PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

INFRASTRUCTURE BILL [*LORDS*]

Eleventh Sitting

Thursday 15 January 2015

(Afternoon)

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New clauses considered.
New schedules considered.
Clauses 46 to 49 agreed to, with amendments.
Title amended.
Bill, as amended, to be reported.
Written evidence reported to the House.

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED

£6·00

PBC (Bill 124) 2014 - 2015

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Monday 19 January 2015

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

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

(Afternoon)

[Sir Roger Gale *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, read the First time, and Question proposed (this day), That the clause be read a Second time.

2 pm

Question again proposed.

The Chair: I remind the Committee that with this we are considering:

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

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

Government amendments 71 to 76.

Mr Brooks Newmark (Braintree) (Con): I want to say a few words about this important new clause, which I strongly support. I was so moved by the comments of the hon. Member for Birmingham, Northfield on the drafting of what is before us that I felt I had to speak. We are extremely well represented by having such an articulate Minister as my right hon. Friend the Member for South Holland and The Deepings, who has shown not only that he is on top of his brief and understands the issues facing many of our constituents, but that he has been listening to Opposition Members in particular.

The bottom line is that there is a thorny issue of not-spots in all our constituencies, particularly in rural areas. In my constituency, which has more than 50 villages, that is a matter of considerable concern. If we are trying to encourage people and small businesses to do their business from home, and if we want to ensure that our villages are lively and vibrant, we need to ensure that the required technology and support is there through access to better mobile communications. That is how people communicate most nowadays.

Although, certainly in my area, many villages seem to have been dying over the past two decades or so, the opportunity for individuals to be at home and run their businesses makes the implementation of the new clause extremely important, at least for my constituents. It is important not only for businesses in rural areas but for individuals, particularly the elderly. The elderly—I think of my mother, who is 85 and very technologically savvy —want to be able to have access to mobile communications, which are important. I receive text messages often. A lot of elderly people rely on mobile phones as opposed to fixed-line communications.

I support new clause 19, but I am an active listener, and the point that some Opposition Members have made about greater granularity and greater understanding of where not-spots are is important. I encourage the Minister to ensure that not only Members but the public at large have a better understanding of where not-spots are with much more granularity than seems to be available at the moment, and to be clear about the Government's implementation strategy to ensure that our constituents know when the problem of not-spots will be dealt with. I do not see the drafting flaws that the hon. Member for Birmingham, Northfield talked about. I certainly believe that the Minister has been actively listening, and I hope that he will address some of the issues that members of the Committee have raised.

Mr Nick Raynsford (Greenwich and Woolwich) (Lab): I rise briefly to reinforce the powerful and wholly justified case made by my hon. Friend the Member for Birmingham, Northfield, and supported by my hon. Friend the Member for Ellesmere Port and Neston, for the withdrawal of the new clause, although not because we oppose it, because we do not. In principle, we want to see a modernisation of the code, but the way in which the process has been handled has not allowed for proper consideration or for all the issues that need to be considered to be teased out.

I will speak about one small provision and highlight some of the unanswered questions and issues that we simply do not have time to address given how these measures have been presented right at the end of the Bill's passage through this House. That is the problem, not the modernisation of the code, which is broadly supported. I agree with the hon. Member for Braintree about the importance of that, but I hope he accepts that there are a lot of unanswered questions. The public need satisfaction, and they need to know that we are doing our job properly in scrutinising an important piece of legislation that will have a considerable impact on the lives of our fellow citizens for many years to come.

I intend to focus on part 13 of the code, which the Minister passed over rapidly. I do not hold that against him, for two reasons: this is a large code including a great deal of other material, and on the surface not much change is being introduced in part 13 compared with the original code of 1984. Part 13 deals with the lopping of trees. The provision in the 1984 code was to allow the lopping of trees that overhung streets and that therefore interfered, or might in future interfere, with electronic communications. That is repeated in part 13 of the new code, but with one addition: to "tree" is added "or other vegetation".

The obvious question is, why has there been a need to add "or other vegetation"? Presumably the phrase refers to shrubs. Has there been a problem with shrubs or vegetation other than trees obstructing telecommunications and causing a problem? Why has the change been introduced? We have not had an explanation, although I do not hold that against the Minister, because we are not discussing his brief. He has been given the responsibility in Committee, but it is a highly complex and technical subject and I cannot expect him to be aware of any representations that have been made over the past 30 years about shrubs obstructing telecommunications operations and, consequently, the need to change the language. As a Committee scrutinising the Bill, however, we should be asking the questions. Why has the change been introduced? What is the evidence? What has been the problem? Why is there a need to extend the definition that previously applied only to trees?

The next question I have to ask is about the omissions. It occurs to me that it is surprising that there is simply a power for operators to serve an order by notice on the occupier of the land and require a tree to be lopped. That is a powerful power, so what are the safeguards to cover difficult circumstances? What if the tree is covered by a tree preservation order? Clearly, there is a potential conflict. How is that to be resolved? What if the shrub—we are now talking about shrubs and not only trees—has a particular value? I can think of many trees and shrubs in various areas that have landscape or horticultural value. It might cause concern were such a tree or shrub to be arbitrarily lopped for no good reason. What are the safeguards in such cases? What if it is in a site of special scientific interest? Do any special provisions apply in such cases?

Furthermore, why does Natural England have no role? I imagine that were there questions about whether trees of a special quality or value should be lopped, Natural England would be the right body to be consulted. That is not, however, referred to in any way in these provisions.

Andrew Miller (Ellesmere Port and Neston) (Lab): I declare a minor interest, because I have planted rather a lot of trees in my time. My right hon. Friend adds to the questions that I posed about Departments that ought to have been engaged in consultation. For example, I wonder whether the Department for Environment, Food and Rural Affairs was consulted.

Mr Raynsford: My hon. Friend is prescient, because I will come on to make that very point.

The points that I have raised illustrate the problem of something being rushed through without adequate consultation, leaving questions unanswered. I do not expect the Minister to answer the questions that I have posed, because it would be unreasonable to expect him to be able to do so. He may be able to have a go, but if I were to ask him how many trees have been lopped in each of the past 30 years under the existing powers, I think it would probably be quite difficult for him and his officials to provide the information to the Committee immediately. That only reinforces the point that this subject ought to have been open to wider consultation and discussion so that the issues could have been teased out and answered in time for proper parliamentary scrutiny.

I do not object to the change; I am happy to see the new code being introduced. I can see its purpose and I want to see it in force, but I want it to be done properly. I do not want to go ahead with questions unanswered and members of the public criticising Parliament for not doing its job properly because it has not had the opportunity for proper scrutiny. I hope that the Minister will respond to the entirely justified call from my hon. Friend the Member for Birmingham, Northfield for the new clause to be withdrawn to allow a proper period of consultation involving all the relevant parties. As my hon. Friend the Member for Ellesmere Port and Neston pointed out, other Departments should be involved.

If that happens, when the new, revised code comes into force, we will have a clear conscience and be able to say that we scrutinised it properly and asked all the relevant questions, that we are satisfied that it really will bring the benefits that the Government claim it will, and that there are no unexpected or as yet uncovered downsides with which we have not an opportunity to deal. That is why the new clause should be withdrawn and the code made the subject of further consultation.

The Minister of State, Department for Transport (Mr John Hayes): I welcome you back to the Chair for our final sitting, Sir Roger. We shall part in some sorrow after the deliberations that we have conducted in such a considered and measured way. So it is with this part of the Bill.

[Mr John Hayes]

I accept at the outset that it would have been better had these measures been introduced earlier and there had been more time to consider them. I do not for a moment want to give the Committee the impression that I do not understand the weight of that argument. Indeed, if I was sitting on the Opposition Front Bench, as I have many times, I would make exactly that case to a Labour Government.

None the less, when I hear from the right hon. Member for Greenwich and Woolwich and the hon. Members for Birmingham, Northfield and for Ellesmere Port and Neston, combined, they remind me of St Augustine, of whom, Members will not be surprised to learn, I am an admirer. Of course, it was St Augustine who said: "Let me be chaste—but not yet." In essence, that is the message that we have heard from the Labour party: let us take the opportunity to reform the code, but not here; let us serve the needs of our constituents, but not in a hurry. That is the message that has been broadcast by Opposition Members.

Mr Raynsford *rose—*

Mr Hayes: I give way to—I will say this—my right hon. Friend.

Mr Raynsford: I am grateful to the Minister for giving way. I know that he has a great love of my constituency, so I simply put it to him that he will know that, as an eminent and serious theologian, St Augustine would not have subscribed to a doctrine unless he was aware of all its implications, and he would have wanted to be sure that there were no unanswered questions.

Mr Hayes: That is certainly true of that eminent gentleman, but on this subject and in this context, I draw also on another hero of mine: W. B. Yeats. There is a proper debate to be had—we may have time for it this afternoon—about who was the greatest poet of the 20th century. I would make a strong case for T. S. Eliot, but I think T. S. Eliot would cite Yeats as perhaps an even greater poet. Did Yeats not say: "Do not wait to strike until the iron is hot; but make it hot by striking"?

2.15 pm

What the Government are doing with these proposals is indeed making the iron hot by striking. We are taking action, and not, by the way, precipitous action. The argument that the Labour party has made would have more weight and force if the proposals were not largely based on the Law Commission's recommendations, which were themselves subject to a detailed consultation and have been considered and debated thoroughly since.

Richard Burden (Birmingham, Northfield) (Lab): Again, this question comes with the health warning that I know the Minister is not from the Department for Culture, Media and Sport, but can he speculate on what piece of equipment that Department is using to warm up its iron? It has taken two years since the Law Commission reported—why?

Mr Hayes: As I said, I am not a man who does not appreciate that there are strong arguments from Members in all parts of the House, and indeed in this Committee, and I think it would have been better if these matters had been brought to a head earlier. I pay tribute to the current Secretary of State for Culture, Media and Sport, because he has struck to make the iron hot; he has seized the initiative and been determined to use the first appropriate legislative vehicle to make the widening of access to mobile phones and improvements to coverage a priority.

I acknowledge that a longer view would have been helpful, but as I say, that would have had more force were it not for the fact that we have largely adopted—the hon. Gentleman knows that the are exceptions to this rule—the Law Commission's report, which has been in the public domain for a long time. If Members are going to argue that delay has been unhelpful, they cannot simultaneously argue that there was not a long time to talk about the Law Commission's recommendations. There has been a very long time to think about them and consider them, which I am sure the hon. Gentleman will have done. I would be surprised if he and other Opposition Members had not pored over those recommendations endlessly, night after night.

Andrew Miller: Strangely enough, the right hon. Gentleman is right. That is why I wrote the article that I referred to before Christmas. I have been working on this issue for some years. However, he is failing to answer the question why there has been this unholy delay on the part of DCMS. Not only has it failed to come forward with the code, but it has failed to update, for nearly three years, the database based on which people will understand where and why masts should be erected.

Mr Hayes: I can tell that I have inspired the hon. Gentleman to poetry because that was a couplet. On the second part of the couplet, I have committed to do all I can to update that database—he is right about that—just as I committed to try to break down the maps that show coverage into an order that allows individual Members of Parliament to consider the circumstances in their constituencies.

On the issue of delay, it is not for me to answer for the previous regime in the DCMS. The current Secretary of State there has clearly made this issue a priority. The hon. Gentleman asked in an earlier intervention whether there had been discussions with DEFRA and others. Yes, there have been extensive discussions. Have there been discussions with the Ministry of Transport? I am the Ministry of Transport, to all intents and purposes, so of course there have been discussions with the Ministry of Transport.

Andrew Miller: So when did the right hon. Gentleman know about the code? Why has he not made it available to the Mobile Operators Association?

Mr Hayes: I am not going to deceive the Committee. The hon. Member for Birmingham, Northfield has already it made clear that when we decided to add this provision to the Bill late last year, I speedily made contact with him to ensure that he was notified. I committed to do all I could to ensure that the Committee and the House more widely had access to officials to make any inquiries that they chose to. I repeat—I do

not want to be repetitive, but repetition is not without its virtues—that, given that this is largely based on the Law Commission report, much of what is required to reform the code has been debated over some time, so there will be a broad consensus on it.

Mr Raynsford *rose—*

Mr Hayes: I shall come to trees in a second. Much—not all, but much—of the change that the Law Commission recommended was about matters that had been of concern for some time. There were therefore not many surprises in its recommendations in that sense, and there are not many surprises in what is before us today. This was not uncharted water. Indeed, if I were a more partisan politician than I am, or a more mischievous man by instinct or habit, I could say that not a lot was done between the years of 1997 and 2010, when many of the doubts and concerns about the prevailing code—a code that, of course, had its genesis in 1984—had already been expressed by mobile operators and others. As my knowledge of recent history is not as great as my familiarity with St Augustine, I cannot recall who was in government between 1997 and 2010.

Nadhim Zahawi (Stratford-on-Avon) (Con) *rose—*

Mr Hayes: I happily give way to my hon. Friend, who I see is about to remind me.

Nadhim Zahawi: I suspect that it was a Labour Government, Minister.

Mr Hayes: I did wonder. Now that my hon. Friend has reminded me, I do recall which party was in power over that period. Now that he brings it fresh to the front of my mind, I recall how little was said and done then.

Mr Raynsford *rose—*

Mr Newmark *rose—*

Mr Hayes: I saw the right hon. Member for Greenwich and Woolwich first, and he was of course a distinguished Minister in that Government.

Mr Raynsford: As the Minister will know, I have been looking at the Telecommunications Act 1984 to see the textual differences. From studying that, I am reminded that amendments were made in the Communications Act 2003. His allegation of inactivity on the part of the previous Government therefore seems uncharacteristically inaccurate.

Mr Hayes: I was aware of the 2003 Act. I have both Acts at my disposal, because I always like to have to hand legislation affected by the proposed legislation before us. The right hon. Gentleman will know, having studied that set of amendments and the original code, that it is largely the original code that defines practice on the ground now. Those amendments were not comprehensive, as the provisions in the Bill and the new schedule embodying the code are. They were of a much less fundamental nature, and that is why the Law Commission recommended what it did. Had it been satisfied with the status quo resulting from the later changes to the '84 provisions, its recommendations would have been nowhere near as comprehensive.

Andrew Miller: I do not seek to make any improper suggestions about the right hon. Gentleman's comments, but if they are accurate, why on earth does he think that reputable businesses among the mobile operators—companies such as the Wireless Infrastructure Group and Arqiva—are expressing concerns? Surely the simple fact is that the redraft has got it wrong because it failed to engage them.

Mr Hayes: Let us see what some people have said about the need for change. EE, which I understand is an organisation called Everything Everywhere, says:

"We hope that the Government will see the Law Commission's work through and introduce legislation before the 2015 Election."

The right hon. and learned Member for Camberwell and Peckham (Ms Harman), a senior member of the Labour party, said:

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

The Law Commission report stated:

"It was clear to us from the beginning of the project that the 2003 code is in need of reform. It is complex and extremely difficult to understand…It is also difficult to discern the relationship of the 2003 code with other elements of the law."

The law firm Osborne Clarke, which covers some areas of digital business, stated:

"The Law Commission has recently reviewed the Code and has made some significant recommendations for reform which should provide greater clarity and strike a fairer balance between Landowners/Developers and Operators."

That is the very point that I have made.

Andrew Miller *rose—*

Mr Newmark *rose—*

Mr Hayes: Before I give way to my hon. Friend and then the hon. Gentleman, let me deal again with the question of balance. It has been suggested that landowners and mobile operators are not happy. Frankly, were either of them entirely happy, I rather suspect that we would not have got the balance right. I am of the view that the provision strikes a fair deal between landowners and mobile operators. It does not do everything that landowners want, and it certainly does not do everything that mobile operators want, but it does enough to ensure our core objective of improving mobile coverage.

I do not want to be unnecessarily hostile, but the Opposition must be careful, because if they send a signal out from this Committee that they are in favour of code reform and wider mobile coverage and they do not take the opportunity to back it, some people—not me, I hasten to add, or other Government Members—will misinterpret that as meaning that they do not care about wider mobile coverage. I know that that is not true, and it would be a misinterpretation, but it would become widespread.

Mr Newmark: I want to reiterate the Minister's history lesson. I have been listening carefully to the right hon. Member for Greenwich and Woolwich, who has said that the Opposition support the spirit of the legislation and the reforms, but they need more time. If my memory

[Mr Newmark]

of history serves me correctly, I seem to remember that during the years when the Opposition were in power, they did not spend a huge amount of time scrutinising things. With their enormous majority, they tended to ram-roll things through Parliament. I believe that the Government have got the balance right in the Bill.

Mr Hayes: All I would say to my hon. Friend is that one of the most dispiriting aspects of democratic politics is the perceived need to demonise one's opponents. I think that that is an unpleasant and unhappy thing, because in fact all Governments do some good things and some bad things. All Governments have some talented Ministers and some who are less so. All Governments have some successes and some failures. Although that may be regarded as a generalisation, as Hegel said:

"An idea is always a generalisation, and generalisation is a property of thinking. To generalise means to think."

In general terms, I believe that most hon. Members would take that view.

Graham Jones (Hyndburn) (Lab): Will the Minister give way?

Mr Hayes: I am afraid that there is a pecking order. First, I must give way to the hon. Member for Ellesmere Port and Neston, and then to the shadow Minister.

Andrew Miller: All the Minister's quotations predated the publication of the new clause. All the code operators that have engaged with members of the Committee have expressed concerns, and I have restated those concerns. In an article that I wrote before Christmas, I expressed the need for change. It is disingenuous for the Minister to suggest that the Opposition oppose reform. We do not, but the new clause will slow down reform. Believe me, Minister; I have been working on this for 20-odd years.

2.30 pm

Mr Hayes: I would certainly want to pay tribute to the hon. Gentleman's diligence and expertise in all such matters—he takes a keen interest in these affairs—but, like him, I am guided by what the industry says. Ericsson says:

"By the time we install small cells there will be a new set of issues that may not be considered and should be. Operators cannot plan service when open to rent uncertainty especially not charges that increase based on usage."

Sky says:

"Sky considers that a number of steps may further encourage…investment, including: ensuring that the Electronic Communications Code…is fit for purpose and allows operators to deploy new infrastructure quickly and affordably."

There is a clamour for change and reform. Of course it is right that we ensure that our measures are as watertight as legislation ever can be. That is one of the endeavours of contributors to this short debate, and I respect that.

Richard Burden: Anyone listening to this debate or reading these proceedings will not have the misunderstanding that the Minister suggests. Opposition Members have made it very clear that we are in favour of reform. We want to get it right, but given what he says about the importance of enacting the reform, and given that the delay appears to be linked to the pattern of negotiations on the deal, is he not concerned that the mobile phone operators have said that

"neither New Clause 19 nor New Schedule 2 as currently drafted deliver the reforms necessary to extend coverage in line with… 17 December"?

If that is the case, the reason he says that this must be enacted is actually the reason why it should not be enacted.

Mr Hayes: I think the hon. Gentleman, like the hon. Member for Rhondda (Chris Bryant), has become preoccupied and very excited. The hon. Member for Rhondda spends a great deal of his time in a state of excitement, which I do not necessarily criticise—I am a passionate man myself—but there is a difference between the passionate pursuit of virtue and a kind of heated excitement. The righteous zeal that I hope I personify stands in stark contrast to his rather excitable claim that, somehow, this code reform is intrinsic to the negotiations to which the hon. Member for Birmingham, Northfield referred. The truth is that code reform would have happened anyway, because code reform was absolutely necessary. It was called for by the industry, agreed by the Opposition and recommended by the Law Commission. My goodness, this was not plucked from the ether; this was a change whose time had come.

