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GENERAL COMMITTEES

Public Bill Committee

INFRASTRUCTURE BILL [*LORDS*]

Tenth Sitting

Thursday 15 January 2015

(Morning)

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The Committee consisted of the following Members:

Chairs: †Mr Jim Hood, Sir Roger Gale

† Blackman-Woods, Roberta *(City of Durham)* (Lab)
† Browne, Mr Jeremy *(Taunton Deane)* (LD)
† Burden, Richard *(Birmingham, Northfield)* (Lab)
Burt, Alistair *(North East Bedfordshire)* (Con)
† Coffey, Dr Thérèse *(Suffolk Coastal)* (Con)
† Greatrex, Tom *(Rutherglen and Hamilton West)* (Lab/Co-op)
† Hayes, Mr John *(Minister of State, Department for Transport)*
† Heaton-Harris, Chris *(Daventry)* (Con)
† Jenrick, Robert *(Newark)* (Con)
† Jones, Graham *(Hyndburn)* (Lab)
† Kwarteng, Kwasi *(Spelthorne)* (Con)
† Miller, Andrew *(Ellesmere Port and Neston)* (Lab)
† Newmark, Mr Brooks *(Braintree)* (Con)
† Parish, Neil *(Tiverton and Honiton)* (Con)
† Raynsford, Mr Nick *(Greenwich and Woolwich)* (Lab)
† Ruane, Chris *(Vale of Clwyd)* (Lab)
† Rudd, Amber *(Parliamentary Under-Secretary of State for Energy and Climate Change)*
Shannon, Jim *(Strangford)* (DUP)
† Whitehead, Dr Alan *(Southampton, Test)* (Lab)
† Williams, Stephen *(Parliamentary Under-Secretary of State for Communities and Local Government)*
† Zahawi, Nadhim *(Stratford-on-Avon)* (Con)

David Slater, Marek Kubala, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 15 January 2015

(Morning)

[Mr Jim Hood *in the Chair*]

Infrastructure Bill [*Lords*]

New Clause 19

The electronic communications code

'(1) In the Telecommunications Act 1984 omit Schedule 2 (the telecommunications code).

(2) Before Schedule 4 to the Communications Act 2003 insert the Schedule 3A set out in Schedule (The electronic communications code) to this Act.

(3) Section 106 of the Communications Act 2003 (application of the electronic communications code) is amended as follows.

(4) In subsection (1) for "the code set out in Schedule 2 to the Telecommunications Act 1984 (c 12)." substitute "the code set out in Schedule 3A."

(5) Omit subsection (2).

(6) In subsection (4)(b) for "conduits" substitute "infrastructure"

(7) In subsection (5)(c) for "conduit system" in each place substitute "system of infrastructure".

(8) In subsection (6) for "16(3)" substitute "82(7)".

(9) Omit subsection (7).

(10) Schedule (The electronic communications code: consequential amendments) has effect.

(11) The Secretary of State may by regulations make consequential provision in connection with any provision made by or under this section or Schedule (The electronic communications code) or (The electronic communications code: consequential amendments).

(12) Regulations under subsection (11) may amend, repeal, revoke or otherwise modify the application of any enactment (but, in the case of primary legislation, only if the primary legislation was passed or made before the end of the Session in which this Act is passed).

(13) The Secretary of State may by regulations amend the electronic communications code set out in Schedule 3A to the Communications Act 2003 for the purposes of ensuring that the provisions of the code are consistent with the law of Scotland or Northern Ireland.

(14) In this section—

"enactment" includes—

(a) an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978,

(b) an enactment comprised in, or in an instrument made under, a Measure or Act of the National Assembly for Wales,

(c) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and

(d) an enactment comprised in, or in an instrument made under, Northern Ireland legislation;

"primary legislation" means—

(a) an Act of Parliament,

(b) a Measure or Act of the National Assembly for Wales,

(c) an Act of the Scottish Parliament, or

(d) Northern Ireland legislation.'—*(Mr Hayes.)*

This omits the telecommunications code which makes provision about the manner in which electronic communications infrastructure can be installed and maintained to enable its replacement with a substantially revised version to be known as the electronic communications code.

Brought up, and read the First time.

11.30 am

The Minister of State, Department for Transport (Mr John Hayes): I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss the following:

Government new schedule 2—*The electronic communications code.*

Government new schedule 3—*The electronic communications code: consequential amendments.*

Government amendments 71 to 76.

Mr Hayes: This group of amendments reforms the electronic communications code, the legal code that regulates the interaction of electronic communication operators, mobile network operators and landowners.

If, Mr Hood, you had had the pleasure of visiting me in my constituency and coming to my home in Moulton, Lincolnshire, you might have had the enormous pleasure of seeing me standing on a chair in my conservatory. I would not have been doing so for your edification or entertainment, but by necessity, for it is only by standing on a chair in my conservatory that I can make and receive mobile telephone calls. That circumstance is shared by many of my constituents, and it leads to great inconvenience.

Not for a moment would I want anyone in Committee to think that I was a slave to that modern god of convenience. Most of the things that I have done that have been most worthwhile, enlightening and lovely have been immensely inconvenient. One thinks of falling in love and having children—both inconvenient. None the less, the inconvenience of inadequate mobile phone coverage does damage to the well-being of countless of my constituents and to the businesses on which they rely for their employment. That is true not only in my constituency, but in large parts of our kingdom. In many places, it is hard to receive or make a mobile phone call. In the modern age, that is simply not acceptable.

For that reason, there has been considerable consensus. As the Committee knows, I like to conduct my ministerial affairs without unnecessary contumely or discord; and we can do so in respect of the reform of the code that governs such matters, for no less a person than the shadow Secretary of State for Culture, Media and Sport, the right hon. and learned Member for Camberwell and Peckham (Ms Harman), has said:

"The Law Commission found the Electronic Communications Code to be complex and outdated and took the view that it was making the rollout of electronic communications more difficult."

She continued:

"As long ago as February 2013, it recommended amendments to the Code strike a better balance between code operators and landowners. This needs to be acted on."

Burke said:

"All government, indeed every human benefit and enjoyment, every virtue, and every prudent act, is founded on compromise and barter."

The amendments we are making to the code are the reasonable balance sought by the Opposition between the interests of mobile phone operators and the landowners on whose land they must put their masts to get the better coverage that I believe is necessary.

These days, electronic communications form a vital part of our societal well-being and our economic health. It is vital that the law regulating the manner in which the supporting infrastructure is maintained and extended is clear and effective, yet it may surprise some to know that we are relying on a code that was part of the Telecommunications Act 1984, when mobile communications were in a very different place from the one they occupy now in national life. The need for change is certain and long overdue. The '84 code, which I have available for the sight of Members and am happy to circulate, is clearly no longer fit for purpose.

The current lack of clarity, given that the code has not been substantively amended since 1984, has led to countless complaints from all kinds of sources and a demand for action. To that end, the Law Commission looked at matters, and its February 2013 report suggested a wholesale rewrite of the provisions designed to improve procedures and the clarity of the drafting. The changes before the Committee are designed to implement substantially the Law Commission's report.

