause—

“The governance of the BBC

- (1) The Communications Act 2003 is amended as follows.
- (2) After section 198ZC (inserted by section *(The independence and funding of the BBC)* of this Act) insert—

“198ZD The governance of the BBC

- (1) The BBC is to be governed by an independent board with the skill, knowledge and experience needed to perform the board's functions as public service broadcaster.
- (2) The members of the board must be drawn from across the nations and regions of the United Kingdom, and must be appointed in accordance with the principles of merit, openness and fairness.”

After Clause 82

LORD LESTER OF HERNE HILL
LORD PANNICK
LORD INGLEWOOD

33 Insert the following new Clause—

“Repeal of section 82

Section 82 is repealed at the end of the period of nine years beginning with the day on which this Act is passed.”

After Clause 95

BARONESS JANKE

33A★ Insert the following new Clause—

“Duties on providers of social media services

After section 131 of the Communications Act 2003 (statement of policy on persistent misuse) insert—

“131A Duties on providers of social media services

- (1) In this section “social media service” means a website or application that enables users to create and share content, to communicate publicly and privately with other users, and to participate in social networking.

After Clause 95 - continued

- (2) Social media services have a general duty to respond to reports of material shared or communicated via their website or application (“the content”) that passes the “criminal test” set out in subsection (3).
- (3) The criminal test is whether the content would, if published by other means, or communicated in person, cause a criminal offence to be committed.
- (4) Social media services have a duty to provide a means for users to report content which, in the view of the user, meets the criminal test.
- (5) Social media services have a duty to remove content which demonstrably meets the criminal test within the prescribed period, and to inform the police.
- (6) The prescribed period must be set out in regulations made by the Secretary of State within 120 days of the commencement of this section.
- (7) Regulations under subsection (6) may prescribe different periods for different categories of social media services, to be determined by the number of users that service has at the time a report is made under the provisions of subsection (4).
- (8) Regulations made under this section must be made by statutory instrument, and may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

Clause 97

LORD LESTER OF HERNE HILL
LORD PANNICK
LORD INGLEWOOD

34 Page 100, line 25, at end insert –

“() sections (*The BBC Charter: timing*), (*The independence and funding of the BBC*) and (*The governance of the BBC*);”

LORD CLEMENT-JONES
LORD FOSTER OF BATH

35★ Page 100, line 35, at end insert –

“() section 30;”

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21 February 2017