Graham Jones: The right hon. Gentleman made the honest point, with which I would not disagree, that all Governments make mistakes. I want to press him to pursue the path he is traversing a little further by suggesting what mistakes he thinks this Government have made and how that reflects on the Bill. I would appreciate his honesty.

My second point, which is not even tangential to the first, has been raised by other members of the Committee. I have been elucidated by his fascinating quotes, and he has enlightened the Committee with some observational, referential points on our literary history, but he has failed to draw on the works of the bard in this passage of the Committee. In answering, or at some other point, will he reflect on our greatest writer?

The Chair: Order. Let me inject a philistine note into this debate. I was denied the ecstasy of listening to the first hour and 40 minutes of the debate this morning, but I have enjoyed the past 40 minutes of it. I will gently point out, however, that although I have no desire or ability to curtail the debate, we are due to finish at five o'clock this evening and I notice that there are three sets of Opposition amendments still to be debated. A degree of expedition might be in order.

Mr Hayes: I was thinking just the same, Sir Roger. I am always guided by your greater authority, experience and expertise. I am going to deal with 10 points in five minutes. They are the 10 points raised in the debate that require further comment.

I will first deal with trees. The right hon. Member for Greenwich and Woolwich mentioned that the new proposals changed the ability of operators to deal with overhanging trees on roads in England and Wales and the streets in Scotland that might impede their progress in improving

infrastructure or adding to the effectiveness of communication. He is right about that. Existing legislation does allow exceptions, even in the kind of areas that he described. Those exceptions will apply in respect of operators. To be honest, I am not absolutely happy about that. I have got the advice from officials, but I am not content about that. I care a lot about trees; after all, we plant trees for those born later. I want to reflect on the right hon. Gentleman's remarks and take another look to see if we are right—I can tell the Committee that that will come as something of a surprise to the officials!

Let me go through the other nine point. I say this not in an unkindly way to the shadow Minister, but he made a fundamental error. There is indeed a 30-page impact assessment on this specific measure which has been in the public domain. I am more than happy to send another copy of that to all Committee members in the general note that I will be sending.

Let me turn to my third point—someone will need to keep check that I cover 10. The hon. Member for Ellesmere Port and Neston asked what powers the Government had to force coverage in uneconomic areas. The Government have no legal powers; we have, however, made a huge step forward in improving coverage. He will know this very well, but £150 million has been invested in the mobile infrastructure projects specifically designed to get mobile coverage to places lacking it at the moment. Broadband Delivery UK rural broadband infrastructure programmes are to deliver superfast broadband to those areas, too.

The fourth point is about the coverage map, which I have dealt with. As I said, Ofcom is responsible for that. We rely on the operators to provide detail, although we do not always get it. I do not think that is good enough. I think we want more and we want it broken down in the way I have described.

I think I have already dealt with the issue of wholesale infrastructure providers. They are defined for the purposes of the new code as operators. That is in line with the Law Commission recommendations. For further assurance, the revised code will allow all existing arrangements to continue. There is no change to those arrangements.

On clarity and poor drafting, officials from the Department for Culture, Media and Sport have considered the concerns raised by stakeholders and are satisfied that the new code is correctly drafted and are engaging with stakeholders to explain the effects of the revised code. Some of those concerns arise from not having enough time to explain, a point that has been made. Some of the queries about drafting may be based on misunderstandings about drafting. I do not think that is exclusively true; as I said, let us get this right. The meeting we are having next week and the further note that I produce will help to address some of those specific matters.

On dispute resolution—I am probably on item six now —there is a clear power to move cases to the jurisdiction of the upper tribunal. We have already written to the Mobile Operators Association and the Mobile Network Operator on that concern.

As for the apparent £1 billion black hole, Ofcom is simply considering whether the commitment by mobile operators to reach 90% coverage affects the process for assessing licence fees. The code makes no change and has no connection with licence fees in legislative terms; we should not give the impression, albeit inadvertently, that it does. That is a matter that sits outside of the consideration of this Committee, as you will understand, Sir Roger, and it would not be appropriate for me to comment on it further.

As for engagement with other Departments, DCMS has indeed been engaged with a range of Departments and other agencies on the code—that was probably the eighth point. On the issue of state aid, we are confident that the agreement reached with mobile operators has no state aid risk. That was the ninth point.

The final point I want to make on this matter is that the purpose of the code is primarily to regulate consensual relationships. The Government do not intend to interfere with existing arrangements. That point was made by a number of hon. Members, who felt that we might arrive in a less desirable place than the one we find ourselves in now. Where existing arrangements have been negotiated carefully and properly under the previous code, they will of course be honoured. The Government's view is that it would be inappropriate to interfere with the rights of two or more parties to a contract in those terms.

This is to move forward, not to stand still or move backwards. So often through our history, it is the party on this side of the Committee—the party of Wilberforce, Shaftesbury and Disraeli—that has taken the nation forward, usually in the face of opposition from Liberals and others. I always say to my hon. Friend the Member for Bristol West that, until about the first couple of decades of the 20th century, there were still Liberals who wanted to put boys up chimneys. I am sure that is not true now. In that spirit, I urge Opposition Members to recognise that this is the future. This is about progress and expanding mobile coverage to people who do not have it. This is, as I said at the outset, about the national interest and the common good. The Opposition would do no favours to either of those, or to themselves, by burying their head in the sand.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 8, Noes 6.

Division No. 11]

AYES

Hayes, rh Mr John	Parish, Neil
Heaton-Harris, Chris	Rudd, Amber
Jenrick, Robert	Williams, Stephen
Newmark, Mr Brooks	Zahawi, Nadhim

NOES

Blackman-Woods, Roberta	Jones, Graham
Burden, Richard	Miller, Andrew
Greatrex, Tom	Raynsford, rh Mr Nick

Question accordingly agreed to.

Clause read a Second time.

Question put, That the clause be added to the Bill.

The Committee divided: Ayes 8, Noes 6.

Division No. 12]

AYES

Hayes, rh Mr John	Parish, Neil
Heaton-Harris, Chris	Rudd, Amber
Jenrick, Robert	Williams, Stephen
Newmark, Mr Brooks	Zahawi, Nadhim

NOES

Blackman-Woods, Roberta	Jones, Graham
Burden, Richard	Miller, Andrew
Greatrex, Tom	Raynsford, rh Mr Nick

Question accordingly agreed to.
New clause 19 added to the Bill.

New Clause 4

WALKING AND CYCLING

"Within six months of the day on which this Act is passed, Her Majesty's Government shall lay before Parliament a strategy which establishes long-term commitment and funding to increase rates of walking and cycling, including in the planning of infrastructure projects."—*(Richard Burden.)*

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 6, Noes 8.

Division No. 13]

AYES

Blackman-Woods, Roberta	Jones, Graham
Burden, Richard	Miller, Andrew
Greatrex, Tom	Raynsford, rh Mr Nick

NOES

Hayes, rh Mr John	Parish, Neil
Heaton-Harris, Chris	Rudd, Amber
Jenrick, Robert	Williams, Stephen
Newmark, Mr Brooks	Zahawi, Nadhim

Question accordingly negatived.

2.45 pm

New Clause 7

PETROLEUM EXTRACTION: ENVIRONMENTAL BASE LINE DATA

"All sites extracting petroleum under the provisions of section 38 must publish all environmental base line data collated over the designated period, in a manner that allows it to be subjected to scientific peer review."—*(Andrew Miller.)*

The purpose is to ensure that disputes over what was naturally occurring prior to extraction can be resolved.

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 6, Noes 8.

Division No. 14]

AYES

Blackman-Woods, Roberta	Jones, Graham
Burden, Richard	Miller, Andrew
Greatrex, Tom	Raynsford, rh Mr Nick

NOES

Hayes, rh Mr John	Parish, Neil
Heaton-Harris, Chris	Rudd, Amber
Jenrick, Robert	Williams, Stephen
Newmark, Mr Brooks	Zahawi, Nadhim

Question accordingly negatived.

New Clause 12

DEVELOPMENT PLAN DOCUMENTS: ACCESSIBLE DESIGN

"In section 19 of the Planning and Compulsory Purchase Act 2004 (preparation of local documents) after subsection (1) insert—

"(1B) Development Plan documents must (taken as a whole) include policies designed to secure inclusive design and accessibility for the maximum number of people including disabled people".—*(Roberta Blackman-Woods.)*

Brought up, and read the First time.

Roberta Blackman-Woods (City of Durham) (Lab): I beg to move, That the clause be read a Second time.

I fear that we are unlikely to have the literary appeal or historical justifications for this new clause that we had in the previous debate, but I thought it might help our deliberations if I briefly gave some background to why new clause 12 is necessary.

The built environment and our housing stock fail to meet the needs of a large number of people. The UK ageing demographic structure and the 5 million British people with mobility problems mean that we have a growing need for accessible housing, but that need is not being met. As a result of the low availability of accessible housing, we know from Government statistics that one in five people requiring adaptations to their home believe that their accommodation is simply not suitable.

Similarly, Habinteg research published in 2010 found that 78,300 wheelchair-user households in England had unmet housing needs. Of the 5 million people in the UK with mobility problems, 72% say that they do not have an accessible door into their building; 52% that they do not have doors and hallways wide enough for a wheelchair; and 50% that they do not have stairs big enough for a stair lift to be fitted.

Part M of the building regulations that were introduced in 1998 sets out guidance requiring new buildings to be safe and convenient for disabled people to access and to move around in internally. As the statistics show, however, much more needs to be done.

The lifetime homes standard is a set of 16 design criteria to ensure that all homes that are built are accessible and more easily adapted to meet people's changing needs at different stages in their lives. However, building to that standard is only optional.

Going back to the discussion that we had a few days ago, had the Government continued to insist that from 2016 homes were built to code level 6, that would have included homes being built with a lifetime promise guarantee included, because it is part of the code level 6 requirements. However, as we know, the Government are not continuing with a commitment to introducing that lifetime homes standard from 2016. The Greater London Authority has required all new homes to meet the lifetime homes standard since 2004, but estimates from the Government show that a mere 5% of homes outside London meet that standard.

New clause 12 creates a duty to ensure that accessibility is at the front of decision makers' minds when preparing local plans in England. There is a clear precedent for such statutory duties to be included in plan making—for example, in 2008, legislation was amended to add a specific duty on local development documents to consider

climate change. Similarly, new clause 12 would insert a specific duty to consider the objective of achieving accessibility into section 19 of the Planning and Compulsory Purchase Act 2004.

There is huge support for the new clause, including from the Town and Country Planning Association and Habinteg housing association. They state that

"it is essential that local authorities are supported in all ways possible to ensure that the whole built environment is accessible, inclusive and can be used and enjoyed by everyone. As part of this we need authorities to be aware of the new standards, understand their importance, integrate them into policy and apply them to the needs of local populations. A statutory duty on plan making to consider accessibility would send a clear signal about the priority to be afforded to this agenda."

That is backed by Age UK, Aspire, the Building Research Establishment, the Centre for Accessible Environments, Care & Repair England, Disability Rights UK, Golden Lane Housing, the International Longevity Centre, Leonard Cheshire Disability, Mencap, the National Housing Federation, and Papworth Trust—and I could go on. There is huge body of opinion saying that we need to do more to improve accessibility.

I expect that the Minister will say, "We have looked at this matter and we have dealt with it via the housing standards review." We know that the Government have created a menu of national housing standards that local authorities may choose to implement via their local plan policy. However, the new standards are set to be purely optional for local authorities and subject to narrow viability testing. The viability test is highly prescriptive and, as the Minister will know, is set out in the national planning policy framework. Because the test is concerned only with the competitive returns to willing landowners and willing developers, it does not include any economic assessment of the long-term benefits to the economy of, for example, the delivery of lifetime homes. That means that a number of organisations will need to continue to make the case for a lifetime homes standard to be the default for all new homes.

Mandatory accessible design standards would speed up the delivery of accessible housing to an appropriate rate, as they have done in London since 2004. In the meantime, it is essential that local authorities are supported in all ways possible to ensure that the whole built environment is accessible, inclusive and, as I said, can be used and enjoyed by everyone. I suggest to the Minister that it is made mandatory for all local authorities to consider accessibility when making their plans. If he wants to go a little further and change his mind on the desirability of code 6 homes from 2016, that is another option available to him to achieve the same end.

The Parliamentary Under-Secretary of State for Communities and Local Government (Stephen Williams): Good afternoon, Sir Roger. The shadow Minister said that she anticipated what I was going to say; of course, we always try to anticipate what she is going to say to ensure that we are well prepared for the sort of issues that might arise. The new clause refers to planning legislation, but she largely spoke about building regulations, which stem not from planning legislation but, as we know from our long and detailed consideration of clause 32, from the Building Act 1984.

I did not anticipate that the hon. Lady would go down the route of looking at part M of the building regulations and how it was affected by the housing standards review. Nevertheless, I can assure her that, having looked at that review and part M, we have made sure both that we strengthened part M as a baseline and that there are optional standards that are tougher for building homes that are age-friendly and wheelchair accessible. We have that optional upper tier standard because the demographics vary. I would guess that the demographics of Christchurch—to pluck a district council from the air—are quite different from those of Greenwich, in terms of the age profile of the population. It is a matter for the London borough of Greenwich to decide whether it wishes to apply a higher standard for accessibility over and above the baseline of part M. An authority somewhere like Christchurch may indeed find the higher standard attractive, and it is now designed, written and out there to be adopted. Although we did not anticipate that the hon. Lady would go down that route, I am reasonably familiar with that issue so hope that I have addressed her point.

The hon. Lady was correct to suggest that I would say that we are doing a lot of work on these matters and try to persuade her that the new clause is not needed. I certainly appreciate its intention. There is a complete meeting of minds on the idea that we must ensure that new homes and the built environment in general are constructed to a standard that previous legislators on this subject would not have considered necessary. Our whole viewpoint on the built environment is that it is not people who are disabled; they are disabled by their surroundings, which are designed for them by others who are usually not disabled. The mindset has switched, and I think that there is complete consensus in the House on that.

I hope that the hon. Lady will not interpret anything that I am about to say as denying her good intentions or feel that we do not also have good intentions. However, the new clause is unnecessary because it replicates requirements on local planning authorities that are already in place. The Government have been clear throughout their reforms that new requirements should be put on authorities only where strictly necessary, and that the planning system should be as streamlined as possible. In preparing a local plan, an authority must have regard to national policies and guidance issued by the Secretary of State. Before a plan can be adopted, it must be found to be sound, which includes being tested for consistency with the policies set out in the national planning policy framework.

Paragraph 50 of the national planning policy framework sets out that local authorities should plan for "inclusive" communities. Paragraph 57 makes it clear that it is

"important to plan positively for the achievement of high quality and inclusive design for all development".

Paragraph 58 of the framework similarly sets out that local plans should establish

"robust and comprehensive policies that set out the quality of development that will be expected for the area."

It goes on to say that policies and decisions should aim to ensure that developments

"create safe and accessible environments".

3 pm

We reiterated the importance of promoting accessibility and inclusion in planning and guidance that was published on 6 March 2014. Moreover, local authorities are required by the Equality Act 2010 to have

"due regard to the need to advance equality of opportunity".

That includes the need to "remove or minimise disadvantages" experienced by people with disabilities and "take steps" to meet their needs. That public sector equality duty means that public bodies have to consider people with disabilities throughout their work, including in shaping policy and delivering services. Throughout the housing standards review that the hon. Lady mentioned, the Government are strengthening the building regulations, as I described.

Work is going on which the hon. Lady and, indeed, other members of the Committee may not be aware of. The Government are working with professional bodies in the sector to strengthen good practice and professional expertise and support inclusive design. We have given support to the Design Council and the Commission for Architecture and the Built Environment in order to mainstream best practice in inclusive design. We have had direct engagement with key construction professionals, including architects, engineers, surveyors and builders. In particular, we funded the Design Council to deliver a web-based one-stop shop for construction sector professionals to share knowledge, relevant research and best practice in inclusive design. That hub was launched on 17 July last year and received 12,000 hits in its first month.

We did not stop there. Back in October, I chaired a meeting at the Design Council of all the professional bodies, including some of the ones that the shadow Minister mentioned. We looked at what we could do together to ensure that the need for inclusive design is built into the initial professional training of people studying for a qualification—whether it is architects, surveyors or people working in building regulations and planning—so that it is as up to date as possible. Of course, as most of the people practising in those areas will already be qualified and in work, we also looked at how that can be built into their continuing professional development.

In February, we will reconvene that group of professional bodies to see what they have done in the intermediate months. The Minister for Disabled People will, I hope, join me at that meeting. We look forward to hearing what all the professional bodies are doing to change professional practice and ensure that when people working in this area are designing a new building or an alteration to an existing one, they have accessibility at the forefront of their minds.

I hope that the hon. Member for City of Durham is reassured by what I have said. In the housing standards review, we thought through carefully what we should do on accessible design and building regulations. We came up with the baseline part M and the enhanced standard, so that local authorities can choose to go further if their local demographics suggest that they should. We have strong guidance in several paragraphs of the NPPF that local authorities have to follow in preparing their local plans.

Although we will be revealing it in February, we have been working behind the scenes with all the relevant professional bodies in this area to ensure that this good practice cascades right through the work force, from a graduate trainee to the most senior person in a planning authority or architectural practice. Inclusivity in design should be at the heart of all their work. With those reassurances, I hope that the hon. Lady will agree that there is good intention on both sides and will withdraw her new clause.

Roberta Blackman-Woods: I will try to explain carefully to the Minister why I am not reassured by what he had to say. Our view is that launching hubs for discussion, chairing meetings, getting professional bodies together and looking at training are all worthwhile things, but they will not deliver what we want unless there is a requirement for local authorities to take account of accessibility in developing their local plans and to think clearly about how that is going to be implemented in practice.

Just for the record, I would be grateful if the Minister told us where he thinks there will not be a demographic need to have more accessibility. Where exactly in the country do we not have an ageing population and people with mobility problems? I have not come across that area, so if he has, perhaps he can enlighten us.

I want to respond to some of the points that the Minister made, particularly about the NPPF. I clearly said that there was an accessibility requirement, but that it was undercut by the viability requirements. I do not think that the Minister dealt with that point at all. In reality, the viability argument trumps the accessibility one. That whole issue needs to be looked at. If it was a level playing field and all local authorities had to accept these new housing standards, which have been operating, as far as I can see, effectively in London for more than a decade, then we would not be in that situation.

I am really surprised that the Minister went down the rather odd route of just asking what part M of the building regulations had to do with it. The point I made about part M of the building regulations was that it had existed since 1998 and it needed looking at again. It is not enough and it is not delivering what we need in terms of building accessible homes or—which would be much more desirable—homes to the lifetime homes standard. That is where the whole debate is, and he will know that if he chairs meetings of professional organisations working in the area.

Stephen Williams: To ask the hon. Lady a direct question, is it her suggestion that all new homes should be built to the lifetime homes standard that Habinteg owns at the moment?

Roberta Blackman-Woods: The new clause asks that local authorities be required to consider accessibility in drawing up their local plans. The point I made about code 6 was that if the Government had not watered down the requirement for new homes to be built to code level 6 by 2016, then we would have had the lifetime homes standard by another route. As that route is not currently available because of the changes that the Government are making through the legislation, perhaps the Minister would consider another route, which is a requirement to put this standard into local plan policy. That was, I thought, the very clear point I made in my comments to the new clause.