The revision of the code forms part of a series of Government measures that seek to build on this country's position as a leader in communications infrastructure. The existing code extends throughout the entire United Kingdom, and the intention is that the revised code will be similarly applicable. We will work with the devolved Administrations to ensure that the revised code works in each location, particularly in relation to issues such as land law and tribunals. We will consult the Northern Ireland and Scottish Governments before implementing any reforms.

The revised code will not apply retrospectively or to existing agreements. It comprises 17 parts, which can be found in new schedule 2. Let me take the Committee through the core elements of the revision. Part 1 deals with the key concepts that are central to the functioning of the code. Paragraph 3 of new schedule 2 defines code rights, the rights that enable operators to install, maintain and operate electronic communications networks.

The code works on the basis of regulating consensual relationships between site providers and operators. Part 2 of the code sets out how code rights work in practice, including how they are conferred, whom they can bind and what code agreements need to look like. Operators do not automatically benefit from all code rights; each right needs to be agreed or imposed by the court.

The industry needs a legal framework to underpin it, specifically one that meets the demands placed on it by ever-changing technology and consumer expectations. In response to that, part 3 of the code centres around two concepts, which were the central changes at the heart of the Law Commission's report. They are the changes that I described earlier as being overdue and that were sought by consumers and the mobile industry—the assignment of code rights and the upgrading and sharing of apparatus.

Upgrading apparatus is crucial to ensure the sustainability of networks and to keep pace with technological developments and consumer demands. In addition, allowing operators to share apparatus enables consolidation, thereby reducing each operator's apparatus footprint.

Andrew Miller (Ellesmere Port and Neston) (Lab): I can see the definition given at the start of the code:

"In this code 'operator' means…where this code is applied in any person's case by a direction under section 106"

and so on. Will the Minister be kind enough to help the Committee by listing who he believes will be covered by that definition and how that will happen in law?

Mr Hayes: Yes. The hon. Gentleman will understand that the principal beneficiaries are those who provide the mobile phone network that we all enjoy—the mobile phone operators whose infrastructure apparatus is necessary to afford the coverage that I described earlier as being beneficial to both businesses and individuals. I am happy to deal with the specifics of his question during the course of my speech and to try to give him some indication of the full range of possible beneficiaries of the changes.

To return to my point, the consolidation of apparatus has value because it reduces cost and allows for the more straightforward extension of the technology necessary to deliver wider coverage. Due to the wide range of possibilities and associated implications, it would be difficult to have an automatic right to upgrade and share apparatus in all circumstances. Instead, individual requirements can be negotiated with site providers or granted by the court.

There are cases, however, in which making small upgrades or sharing can have a significant positive effect on network provision. The revised code provides an automatic right to upgrade or share under certain conditions as long as that places no additional burden on the site provider. Code operators will still be able to pay for additional rights or apply to the courts to impose them. Generally speaking, such matters are agreed between operators, but it is important that the code sets the context for those kinds of agreements, backed up by statute.

Operators are also subject to mergers, acquisitions and other corporate developments affecting their circumstances that complicate the issue of sharing apparatus. The current code is not able to deal effectively with those situations, whereas the revised code will let operators assign code rights to another operator in such circumstances, effectively allowing the second operator to stand in the shoes of the first. Doing so will present no additional burden to site providers, as there will be no practical change in the existing relationship, agreement or responsibilities. The change reflects the fact that this is a dynamic marketplace in which the ownership of organisations or the relationships between them may change. The revised code essentially updates the circumstances in which, in the light of such changes, technology can in effect be shared.

Chris Ruane (Vale of Clwyd) (Lab): What powers are in place to encourage, force or cajole private sector mobile phone companies to provide infrastructure when it is economically unviable to do so? Who has the map of coverage of which operators are operating in an area? What are the actual mechanics of forcing, cajoling or encouraging providers to provide infrastructure in economically unviable circumstances?

Mr Hayes: The hon. Gentleman will be aware that that has been done by voluntary agreements. The mission is to get as much of the country covered as possible by seeking a commitment from operators as a group to widen coverage, as the Secretary of State for Culture, Media and Sport has done. Estimates of the character of coverage are not a perfect science, because of the complexities caused by the range of different operators with different apparatus that I described earlier. But the objective is to get much greater coverage than we have now—the figure of 90% has been used with regard to the voluntary arrangements, as I am sure the hon. Gentleman will know—by a combination of the services offered by a range of operators.

The ambition is to get as much coverage as we can, and the working figure of 90% underpins the voluntary agreement that I described. That will depend on putting in place the statutory changes that will allow the roll-out to happen. The bar to extending coverage has in part been the inappropriate character of the existing arrangements—the outdated character of the code makes it harder to put the new apparatus into place, which makes it harder to get the coverage that the hon. Gentleman describes.

Chris Ruane: What role can MPs play in the communities in their constituencies on this issue? Does the Department hold maps of constituencies with locations of mobile masts stating which operators emit signals from those masts? What role should we be playing in accessing details of the percentage of coverage or the blackspots within our constituencies? Should we be writing to the Minister to force the companies to cover those black holes? Should we write directly to the companies, or to Ofcom? What is the plan of attack for a Member who wants to be a good constituency MP and ensure that his constituents have access to this modern means of communication?

Mr Hayes: The hon. Gentleman is a seasoned parliamentarian. Far be it from me to lecture him on ways in which he can highlight his constituents' concerns using his considerable authority as a Member of Parliament.

11.45 am

Chris Ruane: Will the Minister give way?

Mr Hayes: No, the hon. Gentleman would not want to challenge that suggestion, because after all, it is offered with respect for and experience of his performance in this House. Just before he comes back in, I make three suggestions to him. First, it is absolutely fair to say that these matters can be raised with Government and with Ministers in the House of Commons. He is right to say that where he feels that his constituency is at a disadvantage through inadequate communications, whether those are by mobile telephone or any other means, he can make that case to Ministers.

Secondly, the hon. Gentleman is also right that he should work with local mobile operators in his constituency—I am sure that he has—to encourage them to extend their provision. At the moment, 96% of premises in Britain have some kind of mobile coverage. The problem is that there are places, largely in remote rural areas, that have become known as "not-spots"—standing on my chair in my conservatory offers some kind of mobile coverage, so I am not a not-spot—where there is almost no coverage. If the hon. Gentleman has not-spots in his constituency, he is right to draw them to the attention of mobile phone operators and Ministers, and he has done that today.

My final suggestion—this is the third, for those who are following closely—is that the hon. Gentleman should support the new clause, new schedules and amendments. They are in line with the Law Commission report and respond to the call from the Opposition for the code to be updated. They will have a dramatic catalysing effect on the interests he articulated so diligently and eloquently this morning.

Chris Ruane: I thank the Minister for his kind comments. Indeed, I have campaigned on this issue in my constituency. In the coastal area, we have 4G and state-of-the-art connectivity. In the rural area around Denbigh, we do not. Whether a business succeeds or fails depends on connectivity. If they cannot operate PayPal and other modern means of paying for goods and services—I am thinking in particular of the Llindir Inn in Henllan in my constituency, which is having great difficulty with connectivity—it disadvantages our constituents. I ask again: what help can the Department give to individual MPs, such as a map showing what is available in their constituencies, so that we can help to fix the problem?

Mr Hayes: The hon. Gentleman will know that Ofcom publishes maps broken down to county level. Ofcom does that work on identifying coverage, which is why I know that a little more than 96% of the country is covered by some sort of mobile operation. Those maps are available to him, but we might go further than that.

Andrew Miller: Will the Minister give way?

Mr Hayes: Let me go further, and then I might go even further following the hon. Gentleman's intervention. In fact I might go even further as a result of the overtures from the hon. Member for Vale of Clwyd. On the county-based maps that Ofcom produces, I wonder whether we could look at breaking them down to constituency level. As he said, when making representations it would be most useful to have a view of the villages and towns in one's constituency that do not have coverage. Some of the not-spots in my constituency are specific to a particular town. When I travel to Long Sutton, which I regularly do to represent the interests of my constituents there, I struggle to get mobile telephone coverage. When I drive to the next town, coverage suddenly becomes better. I am sure that the hon. Gentleman will have similar examples. I will ask Ofcom, following today's scrutiny, to look at breaking the maps down still further to constituency level, which will help Members of Parliament to make the representations that he described.

Andrew Miller: Ofcom does, as the Minister says, post the stakeholders' mobile base station database on its website. That website states:

"Ofcom makes no corrections to the data supplied by operators."

It also says that the current data set is out of date. The last Sitefinder update was done in 2012. That is operated by Ofcom on behalf of the Government. Will the Minister get his neighbouring Department to get its finger out and get the data up to date?

Mr Hayes: Yes. That is a perfectly reasonable request. It is difficult because, as the hon. Gentleman says, these are highly dynamic matters. New phone operators are coming on stream, new masts are being erected. We hope that dynamism, as I said earlier, will be catalysed by the improvements to the code that we seek in the Bill. None the less, a more regular analysis is necessary.

I do not doubt that the hon. Gentleman has done his work, but I will double check the facts. It is appropriate for us to consider how to update that information. I will look at the data set and see how it can be updated. In fact, I will go even further than that.

Dr Thérèse Coffey (Suffolk Coastal) (Con): The Minister is being over-generous.

Mr Hayes: No, I am in that kind of mood today. Before the Bill completes its passage through the House, I will come back to the hon. Member for Ellesmere Port and Neston with some firm information about how we can update the information, because it is appropriate to do so.

Mr Brooks Newmark (Braintree) (Con): I am trying to be relevant, following that highly relevant question. It would be helpful to have a bit more granularity. I represent a large rural area, and many villages have areas where there is good mobile reception. However, I can stand in the middle of my house and get no reception at all, whereas if I stand outside my back or front door I seem to be able to get reception. It would be useful to call them not blackspots but perhaps brownspots, where there is mixed reception on a more granular level on a village-by-village basis.

Mr Hayes: That is the point that I was making, as was the hon. Member for Vale of Clwyd who raised the matter initially. The variability of coverage is particular and needs to be broken down at a level that is meaningful for us to be able to make proper representations to Government and the operators. I am always at pains to ensure that Members of this House have as much useful information as possible.

Chris Heaton-Harris (Daventry) (Con): I want to point out that I think all the mobile operators have very granular maps of coverage on their own websites. They are so granular that the blackspot that my own house in under is off the map in a nice white area not shaded in at all. That information is easy to find on the operators' own websites.

Mr Hayes: Yes, that is true, too. It seems from the few interventions that we have had so far that there may be a particular problem with houses of Members of Parliament. I do not know whether that is coincidental. I would not for a moment want to add to the paranoia that sometimes affects elected Members. Certainly, the granularity described by my hon. Friends the Members for Braintree and for Daventry should allow us, when we do the more detailed analysis I have committed to today, to pick out the homes of every single Member of Parliament to see if a pattern emerges. Indeed, an unhappy pattern may be the product of that further work.

As I said earlier, for those who have been following my exciting discourse closely, I am coming to part 4 of the code. I think I have dealt with part 3, which, to reiterate, is underpinned by the consensual relationships that are in the first instance the means by which we guarantee coverage. Part 4 focuses on when that agreement between parties cannot be reached and allows courts to impose an agreement, including by granting interim or temporary land access in order to speed up the roll-out of networks.

In order for an agreement to be imposed under part 4, it must pass a two-stage test. That is an important change, so I want to deal with it comprehensively. The test requires that the site provider can be compensated in money and that the public benefit from placing apparatus on the land outweighs the harm to the site provider. It therefore strikes a balance—a balance of the Burkean kind that I described at the outset—between enabling the roll-out of networks and protecting the rights of site providers, who play a crucial role in making land available for the apparatus that underpins those networks.

Under the current code, unhelpful practices can occur when site providers charge operators above market rates for sites. There are those—they may include the shadow Minister; I do not want to anticipate his sagacious contribution to our affairs—who say that in such a case, we should apply the circumstances that currently prevail in respect of organisations such as National Grid, which obviously has to put apparatus on to land in order to guarantee energy coverage, or the water companies, which have to access land to pipe water to different locations. That was not the Law Commission's view. Although we think that there is a problem in this regard, we are determined to try to strike the balance that I set out between the interests of landowners and the interests of operators. We think that we have got that right, but I will wait to hear what the hon. Gentleman says.

To tackle the problem of when a voluntary arrangement cannot be reached, part 4 defines how the court should calculate the price that an operator pays a site provider for code rights. Market value will remain the valuation basis. However, the new code introduces two important disregards. The first prevents the inflation of price on the basis of site uniqueness. To explain that in a little more detail, I will go off the script that was prepared for me, because I do not like to stay on it; that is very tedious.

This is about what happens when an area is not adequately covered but covering it requires the erection of apparatus in a site with a particularity that marks it out—for example, a site where the landscape is particularly glorious or where the built environment is historic. The problem at the moment is that, with the looseness of the current code, although landowners are not quite able to charge what they like, as there is ultimately a redress to the court, they can charge immensely variable amounts. Even allowing for the current right of redress, rarely do operators successfully challenge that variability, even where they think it unfair. We are trying to create two disregards in those circumstances.

The second disregard ensures that the automatic rights to assign, upgrade and share are not included in any valuation by the site provider. That brings a degree of clarity to the issue of pricing and prevents the sort of ransom pricing that I described, albeit in rather gentle terms.

[Mr Hayes]

To be absolutely clear, market value will be assessed on the value of the land to the code operator as a site for communication apparatus rather on than the value of the land per se. It will not be about using land for some other purpose and valuing it accordingly—for example, grazing sheep or engaging in some other kind of commercial activity.

We have built in an assumption that more than one site is available to the operator, to prevent the possibility of a landowner with a unique site in a particular kind of area, as I described a few moments ago, seeking a ransom or profit share from the operator.