At the moment, the Government do not seem to support either of the routes that would help us deliver more accessible homes. What we have is a talking shop and, for people who have serious mobility issues, that is not good enough. It is not good enough that we are not building homes to the lifetime homes standard when we clearly could.

Stephen Williams: I thank the hon. Lady for giving way a second time. I did not give the full list of the people who were at the meeting at the Design Council in October—in fact, we will be re-inviting the presidents of all these professional bodies to the Design Council in February—but they included people who are advocates for the various disability groups and who are involved in the work. I do not think it is fair to describe it as a talking shop. It is already altering professional practice, and the intention is that that change of mindset will be embedded throughout the profession. It has already had tangible results and the intention is for it to have representation on all the key professional bodies from February.

Roberta Blackman-Woods: I will take the Minister's word that some progress might be made in some areas as a result of the work that is going on. The important thing about the new clause—I have not really heard from him why he disagrees with it—is that it would require all local authorities to consider accessibility in their plan making. In the context of what he has just said about the discussions, I cannot see why the new clause is not acceptable. I wish to press it to a vote.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 6, Noes 9.

Division No. 15]

AYES

Blackman-Woods, Roberta	Jones, Graham
Burden, Richard	Miller, Andrew
Greatrex, Tom	Raynsford, rh Mr Nick

NOES

Hayes, rh Mr John	Parish, Neil
Heaton-Harris, Chris	Rudd, Amber
Jenrick, Robert	Williams, Stephen
Kwarteng, Kwasi	Zahawi, Nadhim
Newmark, Mr Brooks	

Question accordingly negatived.

New Clause 13

PLACE MAKING OBJECTIVES FOR NEW TOWN DEVELOPMENT CORPORATIONS

"In Part 1 of the 1981 New Towns Act delete section 4 (1) and insert—

'(1) The objects of a development corporation established for the purpose of a new town shall be to secure the physical laying out of infrastructure and the long-term sustainable development of the new town.

(1A) Under this Act sustainable development means managing the use, development and protection of land and natural resources in a way which enables people and communities to provide for their legitimate social, economic and cultural wellbeing, while sustaining the potential for future generations to meet their own needs.

(1B) In achieving sustainable development, development corporations should—

(a) positively identify suitable land for development in line with the economic, social and environmental objectives so as to improve the quality of life, wellbeing and health of people and the community;

(b) contribute to the sustainable economic development of the town;

(c) contribute to the vibrant cultural and artistic development of the town;

(d) protect and enhance the natural and historic environment;

(e) contribute to mitigation and adaptation to climate change in line with the objectives of the Climate Change Act 2008;

(f) positively promote high quality and inclusive design for the maximum number of people including disabled people;

(g) ensure that decision-making is open, transparent, participative and accountable; and

(h) ensure that assets are managed for long-term interest of the community.

(1C) In this Part "infrastructure" includes—

(a) water, electricity, gas, telecommunications, sewerage or other services;

(b) roads, railways or other transport facilities;

(c) retail or other business facilities;

(d) health, educational, employment or training facilities;

(e) social, religious, recreational or cultural facilities;

(f) green infrastructure and ecosystems;

(g) cremation or burial facilities; and

(h) community facilities not falling within paragraphs (a) to (f); and

"land" includes housing or other buildings (and see also the definition in Schedule 10 to the Interpretation Act 1978), and references to housing include (where the context permits) any yard, garden, outhouses and appurtenances belonging to, or usually enjoyed with, the building or part of building concerned.'"'—*(Roberta Blackman-Woods.)*

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 6, Noes 9.

Division No. 16]

AYES

Blackman-Woods, Roberta	Jones, Graham
Burden, Richard	Miller, Andrew
Greatrex, Tom	Raynsford, rh Mr Nick

NOES

Hayes, rh Mr John	Parish, Neil
Heaton-Harris, Chris	Rudd, Amber
Jenrick, Robert	Williams, Stephen
Kwarteng, Kwasi	Zahawi, Nadhim
Newmark, Mr Brooks	

Question accordingly negatived.

New Clause 14

IMPACT OF INFRASTRUCTURE SPENDING ON COSTS FOR CONSUMERS

"28A Provision of impact data

'(1) The Chancellor of the Exchequer may by regulations make provision for the regulators to provide data, in a manner prescribed by the regulations, about the anticipated impact of infrastructure spending on the cost of products for consumers.

(2) Regulations made under subsection (1) may prescribe—

(a) the type of infrastructure spending about which data must be provided;

(b) the nature of the data to be provided;

(c) the methodology for collating and manipulating the data, including assumptions that should be made;

(d) the form in which the data should be presented;

(e) the persons that should receive a copy of the data.

(3) The regulations may make different provision for different regulators where necessary.

(4) The Treasury must scrutinise the data provided under subsection (1) and assess—

(a) the cumulative impact of infrastructure spending on the cost of products for consumers;

(b) the affordability of any anticipated increases in the cost of products for consumers, taking into account factors other than infrastructure spending that are also likely to significantly impact the cost of products; and

(c) differences in affordability between different groups of consumers, if any.

(5) The Treasury must publish the data provided under subsection (1) and the assessment made under subsection (4) in such manner as it reasonably deems appropriate.

(6) The Treasury must take into account the assessment in subsection (4) in making decisions about the extent, prioritisation or timing of infrastructure spending.

(7) The duties in subsections (4) and (5) may be delegated to any person or organisation that the Chancellor of the Exchequer reasonably deems appropriate.

(8) A delegation under subsection (7) may specify—

(a) the extent to which the duty is delegated; and

(b) any conditions to which the delegation is subject.

(9) The Chancellor of the Exchequer may give directions to the regulators in relation to infrastructure spending in furtherance of this Part."—*(Tom Greatrex.)*

Brought up, and read the First time.

Tom Greatrex (Rutherglen and Hamilton West) (Lab/Co-op): I beg to move, That the clause be read a Second time.

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

New clause 15—*Interpretation of section (Impact of infrastructure spending on costs for consumers)*—

In section Impact of infrastructure spending on costs for consumers—

(a) "consumer" means any individual or household of individuals that purchases a product or products;

(b) "product" means a good or service the provision of which is regulated by a regulator;

(c) "a regulator" means any of—

(i) the Northern Ireland Authority for Utility Regulation;

(ii) the Office of Communications;

(iii) the Office of Gas and Electricity Markets;

(iv) the Office of Rail Regulation;

(v) the Water Industry Commission for Scotland; and

(vi) the Water Services Regulation Authority;

and "the regulators" means (i) to (vi)."

Tom Greatrex: I want to talk about the intent behind the new clause, which is an important amendment to tease out the Government's thinking on these important and significant issues. The title of the Bill is the Infrastructure Bill—we might have a discussion about the short title or the long title on Report—and it obviously impacts on different forms of infrastructure. We have heard today about energy, transport, standards for homes and a range of issues. With infrastructure, there are always costs, and costs end up being borne by the consumer and/or taxpayer—groups that often overlap.

It is important to reflect on a National Audit Office report on infrastructure costs. The NAO concluded that no one in Government is drawing together an overall forecast of aggregated costs on a range of different sectors or how that will impact on consumers. I am aware that in 2010 Ofgem in the energy sector undertook Project Discovery, which looked at costs associated with the renewal of energy infrastructure. Although a regulator did that, the Government took the view that it was policy work, so since 2010 the Department of Energy and Climate Change has done similar assessments.

3.15 pm

In relation to water, however, as the National Audit Office report highlighted, the limited forecast for future bills is attempted by Ofwat and not by the Department for Environment, Food and Rural Affairs. In telecoms, neither the regulator nor the relevant Department is making any such forecast. We can see that there is an inconsistency in the approach to those important matters. I am sure that we all support infrastructure renewal; the need for it is pretty urgent in some areas and sectors. However, we are all rightly concerned about the cost and where it falls.

We can debate, as we frequently do, whether certain forms of technology are a waste of money and how effective they are. The hon. Member for Daventry may decide to start such a conversation. For the sake of transparency, however, I am sure that he and others would like that to be comprehensive. The amendment would compel the Treasury to charge someone else on its behalf, to undertake such an exercise systematically, so that the results could be compiled, compared and made available not only to those of us who scrutinise Government policy but to the general public.

Such an exercise is important for two reasons. First, it is important from the point of view of seeking the best value for money for taxpayer-funded or, eventually, consumer-funded projects when the cost ends up on people's bills. Secondly, it is important to enable us to have an objective debate. Various different people make assessments and claims about the costs, but the comparisons are not always accurate. In the energy arena, for example, that can be done on the basis of generational capacity or of lifetime costs. The figures can be calibrated in different ways, which may lead to contrasting results from studies on the same issue. It would be helpful for the Government to consider a properly comparable way of doing that, which covers a number of different sectors in a consistent way, and new clauses 14 and 15 are designed to achieve that.

I am sure that the Minister is aware of the work that the NAO and the Public Accounts Committee have done on the matter. It is always wise to take account of their work and to look at ways to respond, through the work of Government, to their legitimate concerns so that if there are any deficiencies, as there seem to be in this area, those can be rectified. Members of the Committee may well be aware that the Consumers Association has, over a long time, pressed for something similar to new clauses 14 and 15, and the organisation contributed to the evidence taken by the NAO in the preparation of the report. Even if the Government cannot accept the new clauses, I hope that the Minister can indicate that they are seriously considering the issues I have raised. I hope that they are considering ways of providing the

relevant information objectively and with the right analysis, in order to remove the doubt and distortion that we have seen in some of the debates about cost and ensure that people are clear about the costs associated with different projects or policy developments. In such a way, the Government can ensure that public debate is well informed rather than misinformed.

Mr Hayes: I have grown increasingly fond, during our deliberations, of a number of members of the Committee, including the hon. Members for City of Durham and for Birmingham, Northfield, but it is no secret that the hon. Member for Rutherglen and Hamilton West is my favourite. When I saw the notes that were prepared for me—which were immensely tedious and to which I am not going to refer— encouraging me to resist the new clause, I was not exactly resentful, but there was a certain sorrow in my heart. None the less, I am going to resist the new clause, but not because it does not have some nuggets at its core.

There are two powerful points at the heart of the motivation behind the proposed new clauses. The first is that consumers should know as much as possible about what their bill comprises. There is precedent for that because, as the hon. Gentleman knows, given his shadow ministerial responsibilities in the field of energy, energy bills are broken down to show what is spent, for example, on transmission costs, which are a substantial part of bills. Distribution and transmission costs together are something like 20% of the bill, and it is important that people know that.

The second nugget at the heart of the reason for the proposed new clauses is that it is good to have some independent scrutiny of the effect—particularly in those areas of infrastructure and investment that are necessary to deliver utilities—that the character of that investment has on consumers. That argument is made by the Consumers Association and others, and the hon. Gentleman amplified it in his short remarks. However, I am not sure that the new clause is the best way to go about it.

I have two problems with the way in which the hon. Gentleman set about addressing at least two important issues. The first is that because so much infrastructural investment is private—not dictated by Government—and the Government therefore do not set the overall level of infrastructural spending, I am not sure that it is appropriate for the Government to become involved in the way that they would have to if the new clauses were incorporated into the Bill.

We do not control how much is spent on a large proportion of infrastructure. Investment in roads is funded almost exclusively privately, and although we have a road investment strategy, the delivery of that strategy is essentially about building sufficient confidence in long-term commitment to encourage private sector investment. The same might be true in the area in which the hon. Gentleman has responsibility and considerable expertise. Given that at least 60% of our infrastructural pipeline is expected to be privately funded, I am not sure that the proposal that he is making is the right vehicle to achieve the two things that I have highlighted as seeming significant.

The second reason why I would resist the new clauses—just in case any members of the Committee were worrying, there are times to speak for a long time and times to speak for a short time, and I shall be speaking for a short time on this occasion—is that I am not sure that aggregating spend on infrastructure is meaningful. I certainly do not think that it is easy to devise a robust mechanism for doing so. Certainly, aggregating effects on consumers is problematic, because of the variable character of the effect of infrastructural investment and the variable character of the nature of consumption. Therefore, for those two pretty central reasons of economic theory and practice, it is difficult to accept the new clauses.

There are any number of more detailed explanations that I could read out to the point of tedium, but I have no intention of doing so. However, because of the tone in which the hon. Gentleman spoke and the intent behind the amendments, which I recognise, I will look again at the matter, with the caveats I have mentioned.

The hon. Gentleman is right about the National Audit Office. If I were in opposition—far be it from me to teach people how to do their jobs—I might have focused more on the regulators' teeth, because there is the question of the balance between measurement and regulation. There is an interesting point about what role regulators should and do play in assessing the appropriateness of infrastructure investment. As he will know, they already have such a responsibility, but the Bill provides an opportunity to test the effectiveness of what they currently do. There are matters that we can look at, the consideration of which has been catalysed by the tabling of these new clauses. Because of not only my affection for the hon. Gentleman but the sense in what he said, I will look at them again. On that basis, I hope that he will withdraw the new clause.

Tom Greatrex: Briefly, I would like to make two points for the record. The Minister talked about private investment, but that investment often ends up on consumers' bills. I am talking not just about energy but about some transport matters that are the cause of concern.

During the festive period we saw disruption to many rail services, caused by overrunning works. The justification from, I think, one of the Minister's colleagues in his Department, not just for those works but for the subsequent increase in fares, was that the investment would lead to better services and facilities and greater rail capacity. The Government often make that point, but it is important that the public and others who rightly want to scrutinise what the Government are doing can test the objectivity of those statements.

Mr Hayes: The hon. Gentleman makes an interesting point. Let me make our argument even more sophisticated than it is already—that is a tough call, but I will give it a shot. The disruption he described was not really about the investment, but was about the decision-making process and the effects of the delivery of that investment. In a sense, it is rather clumsy to confuse the two.

That gives me the opportunity to tell the hon. Gentleman, and, through him, the Committee, that the hon. Member for Birmingham, Northfield made several points in the early stages of our considerations about the accountability of the new body that we are establishing to deliver our road investment strategy, Highways England. I am clear that I want Highways England to look as little like Network Rail as possible.

Tom Greatrex: I am sure that that will be of comfort to my hon. Friend the Member for Birmingham, Northfield. We may return to those discussions on Report.

[Tom Greatrex]

Perhaps I did not express myself clearly. My point was not that the investment was the cause of the disruption, but that following the disruption, which led to media and public attention, one of the Minister's colleagues had to interrupt her Christmas break to speak about it, and she said that the reason for the investment of which that work was a part was to deliver better services. That was at the same time as announcements about fare increases, which were justified in part by that Minister as a way of funding some of the investment in the improvement in the railways that we want to see.

My other point is about regulators. The important point is that regulators in different sectors, whether energy, water or telecoms, seem to make forecasts differently. That was another reason for tabling the new clauses. If each regulator—or a combination of different regulators—made those forecasts consistently and with the same level of detailed work, there would perhaps be less of an issue. However, that is demonstrably not the case—for example, I made the comparison between the work that is done by Ofgem, and the way it is passed on to the Government, and the work done by Ofwat.

3.30 pm

There are serious issues to be looked at, but, having said that, and not just because the Minister has highlighted me as his favourite Member on the Opposition side of the Committee—and only on this side, I am sure—I do not intend to press the new clause to a vote. However, I hope that he and colleagues in other Departments will look at those issues in detail, because even if they do not come to the fore while we are considering this Bill, I am sure they will be raised in future by Members on both sides of the House who are interested in ensuring absolute clarity about cost and information for consumers. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 17

COMMUNITY BENEFIT FOR SCHEMES PROVIDED BY COMPANIES ENGAGED IN HYDRAULIC FRACTURING

'(1) The Secretary of State shall by regulations make provision for community benefit schemes to be provided by companies engaged in the extraction of gas and oil rock by means of hydraulic fracturing.'—*(Tom Greatrex.)*

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 6, Noes 9.

Division No. 17]

AYES

Blackman-Woods, Roberta	Jones, Graham
Burden, Richard	Miller, Andrew
Greatrex, Tom	Raynsford, rh Mr Nick

NOES

Burt, rh Alistair	Parish, Neil
Hayes, rh Mr John	Rudd, Amber
Heaton-Harris, Chris	Williams, Stephen
Jenrick, Robert	Zahawi, Nadhim
Newmark, Mr Brooks	

Question accordingly negatived.

New Clause 18

GREATER LONDON AUTHORITY: HOUSING AND REGENERATION

'(1) The Greater London Authority Act 1999 is amended in accordance with subsection (2).

(2) In section 31 (Limits of the general power), at the end insert—

'(10) Nothing in subsection (1)(a) above shall be taken to prevent the Authority from providing financial assistance to any body or person for the purposes of housing or regeneration."' .—*(Nadhim Zahawi.)*

To broaden the Greater London Authority's powers to enable them to fund housing and regeneration programmes which include some degree of financial support for the development of London's transport infrastructure.

Brought up, and read the First time.

Nadhim Zahawi: I beg to move, That the clause be read a Second time.

May I add my voice to that of my colleagues in saying what a pleasure it has been to serve under your chairmanship, Sir Roger? You have kept us committed to doing the right thing, focused on the Bill, and wide awake as well.

I have tabled the new clause to draw attention to an anomaly in the Greater London Authority Act 1999 that could limit the ability of the Greater London authority to fund infrastructure improvements as part of regeneration projects in this great city. Such infrastructure investment is vital and greatly welcome to both the residents of our nation's capital and visitors to it, such as my own constituents.

The new clause relates to section 31(1) of the 1999 Act, which appears to prohibit the GLA's expenditure on a project if that project could be undertaken by Transport for London. As members of the Committee will be aware, a number of important infrastructure projects in London at the moment are supported by the Government, including the new housing zones policy and the massive regeneration of Barking riverside. Many of those projects include transport infrastructure that could be considered to be covered by section 31(1). I also understand that the section could prevent the Homes and Communities Agency from undertaking work under a delegation from the GLA.

To ensure that vital infrastructure spending in the capital is on a rock-solid legal footing, I strongly believe that it is important that any misunderstandings arising from section 31(1) of the 1999 Act be removed as soon as possible. I would therefore appreciate a commitment from the Government to deal with the anomaly.

Stephen Williams: I thank my hon. Friend the Member for Stratford-on-Avon. It is nice to hear him speak in the Committee; his time spent sitting silently but supportively listening to everyone else has now been rewarded. He has raised an important point, of which the Government are aware—indeed, it was drawn to our attention—and I thank him for giving the issue an airing for the whole Committee.

The GLA recently informed the Government that in its opinion, it was ambiguous whether the GLA would have the legal powers to fund the transport elements of housing or regeneration schemes. As my hon. Friend said,

that is because of a general prohibition in the original Act that set up the GLA in 1999 preventing the it from incurring expenditure in doing anything that its functional bodies can do—in this instance, Transport for London. From a commercial perspective, it is a case in which the subsidiary appears to have more power than the parent, which seems odd, but that is how the legislation was constructed back in 1999.

Transport for London has wide-ranging powers, defined as being

"for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within Greater London."

If the GLA's interpretation of the legislation is correct, it could have a significant impact on its ability to provide financial assistance for some of its projects to build new homes in London. That is clearly not what Parliament intended when passing the Localism Act 2011, which devolved responsibility for housing and regeneration in London to the Mayor and the GLA.