12 noon

To be clear, and moving away from what is printed in front of me, that is in the new code. In areas such as I described a few moments ago, where it is necessary to erect new apparatus to get coverage but the site has a particularity, rather than the landowner being able to say, "Well, there is no other place you can put this to get that coverage, so I can charge what I like", a notional second site will afford protection and give a reasonable assessment of market value.

The legal framework also needs to be flexible enough to remain relevant and useful for the roll-out of modern telecommunications infrastructure. Paragraph 24, in part 4 of proposed new schedule 3A, allows for further reforms to the basis of valuation should evidence prove that it is required. That power would be used only after a full public consultation and is subject to the affirmative resolution procedure. I say that to reassure the Committee.

Part 5 of the code deals with the termination and modification of code rights. It allows site providers to terminate code rights under certain circumstances, for example if the operator persistently delays payment. Although code rights and apparatus can be imposed on site providers under specified circumstances, the code ensures that operators and their apparatus can be removed from sites, including in cases where the operator persistently delays payment or if the site provider intends to redevelop the site. The revised code clearly sets out those processes and the protections available to site providers. I emphasise that that is a matter of balance. I am absolutely clear that landowners should not be put at an unreasonable disadvantage as a result of the code reforms. The code has to balance their interests with the interests of the mobile phone operators.

Part 6 of the code sets out the circumstances under which site providers can remove apparatus when code rights expire or if the courts order removal. Parts 7 to 9 deal with specific types of land on which operators have rights to install apparatus. Part 7, in particular, relates to how the code works on transport land—for example, railways and canals. Similarly, part 8 covers the conferral of rights on streets or roads. Part 9 focuses on the conferral and exercise of rights on tidal water and lands. The rights for those particular land types do not require agreement under part 2 because of the public nature, or other special nature, of that land.

Part 10 deals with those who are carrying out work for certain purposes on lands on which apparatus is sited, for example works related to transport systems. They are known as undertakers. It provides mechanisms for ensuring that any such works do not interfere with, or impair, operators' networks.

The following parts specify how the code can be used by, or impact upon, third parties. Networks depend in part on the cables and wires that pass above us. Part 11 details the provisions relating to overhead apparatus. Part 12 provides rights to object to certain apparatus, including setting out who is eligible to object. Depending on the apparatus or its location, that includes site providers and those with interest in the land or neighbouring land. Part 13 provides a right to lop trees or other vegetation. The final parts of the code return to the general regime—the parts that will be used in most cases.

Then there is the issue, in part 14, of the award of compensation. It can be awarded to a range of people who may be affected by the installation or modification of apparatus. There are some further formal parts of the code. Part 15 sets out how notices can be given under the code. Part 16 deals with provision for dispute resolution, which largely maintains the current arrangements and forums—the county courts, or the sheriff courts in Scotland. Paragraph 94 enables the jurisdiction for code disputes to be transferred to the lands chamber of the upper tribunal, the specialist expertise of which—including on land valuation matters—is considered particularly suited to dealing with them. Part 17 focuses on supplementary provisions, including the application of the code to the Crown.

New schedule 3 proposes several consequential amendments to ensure that the code aligns with existing and relevant legislation. Amendments 71 and 72 are technical and will amend clause 46 of the Bill, which makes provision about the procedure applying to the powers to make regulations amending legislation. They will ensure that any amendments made by regulation to primary legislation follow the affirmative resolution procedure. Amendments 73, 74, 75 and 76 make consequential amendments to the Bill on extent and commencement and to the long title, to allow for the introduction of the electronic communications code, which I know will be of particular interest to the hon. Member for Southampton, Test, who has raised that in Committee.

Finally—I sense that the Committee will be nervous about my drawing my remarks to a conclusion, lest I might not quickly return to my feet—let me emphasise once again that ensuring effective broadband and mobile coverage across the UK is critical socially and economically. It will make a big difference to rural areas such as the one I represent and areas represented by Members across the Committee. I look to Members representing seats in Nottinghamshire, Leicestershire and other places; Devon springs to mind. I know that they will have received countless representations from businesses and constituents about the inadequacy of current mobile coverage and its effect on their lives and livelihoods.

The code provides a modern and rigorous legal foundation for the roll-out of apparatus that is essential to obtain that wider coverage and the positive multiplier effects of this technology. I said at the outset that I was not a slave to convenience, and neither am I a blind adherent to the view that technology is always a necessary good. Nevertheless, it seems to me that this change's time has come. I invite Opposition Members to look beyond the narrow confines of, dare I say it, cheap politics to the wider national interest.

I know almost every member of the Committee and I know that they have the promotion of the national interest and the protection and advancement of the

common good at the heart of all they do. I know them all well enough to be sure of that. While I freely acknowledge, in advance of any further contributions, that it would have been better had these matters been introduced earlier, I think that we are doing the right thing for the right reasons. As soon as this matter was brought to my attention, I was at pains to ensure that the new clause and amendments were tabled, and I know that there has been some time for Members across the Committee to consider them. I will write to the Committee before Report about any matters that arise from today's debate. I also intend to hold a further meeting, open to all members of the Committee and all Members of the House, as I have previously done, to allow them to put technical questions to officials across a range of Departments. I will do that next week and give notice of that meeting today.

I agree that, in ideal circumstances, this would have been considered by the other place before it came here and we would have had a chance to look at it in rather more detail. However, I hope that the extent of my explanation today and my willingness to provide further information on request is sufficient to persuade all members of the Committee that, given the necessity of amending this code, they should, with some enthusiasm, support the provisions that I have moved in this all too brief speech.

Richard Burden (Birmingham, Northfield) (Lab): I start by thanking the Minister for his explanation of new clause 19 and the 50 or so pages of schedules and amendments that accompany it. I must say that I was a little worried at the start of his explanation when one of the first things he did was invite you to his home, Mr Hood, to see him standing on a chair. I began to wonder where it was going. I was not sure if it was undue influence on the Chair, distinctly unparliamentary or what it was. It became clear that he was talking about his mobile phone coverage, ending with the memorable phrase, "I am not a not-spot." I am pleased to hear that.

He moved on to some interesting comments about analysing mobile phone coverage at the homes of MPs. That would be quite an interesting exercise. A serious point was raised by my hon. Friend the Member for Vale of Clwyd about the difficulty Members have in getting the kind of information they need to represent their constituents effectively. I welcome the Minister's comments, especially his response to my hon. Friend the Member for Ellesmere Port and Neston about ensuring that information available through public agencies is comprehensive and up to date. The Minister was helpful in saying that, if that information can be broken down by constituency, it would be beneficial. I welcome all those points.

The Minister is right that the aim of the changes is to update and reform the regime covering the roll-out of communications infrastructure, to ensure that it is fit for this century, not just the last couple of decades of the previous century. That is all well and good, but it is not something that occurred to people only as they were doing their Christmas shopping in 2014. The way the Government have tried to clot the new clause and all the schedules, running to nearly 60 pages, into the Bill after the eleventh hour, indicates that that is precisely what they want us to believe. Suddenly it was urgent to do this just before Christmas, to get those amendments written and out, and the new clause appeared only after we returned from the Christmas break.