Although I thank my hon. Friend for tabling the new clause, we do not think that, as currently drafted, it achieves the clarity that the GLA is rightly seeking at the moment on the extent of its powers to incur expenditure on transport. I can inform him and advise the Committee that the Government are investigating the issue urgently and seeking the most appropriate legislative solution to ensure that the Mayor, and specifically the GLA, have the clarity needed to build the new homes and create the new jobs that London and Londoners desperately need. With that reassurance that we are aware of the problem, it is being considered urgently and a solution is hopefully forthcoming shortly, I encourage my hon. Friend to withdraw his clause.

Nadhim Zahawi: I am grateful to my hon. Friend. From his comments, he is clearly taking the matter seriously and has considered it in some detail. I hope that he will be able to come back with a legislative solution. I beg to ask leave to withdraw the clause.

Clause, by leave, withdrawn.

New Clause 20

PLANNING NOTIFICATION FOR THE EXTRACTION OF UNCONVENTIONAL OIL AND GAS

'(1) The Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment No. 2) Order is amended as follows.

(2) In Article 2, "Amendments to the Town and Country Planning (Development Management Procedure) (England) Order 2010", paragraph (4), after "consisting of the" in inserted paragraph (2A), insert "conventional".'—*(Tom Greatrex.)*

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 6, Noes 10.

Division No. 18]

AYES

Blackman-Woods, Roberta	Jones, Graham
Burden, Richard	Miller, Andrew
Greatrex, Tom	Raynsford, rh Mr Nick

NOES

Burt, rh Alistair	Heaton-Harris, Chris
Hayes, rh Mr John	Jenrick, Robert
Kwarteng, Kwasi	Rudd, Amber
Newmark, Mr Brooks	Williams, Stephen
Parish, Neil	Zahawi, Nadhim

Question accordingly negatived.

New Schedule 1

MAYORAL DEVELOPMENT ORDERS

'PART 1

MAIN AMENDMENTS

1 After section 61D of the Town and Country Planning Act 1990 insert—

"Mayoral development orders

61DA Mayoral development orders

(1) The Mayor of London may by order (a Mayoral development order) grant planning permission for development specified in the order on one or more sites specified in the order.

(2) The site or sites must fall within—

(a) the area of a local planning authority in Greater London, or

(b) the areas of two or more local planning authorities in Greater London.

(3) The Secretary of State may by development order specify an area or class of development in respect of which a Mayoral development order must not be made.

61DB Permission granted by Mayoral development order

(1) Planning permission granted by a Mayoral development order may be granted—

(a) unconditionally, or

(b) subject to such conditions or limitations as are specified in the order.

(2) A condition imposed by a Mayoral development order may provide for the consent, agreement or approval to a matter specified in the condition to be given by one or more persons specified in the condition.

(3) A person specified in a condition must be the Mayor of London or a relevant local planning authority.

(4) The Secretary of State may by development order provide that, if the consent, agreement or approval of a person required by a condition imposed by a Mayoral development order is not given within a specified period, that consent, agreement or approval may be sought from a specified person.

(5) In subsection (4) "specified" means specified, or of a description specified, in the development order.

(6) The Secretary of State may by development order make provision for a person to apply for planning permission for the development of land without complying with a condition imposed on the grant of planning permission by a Mayoral development order.

(7) A development order under subsection (6) may, in particular make provision similar to that made by section 73, subject to such modifications as the Secretary of State thinks appropriate.

(8) So far as the context requires, in relation to—

(a) an application for the consent, agreement or approval of the Mayor of London to a matter specified in a condition imposed by a Mayoral development order, or

(b) the determination of such an application,

any reference in an enactment to a local planning authority (however expressed) includes a reference to the Mayor.

(9) For the purposes of this Act a local planning authority is a relevant local planning authority in relation to a Mayoral development order or proposed Mayoral development order if a site or part of a site to which the order or proposed order relates is within the authority's area.

61DC Preparation and making of Mayoral development order

(1) The Secretary of State may by development order make provision about the procedure for the preparation and making of a Mayoral development order.

(2) A development order under subsection (1) may in particular make provision about—

(a) notice, publicity and inspection by the public;

(b) consultation with and consideration of views of such persons and for such purposes as are specified in the order;

(c) the making and consideration of representations.

(3) A Mayoral development order may be made only in response to an application to the Mayor of London by each relevant local planning authority.

(4) A proposed Mayoral development order may be consulted on only with the consent of each relevant local planning authority.

(5) A Mayoral development order may not be made unless the order has been approved, in the form in which it is made, by each relevant local planning authority.

(6) If the Mayor of London makes a Mayoral development order, the Mayor must send a copy to the Secretary of State as soon as is reasonably practicable after the order is made.

61DD Revision or revocation of Mayoral development order

(1) The Mayor of London may at any time revise or revoke a Mayoral development order with the approval of each relevant local planning authority.

(2) The Mayor of London must revise a Mayoral development order if the Secretary of State directs the Mayor to do so (and the requirement for the approval of each relevant local planning authority does not apply in those circumstances).

(3) The Secretary of State may at any time revoke a Mayoral development order if the Secretary of State thinks it is expedient to do so.

(4) The power under subsection (3) is to be exercised by order made by the Secretary of State.

(5) If the Secretary of State revokes a Mayoral development order the Secretary of State must state the reasons for doing so.

(6) The Secretary of State may by development order make provision about—

(a) the steps to be taken by the Secretary of State before giving a direction or making an order under this section;

(b) the procedure for the revision or revocation of a Mayoral development order.

(7) A development order under subsection (6) may in particular make provision about—

(a) notice, publicity and inspection by the public;

(b) consultation with and consideration of views of such persons and for such purposes as are specified in the order;

(c) the making and consideration of representations.

61DE Effect of revision or revocation on incomplete development

(1) This section applies if planning permission for development granted by a Mayoral development order is withdrawn at a time when the development has been started but not completed.

(2) For this purpose planning permission for development granted by a Mayoral development order is withdrawn—

(a) if the order is revoked under section 61DD, or

(b) if the order is revised under that section so that it ceases to grant planning permission for the development or materially changes any condition or limitation to which the grant of permission is subject.

(3) The development may, despite the withdrawal of the permission, be completed, subject as follows.

(4) If the permission is withdrawn because the Mayoral development order is revoked by the Mayor of London, the Mayor may make a determination that subsection (3) is not to apply in relation to development specified in the determination.

(5) A determination under subsection (4) must be published in such manner as the Mayor of London thinks appropriate.

(6) If the permission is withdrawn because the Mayoral development order is revoked by an order made by the Secretary of State under section 61DD, the order under that section may provide that subsection (3) is not to apply in relation to development specified in that order.

(7) If the permission is withdrawn because the order is revised as mentioned in subsection (2)(b), the revised order may provide that subsection (3) is not to apply in relation to development specified in the order.

(8) The power under this section to include provision in an order under section 61DD or a Mayoral development order may be exercised differently for different purposes."

Part 2

Consequential amendments

2 The Town and Country Planning Act 1990 is amended as follows.

3 In section 56(5)(a) (time when development begun where planning permission granted by general or local development order) for "or a local development order" substitute ", a local development order or a Mayoral development order".

4 In section 57(3) (planning permission not required for normal use of land where planning permission for development of land granted by development order etc) after "a local development order" insert ", a Mayoral development order".

5 In section 58(1) (planning permission may be granted by development order etc) after "a local development order" insert ", a Mayoral development order".

6 In section 62(2A) (applications for planning permission: references in subsections (1) and (2) to applications for planning permission to include applications under section 61L(2)) after "references to" in the second place insert "—

(a) applications for consent, agreement or approval as mentioned in section 61DB(2), and

(b) ".

7 In section 65(3A) (notice etc of applications for planning permission: references in subsections (1) and (3) to applications for planning permission etc to include applications under section 61L(2) etc) after "references to" in the second place insert "—

(a) any application for consent, agreement or approval as mentioned in section 61DB(2) or any applicant for such consent, agreement or approval, and

(b) ".

8 (1) Section 69 (register of applications etc) is amended as follows.

(2) In subsection (1) (duty of local planning authority to keep register containing information about planning applications etc) after paragraph (c) insert—

"(cza) Mayoral development orders;".

(3) In subsection (2)(b) (requirement for register to contain information about local development orders etc) after "local development order," insert "Mayoral development order,".

9 (1) Section 71 (consultations in connection with determinations under section 70) is amended as follows.

(2) In subsection (2ZA) (references in subsections (1) and (2) to applications for planning permission to include applications under section 61L(2)) after "references to" in the second place insert "—

(a) an application for consent, agreement or approval as mentioned in section 61DB(2), and

(b) ".

(3) In subsection (3A) (disapplication of consultation requirement relating to caravan sites in case of neighbourhood development order) after "granted by" insert "a Mayoral development order or".

10 In section 74(1ZA) (directions etc as to method of dealing with applications: references in subsections (1)(c) and (f) to planning permission etc to include approvals under section 61L(2) etc)—

(a) in paragraph (a) after "reference to" in the second place insert "—

(i) a consent, agreement or approval as mentioned in section 61DB(2), and

(ii) ", and

(b) in paragraph (b) after "references to" in the second place insert "—

(i) applications for consent, agreement or approval as mentioned in section 61DB(2), and

(ii) ".

11 In section 77(1) (reference of applications to the Secretary of State)—

(a) for "approval" substitute "consent, agreement or approval", and

(b) after "a local development order" insert ", a Mayoral development order".

12 In section 78(1)(c) (right of appeal against refusal of application for approval under development order etc.) after "a local development order" insert ", a Mayoral development order".

13 In section 88(9) (provision for permission for development in enterprise zones does not prevent planning permission from being granted by other means) after "a local development order" insert ", a Mayoral development order".

14 In section 91(4)(a) (provisions about general condition limiting duration of planning permission do not apply to permission granted by development order etc) after "a local development order" insert ", a Mayoral development order".

15 (1) Section 108 (compensation for refusal etc of planning permission formerly granted by development order etc) is amended as follows.

(2) In the heading after "local development order" insert ", Mayoral development order".

(3) In subsection (1)—

(a) in paragraph (a) after "a local development order" insert ", a Mayoral development order", and

(b) after "the local development order" insert ", the Mayoral development order".

(4) After subsection (1) insert—

"(1A) Where section 107 applies in relation to planning permission granted by a Mayoral development order—

(a) subsection (1) of that section has effect as if it provided for a claim to be made to, and compensation to be paid by, the Mayor of London rather than the local planning authority, and

(b) subject to subsection (1B), sections 109 to 112 have effect where compensation is payable by the Mayor of London under section 107(1) as if references to the local planning authority (however expressed) were references to the Mayor of London.

(1B) Subsection (1A)(b) does not apply to section 110(2) or (4)."

(5) In subsection (2)—

(a) after "a local development order" insert ", a Mayoral development order", and

(b) after "revocation" in both places insert ", revision".

(6) In subsection (3B) after paragraph (b) insert—

"(ba) in the case of planning permission granted by a Mayoral development order, the condition in subsection (3DA) is met, or".

(7) After subsection (3D) insert—

"(3DA) The condition referred to in subsection (3B)(ba) is that—

(a) the planning permission is withdrawn by the revocation or revision of the Mayoral development order,

(b) notice of the revocation or revision was published in the prescribed manner not less than 12 months or more than the prescribed period before the revocation or revision took effect, and

(c) either—

(i) the development authorised by the Mayoral development order had not begun before the notice was published, or

(ii) section 61DE(3) applies in relation to the development."

16 In section 109(6) (apportionment of compensation for depreciation: interpretation) in the definition of "relevant planning decision" after "the local development order" insert ", the Mayoral development order".

17 In section 171H(1)(a) (compensation for temporary stop notice: application where activity authorised by development order etc) after "a local development order" insert ", a Mayoral development order".

18 In section 264(5)(ca) (land which is treated as operational land of a statutory undertaker by virtue of planning permission for its development granted by a local development order etc) after "a local development order" insert ", a Mayoral development order".

19 (1) Section 303 (fees for planning applications etc) is amended as follows.

(2) After subsection (1) insert—

"(1ZA) The Secretary of State may by regulations make provision for the payment of a fee to—

(a) the Mayor of London in respect of an application for consent, agreement or approval as mentioned in section 61DB(2) or the giving of advice about such an application;

(b) a specified person in respect of an application for consent, agreement or approval for which provision is made under section 61DB(4) or the giving of advice about such an application."

(3) After subsection (10) insert—

"(10A) If the Mayor of London or a specified person calculates the amount of fees in pursuance of provision made by regulations under subsection (1ZA) the Mayor of London or the specified person must secure that, taking one financial year with another, the income from the fees does not exceed the cost of performing the function."

(4) After subsection (11) insert—

"(12) In this section "specified person" means a person specified by development order under section 61DB(4)."

20 In section 305(1)(a) (contributions by Ministers towards compensation paid by local authorities) after "local authority" insert ", the Mayor of London".

21 In section 324 (rights of entry) after subsection (1A) insert—

"(1B) Any person duly authorised in writing by the Secretary of State, a local planning authority or the Mayor of London may at any reasonable time enter any land for the purpose of surveying it in connection with—

(a) a proposal by a local planning authority to apply to the Mayor of London for the Mayor to make a Mayoral development order, or

(b) a proposal by the Mayor of London to make a Mayoral development order."

22 (1) Section 333 (regulations and orders) is amended as follows.

(2) In subsection (4) after "61A(5)" insert ", 61DD(4),".

(3) In subsection (5) after "Wales)," insert "61DD(4),".

23 In section 336(1) (interpretation) at the appropriate place insert—

""relevant local planning authority" is to be construed in accordance with section 61DB(9);".' — *(Mr Hayes.)*

This amendment makes detailed provision about Mayoral development orders as described in amendment NC8. It also contains consequential amendments to the Town and Country Planning Act 1990.

Brought up, read the First and Second time, and added to the Bill.

New Schedule 2

THE ELECTRONIC COMMUNICATIONS CODE

'1 This is the Schedule to be inserted before Schedule 4 to the Communications Act 2003

"SCHEDULE 3A

THE ELECTRONIC COMMUNICATIONS CODE

PART 1

KEY CONCEPTS

Introductory

1 (1) This Part defines some key concepts used in this code.

(2) For definitions of other terms used in this code, see—

(a) paragraph 91 (meaning of "the court").

(b) paragraph 101 (meaning of "occupier"),

(c) paragraph 103 (general interpretation),

(d) section 32 (meaning of electronic communications networks and services), and

(e) section 405 (general interpretation).

The operator

2 In this code "operator" means—

(a) where this code is applied in any person's case by a direction under section 106, that person, and

(b) where this code applies by virtue of section 106(3)(b), the Secretary of State or (as the case may be) the Northern Ireland department in question.

The code rights

3 For the purposes of this code a "code right", in relation to an operator and any land, is a right for the statutory purposes—

(a) to install and keep electronic communications apparatus on, under or over the land,

(b) to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus which is on, under or over the land,

(c) to carry out any works on the land for or in connection with the installation, maintenance, adjustment, alteration, repair, upgrading or operation of electronic communications apparatus,

(d) to enter the land to inspect, maintain, adjust, alter, repair, upgrade or operate any electronic communications apparatus which is on, under or over the land or elsewhere,

(e) to connect to a power supply,

(f) to interfere with or obstruct a means of access to or from the land (whether or not any electronic communications apparatus is on, under or over the land), or

(g) to lop or cut back, or require another person to lop or cut back, any tree or other vegetation that interferes or will or may interfere with electronic communications apparatus.

The statutory purposes

4 In this code "the statutory purposes", in relation to an operator, means—

(a) the purposes of the operation of the operator's network, or

(b) the purposes of providing an infrastructure system.

Electronic communications apparatus, lines and structures

5 (1) In this code "electronic communications apparatus" means—

(a) any apparatus which is designed or adapted for use in connection with the provision of an electronic communications network,

(b) any apparatus which is designed or adapted for a use which consists of or includes the sending or receiving of communications or other signals that are transmitted by means of an electronic communications network,

(c) any line, and

(d) any other structure or thing which is designed or adapted for use in connection with the provision of an electronic communications network.

(2) References to the installation of electronic communications apparatus are to be construed accordingly.

(3) In this code—

"line" means any wire, cable, tube, pipe or similar thing (including its casing or coating) which is designed or adapted for use in connection with the provision of any electronic communications network or electronic communications service;

"structure" includes a building only if the sole purpose of that building is to enclose other electronic communications apparatus.

The operator's network

6 In this code "network" in relation to an operator means—

(a) if the operator falls within paragraph 2(a), so much of any electronic communications network or infrastructure system provided by the operator as is not excluded from the application of the code under section 106(5), and

(b) if the operator falls within paragraph 2(b), the electronic communications network which the Secretary of State or the Northern Ireland department is providing or proposing to provide.

Infrastructure system

7 In this code "infrastructure system" means a system of infrastructure provided so as to be available for use by providers of electronic communications networks for the purposes of the provision by them of their networks.

PART 2

CONFERRAL OF CODE RIGHTS AND THEIR EXERCISE

Introductory

8 This Part of this code makes provision about—

(a) the conferral of code rights,

(b) the persons who are bound by code rights, and

(c) the exercise of code rights.

Who may confer code rights?

9 A code right in respect of land may only be conferred on an operator by an agreement between the occupier of the land and the operator.

Who else is bound by code rights?

10 (1) This paragraph applies if, in accordance with this Part, a code right is conferred on an operator in respect of land by a person ("O") who is the occupier of the land when the code right is conferred.

(2) If O has an interest in the land when the code right is conferred, the code right also binds—

(a) the successors in title to that interest,

(b) a person with an interest in the land that is created after the right is conferred and is derived (directly or indirectly) out of—

(i) O's interest, or

(ii) the interest of a successor in title to O's interest, and

(c) any other person at any time in occupation of the land whose right to occupation was granted by—

(i) O, at a time when O was bound by the code right, or

(ii) a person within paragraph (a) or (b).

(3) A successor in title who is bound by a code right by virtue of sub-paragraph (2)(a) is to be treated as a party to the agreement by which O conferred the right.

(4) The code right also binds any other person with an interest in the land who has agreed to be bound by it.

(5) If such a person ("P") agrees to be bound by the code right, the code right also binds—

(a) the successors in title to P's interest,

(b) a person with an interest in the land that is created after P agrees to be bound and is derived (directly or indirectly) out of—

(i) P's interest, or

(ii) the interest of a successor in title to P's interest, and

(c) any other person at any time in occupation of the land whose right to occupation was granted by—

(i) P, at a time when P was bound by the code right, or

(ii) a person within paragraph (a) or (b).

(6) A successor in title who is bound by a code right by virtue of sub-paragraph (5)(a) is to be treated as a party to the agreement by which P agreed to be bound by the right.

Requirements for agreements

11 (1) An agreement under this Part—

(a) must be in writing,

(b) must be signed by or on behalf of the parties to it,

(c) must state for how long the code right is exercisable, and

(d) must state the period of notice (if any) required to terminate the agreement.

(2) Sub-paragraph (1)(a) and (b) also applies to the variation of an agreement under this Part.

(3) The agreement as varied must still comply with sub-paragraph (1)(c) and (d).

Exercise of code rights

12 (1) A code right is exercisable only in accordance with the terms subject to which it is conferred.

(2) Anything done by an operator in the exercise of a code right conferred under this Part in relation to any land is to be treated as done in the exercise of a statutory power.

(3) Sub-paragraph (2) does not apply against a person who—

(a) is the owner of the freehold estate in the land or the lessee of the land, and

(b) is not for the time being bound by the code right.

(4) In the application of sub-paragraph (3) to Scotland the reference to a person who is the owner of the freehold estate in the land or the lessee of the land is to be read as a reference to a person who is the the owner or the tenant of the land.