I do not blame the Minister for that. He has had it dumped on him at the last minute by his colleagues in other Departments; he has done his best with it. I genuinely thank him for his courtesy in trying to do the best he can to preserve the integrity of this Committee and enable it to scrutinise the Bill. As soon as he was told in December that Ministers in the Department for Culture, Media and Sport intended to insert this entirely new provision into the Bill, he alerted me as the Opposition spokesperson so that I could alert the relevant Opposition team scrutinising DCMS.

As far as the Minister and I are concerned, since our Departments are not involved, we both felt that if the new clause and schedules and consequential amendments were as uncontentious as we were led to believe, despite the irregularity and last-minute nature of the Government's actions, we might be able to co-operate in the national interest. Mr Hood, it did not turn out like that.

As we know, amendments were not tabled until we got back after the Christmas recess. They ran to around 60 pages. All that was added to yet more clauses, now defined as infrastructure measures, that were never mentioned when the Bill was introduced in the other place. They were never mentioned on Second Reading in this place, and mentioned only once we were well into the Committee stage. As we now know, one measure even necessitated changing the long title of the Bill—the very thing that is meant to define what the Bill is about.

Now we have the new clause, new schedules and amendments related to electronic communications with just four hours to conclude consideration of what was already in the Bill. Let us remember that the Bill contains measures on matters that require major scrutiny, such as shale gas extraction, which we discussed in Committee last week and at the start of this week. We have had to cope with reports from which the Government had redacted key information that would have benefited our scrutiny of the Bill.

12.15 pm

We are required to deal with things which, in a sense, we were expecting—not necessarily the redaction of paragraphs from a report yet here we are, on the very last day of the Bill's consideration in Committee, and we are just starting to scrutinise 60 pages of new clause and amendments that we saw for the first time last week. They were tabled after all the other stages of the Bill and after we agreed programme motions for a Bill that did not bear a close relationship to the Bill we ended up discussing when we got to Committee. Frankly, that is not good enough.

As I say, the Minister has done his best. In just one week, he has met with me, with my colleagues and with Members across the House. I am pleased to say that he has facilitated a meeting with the Secretary of State at DCMS. The Minister takes his responsibilities very seriously and I pay tribute to him for that. However, the reality that we now face is this: although there is a consensus on the need for reform in this area, it has become abundantly clear in the past week that there is no confidence in the mobile phone industry or among the landowners who will be affected in the provisions

that have been tabled. The changes will involve uncosted financial commitments which Ministers expect a new Government to sign up to before they have the information we would all need to do so.

There are inconsistencies in the amendments, the new clause and the new schedules. With the best will in the world, we cannot give them the scrutiny they need in the time available. With 60 pages containing all those problems, there really has been no opportunity and there will have been no opportunity by the end of Committee stage for consideration and amendment of what the Government propose. That is why we did not table any amendments; there was no point. They would have provided a fig leaf or a veneer that scrutiny was somehow going on when it was not possible.

In a minute, I will outline some of the problems with the detail of the provisions. With the best will in the world, they will not have had the scrutiny they need by the time we get to the end of today. Despite being urged in business questions this morning to provide two days to debate the Bill on Report, the Government still, as far as we know, propose to provide just one. We will have one day to debate—let us remember—not just these provisions but shale gas extraction, various issues that my hon. Friend the Member for Rutherglen and Hamilton West has taken up in relation to the Department for Communities and Local Government, the big issue of Highways Agency reform and the road investment strategy, as well as the future of our road network.

In the light of that, the Bill will not have the scrutiny it needs. That is why I urge the Minister to think again. I ask him—this is the first time I have done so in relation to the Bill—not to force us to vote against the proposed measure but to do the right thing and withdraw the new clause and new schedules so that the code can get the proper scrutiny that it needs. It does not have to be in the Bill. Let us take the time to do what is needed and get it right. If he will not do that, the Opposition will oppose the new clause.

So what is wrong with what the Government are proposing today? On this side of the Committee, we have no problems with the aim of reforming the code. As the Minister said, it was enacted more than 30 years ago, in 1984. The electronic communications code sets out the rights to install and maintain apparatus on public and private land. That means that in 2015 it governs the infrastructure needed for networks which support broadband, mobile internet and telephone, cable television and landlines. Hon. Members know just how important that infrastructure is for our economy and society, and the Minister referred to that.

The electronic communications market is valued at around £35 billion in the UK. It is difficult to see how British business and our economy would function without that industry. Mobile phones are no longer a luxury; they have become a necessity and a utility. Some 95% of households use mobile phones and 16% have no voice landline.

The code governing the infrastructure that upholds the networks is essential. It provides the legal framework for when landowners and communications companies come into dispute, or cannot reach an agreement on the roll-out of the infrastructure that is needed. There is widespread consensus; I have not come across anybody who says that the code does not need to change. It is not fit for purpose in its current form. The courts and the people who work with it have said that it is complex and confusing. Operators and landowners have been calling for it to be reformed and simplified.

As the Minister said, the Law Commission reviewed the code in 2012, and published a set of recommendations to bring clarity and certainty to network providers and landowners. We agree that reform of the code is needed to enable those parties to reach agreements more easily, saving everyone time, effort and money. Reform is vital to support the effective roll-out of electronic communications and improve coverage. Far too many people are still locked on the wrong side of the digital divide. We have heard that some of those may be Members of Parliament, but we need to remember that the digital divide is still most commonly associated with poverty and deprivation. Mobile not-spots—areas of poor or no coverage—are still a major problem in rural and urban areas, and cause huge frustration for people trying to use their mobile phones for the internet, calls, texts and so on.

My right hon. and learned Friend the Member for Camberwell and Peckham (Ms Harman) has for some time been calling for action to reform the code and support the expansion of mobile telephony access. Sadly, a gulf remains between the intention to clarify and update the code, and the new clause that we are being asked to scrutinise. Over the past week my inbox has been filling with concerns from the affected parties—from operators and infrastructure providers, to landowners and land valuers—who are quite rightly angered about having a week not only to see these things themselves, but to contact members of the Committee. Members of the Committee then end up having just one day to sort through all the problems. It bears repeating: 60 pages of reforms to the code.

As many have pointed out, the Law Commission reviewed the code more than two years ago. So what happened when it reviewed it? We have had no official Government response. Indeed, we looked at the Law Commission's website yesterday, which said about that review:

"We await the Government's response to our recommendations."

The Law Commission said that yesterday. Members will know that the Government are meant to set out their response to Law Commission reviews every year. However, that has not happened in this case. The Government have stalled. They have delayed and they are now rushing through changes without giving—*[Interruption.]*

The Chair: Order. If the Whips want to have any discussions, could they please go into the corridor?

Richard Burden: The Government are now trying to rush through these changes without giving anyone adequate time to scrutinise them. We have had no public consultation to consider and no updated impact assessment on the revisions to the Bill. My colleagues shadowing the Department for Culture, Media and Sport, as well as the affected parties, have been poring over this text since it was published just before the deadline on Thursday 8 January.