Access to land

13 (1) This paragraph applies to an operator by whom any of the following rights is exercisable in relation to land—

(a) a code right within paragraph (a) to (e) or (g) of paragraph 3;

(b) a right under Part 8 (street works rights);

(c) a right under Part 9 (tidal water rights);

(d) a right under paragraph 71 (power to fly lines).

(2) The operator may not exercise the right so as to interfere with or obstruct any means of access to or from any other land unless, in accordance with this code, the occupier of the other land has conferred or is otherwise bound by a code right within paragraph (f) of paragraph 3.

(3) The reference in sub-paragraph (2) to a means of access to or from land includes a means of access to or from land that is provided for use in emergencies.

(4) This paragraph does not require a person to whom sub-paragraph (5) applies to agree to the exercise of any code right on land other than the land mentioned in that sub-paragraph.

(5) This sub-paragraph applies to a person who is the occupier of, or owns an interest in, land which is—

(a) a street in England and Wales or Northern Ireland,

(b) a road in Scotland, or

(c) tidal water or lands within the meaning of Part 9.

Part 3

Assignment of code rights, and upgrading and sharing of apparatus

Introductory

14 This Part of this code makes provision for—

(a) operators to assign code rights conferred by an agreement under Part 2,

(b) operators to upgrade electronic communications apparatus to which such an agreement relates, and

(c) operators to share the use of any such electronic communications apparatus.

Assignment of code rights

15 (1) Any agreement under Part 2 of this code is void to the extent that—

(a) it prevents or limits assignment of the agreement to another operator, or

(b) it makes assignment of the agreement subject to conditions to be met by the operator (including a condition requiring the payment of money).

(2) In its application to England and Wales sub-paragraph (1) does not apply to the following terms of an agreement under Part 2 of this code—

(a) terms in a lease which require the operator to enter into an authorised guarantee agreement within the meaning of the Landlord and Tenant (Covenants) Act 1995 (see sections 16 and 28 of that Act);

(b) terms in an agreement other than a lease which have a similar effect to terms within paragraph (a).

(3) If an operator ("the assignor") assigns an agreement under Part 2 of this code to another operator ("the assignee"), the assignee is from the date of the assignment bound by the terms of the agreement.

(4) The assignor is not liable for any breach of a term of the agreement that occurs after the assignment if (and only if), before the breach took place, the assignor or the assignee gave a notice in writing to the other party to the agreement which—

(a) identified the assignee, and

(b) provided a contact address for the assignee.

(5) Sub-paragraph (4) is subject to the terms of any authorised guarantee agreement or similar agreement entered into by the assignor as mentioned in sub-paragraph (2).

(6) In the application of this paragraph to Scotland references to assignment of an agreement are to be read as references to assignation of an agreement.

Power for operator to upgrade or share apparatus

16 (1) An operator ("the main operator") who has entered into an agreement under Part 2 of this code may, if the conditions in sub-paragraphs (2) to (4) are met—

(a) upgrade any of the electronic communications apparatus to which the agreement relates, or

(b) share the use of any such electronic communications apparatus with another operator.

(2) The first condition is that the main operator has exclusive possession of the apparatus.

(3) The second condition is that any changes to the apparatus as a result of the upgrading or sharing have no adverse impact on its appearance or no more than a minimal adverse impact on its appearance.

(4) The third condition is that the upgrading or sharing imposes no additional burden on the other party to the agreement.

(5) For the purposes of sub-paragraph (4) an additional burden includes anything that—

(a) has an additional adverse effect on the other party's enjoyment of the land, or

(b) causes additional damage, expense or inconvenience to that party.

(6) Any agreement under Part 2 of this code is void to the extent that—

(a) it prevents or limits the upgrading or sharing, in a case where the conditions in sub-paragraphs (2) to (4) are met, of any of the electronic communications apparatus to which the agreement relates, or

(b) it makes upgrading or sharing of such apparatus subject to conditions to met by the operator (including a condition requiring the payment of money).

(7) References in this paragraph to sharing electronic communications apparatus include carrying out works to the apparatus to enable such sharing to take place.

Effect of agreements enabling sharing between operators and others

17 (1) This paragraph applies where—

(a) this code has been applied by a direction under section 106 in a person's case,

(b) this code expressly or impliedly imposes a limitation on the use to which electronic communications apparatus installed by that person may be put or on the purposes for which it may be used, and

(c) that person is a party to a relevant agreement or becomes a party to an agreement which (after the person has become a party to it) is a relevant agreement.

(2) The limitation does not preclude—

(a) the doing of anything in relation to that apparatus, or

(b) its use for particular purposes,

to the extent that the doing of that thing, or the use of the apparatus for those purposes, is in pursuance of the relevant agreement.

(3) This paragraph is not to be construed, in relation to a person who is entitled or authorised by or under a relevant agreement to share the use of apparatus installed by another party to the agreement, as affecting any consent requirement imposed (whether by an agreement, an enactment or otherwise) on that person.

(4) In this paragraph—

"consent requirement", in relation to a person, means a requirement for the person to obtain consent or permission to or in connection with—

(a) the installation by the person of apparatus, or

(b) the doing by the person of any other thing in relation to apparatus the use of which the person is entitled or authorised to share;

"relevant agreement" means an agreement in relation to electronic communications apparatus which—

(a) relates to the sharing by different parties to the agreement of the use of that apparatus, and

(b) is an agreement that satisfies the requirements of sub-paragraph (5).

(5) An agreement satisfies the requirements of this sub-paragraph if—

(a) every party to the agreement is a person in whose case this code applies by virtue of a direction under section 106, or

(b) one or more of the parties to the agreement is a person in whose case this code so applies and every other party to the agreement is a qualifying person.

(6) A person is a qualifying person for the purposes of sub-paragraph (5) if the person is either—

(a) a person who provides an electronic communications network without being a person in whose case this code applies, or

(b) a designated provider of an electronic communications service consisting in the distribution of a programme service by means of an electronic communications network.

(7) In sub-paragraph (6)—

"designated" means designated by regulations made by the Secretary of State;

"programme service" has the same meaning as in the Broadcasting Act 1990.

Part 4

Power of court to impose agreement

Introductory

18 This Part of this code makes provision about—

(a) the circumstances in which the court can impose an agreement on a person by which the person confers or is otherwise bound by a code right,

(b) the test to be applied by the court in deciding whether to impose such an agreement,

(c) the effect of such an agreement and its terms,

(d) the imposition of an agreement on a person on an interim or temporary basis.

When can the court impose an agreement?

19 (1) This paragraph applies where the operator requires a person (a "relevant person") to agree—

(a) to confer a code right on the operator, or

(b) to be otherwise bound by a code right which is exercisable by the operator.

(2) The operator may give the relevant person a notice in writing—

(a) setting out the code right, and all of the other terms of the agreement that the operator seeks, and

(b) stating that the operator seeks the person's agreement to those terms.

(3) The operator may apply to the court for an order under this paragraph if—

(a) the relevant person does not, before the end of 28 days beginning with the day on which the notice is given, agree to confer or be otherwise bound by the code right, or

(b) at any time after the notice is given, the relevant person gives notice in writing to the operator that the person does not agree to confer or be otherwise bound by the code right.

(4) An order under this paragraph is one which imposes on the operator and the relevant person an agreement between them which—

(a) confers the code right on the operator, or

(b) provides for the code right to bind the relevant person.

What is the test to be applied by the court?

20 (1) Subject to sub-paragraph (5), the court may make an order under paragraph 19 if (and only if) the court thinks that both of the following conditions are met.

(2) The first condition is that the prejudice caused to the relevant person by the order is capable of being adequately compensated by money.

(3) The second condition is that the public benefit likely to result from the making of the order outweighs the prejudice to the relevant person.

(4) In deciding whether the second condition is met, the court must have regard to the public interest in access to a choice of high quality electronic communications services.

(5) The court may not make an order under paragraph 19 if it thinks that the relevant person intends to redevelop all or part of the land to which the code right would relate, or any neighbouring land, and could not reasonably do so if the order were made.

What is the effect of an agreement imposed under paragraph 19?

21 An agreement imposed by an order under paragraph 19 takes effect for all purposes of this code as an agreement under Part 2 of this code between the operator and the relevant person.

What are the terms of an agreement imposed under paragraph 19?

22 (1) An order under paragraph 19 may impose an agreement which gives effect to the code right sought by the operator with such modifications as the court thinks appropriate.

(2) An order under paragraph 19 must require the agreement to contain such terms as the court thinks appropriate, subject to sub-paragraphs (3) to (8).

(3) The terms of the agreement must include terms as to the payment of consideration by the operator to the relevant person for the relevant person's agreement to confer or be bound by the code right (as the case may be).

(4) Paragraph 23 makes provision about the determination of consideration under sub-paragraph (3).

(5) The terms of the agreement must include the terms the court thinks appropriate for ensuring that the least possible loss and damage is caused by the exercise of the code right to persons who—

(a) occupy the land in question,

(b) own interests in that land, or

(c) are from time to time on that land.

(6) Sub-paragraph (5) applies in relation to a person regardless of whether the person is a party to the agreement.

(7) The terms of the agreement must include terms specifying for how long the code right conferred by the agreement is exercisable.

(8) The court must determine whether the terms of the agreement should include a term—

(a) permitting termination of the agreement (and, if so, in what circumstances);

(b) enabling the relevant person to require the operator to reposition or temporarily to remove the electronic communications equipment to which the agreement relates (and, if so, in what circumstances).

How is consideration to be determined under paragraph 22?

23 (1) The amount of consideration payable by an operator to a relevant person under an agreement imposed by an order under paragraph 19 must be an amount or amounts representing the market value of the relevant person's agreement to confer or be bound by the code right (as the case may be).

(2) For this purpose the market value of a person's agreement to confer or be bound by a code right is the amount that, at the date the market value is assessed, a willing buyer would pay a willing seller for the agreement—

(a) in a transaction at arm's length,

(b) on the basis that the buyer and seller were acting prudently and with full knowledge of the transaction, and

(c) as if the transaction were subject to the other provisions of the agreement imposed by the order under paragraph 19.

(3) The market value—

(a) must be assessed on the basis of the value to the operator of the agreement and having regard to the use which the operator intends to make of the land in question (even if the operator may only use the land in that way pursuant to powers conferred by an enactment), and

(b) must not be assessed on the basis of the value of the right or agreement to the relevant person.

(4) The market value must be assessed on the assumption that—

(a) there is more than one site which the operator could use for the purpose for which the operator intends to use the land in question (whether or not that is actually the case), and

(b) paragraphs 15 and 16 (assignment of code rights and upgrading and sharing of apparatus) do not apply to the code right or any electronic communications apparatus to which the code right could apply.

(5) The terms of the agreement may provide for consideration to be payable—

(a) as a lump sum or periodically,

(b) on the occurrence of a specified event or events, or

(c) in such other form or at such other time or times as the court may direct.

Power to amend paragraph 23

24 (1) The Secretary of State may by regulations amend paragraph 23 so that it requires that the amount of consideration referred to in sub-paragraph (1) of that paragraph—

(a) must be assessed on the basis of the value of the right or agreement to the relevant person, and

(b) must not be assessed on the basis of the value to the operator of the right or agreement or having regard to the use which the operator intends to make of the land in question.

(2) Regulations under sub-paragraph (1) may also repeal paragraph 23(4).

(3) Before making regulations under this paragraph the Secretary of State must consult such persons as appear to the Secretary of State to be appropriate.

What rights to the payment of compensation are there?

25 (1) If the court makes an order under paragraph 19 the court may also order the operator to pay compensation to the relevant person for any loss or damage that has been sustained or will be sustained by that person as a result of the exercise of the code right to which the order relates.

(2) An order under sub-paragraph (1) may be made—

(a) at the time the court makes an order under paragraph 19, or

(b) at any time afterwards, on the application of the relevant person.

(3) An order under sub-paragraph (1) may—

(a) specify the amount of compensation to be paid by the operator, or

(b) give directions for the determination of any such amount.

(4) Directions under sub-paragraph (3)(b) may provide—

(a) for the amount of compensation to be agreed between the operator and the relevant person;

(b) for any dispute about that amount to be determined by arbitration.

(5) An order under this paragraph may provide for the operator—

(a) to make a lump sum payment,

(b) to make periodical payments,

(c) to make a payment or payments on the occurrence of an event or events, or

(d) to make a payment or payments in such other form or at such other time or times as the court may direct.

(6) Paragraph 81 makes further provision about compensation in the case of an order under paragraph 19.

Interim code rights

26 (1) An operator may apply to the court for an order which imposes on the operator and that person, on an interim basis, an agreement between them which—

(a) confers a code right on the operator, or

(b) provides for a code right to bind that person.

(2) An order under this paragraph imposes an agreement on the operator and a person on an interim basis if it provides for them to be bound by the agreement—

(a) for the period specified in the order, or

(b) until the occurrence of an event specified in the order.

(3) The court may make an order under this paragraph if (and only if) the operator has served a notice under paragraph 19(2) stating that an agreement is sought on an interim basis and—

(a) the operator and that person have agreed to the making of the order and the terms of the agreement imposed by it, or

(b) the court thinks that there is a good arguable case that the test in paragraph 20 for the making of an order under paragraph 19 is met.

(4) Subject to sub-paragraphs (5) and (6), the following provisions apply in relation to an order under this paragraph and an agreement imposed by it as they apply in relation to an order under paragraph 19 and an agreement imposed by it—

(a) paragraph 19(3) (time at which operator may apply for agreement to be imposed);

(b) paragraph 21 (effect of agreement imposed under paragraph 19);

(c) in paragraph 22 (terms of agreement imposed under paragraph 19), sub-paragraphs (1) to (6) and (8);

(d) paragraph 23 (payment of consideration);

(e) paragraph 25 (payment of compensation);

(f) paragraph 81 (compensation where agreement imposed).

(5) The court may make an order under this paragraph even though the period mentioned in paragraph 19(3)(a) has not elapsed (and paragraph 19(3)(b) does not apply) if the court thinks that the order should be made as a matter of urgency.

(6) Paragraphs 22, 23 and 25 apply by virtue of sub-paragraph (4) as if—

(a) references to the relevant person were to the person mentioned in sub-paragraph (1) of this paragraph, and

(b) the duty in paragraph 22 to include terms as to the payment of consideration to that person in an agreement were a power to do so.

(7) Sub-paragraph (8) applies if—

(a) an order has been made under this paragraph imposing an agreement on an operator and a person in respect of any land, and

(b) on a subsequent application under paragraph 19 for an order to be made imposing an agreement on the operator and the person in respect of that land, the court decides not to make such an order.

(8) From the time when the court's decision is made, that person has the right to require the operator to remove any electronic communications apparatus placed on the land under the agreement imposed under this paragraph.

Temporary code rights

27 (1) This paragraph applies where—

(a) an operator gives a notice under paragraph 19(2) to a person in respect of any land,

(b) the notice requires that person's agreement in respect of a right which is to be exercisable (in whole or in part) in relation to electronic communications apparatus which is already installed on, under or over the land,

(c) the notice states that the agreement is sought on a temporary basis, and

(d) the person has the right to require the removal of the apparatus as a result of paragraph 37 but, as a result of the operation of paragraph 39, the operator is not required to remove the apparatus.

(2) The court may, on the application of the operator, impose on the operator and the person an agreement between them which confers on the operator such temporary code rights as appear to the court reasonably necessary for securing the objective in sub-paragraph (3).

(3) That objective is that, until proceedings under paragraph 19 or 39 are determined, the service provided by the operator's network is maintained and the apparatus is properly adjusted and kept in repair.

(4) Subject to sub-paragraphs (5) and (6), the following provisions apply in relation to an order under this

paragraph and an agreement imposed by it as they apply in relation to an order under paragraph 19 and an agreement imposed by it—

(a) paragraph 19(3) (time at which operator may apply for agreement to be imposed);

(b) paragraph 21 (effect of agreement imposed under paragraph 19);

(c) in paragraph 22 (terms of agreement imposed under paragraph 19), sub-paragraphs (1) to (6) and (8);

(d) paragraph 23 (payment of consideration);

(e) paragraph 25 (payment of compensation);

(f) paragraph 81 (compensation where agreement imposed).

(5) The court may make an order under this paragraph even though the period mentioned in paragraph 19(3)(a) has not elapsed (and paragraph 19(3)(b) does not apply) if the court thinks that the order should be made as a matter of urgency.

(6) Paragraphs 22, 23 and 25 apply by virtue of sub-paragraph (4) as if—

(a) references to the relevant person were to the person mentioned in sub-paragraph (1) of this paragraph, and

(b) the duty in paragraph 22 to include terms as to the payment of consideration to that person in an agreement were a power to do so.

(7) Sub-paragraph (8) applies where, in the course of the proceedings under paragraph 19, it is shown that a person with an interest in the land was entitled to require the removal of the apparatus immediately after it was installed.

(8) The court must, in determining for the purposes of paragraph 19 whether the apparatus should continue to be kept on, under or over the land, disregard the fact that the apparatus has already been installed there.

Part 5

Termination and modification of agreements

Introductory

28 This Part of this code makes provision about—

(a) the continuation of code rights after the time at which they cease to be exercisable under an agreement,

(b) the procedure for bringing an agreement to an end,

(c) the procedure for changing an agreement relating to code rights, and

(d) the arrangements for the making of payments under an agreement whilst disputes under this Part are resolved.

Application of this Part

29 (1) This Part of this code applies to an agreement under Part 2 of this code, subject to sub-paragraphs (2) to (4).

(2) This Part of this code does not apply to a lease of land in England and Wales if—

(a) its primary purpose is not to grant code rights, and

(b) it is a lease to which Part 2 of the Landlord and Tenant Act 1954 (security of tenure for business, professional and other tenants) applies.

(3) In determining whether a lease is one to which Part 2 of the Landlord and Tenant Act 1954 applies, any agreement under section 38A (agreements to exclude provisions of Part 2) of that Act is to be disregarded.

(4) This Part of this code does not apply to a lease of land in Northern Ireland if—

(a) its primary purpose is not to grant code rights, and

(b) it is a lease to which the Business Tenancies (Northern Ireland) Order 1996 (SI 1996/725 (NI 5)) applies.

(5) An agreement to which this Part of this code applies is referred to in this code as a "code agreement".

Continuation of code rights

30 (1) Sub-paragraph (2) applies if—

(a) a code right is conferred by, or is otherwise binding on, a person (the "site provider") as the result of a code agreement, and

(b) under the terms of the agreement—

(i) the right ceases to be exercisable or the site provider ceases to be bound by it, or

(ii) the site provider may bring the code agreement to an end so far as it relates to that right.

(2) Where this sub-paragraph applies the code agreement continues so that—

(a) the operator may continue to exercise that right, and

(b) the site provider continues to be bound by the right.

(3) Sub-paragraph (2) does not apply to a code right which is conferred by, or is otherwise binding on, a person by virtue of an order under paragraph 26 (interim code rights) or 27 (temporary code rights).

(4) Sub-paragraph (2) is subject to the following provisions of this Part of this code.

How may a person bring a code agreement to an end?

31 (1) A site provider who is a party to a code agreement may bring the agreement to an end by giving a notice in accordance with this paragraph to the operator who is a party to the agreement.

(2) The notice must—

(a) comply with paragraph 86 (notices given by persons other than operators),

(b) specify the date on which the site provider proposes the code agreement should come to an end, and

(c) state the ground on which the site provider proposes to bring the code agreement to an end.