With nearly two years to consider this, the Government could, if they had wanted to, have introduced these provisions to the Bill when it was first published in July of last year. I will come to what I think are the reasons

for this being so last minute in due course; suffice to say for now that if changes had been proposed in the initial draft of the Bill, people would have had adequate time to give them proper scrutiny. By "people", I mean those in the other place and in this place, as well as external stakeholders. Instead of that, we are trying to scrutinise those 60 pages on our last day in Committee.

The Country Land and Business Association has not minced its words. It has called this an "abuse" of the parliamentary process and said that the Government have failed to meet the Law Commission's recommendation to rewrite the code in plain English so that the public do not need to have recourse to a lawyer to work out what it says. I cannot imagine that peers in the other place will be pleased with that approach or the poorly drafted changes to legislation that have resulted from it.

I have some initial thoughts on why these reforms, as proposed, are not fit for purpose. The Government are now in the absurd position of proposing amendments that aim to clarify the code but could result in confusing it further. Although only one week has been allowed for scrutiny, all parties affected by the legislation to whom the Opposition have spoken state that it is poorly drafted. The House of Commons Library has said that the amendment is "extremely technical"—very diplomatic words, as ever, from the Library.

The full scope of the new clause is not clear. The media infrastructure company working with the Government to expand new mobile sites, Arqiva, has warned of the risk that the "ambiguity of the drafting" will lead to

"unintended consequences that will have a detrimental effect on the communications services to consumers."

I am not sure about the Minister, but that sounds rather familiar to me, because Arqiva is not the first organisation to say that kind of thing. In the case of Geo Networks Ltd *v.* The Bridgewater Canal Company Ltd, Mr Justice Lewison stated:

"The code is not one of Parliament's better drafting efforts. In my view it must rank as one of the least coherent and thought-through pieces of legislation on the statute book."

That poorly drafted code that the judge was talking about has lasted for 30 years. Its successor might end up lasting just as long. Members have a duty to get this right. We cannot just replace a code criticised for being poorly written, poorly drafted and confusing with another that is poorly written, poorly drafted and confusing. I will give a few examples of the confusion and uncertainty that the code could result in if the Government get their way.

12.30 pm

First, there is confusion over who, and what agreements, the reformed code will now apply to. The drafting is not clear about whether the code will apply to third-party infrastructure providers—those operating apparatus such as masts—and the agreements between them and mobile phone operators. That was one of the Law Commission's recommendations.

It is not clear whether the code applies to commercially negotiated agreements between mobile phone operators. In locations where it may not be economic for one operator to roll out its own mast, companies will reach agreements together. That is essential for expanding coverage. It is not clear whether the new code rights will be able to be contracted out either. The commercial trends of electronic communications infrastructure models are changing and network sharing is increasing, so we need clarity, not ambiguity, over who this applies to.

Secondly, we do not know whether the changes to the code will affect existing agreements. The Law Commission was clear that reform should not be retrospective, recommending that the revised code should not apply to existing agreements. The Minister said today that he does not believe that the new code will apply to existing agreements. I am pleased about that, but it is not clear from looking at the words on the page or from looking at the new clause and schedules. In just one week, everybody affected is saying, "This just is not clear."

Thirdly, and very importantly, the new clause that we are being asked to support fails to provide clarity on the issue of facilitating upgrades and site sharing. That is one of the key reasons for reform in the first place. DCMS has said its aim was to give greater automatic sharing rights to code operators because the ability to share infrastructure is essential for upgrading, expanding and delivering communications. Telecoms apparatus has to be updated to keep pace with rapid changes in technology.

Around 80% of 4G roll out will be delivered through upgrades, but the Mobile Operators Association has said that the provisions do not help to achieve that. It says that it will make it difficult to share infrastructure, stating that paragraph 16, which states that changes to apparatus should not have an adverse impact on appearance, will in practice prohibit sharing and upgrading, which often requires operators to use different cabinets and antennas. It states that preventing sharing could create inconvenience, and the amendment will lead to confusion and increased litigation from landowner objections. I do not know whether the Mobile Operators Association is right about that; I do not think anybody knows if it is totally right. We should not be left now on a wing and a prayer to hope that it is not right.

I could go on and on with questions. Just some of the additional considerations and concerns that have been raised include what the new forum for dispute resolution will be. All stakeholders state that that requires reform. The Law Commission recommended

"that the revised Code should make provision for the Lands Chamber of the Upper Tribunal to adjudicate Code disputes".

However, it is not clear what the new forum will be or whether the Lands Chamber will be used as was anticipated.

There are questions about whether the revised code will mean that electronic communications apparatus passes to landowners because it is attached to land. That is not clear. There are concerns about the effect of the code on the way that market value is assessed. The Minister said that it sorts out that issue. I am pleased that he is confident about that, because nobody else is. It seems—we have not had the time to look at it properly—that it will change the Law Commission proposal to an assessment on the basis of value for the operator, which would be a major and significant change to current costs.

The Minister cannot dismiss the many concerns about the provisions, which pertain to issues such as which parties the code rights will cover and how disputes will be resolved. The problems with the new clause are not just minor and technical; it is complex and ambiguous and it clearly needs to be changed substantially. The

Opposition have not had time to consult the affected stakeholders and to draft and table effective amendments to make that change. I therefore request—on behalf of the Opposition, the parties that will be affected by the code and members of the public who want communications infrastructure to be rolled out effectively—that the Minister does the right thing and withdraws the new clause. We want the Government to address those concerns, revise the code and introduce so it can be given proper legislative scrutiny. I hope the Minister listens to our calls.

As I said, we think we know why the Government introduced the measure so quickly and produced such a problematic, ambiguous and rushed new clause. The Department for Culture, Media and Sport has been looking at legislative options to improve coverage in partial not-spots for some time. After facing opposition on proposals for national roaming, just before Christmas the Secretary of State for Culture, Media and Sport, the right hon. Member for Bromsgrove (Sajid Javid) announced a deal with mobile phone operators on future coverage obligations, which guarantees £5 billion of investment in mobile infrastructure by 2017, provides guaranteed voice and text coverage from each operator across 90% of the UK by 2017 and will be legally binding and enforceable by Ofcom.

We understand that the Government will provide no cash payments. However, they agreed to inform Ofcom of that deal in their ongoing work to revise annual licence fees—in other words, the subscription fee that mobile networks pay to the Government. The widespread view is that the revision would have seen the fees increase in the next Parliament. The deal will enable the Government's freehold buildings to be used as sites for mobile infrastructure. Finally, it will reform the code, which the Mobile Operators Association said

"is the single most important regulatory reform to improve mobile coverage."

So there we have it. Although there is widespread support for ECC reform, the new clause is being pushed through Parliament in this way as part of a Government deal with the mobile phone operators negotiated behind closed doors. In addition to the ambiguity in the new clause and the schedules that accompany it, there is little clarity about the implications of that deal.