(3) The date specified under sub-paragraph (2)(b) must fall—

(a) after the end of the period of 18 months beginning with the day on which the notice is given, and

(b) after the time at which, apart from paragraph 30, the code right to which the agreement relates would have ceased to be exercisable or to bind the site provider or at a time when, apart from that paragraph, the code agreement could have been brought to an end by the site provider.

(4) The ground stated under sub-paragraph (2)(c) must be one of the following—

(a) that the code agreement ought to come to an end as a result of substantial breaches by the operator of its obligations under the agreement;

(b) that the code agreement ought to come to an end because of persistent delays by the operator in making payments to the site provider under the agreement;

(c) that the site provider intends to redevelop all or part of the land to which the code agreement relates, or any neighbouring land, and could not reasonably do so unless the code agreement comes to an end;

(d) that the operator is not entitled to the code agreement because the test under paragraph 20 for the imposition of the agreement on the site provider is not met.

What is the effect of a notice under paragraph 31?

32 (1) Where a site provider gives a notice under paragraph 31, the code agreement to which it relates comes to an end in accordance with the notice unless—

(a) within the period of three months beginning with the day on which the notice is given, the operator gives the site provider a counter-notice in accordance with sub-paragraph (3), and

(b) within the period of three months beginning with the day on which the counter-notice is given, the operator applies to the court for an order under paragraph 34.

(2) Sub-paragraph (1) does not apply if the operator and the site provider agree to the continuation of the code agreement.

(3) The counter-notice must state—

(a) that the operator does not want the existing code agreement to come to an end,

(b) that the operator wants the site provider to agree to confer or be otherwise bound by the existing code right on new terms, or

(c) that the operator wants the site provider to agree to confer or be otherwise bound by a new code right in place of the existing code right.

(4) If, on an application under sub-paragraph (1)(b), the court decides that the site provider has established any of the grounds stated in the site provider's notice under paragraph 31, the court must order that the code agreement comes to an end in accordance with the order.

(5) Otherwise the court must make one of the orders specified in paragraph 34.

How may a party to a code agreement require a change to the terms of an agreement which has expired?

33 (1) An operator or site provider who is a party to a code agreement by which a code right is conferred by or otherwise binds the site provider may, by notice in accordance with this paragraph, require the other party to the agreement to agree that—

(a) the code agreement should have effect with modified terms,

(b) where under the code agreement more than one code right is conferred by or otherwise binds the site provider, that the agreement should no longer provide for an existing code right to be conferred by or otherwise bind the site provider,

(c) the code agreement should—

(i) confer an additional code right on the operator, or

(ii) provide that the site provider is otherwise bound by an additional code right, or

(d) the existing code agreement should be terminated and a new agreement should have effect between the parties which—

(i) confers a code right on the operator, or

(ii) provides for a code right to bind the site provider.

(2) The notice must—

(a) comply with paragraph 85 or 86, according to whether the notice is given by an operator or a site provider,

(b) specify—

(i) the day from which it is proposed that the modified terms should have effect,

(ii) the day from which the agreement should no longer provide for the code right to be conferred by or otherwise bind the site provider,

(iii) the day from which it is proposed that the additional code right should be conferred by or otherwise bind the site provider, or

(iv) the day on which it is proposed the existing code agreement should be terminated and from which a new agreement should have effect,

(as the case may be), and

(c) set out details of—

(i) the proposed modified terms,

(ii) the code right it is proposed should no longer be conferred by or otherwise bind the site provider,

(iii) the proposed additional code right, or

(iv) the proposed terms of the new agreement,

(as the case may be).

(3) The day specified under sub-paragraph (2)(b) must fall—

(a) after the end of the period of 6 months beginning with the day on which the notice is given, and

(b) after the time at which, apart from paragraph 30, the code right would have ceased to be exercisable or to bind the site provider or at a time when, apart from that paragraph, the code agreement could have been brought to an end by the site provider.

(4) Sub-paragraph (5) applies if, after the end of the period of 6 months beginning with the day on which the notice is given, the operator and the site provider have not reached agreement on the proposals in the notice.

(5) Where this paragraph applies, the operator or the site provider may apply to the court for the court to make an order under paragraph 34.

What orders may a court make on an application under paragraph 32 or 33?

34 (1) This paragraph sets out the orders that the court may make on an application under paragraph 32(1)(b) or 33(5).

(2) The court may order that the operator may continue to exercise the existing code right in accordance with the existing code agreement for such period as may be specified in the order (so that the code agreement has effect accordingly).

(3) The court may order the modification of the terms of the code agreement relating to the existing code right.

(4) Where under the code agreement more than one code right is conferred by or otherwise binds the site provider, the court may order that the code agreement has effect so that it no longer provides for an existing code right to be conferred by or otherwise bind the site provider.

(5) The court may order that the code agreement relating to the existing code right has effect so that—

(a) it confers an additional code right on the operator, or

(b) it provides that the site provider is otherwise bound by an additional code right.

(6) The court may order the termination of the code agreement relating to the existing code right (subject to sub-paragraph (10)), and order the operator and the site provider to enter into a new agreement which—

(a) confers a code right on the operator, or

(b) provides for a code right to bind the site provider.

(7) The terms of the new agreement are to be such as are agreed between the operator and site provider.

(8) If the operator and the site provider are unable to agree on the terms of the new agreement, the court must on an application by either party make an order specifying those terms.

(9) Paragraphs 22(2) to (8), 23, 25 and 81 apply to an order under sub-paragraph (8) as they apply to an order under paragraph 19; but the court must also have regard to the terms of the existing code agreement in determining the terms of the new agreement.

(10) The existing code agreement continues until the new agreement takes effect.

(11) This code applies to the new agreement as if it were an agreement under Part 2 of this code.

(12) In determining which order to make under this paragraph, the court must have regard to all the circumstances of the case, and in particular to—

(a) the operator's business and technical needs,

(b) the use that the site provider is making of the land to which the existing code agreement relates,

(c) any duties imposed on the site provider by an enactment, and

(d) the amount of consideration payable by the operator to the site provider under the existing code agreement.

(13) Where the court makes an order under this paragraph, it may also order the operator to pay the site provider the amount (if any) by which A exceeds B, where—

(a) A is the amount of consideration that would have been payable by the operator to the site provider for the relevant period if that amount had been assessed on the same basis as the consideration payable as the result of order, and

(b) B is the amount of consideration payable by the operator to the site provider for the relevant period.

(14) In sub-paragraph (13) the relevant period is the period (if any) that—

(a) begins on the date on which, apart from the operation of paragraph 30, the code right would have ceased to be exercisable or to bind the site provider or from which, apart from that paragraph, the code agreement could have been brought to an end by the site provider, and

(b) ends on the date on which the order is made.

What arrangements for payment can be made pending determination of the application?

35 (1) This paragraph applies where—

(a) a code right continues to be exercisable under paragraph 30 after the time at which, apart from the operation of that paragraph, the code right would have ceased to be exercisable or to bind the site provider or from which, apart from that paragraph, the code agreement could have been brought to an end by the site provider, and

(b) the operator or the site provider has applied to the court for an order under paragraph 32(1)(b) or 33(5).

(2) The site provider may—

(a) agree with the operator that, until the application has been finally determined, the site provider will continue to receive the payments of consideration from the operator to which the site provider is entitled under the agreement relating to the existing code right,

(b) agree with the operator that, until that time, the site provider will receive different payments of consideration under that agreement, or

(c) apply to the court for the court to determine the payments of consideration to be made by the operator to the site provider under that agreement until that time.

(3) The court must determine the payments under sub-paragraph (3)(c) on the basis set out in paragraph 23 (calculation of consideration).

Part 6

Rights to require removal of electronic communications apparatus

Introductory

36 This Part of this code makes provision about—

(a) the cases in which a person with an interest in land has the right to require the removal of electronic communications apparatus,

(b) the means by which a person can discover whether apparatus is on land pursuant to a code right, and

(c) the means by which a right to require removal can be enforced.

When does a person have the right to require removal of electronic communications apparatus?

37 (1) A person with an interest in land (a "landowner") has the right to require the removal of electronic communications apparatus on, under or over the land if (and only if) one or more of the following conditions are met.

(2) The first condition is that the landowner has never been bound by a code right entitling an operator to keep the apparatus on, under or over the land.

This is subject to sub-paragraph (4).

(3) The second condition is that a code right entitling an operator to keep the apparatus on, under or over the land has come to an end or has ceased to bind the landowner—

(a) as the result of paragraph 32(1), or

(b) as the result of an order under paragraph 32(4) or 34(4) or (6).

This is subject to sub-paragraph (4).

(4) The landowner does not meet the first or second condition if—

(a) the land is occupied by a person who—

(i) conferred a code right (which is in force) entitling an operator to keep the apparatus on, under or over the land, or

(ii) is otherwise bound by such a right, and

(b) that code right was not conferred in breach of a covenant enforceable by the landowner.

(5) The third condition is that—

(a) an operator has the benefit of a code right entitling the operator to keep the apparatus on, under or over the land, but

(b) the apparatus is not, or is no longer, used for the purposes of the operator's network, and

(c) there is no reasonable likelihood that the apparatus will be be used for that purpose.

(6) The fourth condition is that—

(a) this code has ceased to apply to a person so that the person is no longer entitled under this code to keep the apparatus on, under or over the land,

(b) the retention of the apparatus on, under or over the land is not authorised by a scheme contained in an order under section 117, and

(c) there is no other person with a right conferred by or under this code to keep the apparatus on, under or over the land.

(7) The fifth condition is that—

(a) the apparatus was kept on, under or over the land pursuant to—

(i) a transport land right (see Part 7), or

(ii) a street work right (see Part 8),

(b) that right has ceased to be exercisable in relation to the land by virtue of paragraph 50(9) or 56(8), and

(c) there is no other person with a right conferred by or under this code to keep the apparatus on, under or over the land.

How does a person find out whether apparatus is on land pursuant to a code right?

38 (1) A landowner may by notice require an operator to disclose whether—

(a) the operator owns electronic communications apparatus on, under or over land in which the landowner has an interest or uses such apparatus for the purposes of the operator's network, or

(b) the operator has the benefit of a code right entitling the operator to keep electronic communications apparatus on, under or over land in which the landowner has an interest.

(2) The notice must comply with paragraph 86 (notices given by persons other than operators).

(3) Sub-paragraph (4) applies if—

(a) the operator does not, before the end of the period of three months beginning with the date on which the notice under sub-paragraph (1) was given, give a notice to the landowner that—

(i) complies with paragraph 85 (notices given by operators), and

(ii) discloses the information sought by the landowner,

(b) the landowner takes action under paragraph 39 to enforce the removal of the apparatus, and

(c) it is subsequently established that—

(i) the operator owns the apparatus or uses it for the purposes of the operator's network, and

(ii) the operator has the benefit of a code right entitling the operator to keep the apparatus on, under or over the land.

(4) The operator must nevertheless bear the costs of any action taken by the landowner under paragraph 39 to enforce the removal of the apparatus.

How does a person enforce removal of apparatus?

39 (1) A landowner who has the right to require the removal of electronic communications apparatus on, under or over land may, in accordance with this paragraph, require the operator whose apparatus it is—

(a) to remove the apparatus, and

(b) to restore the land to its condition before the apparatus was placed on, under or over the land.

(2) The landowner may give a notice to the operator requiring the operator—

(a) to remove the apparatus, and

(b) to restore the land to its condition before the apparatus was placed on, under or over the land.

(3) The notice must—

(a) comply with paragraph 86 (notices given by persons other than operators), and

(b) specify the period within which the operator must complete the works.

(4) The period specified under sub-paragraph (3) must be a reasonable one.

(5) Sub-paragraph (6) applies if, within the period of 28 days beginning with the day on which the notice was given, the landowner and the operator do not reach agreement on any of the following matters—

(a) that the operator will remove the apparatus;

(b) that the operator will restore the land to its condition before the apparatus was placed on, under or over the land;

(c) the time at which or period within which the apparatus will be removed;

(d) the time at which or period within which the land will be restored.

(6) The landowner may make an application to the court for—

(a) an order under paragraph 40(1) (order requiring operator to sell apparatus etc), or

(b) an order under paragraph 40(2) (order enabling landowner to sell apparatus etc).

(7) If the court makes an order under paragraph 40(1), but the operator does not comply with the agreement imposed on the operator and the landowner by virtue of paragraph 40(5), the landowner may make an application to the court for an order under paragraph 40(2).

What orders may the court make on an application under paragraph 39?

40 (1) An order under this paragraph is an order that the operator must, within the period specified in the order—

(a) remove the apparatus, and

(b) restore the land to its condition before the apparatus was placed on, under or over the land.

(2) An order under this paragraph is an order that the landowner may do any of the following—

(a) remove or arrange the removal of the electronic communications apparatus;

(b) sell any apparatus so removed;

(c) recover the costs of any action under paragraph (a) or (b) from the operator;

(d) recover from the operator the costs of restoring the land to its condition before the apparatus was placed on, under or over the land;

(e) retain the proceeds of sale of the apparatus to the extent that these do not exceed the costs incurred by the landowner as mentioned in paragraph (c) or (d).

(3) An order under this paragraph may require the operator to pay compensation to the landowner for any loss or damage suffered by the landowner as a result of the presence of the apparatus on the land during the period when the landowner had the right to require the removal of the apparatus from the land but was not able to exercise that right.

(4) Paragraph 81 makes further provision about compensation under sub-paragraph (3).

(5) An order under sub-paragraph (1) takes effect as an agreement between the operator and the landowner that—

(a) requires the operator to take the steps specified in the order, and

(b) otherwise contains such terms as the court may so specify.

Part 7

Conferral of transport land rights and their exercise

Introductory

41 This Part of this code makes provision about—

(a) the conferral of transport land rights, and

(b) the exercise of transport land rights.

Transport land and transport undertakers

42 In this Part of this code—

"transport land" means land which is used wholly or mainly—

(a) as a railway, canal or tramway, or

(b) in connection with a railway, canal or tramway on the land;

"transport undertaker", in relation to transport land, means the person carrying on the railway, canal or tramway undertaking.

Conferral of transport land rights

43 (1) An operator may exercise a transport land right for the statutory purposes.

(2) But that is subject to the following provisions of this Part of this code.

The transport land rights

44 (1) For the purposes of this code a "transport land right", in relation to an operator, is—

(a) a right to cross any transport land with a line;

(b) a right, for the purposes of crossing any transport land with a line—

(i) to install and keep the line and any other electronic communications apparatus on, under or over the transport land;

(ii) to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus on, under or over the transport land;

(iii) a right to carry out any works on the transport land for or in connection with the exercise of a right under sub-paragraph (i) or (ii);

(iv) a right to enter the transport land to inspect, maintain, adjust, alter, repair, upgrade or operate the line or other electronic communications apparatus.

(2) A line installed in the exercise of a transport land right need not cross the transport land in question by a direct route or the shortest route from the point at which the line enters the transport land.

(3) But the line must not cross the transport land by any route which, in the horizontal plane, exceeds that shortest route by more than 400 metres.

(4) The transport land rights do not authorise an operator to install a line or other electronic communications apparatus in any position on transport land in which the line or other apparatus would interfere with traffic on the railway, canal or tramway.

Non-emergency works: when can an operator exercise the transport land rights?

45 (1) Before exercising a transport land right in order to carry out non-emergency works, the operator must give the transport undertaker notice of the intention to carry out the works ("notice of proposed works").

(2) Notice of proposed works must contain a plan and section of the works; but, if the transport undertaker agrees, the notice may instead contain a description of the works (whether or not in the form of a diagram).

(3) The operator must not begin the proposed works until the notice period has ended.

(4) But the operator's power to carry out the proposed works is subject to paragraph 46.

(5) In this paragraph—

"non-emergency works" means any works which are not emergency works under paragraph 47;

"notice period" means the period of 28 days beginning with the day on which notice of proposed works is given.

What is the effect of the transport undertaker giving notice of objection to the operator?

46 (1) This paragraph applies if an operator gives a transport undertaker notice of proposed works under paragraph 45.

(2) The transport undertaker may, within the notice period, give the operator notice objecting to the proposed works ("notice of objection").

(3) If notice of objection is given, the operator or the transport undertaker may, within the arbitration notice period, give the other notice that the objection is to be referred to arbitration under paragraph 48 ("arbitration notice").

(4) In a case where notice of objection is given, the operator may exercise a transport land right in order to carry out the proposed works only if they are permitted under sub-paragraph (5) or (6).

(5) Works are permitted in a case where—

(a) the arbitration notice period has ended, and

(b) no arbitration notice has been given.

(6) In a case where arbitration notice has been given, works are permitted in accordance with an award made on the arbitration.

(7) In this paragraph—

(a) "arbitration notice period" means the period of 28 days beginning with the day on which objection notice is given;

(b) expressions defined in paragraph 45 have the same meanings as in that paragraph.

Emergency works: when can an operator exercise the transport land rights?

47 (1) An operator may exercise a transport land right in order to carry out emergency works.

(2) If the operator exercises a transport land right to carry out emergency works, the operator must give the transport undertaker an emergency works notice as soon as reasonably practicable after starting the works.

(3) An "emergency works notice" is a notice which—

(a) identifies the emergency works;

(b) contains a statement of the reason why the works are emergency works; and

(c) contains either—

(i) the matters which would be included in a notice of proposed works (if one were given in relation to the works), or

(ii) a reference to a notice of proposed works which relates to the works that are emergency works (if one has been given).

(4) A transport undertaker may, within the compensation notice period, give the operator notice which requires the operator to pay compensation for loss or damage sustained in consequence of the carrying out of emergency works ("compensation notice").

(5) The operator must pay the transport undertaker any compensation which is required by a compensation notice (if given within the compensation notice period).

(6) The amount of compensation payable under sub-paragraph (5) is to be agreed between the operator and the transport undertaker.

(7) But if—

(a) the compensation agreement period has ended, and

(b) the operator and the transport undertaker have not agreed the amount of compensation payable under sub-paragraph (6),

the operator or the transport undertaker may give the other notice that the disagreement is to be referred to arbitration under paragraph 48.

(8) A reference in this paragraph to emergency works includes a reference to any works which are included in a notice of proposed works but become emergency works before the operator is authorised by paragraph 46 or 47 to carry them out.

(9) In this paragraph—

"compensation agreement period" means the period of 28 days beginning with the day on which a compensation notice is given;

"compensation notice period" means the period of 28 days beginning with the day on which an emergency works notice is given;

"emergency works" means works carried out in order to stop anything already occurring, or to prevent anything imminent from occurring, which is likely to cause—

(a) danger to persons or property,

(b) the interruption of any service provided by the operator's network,

(c) substantial loss to the operator,

and any other works which it is reasonable (in all the circumstances) to carry out with those works;

"notice of proposed works" means such notice given under paragraph 45.

What happens if a dispute about the transport land rights is referred to arbitration?

48 (1) This paragraph applies if notice is given under paragraph 46(3) or 47(7) that the following matter (the "matter in dispute") is to be referred to arbitration—

(a) an objection to proposed works;

(b) a disagreement about an amount of compensation.

(2) The matter in dispute is to be referred to the arbitration of a single arbitrator appointed—

(a) by agreement between the parties, or

(b) in the absence of such agreement, by the President of the Institution of Civil Engineers.