The anticipated increase in licence fees, which, as we heard, is expected to raise an additional £1 billion in revenue for the Treasury from 2015 to 2020, is unlikely to happen as a result of the deal. We have seen no business case, impact assessment or cost-benefit analysis of it. There are concerns that it may cause problems if it constitutes state aid under EU law, which the Government have failed to address. It is completely unclear whether the decrease in the number of partial not-spots, with the potential loss of up to £1 billion in revenue, constitutes a good deal for the public. My hon. Friend the Member for Rhondda (Chris Bryant) has been explicit, as mentioned in today's newspapers, that the Opposition are simply not willing to sign off on one element of uncosted proposals that could result in substantial loss to the taxpayer.

Of course, it might not come to that now. It seems that this new clause is so poorly drafted that it threatens to put the Government's entire deal at risk anyway, whatever we do. The mobile network operators have said:

"Neither new clause 19 nor new schedule 2 as currently drafted deliver the reforms necessary to extend coverage in line with the 17 December agreement."

Whatever we do today, it is not clear whether that deal is still on or has ceased to be a deal. What a mess, Mr Hood. And what a clear example of why the Government should not have tried to rush through such an important deal, and should not be rushing such important legislative change.

In conclusion, in the light of the substantial and wide-ranging concerns raised about the new clause, as well as the schedules that accompany it, and the serious implications it could have for further confusing the regulations governing communications infrastructure, if the Government do not backtrack, the Opposition will vote against it. I repeat that Labour absolutely supports the expansion of mobile phone access and the reform of this outdated code. What we do not support is ineffective and rushed reform that will increase ambiguity, confusion and litigation. We need to get this right. If our Committee approves the new clause today, we will be doing a disservice to the bodies that rely on this legislation to roll out communications infrastructure effectively, to those who own the land on which it is placed and to the public who rely on that infrastructure for their everyday lives.

So, let us get this right. Get it out of the Bill. Do it properly. We have known this has been coming for years. If this Government will not do it properly, I am confident that the next Government, after May, will get this right, get the infrastructure in place and get the right deal for the taxpayer.

Chris Heaton-Harris: It is a pleasure to serve under your chairmanship again, Mr Hood. Alas, it seems this will be our last day together. I want to say thank you for the courteous way in which you have chaired our proceedings. As I have been nice to you, if I range out of order now, you might be slightly nicer to me, though you seem a very strict Chair.

I generally welcome the provisions we are discussing. As the hon. Member for Birmingham, Northfield said, these changes have been needed for some time. The existing code is old and essentially out of date. I obviously want to see much better provision of mobile telephony and broadband services across my constituency. I find the general direction or push of this code most welcome.

I have also had many issues in the past. I was a Member of the European Parliament for 10 years and have seen how these big, chunky pieces of code-changing and technical legislation take so much time to get to the point of being signed off and delivered by Government and industry, so that people can get the better service provision that they expect. I therefore do not have quite as much of an issue with the speed of the process we are having. I have always wondered why it takes Government so long to bring things forward.

However, like the hon. Gentleman, I was surprised at what happened with the 60-odd pages just before Christmas. I received the letter from the Minister and the attachment. I always look forward to letters from the Minister: they tend to be slightly shorter than his speeches—it is not that I do not like his speeches, but his letters get to the point a bit quicker. I was slightly surprised to see that the attachment contained so much.

12.45 am

As an interested observer of these industries and how they are regulated, both in my European Parliament days and since I have been in this place, I am aware that some of the language used in the code can be very confusing. I will have more to say about the pace of change, but I would appreciate—I do not think this is beyond the bounds of what can happen before we get to Report—a nice plain English guide to the code. DCLG has done that recently in other areas. It issued one for planning, for example, so that people can easily read a digestible plain English planning guide to the many changes that have happened over the past five years. It is not too much of an ask for Members of Parliament to have a plain English guide on Report to what the code actually does and how it is delivered.

Mr Hayes: I would like to say that that is a laudable suggestion and I will make sure it is acted on.

Chris Heaton-Harris: The Minister is always so quick to act. He is a gem among Ministers. Some would say he is a rough gem at times, but I believe he is a polished diamond—well fracked as well, or perhaps sandblasted.

The Opposition spokesman was slightly unkind. There has been a great deal of agreement in this Committee over many things, but I was taken by the statement that the Opposition are unwilling to sign off uncosted proposals; I have just been reading the uncosted proposals mooted by the Leader of the Opposition.

I took some umbrage when the right hon. Member for Birmingham, Northfield—no, hon. Gentleman—

Richard Burden: Thanks, anyway.

Chris Heaton-Harris: Perhaps one day he will be a right hon. He said that the Government dealt with mobile phone operators and negotiated behind closed doors. If it was the case that the code was negotiated with mobile operators behind closed doors, they would not be so concerned about how it would function for them, so I do not think that that was a fair statement. Also, there would not be so many concerned mobile phone operators paying attention to what goes on in this Committee today, so I think he was slightly over-egging the pudding; there is some concern.

As the hon. Gentleman will know, because he will have received the same e-mails that I have, some operators have a particular concern about the drafting of the code in relation to third-party infrastructure providers. The code does not apply to such providers in their relationships with landowners. However, it does apply to the sites that they provide to mobile network operators. So there is a risk to the mobile operators who are being forced to switch off large parts of their networks during any contractual dispute and will be in a weak position in negotiations with other parties as a result. This particular provision may prevent them from upgrading and sharing sites easily with third-party infrastructure providers.

The code suggests that infrastructure does not form part of land and is therefore not subject to the code. Many mobile operators have relationships with third-party providers based on the rights in the current code, so there is a great deal of concern among mobile operators about this sizeable change to the code. Such issues need to be addressed in Committee today or next week so that when we get to Report stage we can have a plain English argument about a code that is in plain English and everybody knows exactly where they stand. It would help the mobile operators, landowners and third-party infrastructure providers, and they could stand down their QCs and legal teams, because they would completely understand what is in the code, the benefits of it to all our constituents and what it is meant to do. Then the issues that the Opposition spokesman and I and other speakers have rightly outlined will have been addressed.

Mr Hayes: Again, my hon. Friend makes an excellent point. I said in my opening remarks that I would write to the Committee and other Members of the House about a range of matters, including that one. I will meet Members of the House next week, again making officials available to deal with some of the queries he described. I will also ensure that, through DCMS, we write to mobile operators, dealing with any queries of the kind he describes, before Report.

Chris Heaton-Harris: I thank the Minister for the way he is conducting himself and the pledges he has given in Committee. If, on Report, a whole host of the wrinkles in the code are ironed out, we might well be able to deliver a code that is very much fit for purpose, does the job that everybody expects it to, is welcomed by industry and third-party infrastructure providers, stands down the lawyers so that the legal profession does not make quite so much money out of all concerned, and makes quite a big change in a relatively short period of time.

Richard Burden: The hon. Gentleman is making a thoughtful speech and I follow what he is saying. May I put it to him that we face some pretty big logistical problems here? I also welcome the Minister's offer to meet again to try to run through things, but if Report is going to be for one day on 26 January, all amendments will have to be tabled by next Wednesday. Let us say that next Friday we work out that a big change needs to be made to the code. We will be going headlong into Report and nobody will be able to do anything about it. Is it not better to take a step back and do it properly?

Chris Heaton-Harris: I understand what the hon. Gentleman and the Opposition have been saying. I am a Back-Bench Member and I am not going to make any pledges or changes. I want to see how far we can get this measure right in the limited time that we have available.

I know, and we have heard, that the Minister and the various Departments have the will to get this right. While there are a number of issues, and I have only briefly described a couple of them, the will is there so let us see where we are next Wednesday before we get too excited about process, knives, programme motions and how long a Report day should be. I completely understand the hon. Gentleman's concerns about timing, but we are pushing at an open door at the Ministry and I will be interested to see how far we get today and by Wednesday next week.

Andrew Miller: The new clause and new schedule deal with issues that will have a profound impact on each and every one of our constituencies. We started this discussion with an exchange between my hon. Friend

[Andrew Miller]

the Member for Vale of Clwyd and the Minister about my hon. Friend's constituency. I intervened and pointed out that Ofcom's website provides everyone, on a grid basis, with details of where every single mobile phone mast is. Someone can look at an Ordnance Survey map and pin it down just by the grid reference. Great.

Unfortunately, the website has not been updated for two years. That is the fault not of the operators or of Ofcom but of DCMS. The task of providing the data and, if it is not getting the information, chasing the operators accordingly, lies firmly with the Department. That presents us with a basic problem. All the way through this discussion, we need to focus on the inaction of DCMS, not the quick-to-act Minister sitting in the hot seat today. I agree that he is trying his best in a rather difficult situation.

I asked the Minister at one stage to define who the operators were. New schedule 2 says that the "operator" is a person as described in section 106 of the Communications Act 2003. The Minister ought to be aware—I am sure that he is, and his officials are certainly aware—that the definition of operator here is not a straightforward case of saying, "Here are the four telecom providers: Vodafone, EE and so on." It also includes Airwave and Network Rail. Of course, it excludes some who were in existence merely a few months ago, such as Orange, which is now incorporated into the EE side. That information is not publicly available because, as I pointed out, the website is two years—actually, close to three years out of date, having last been updated in May 2012.

There is a real problem in defining who the operators are. What discussions has DCMS had with the Department for Transport in respect of Network Rail, or with the Home Office in respect of Airwave? These are very serious issues.

Mr Hayes: As the hon. Gentleman mentioned various wholesale infrastructure providers, it might be worth clarifying whether they are code operators. As he will know, the Law Commission considered this issue. It was anxious that such agencies should, for the purposes of the new code, be defined as operators. They are, indeed, defined as such in the new code. The new arrangements are clearer on that than the existing ones and are entirely in line with the Law Commission's recommendations.

Andrew Miller: That may well be the case, but my specific question to the Minister is this. Has this draft code been discussed with the Home Office or the Department for Transport in terms of their responsibilities? I suspect that the answer is no because of the speed of processing here.

Just before Christmas, I contributed to an article in an online magazine, www.cable.co.uk. On 30 December, in an article headed, "'Common sense' approach needed to eradicate mobile not-spots", I set out the case in a few lines for a "knocking of heads together" to resolve the issue of mobile not-spots, and for some clarity of thinking. That was just after the £5 billion deal to which my hon. Friend the Member for Birmingham, Northfield referred. It is quite clear that, at that time, the Government had been discussing the much-needed revisions to the code. However, that code was not made available to us in a timely fashion. As a consequence, we find ourselves in some real difficulty. I hope, during the course of my remarks, to set out some of those difficulties and explain why I regard this as extremely dangerous, especially for those of us who represent areas that include some beautiful spots, where there are still concerns about siting, and difficulties with landowners and local authorities about consents and access arrangements. I would like to point out some of those difficulties.

1 pm

The hon. Member for Daventry made some thoughtful remarks. There was only one sentence on which I disagree with him, and he knows which. As he mentioned, the issue has been raised by a number of the operators, both principal and secondary. One is the Wireless Infrastructure Group, which e-mailed us all yesterday. It was yesterday because it has only just seen the proposals. It is a principal player in the discussion and yet it makes the points also raised by my hon. Friend the Member for Birmingham, Northfield and the hon. Member for Daventry. It says:

> "However, whilst the new Code recognises the role of wholesale providers in the sector and establishes them as Code Operators, the drafting leaves unnecessary uncertainty. We are particularly concerned that an unintended consequence of these complex amendments on a complex sector could be to inadvertently interfere in the vital commercial relationships between Code Operators. The purpose of the Code is to govern the rights of Code Operators in their dealings with landowners yet the lack of clarity in the text could lead to confusion in the relationship between Code Operators including between wholesalers and network operators. This could discourage wholesale infrastructure providers from bringing further investment to the sector."

That cannot be good for our constituencies; that will not solve the Minister's problem of standing on his chair. The WIG e-mail continues:

> "We would urge the Committee to seek clarity from the government regarding the intention of these amendments in so far as they will affect wholesale providers."

Similarly, the Mobile Operators Association has made some thoughtful and telling observations in an e-mail to us. I shall not recite those because my hon. Friend the Member for Birmingham, Northfield covered a significant part of them. It is worth pointing out that the way the code is drafted creates a built-in incentive against mast sharing. It seems a little too technology-specific. The way I read it—I have taken advice from people who know more than I do—it seems to include only one type of sharing box, the one that is called a MORAN, Multi-Operator Radio Access Network.

Having technology-specific legislation is not good practice in this field. We need to create codes of practice that enable the advancement of technology, so we need to cover everything we possibly can. It will create a slowdown in the roll-out of internet access in our constituencies, especially in rural areas where 4G and potentially 5G will be hugely important in filling some of the gaps.

Those of us who represent areas including hard-to-reach spots would be doing a disservice to our constituents if we let this code go through unchallenged. We do need to get some clear answers to these questions. For the reasons pointed out by my hon. Friend the Member for Birmingham, Northfield in his exchange with the hon. Member for Daventry, we do not have enough time to

do that. Like the Minister and my hon. Friend, I want to see this code developed. That is why I said we needed to knock heads together and get it done.

The problem is that the Department for Culture, Media and Sport has sat in its bunker and not dealt with the key players. The mobile operators did not see the finalised code until it was too late to comment or encourage Members to table any amendments. Had that been done just a few days before, we would not have found ourselves in this position. We would be debating amendments that the Government might have found themselves tabling.

As a consequence, there is only one choice in front of us; and that is firmly to reject this code. If we accept the new clause, we are going to damage the roll-out of these important technologies in our constituencies—something that not one of us wants to do—and I lay a bet that the Minister will still be standing on his chair in a year's time, cursing the time when he had to carry the can for DCMS in this Committee and justify the code.

It is not going to work in its current form. It will be a lawyer's paradise, as the hon. Member for Daventry hinted. I urge members of the Committee to reject it firmly.

Ordered, That further consideration be now adjourned. *—(Dr Coffey.)*

1.7 pm

Adjourned till this day at Two o'clock.