(3) If the matter in dispute is an objection to proposed works, the arbitrator has the following powers—

(a) power to require the operator to give the arbitrator a plan and section in such form as the arbitrator thinks appropriate;

(b) power to require the transport undertaker to give the arbitrator any observations on such a plan or section in such form as the arbitrator thinks appropriate;

(c) power to impose on either party any other requirements which the arbitrator thinks appropriate (including a requirement to provide information in such form as the arbitrator thinks appropriate);

(d) power to make an award—

(i) requiring modifications to the proposed works, and

(ii) specifying the terms on which, and the conditions subject to which, the proposed works may be carried out;

(e) power to award one or both of the following, payable to the transport undertaker—

(i) compensation for loss or damage sustained by that person in consequence of the carrying out of the works;

(ii) consideration for the right to carry out the works.

(4) If the matter in dispute is a disagreement about an amount of compensation, the arbitrator has the following powers—

(a) power to impose on either party any requirements which the arbitrator thinks appropriate (including a requirement to provide information in such form as the arbitrator thinks appropriate);

(b) power to award compensation, payable to the transport undertaker, for loss or damage sustained by that person in consequence of the carrying out of the emergency works.

(5) The arbitrator may make an award conditional upon a party complying with a requirement imposed under sub-paragraph (3)(a), (b) or (c) or (4)(a).

(6) In determining what award to make, the matters to which the arbitrator must have regard include the public interest in there being access to a choice of high quality electronic communications services.

(7) The arbitrator's power under sub-paragraph (3) or (4) to award compensation for loss includes power to award compensation for any increase in the expenses incurred by the transport undertaker in carrying on its railway, canal or tramway undertaking.

(8) An award of consideration under sub-paragraph (3)(e)(ii) must be determined on the basis of what would have been fair and reasonable if the transport undertaker had willingly given authority for the works to be carried out on the same terms, and subject to the same conditions (if any), as are contained in the award.

(9) In this paragraph "party" means—

(a) the operator, or

(b) the transport undertaker.

When can a transport undertaker require an operator to alter communications apparatus?

49 (1) A transport undertaker may give an operator notice which requires the operator to alter a line or other electronic communications apparatus specified in the notice ("notice requiring alterations") on the ground that keeping the apparatus on, under or over transport land interferes with, or is likely to interfere with—

(a) the carrying on of the transport undertaker's railway, canal or tramway undertaking, or

(b) anything done or to be done for the purposes of its railway, canal or tramway undertaking.

(2) The operator may, within the notice period, give the transport undertaker notice ("counter-notice") specifying the respects in which the operator is not prepared to comply with the notice requiring alterations.

(3) The operator must comply with the notice requiring alterations, within a reasonable time and to the reasonable satisfaction of the transport undertaker, if—

(a) the notice period has ended, and

(b) no counter-notice has been given.

(4) If counter-notice has been given (within the notice period), the transport undertaker may apply to the court for an order requiring the operator to alter any of the specified apparatus.

(5) The court must not make an order unless it is satisfied that the order is necessary on one of the grounds mentioned in sub-paragraph (1).

(6) In determining whether to make an order, the matters to which the court must also have regard include the public interest in there being access to a choice of high quality electronic communications services.

(7) An order under this paragraph may take such form and be on such terms as the court thinks fit.

(8) In particular, the order—

(a) may impose such conditions, and

(b) may contain such directions to the operator or the transport undertaker,

as the court thinks necessary for resolving any difference between the operator and the transport undertaker and for protecting their respective interests.

(9) In this paragraph—

"notice period" means the period of 28 days beginning with the day on which notice requiring alterations is given;

"specified apparatus" means the line or other electronic communications apparatus specified in notice requiring alterations.

What happens to the transport land rights if land ceases to be transport land?

50 (1) This paragraph applies if an operator is exercising a transport land right in relation to land immediately before a time when it ceases to be transport land.

(2) After that time, this Part of this code — except for paragraph 49 — continues to apply to the land as if it were still transport land (and, accordingly, the operator may continue to exercise any transport land right in relation to the land as if it were still transport land).

(3) But sub-paragraph (2) is subject to sub-paragraphs (4) to (9).

(4) In the application of this Part of this code to land in accordance with sub-paragraph (2), references to the transport undertaker have effect as references to the occupier of the land.

(5) The application of this Part of this code to land in accordance with sub-paragraph (2) does not authorise the operator—

(a) to cross the land with any line that is not in place at the time when the land ceases to be transport land, or

(b) to install and keep any line or other electronic communications apparatus that is not in place at the time when the land ceases to be transport land.

(6) But sub-paragraph (5) does not affect the power of the operator to replace an existing line or other apparatus (whether in place at the time when the land ceased to be transport land or a replacement itself authorised by this sub-paragraph) with a new line or apparatus which—

(a) is not substantially different from the existing line or apparatus, and

(b) is not in a significantly different position.

(7) The occupier of the land may, at any time after the land ceases to be transport land, give the operator notice specifying a date on which this Part of this code is to cease to apply to the land in accordance with this paragraph ("notice of termination").

(8) That date specified in the notice of termination must fall after the end of the period of 12 months beginning with the day on which the notice of termination is given.

(9) On the date specified in notice of termination in accordance with sub-paragraph (8), the transport land rights cease to be exercisable in relation to the land in accordance with this paragraph.

Offence: operators who do not comply with this Part of this code

51 (1) An operator is guilty of an offence if the operator starts any works in contravention of any provision of paragraph 45, paragraph 46 or paragraph 47.

(2) An operator guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) In a case where this Part of this code applies in accordance with paragraph 50, the reference in this paragraph to paragraph 45, paragraph 46 or paragraph 47 is a reference to that paragraph as it applies in accordance with paragraph 50.

Part 8

Conferral of street work rights and their exercise

Introductory

52 This Part of this code makes provision about—

(a) the conferral of street work rights, and

(b) the exercise of street work rights.

Streets and roads

53 In this Part of this code—

"road" means—

(a) a road in Scotland which is a public road;

(b) a road in Northern Ireland, other than any land comprised in the route of a special road (within the meaning of the Roads (Northern Ireland) Order 1993 (SI 1993/3160 (NI 15)));

"street" means a street in England and Wales which is a maintainable highway (within the meaning of Part 3 of New Roads and Street Works Act 1991), other than one which is a footpath, bridleway or restricted byway that crosses, and forms part of, any agricultural land or any land which is being brought into use for agriculture.

Conferral of street work rights

54 (1) An operator may exercise a street work right for the statutory purposes.

(2) But that is subject to the following provisions of this Part of this code.

The street work rights

55 (1) For the purposes of this code a "street work right", in relation to an operator, is—

(a) a right to install and keep electronic communications apparatus in, on, under, over, along or across a street or a road;

(b) a right to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus which is installed or kept by the exercise of the right under paragraph (a);

(c) a right to carry out any works in, on, under, over, along or across a street or road for or in connection with the exercise of a right under paragraph (a) or (b);

(d) a right to enter any street or road to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus which is installed or kept by the exercise of the right under paragraph (a).

(2) The works that may be carried out under sub-paragraph (1)(c) include—

(a) breaking up or opening a street or a road;

(b) tunnelling or boring under a street or a road;

(c) breaking up or opening a sewer, drain or tunnel.

What happens to the street work rights if land ceases to be a street or road?

56 (1) This paragraph applies if an operator is exercising a street work right in relation to land immediately before a time when the land ceases to be a street or road.

(2) After that time, this Part of this code continues to apply to the land as if it were still a street or road (and, accordingly, the operator may continue to

exercise any street work right in relation to the land as if it were still a street or road).

(3) But sub-paragraph (2) is subject to sub-paragraphs (4) to (7).

(4) The application of this Part of this code to land in accordance with sub-paragraph (2) does not authorise the operator to install or keep any electronic communications apparatus that is not in place at the time when the land ceases to be a street or road.

(5) But sub-paragraph (4) does not affect the power of the operator to replace existing apparatus (whether in place at the time when the land ceased to be a street or road or a replacement itself authorised by this sub-paragraph) with new apparatus which—

(a) is not substantially different from the existing apparatus, and

(b) is not in a significantly different position.

(6) The occupier of land may, at any time after the land ceases to be a street or road, give the operator notice specifying a date on which this Part of this code is to cease to apply to the land in accordance with this paragraph ("notice of termination").

(7) That date specified in the notice of termination must fall after the end of the period of 12 months beginning with the day on which the notice of termination is given.

(8) On the date specified in notice of termination in accordance with sub-paragraph (7), the street work rights cease to be exercisable in relation to the land in accordance with this paragraph.

Part 9

Conferral of tidal water rights and their exercise

Introductory

57 This Part of this code makes provision about—

(a) the conferral of tidal water rights, and

(b) the exercise of tidal water rights.

Tidal water or lands

58 In this Part of this code "tidal water or lands" includes—

(a) any estuary or branch of the sea,

(b) the shore below mean high water springs, and

(c) the bed of any tidal water.

Conferral of tidal water rights

59 (1) An operator may exercise a tidal water right for the statutory purposes.

(2) But that is subject to the following provisions of this Part of this code.

The tidal water rights

60 (1) For the purposes of this code a "tidal water right", in relation to an operator, is—

(a) a right to install and keep electronic communications apparatus on, under or over tidal water or lands;

(b) a right to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus on, under or over the tidal water or lands;

(c) a right to carry out any works on, under or over any tidal water or lands for or in connection with the exercise of a right under paragraph (a) or (b);

(d) a right to enter any tidal water or lands to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus which is installed or kept by the exercise of the right under paragraph (a).

(2) The works that may be carried out under sub-paragraph (1)(c) include placing a buoy or seamark.

Exercise of tidal water right: Crown land

61 (1) An operator may not exercise a tidal water right in relation to land in which a Crown interest subsists unless agreement has been given to the exercise of the right in relation to the land, in accordance with paragraph 100, in respect of that interest.

(2) If, under a term of such an agreement (the "relevant term"), the amount of consideration payable in respect of a tidal water right exceeds the market value of the right, the relevant term may only be enforced so as to require payment of an amount of consideration which is equal to that market value.

(3) For this purpose the market value of a tidal water right is the amount that, at the date when the relevant term was agreed, a willing buyer would have paid a willing seller for the agreement—

(a) in a transaction at arm's length, and

(b) on the basis that the buyer and seller were acting prudently and with full knowledge of the transaction.

(4) The market value—

(a) must be assessed on the basis of the value to the operator of the tidal water right and having regard to the use which the operator intends to make of the tidal waters or land in exercising that right (even if the operator may only use the tidal waters or land in that way pursuant to powers conferred by an enactment), and

(b) must not be assessed on the basis of the value of the tidal water right to the holder of the Crown interest.

(5) The market value must be assessed on the assumption that there is more than one site which the operator could use for the purpose for which the operator intends to use the tidal waters or land in question (whether or not that is actually the case).

Part 10

Undertaker's works affecting electronic communications apparatus

Introductory

62 This Part of this code makes provision about the carrying out of undertaker's works by undertakers or operators.

Key definitions

63 (1) In this Part of this code—

"undertaker" means a person (including a local authority) of a description set out in any of the entries in the first column of the following table;

"undertaker's works", in relation to an undertaker of a description set out in a particular entry in the first column of the table, means works of the description set out in the corresponding entry in the second column of the table.

"undertaker"	"undertaker's works"
A person authorised by any enactment (whether public general or local) or by any order or scheme made under or confirmed by any enactment to carry on any railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking	Works that the undertaker is authorised to carry out for the purposes of, or in connection with, the undertaking which it carries on

"undertaker"	"undertaker's works"
A person (apart from an operator) to whom this code is applied by a direction under section 106 of the Communications Act 2003	Works that the undertaker is authorised to carry out by or in accordance with any provision of this code
Any person to whom this Part of this code is applied by any enactment (whenever passed or made)	Works for the purposes of which this paragraph is applied to the undertaker

(2) In this Part of this code—

(a) a reference to undertaker's works which interfere with a network is a reference to any undertaker's works which involve, or are likely to involve, an alteration of any electronic communications apparatus kept on, under or over any land for the purposes of an operator's network;

(b) a reference to an alteration of any electronic communications apparatus is a reference to a temporary or permanent alteration of the apparatus.

When can an undertaker carry out non-emergency undertaker's works?

64 (1) Before carrying out non-emergency undertaker's works which interfere with a network, an undertaker must give the operator notice of the intention to carry out the works ("notice of proposed works").

(2) Notice of proposed works must specify—

(a) the nature of the proposed undertaker's works,

(b) the alteration of the electronic communications apparatus which the works involve or are likely to involve, and

(c) the time and place at which the works will begin.

(3) The undertaker must not begin the proposed undertaker's works (including the proposed alteration of electronic communications apparatus) until the notice period has ended.

(4) But the undertaker's power to alter electronic communications apparatus (in carrying out the proposed undertaker's works) is subject to paragraph 65.

(5) In this paragraph—

"non-emergency undertaker's works" means any undertaker's works which are not emergency works under paragraph 68;

"notice period" means the period of 10 days beginning with the day on which notice of proposed works is given.

What is the effect of the operator giving counter-notice to the undertaker?

65 (1) This paragraph applies if an undertaker gives an operator notice of proposed works under paragraph 64.

(2) The operator may, within the notice period, give the undertaker notice ("counter-notice") stating either—

(a) that the operator requires the undertaker to make any alteration of the electronic communications apparatus that is necessary or expedient because of the proposed undertaker's works—

(i) under the supervision of the operator, and

(ii) to the satisfaction of the operator; or

(b) that the operator intends to make any alteration of the electronic communications apparatus that is necessary or expedient because of the proposed undertaker's works.

(3) In a case where counter-notice contains a statement under sub-paragraph (2)(a), the undertaker must act in accordance with the counter-notice when altering electronic communications apparatus (in carrying out the proposed undertaker's works).

(4) But, if the operator unreasonably fails to provide the required supervision, the undertaker must act in accordance with the counter-notice only insofar as it requires alterations to be made to the satisfaction of the operator.

(5) In a case where counter-notice contains a statement under sub-paragraph (2)(b) (operator intends to make alteration), the undertaker must not alter electronic communications apparatus (in carrying out the proposed undertaker's works).

(6) But that does not prevent the undertaker from making any alteration of electronic communications apparatus which the operator fails to make within a reasonable time.

(7) Expressions defined in paragraph 64 have the same meanings in this paragraph.

What expenses must the undertaker pay?

66 (1) This paragraph applies if an undertaker carries out any non-emergency undertaker's works in accordance with paragraph 64 (including in a case where counter-notice is given under paragraph 65).

(2) The undertaker must pay the operator the amount of any loss or damage sustained by the operator in consequence of any alteration being made to electronic communications apparatus (in carrying out the works).

(3) The undertaker must pay the operator any expenses incurred by the operator in, or in connection with, supervising the undertaker when altering electronic communications apparatus (in carrying out the works).

(4) Any amount which is not paid in accordance with this paragraph is to be recoverable by the operator from the undertaker in any court of competent jurisdiction.

When can the operator alter apparatus in connection with non-emergency undertaker's works?

67 (1) An operator may make an alteration of electronic communications apparatus if—

(a) notice of proposed works has been given,

(b) the notice period has ended, and

(c) counter-notice has been given which states (in accordance with paragraph 65(2)(b)) that the operator intends to make the alteration.

(2) If the operator makes any alteration in accordance with this paragraph, the undertaker must pay the operator—

(a) any expenses incurred by the operator in, or in connection with, making the alteration; and

(b) the amount of any loss or damage sustained by the operator in consequence of the alteration being made.

(3) Any amount which is not paid in accordance with sub-paragraph (2) is to be recoverable by the operator from the undertaker in any court of competent jurisdiction.

(4) Expressions defined in paragraph 64 have the same meanings in this paragraph.

When can an undertaker carry out emergency undertaker's works?

68 (1) An undertaker may, in carrying out emergency undertaker's works, make an alteration of any electronic communications apparatus kept on, under or over any land for the purposes of an operator's network.

(2) The undertaker must give the operator notice of the emergency undertaker's works as soon as practicable after beginning them.

(3) This paragraph does not authorise the undertaker to make an alteration of apparatus after any failure by the undertaker to give notice in accordance with subsection (2).

(4) The undertaker must make the alteration to the satisfaction of the operator.

(5) If the undertaker makes any alteration in accordance with this paragraph, the undertaker must pay the operator—

(a) any expenses incurred by the operator in, or in connection with, supervising the undertaker when making the alteration; and

(b) the amount of any loss or damage sustained by the operator in consequence of the alteration being made.

(6) Any amount which is not paid in accordance with sub-paragraph (5) is to be recoverable by the operator from the undertaker in any court of competent jurisdiction.

(7) In this paragraph "emergency undertaker's works" means undertaker's works carried out in order to stop anything already occurring, or to prevent anything imminent from occurring, which is likely to cause—

(a) danger to persons or property,

(b) interference with the exercise of any functions conferred or imposed on the undertaker by or under any enactment, or

(c) substantial loss to the undertaker,

and any other works which it is reasonable (in all the circumstances) to carry out with those works.

Offence: undertakers who do not comply with this Part of this code

69 (1) An undertaker, or an agent of an undertaker, is guilty of an offence if that person—

(a) makes an alteration of electronic communications apparatus in carrying out non-emergency undertaker's works, and

(b) does so—

(i) without notice of proposed works having been given in accordance with paragraph 64, or

(ii) (in a case where such notice is given) before the end of the notice period under paragraph 64.

(2) An undertaker, or an agent of an undertaker, is guilty of an offence if that person—

(a) makes an alteration of electronic communications apparatus in carrying out non-emergency undertaker's works, and

(b) unreasonably fails to comply with any reasonable requirement of the operator under this Part of this code when doing so.

(3) An undertaker, or an agent of an undertaker, is guilty of an offence if that person—

(a) makes an alteration of electronic communications apparatus in carrying out emergency undertaker's works, and

(b) does so without notice of emergency undertaker's works having been given in accordance with paragraph 68.

(4) A person guilty of an offence under this paragraph is liable on summary conviction to—

(a) a fine not exceeding level 4 on the standard scale, if the service provided by the operator's network is interrupted by the works or failure, or

(b) a fine not exceeding level 3 on the standard scale, if that service is not interrupted.

(5) This paragraph does not apply to a Northern Ireland department.

Part 11

Overhead apparatus

Introductory

70 This Part of this code—

(a) confers a power on operators to install and keep certain overhead apparatus, and

(b) imposes a duty on operators to affix notices to certain overhead apparatus.

Power to fly lines

71 (1) This paragraph applies where any electronic communications apparatus is kept on or over any land for the purposes of an operator's network.

(2) The operator has the right, for the statutory purposes, to install and keep lines which—

(a) pass over other land adjacent to, or in the vicinity of, the land on or over which the apparatus is kept,

(b) are connected to that apparatus, and

(c) are not, at any point where they pass over the other land, less than three metres above the ground or within two metres of any building over which they pass.

(3) Sub-paragraph (2) does not authorise the installation or keeping on or over any land of—

(a) any electronic communications apparatus used to support, carry or suspend a line installed under sub-paragraph (2), or

(b) any line which, as a result of its position, interferes with the carrying on of any business carried on on that land.

(4) In this paragraph "business" includes a trade, profession or employment and includes any activity carried on by a body of persons (whether corporate or unincorporate).

Duty to attach notices to overhead apparatus

72 (1) This paragraph applies where—

(a) an operator has, for the purposes of the operator's network, installed any electronic communications apparatus, and

(b) the whole or part of the apparatus is at a height of three metres or more above the ground.

(2) The operator must, before the end of the period of three days beginning with the day after that on which the installation is completed, in a secure and durable manner attach a notice—

(a) to every major item of apparatus installed, or

(b) if no major item of apparatus is installed, to the nearest major item of electronic communications apparatus to which the apparatus that is installed is directly or indirectly connected.

(3) A notice attached under sub-paragraph (1) above—

(a) must be attached in a position where it is reasonably legible, and

(b) must give the name of the operator and an address in the United Kingdom at which any notice of objection may be given under paragraph 74(5) in respect of the apparatus in question.

(4) Any person giving such a notice at that address in respect of that apparatus is to be treated as having given that address for the purposes of paragraph 88(2).

(5) An operator who breaches the requirements of this paragraph is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(6) In any proceedings for an offence under this paragraph it is a defence for the person charged to prove that the person took all reasonable steps and exercised all due diligence to avoid committing the offence.

Part 12

Rights to object to certain apparatus

Introductory

73 This Part of this code makes provision conferring rights to object to certain kinds of apparatus, and makes provision about—

(a) the cases in which and persons by whom a right can be exercised, and

(b) the power and procedures of the court if an objection is made.

When and by whom can a right to object be exercised?

74 (1) A right to object under this Part of this code is available where, pursuant to the right in paragraph 59, an operator keeps electronic communications apparatus installed on, under or over tidal water or lands.

(2) In that case a person has a right to object under this Part of this code if the person—

(a) is an occupier of, or has an interest in, the tidal water or lands,

(b) is not bound by a code right enabling the operator to keep the apparatus installed on, under or over the tidal water or lands, and

(c) is not a person with the benefit of a Crown interest in the tidal water or lands.

(3) A right to object under this Part of this code is available where an operator keeps a line installed over land pursuant to the right in paragraph 71.

(4) In that case a person has a right to object under this Part of this code if the person—

(a) is an occupier of, or has an interest in, the land, and

(b) is not bound by a code right enabling the operator to keep the apparatus installed over the land.

(5) A right to object under this Part of this code is available where—

(a) electronic communications apparatus is kept on or over land for the purposes of an operator's network, and

(b) the whole or any part of that apparatus is at a height of three metres or more above the ground.

(6) In that case a person has a right to object under this Part of this code if—

(a) the person is an occupier of, or has an interest in, any neighbouring land, and

(b) because of the nearness of the neighbouring land to the land on or over which the apparatus is kept—

(i) the enjoyment of the neighbouring land is capable of being prejudiced by the apparatus, or

(ii) any interest in that land is capable of being prejudiced by the apparatus.

(7) There is no right to object under this Part of this code in respect of the apparatus if the apparatus—

(a) replaces any electronic communications apparatus which is not substantially different from the new apparatus, and

(b) is not in a significantly different position.

How may a right to object be exercised?

75 (1) A person with a right to object under this Part ("the objector") may exercise the right by giving a notice to the operator.

(2) The right to object that the person has, and the procedure that applies to that right, depends on whether—

(a) the notice is given before the end of the period of 12 months beginning with the date on which installation of the apparatus was completed (see paragraph 76), or

(b) the notice is given after the end of that period (see paragraph 77).

What is the procedure if the objection is made within 12 months of installation?

76 (1) This paragraph applies if the notice is given before the end of the period of 12 months beginning with the date on which installation of the apparatus was completed.

(2) At any time after the end of the period of two months beginning with the date on which the notice is given, but before the end of the period of four months beginning with that date, the objector may apply to the court to have the objection upheld.

(3) The court must uphold the objection if the following conditions are met.

(4) The first condition is that the apparatus appears materially to prejudice the objector's enjoyment of, or interest in, the land by reference to which the objection is made.

(5) The second condition is that the court is not satisfied that the only possible alterations of the apparatus will—

(a) substantially increase the cost or diminish the quality of the service provided by the operator's network to persons who have, or may in future have, access to it,

(b) involve the operator in substantial additional expenditure (disregarding any expenditure caused solely by the fact that any proposed alteration was not adopted originally or, as the case may be, that the apparatus has been unnecessarily installed), or

(c) give to any person a case at least as good as the objector has to have an objection under this paragraph upheld.

(6) If the court upholds an objection under this paragraph it may by order do any of the following—

(a) direct the alteration of the apparatus to which the objection relates;

(b) authorise the installation (instead of the apparatus to which the objection relates), in a manner and position specified in the order, of any apparatus specified in the order;

(c) direct that no objection may be made under this paragraph in respect of any apparatus the installation of which is authorised by the court.

(7) Where an objector has both given a notice under paragraph 75 and applied for compensation under any of the other provisions of this code—

(a) the court may give such directions as it thinks fit for ensuring that no compensation is paid until any proceedings under this paragraph have been disposed of, and

(b) if the court makes an order under this paragraph, it may provide in that order for some or all of the compensation otherwise payable under this code to the objector not to be so payable, or, if the case so requires, for some or all of any compensation paid under this code to the objector to be repaid to the operator.

(8) For the purposes of sub-paragraph (5)(c), the court has the power on an application under this paragraph to give the objector directions for bringing the application to the notice of such other interested persons as it thinks fit.

(9) This paragraph is subject to paragraph 78.

What is the procedure if the objection is made later than 12 months after installation?

77 (1) This paragraph applies if the notice is given after the end of the period of 12 months beginning with the date on which installation of the apparatus was completed.

(2) At any time after the end of the period of two months beginning with the date on which the notice is given, but before the end of the period of four months beginning with that date, the objector may apply to the court to have the objection upheld.

(3) The court may uphold the objection only if it is satisfied that—

(a) the alteration is necessary to enable the objector to carry out a proposed improvement of the land by reference to which the objection is made, and

(b) the alteration will not substantially interfere with any service which is or is likely to be provided using the operator's network.

(4) If the court upholds an objection under this paragraph it may by order direct the alteration of the apparatus to which the objection relates.

(5) An order under this paragraph may provide for the alteration to be carried out with such modifications, on such terms and subject to such conditions as the court thinks fit.

(6) But the court must not include any such modifications, terms or conditions in its order without the consent of the objector, and if such consent is not given may refuse to make an order under this paragraph.

(7) An order made under this paragraph must, unless the court otherwise thinks fit, require the objector to reimburse the operator in respect of any expenses which the operator incurs in or in connection with the execution of any works in compliance with the order.

(8) This paragraph is subject to paragraph 78.

(9) In this paragraph "improvement" includes development and change of use.

What limitations are there on the court's powers under paragraph 76 or 77?

78 (1) This paragraph applies where the court is considering making—

(a) an order under paragraph 76 directing the alteration of any apparatus or authorising the installation of any apparatus, or

(b) an order under paragraph 77 directing the alteration of any apparatus.

(2) The court must not make the order unless it is satisfied—

(a) that the operator has all such rights as it appears to the court appropriate that the operator should have for the purpose of making the alteration or, as the case may be, installing the apparatus, or

(b) that—

(i) the operator would have all those rights if the court, on an application under paragraph 19, imposed an agreement on the operator and another person, and

(ii) it would be appropriate for the court, on such an application, to impose such an agreement.

(3) For the purposes of avoiding the need for the agreement of any person to the alteration or installation of any apparatus, the court has the same powers as it would have if an application had been duly made under paragraph 19 above for an order imposing such an agreement.

(4) For the purposes of this paragraph, the court has the power on an application under paragraph 76 or 77 to give the objector directions for bringing the application to the notice of such other interested persons as it thinks fit.

Part 13

Rights to lop trees

Rights to lop trees

79 (1) This paragraph applies where—

(a) a tree or other vegetation overhangs a street in England and Wales or Northern Ireland or a road in Scotland, and

(b) the tree or vegetation—

(i) obstructs, or will or may obstruct, relevant electronic communications apparatus, or

(ii) interferes with, or will or may interfere with, such apparatus.

(2) In sub-paragraph (1) "relevant electronic communications apparatus" means electronic communications apparatus which—

(a) is installed, or about to be installed, on land, and

(b) is used, or to be used, for the purposes of an operator's network.

(3) The operator may, by notice to the occupier of the land on which the tree or vegetation is growing, require the tree to be lopped or the vegetation to be cut back to prevent the obstruction or interference.

(4) If, within the period of 28 days beginning with the day on which the notice is given, the occupier of the land on which the tree is growing gives the operator a counter-notice objecting to the lopping of the tree or cutting back of the vegetation, the notice has effect only if confirmed by an order of the court.

(5) Sub-paragraph (6) applies if at any time a notice under sub-paragraph (3) has not been complied with and—

(a) the period of 28 days beginning with the day on which the notice was given has expired without a counter-notice having been given, or

(b) an order of the court confirming the notice has come into force.

(6) The operator may cause the tree to be lopped or the vegetation to be cut back.

(7) Where the operator lops a tree or cuts back vegetation in exercise of the power in sub-paragraph (6) the operator must do so in a husband-like manner and in such a way as to cause the minimum damage to the tree or vegetation.

(8) Sub-paragraph (9) applies where—

(a) a notice under sub-paragraph (3) is complied with (either without a counter-notice having been given or after the notice has been confirmed), or

(b) the operator exercises the power in sub-paragraph (6).

(9) The court must, on an application made by a person who has sustained loss or damage in consequence of the lopping of the tree or cutting back of the vegetation or who has incurred expenses in complying with the notice, order the operator to pay that person such compensation in respect of the loss or damage as it thinks fit.

Part 14

Compensation under the code

Introductory

80 This Part of this code makes provision about compensation under this code.

Compensation where agreement imposed or apparatus removed

81 (1) This paragraph applies to the following powers of the court to order an operator to pay compensation to a person—

(a) the power in paragraph 25(1) (compensation where order made imposing agreement on person);

(b) the power in paragraph 40(3) (compensation in relation to removal of the apparatus from the land).

(2) Depending on the circumstances, the power of the court to order the payment of compensation for loss or damage includes power to order payment for—

(a) expenses (including reasonable legal and valuation expenses, subject to the provisions of any enactment about the powers of the court by whom the order for compensation is made to award costs),

(b) diminution in the value of the land, and

(c) costs of reinstatement.

(3) For the purposes of assessing such compensation for diminution in the value of land, the following provisions apply with any necessary modifications as they apply for the purposes of assessing compensation for the compulsory purchase of any interest in land—

(a) in relation to England and Wales, rules (2) to (4) set out in section 5 of the Land Compensation Act 1961;

(b) in relation to Scotland, rules (2) to (4) set out in section 12 of the Land Compensation (Scotland) Act 1963;

(c) in relation to Northern Ireland, rules (2) to (4) set out in Article 6(1) of the Land Compensation (Northern Ireland) Order 1982 (SI 1982/712 (NI 9)).

(4) In the application of this paragraph to England and Wales, section 10(1) to (3) of the Land Compensation Act 1973 (compensation in respect of mortgages, trusts of land and settled land) applies in relation to such compensation for diminution in the value of land as it applies in relation to compensation under Part 1 of that Act.

(5) In the application of this paragraph to Scotland, section 10(1) and (2) of the Land Compensation (Scotland) Act 1973 (compensation in respect of restricted interests in land) applies in relation to such compensation for diminution in the value of land as it applies in relation to compensation under Part 1 of that Act.

(6) In the application of this paragraph to Northern Ireland, Article 13(1) to (3) of the Land Acquisition and Compensation (Northern Ireland) Order 1973 (SI 1973/1896 (NI 21)) (compensation in respect of mortgages, trusts for sale and settlements) applies in relation to such compensation for diminution in the value of land as it applies in relation to compensation under Part II of that Order.

(7) Where a person has a claim for compensation to which this paragraph applies and a claim for compensation under any other provision of this code in respect of the same loss, the compensation payable to that person must not exceed the amount of that person's loss.

Compensation for injurious affection to neighbouring land etc

82 (1) This paragraph applies where a right conferred by or in accordance with any provision of Parts 2 to 9 of this code is exercised by an operator.

(2) In the application of this paragraph to England and Wales, compensation is payable by the operator under section 10 of the Compulsory Purchase Act 1965 (compensation for injurious affection to neighbouring land) as if that section applied in relation to injury caused by the exercise of such a right as it applied in relation to injury caused by the execution of works on land that has been compulsorily acquired.

(3) In the application of this paragraph to Scotland, compensation is payable by the operator under section 6 of the Railway Clauses Consolidation (Scotland) Act 1845 as if that section applied in relation to injury caused by the exercise of such a right as it applied in relation to injury caused by the execution of works on land that has been taken or used for the purpose of a railway.

(4) Any question as to a person's entitlement to compensation by virtue of sub-paragraph (3), or as to the amount of that compensation, is, in default of agreement, to be determined by the Lands Tribunal for Scotland.

(5) In the application of this paragraph to Northern Ireland, compensation is payable by the operator under Article 18 of the Land Compensation (Northern Ireland) Order 1982 (SI 1982/712 (NI 9)) as if that section applied in relation to injury caused by the exercise of such a right as it applied in relation to injury caused by the execution of works on land that has been compulsorily acquired.

(6) Any question as to a person's entitlement to compensation by virtue of sub-paragraph (5), or as to the amount of that compensation, is, in default of agreement, to be determined by the Lands Tribunal for Northern Ireland.

(7) Compensation is payable on a claim for compensation under this paragraph only if the amount of the compensation exceeds £50.

(8) Compensation is payable to a person under this paragraph irrespective of whether the person claiming the compensation has any interest in the land in relation to which the right referred to in sub-paragraph (1) is exercised.

(9) Compensation under this paragraph may include reasonable legal and valuation expenses, subject to the provisions of any enactment about the powers of the court or tribunal by whom an order for compensation is made to award costs.

No other compensation available

83 Except as provided by any provision of Parts 2 to 14 of this code or this Part, an operator is not liable to compensate any person for, and is not subject to any other liability in respect of, any loss or damage caused by the lawful exercise of any right conferred by or in accordance with any provision of those Parts.

Part 15

Notices under the code

Introductory

84 This Part makes provision—

(a) about requirements for the form of notices given under this code by operators,

(b) about requirements for the form of notices given under this code by persons other than operators, and

(c) about procedures for giving notices.

Notices given by operators

85 (1) A notice given under this code by an operator must—

(a) explain the effect of the notice,

(b) explain which provisions of this code are relevant to the notice, and

(c) explain the steps that may be taken by the recipient in respect of the notice.

(2) If OFCOM have prescribed the form of a notice which may or must be given by an operator under a provision of this code, a notice given by an operator under that provision must be in that form.

(3) A notice which does not comply with this paragraph is not a valid notice for the purposes of this code.

(4) Sub-paragraph (3) does not prevent the person to whom the notice is given from relying on the notice if the person chooses to do so.

(5) In any proceedings under this code a certificate issued by OFCOM stating that a particular form of notice has been prescribed by them as mentioned in this paragraph is conclusive evidence of that fact.

Notices given by others

86 (1) Sub-paragraph (2) applies to a notice given under paragraph 31(1), 33(1), 38(1) or 39(2) by a person other than an operator.

(2) If OFCOM have prescribed the form of a notice given under the provision in question by a person other than an operator, the notice must be in that form.

(3) A notice which does not comply with sub-paragraph (2) is not a valid notice for the purposes of this code.

(4) Sub-paragraph (3) does not prevent the operator to whom the notice is given from relying on the notice if the operator chooses to do so.

(5) Sub-paragraph (6) applies to a notice given under any other provision of this code by a person other than an operator if—

(a) OFCOM have prescribed the form of a notice given under that provision by a person other than an operator,

(b) the notice is given in response to a notice given by an operator, and

(c) the operator has, in giving the notice, drawn the person's attention to the form prescribed by OFCOM.

(6) The notice is a valid notice for the purposes of this code, but the person giving the notice must bear any costs incurred by the operator as a result of the notice not being in that form.

(7) In any proceedings under this code a certificate issued by OFCOM stating that a particular form of notice has been prescribed by them as mentioned in this paragraph is conclusive evidence of that fact.

Prescription of notices by OFCOM

87 (1) OFCOM must prescribe the form of a notice to be given under each provision of this code that requires a notice to be given.

(2) OFCOM may from time to time amend or replace a form prescribed under sub-paragraph (1).

(3) Before prescribing a form for the purposes of this code, OFCOM must consult operators and such other persons as OFCOM think appropriate.

(4) Sub-paragraph (3) does not apply to the amendment or replacement of a form prescribed under sub-paragraph (1).

Procedures for giving notice

88 (1) A notice given under this code must not be sent by post unless it is sent by a registered post service or by recorded delivery.

(2) For the purposes, in the case of a notice under this code, of section 394 of this Act (service of notifications and other documents) and section 7 of the Interpretation Act 1978 (references to service by post), the proper address of a person ("P") is—

(a) if P has given the person giving the notice an address for service under this code, that address, and

(b) otherwise, the address given by section 394.

(3) Sub-paragraph (4) applies if it is not practicable, for the purposes of giving a notice under this code, to find out after reasonable enquiries the name and address of a person who is the occupier of land for the purposes of this code.

(4) A notice may be given under this code to the occupier —

(a) by addressing it to a person by the description of "occupier" of the land (and describing the land), and

(b) by delivering it to a person who is on the land or, if there is no person on the land to whom it can be delivered, by affixing it, or a copy of it, to a conspicuous object on the land.

(5) Sub-paragraph (6) applies if it is not practicable, for the purposes of giving a notice under this code, to find out after reasonable enquiries the name and address of the owner of an interest in land.

(6) A notice may be given under this code to the owner—

(a) by addressing it to a person by the description of "owner" of the interest (and describing the interest and the land), and

(b) by delivering it to a person who is on the land or, if there is no person on the land to whom it can be delivered, by affixing it, or a copy of it, to a conspicuous object on the land.

Part 16

Enforcement and dispute resolution

Introductory

89 This Part of this code makes provision about—

(a) the court or tribunal by which agreements and rights under this code may be enforced,

(b) the meaning of references to "the court" in this code, and

(c) the power of the Secretary of State by regulations to confer jurisdiction under this code on other tribunals.

Enforcement of agreements and rights

90 An agreement under this code, and any right conferred by this code, may be enforced—

(a) in the case of an agreement imposed by a court or tribunal, by the court or tribunal which imposed the agreement,

(b) in the case of any agreement or right, by any court or tribunal which for the time being has the power to impose an agreement under this code, or

(c) in the case of any agreement or right, by any court of competent jurisdiction.

Meaning of "the court"

91 (1) In this code "the court" means—

(a) in relation to England and Wales, the county court,

(b) in relation to Scotland, the sheriff, and

(c) in relation to Northern Ireland, a county court.

(2) Sub-paragraph (1) is subject to provision made by regulations under paragraph 92.

Power to confer jurisdiction on other tribunals

92 (1) The Secretary of State may by regulations provide for a function conferred by this code on the court to be exercisable by any of the following—

(a) in relation to England and Wales, the First-tier Tribunal;

(b) in relation to England and Wales, the Upper Tribunal;

(c) in relation to Scotland, the Lands Tribunal for Scotland;

(d) in relation to Northern Ireland, the Lands Tribunal for Northern Ireland.

(2) Regulations under sub-paragraph (1) may make provision for the function to be exercisable by a tribunal to which the regulations apply—

(a) instead of by the court, or

(b) as well as by the court.

(3) The Secretary of State may by regulations make provision—

(a) requiring proceedings to which regulations under sub-paragraph (1) apply to be commenced in the court or in a tribunal to which the regulations apply;

(b) enabling the court or such a tribunal to transfer such proceedings to a tribunal which has jurisdiction in relation to them by virtue of such regulations or to the court.

(4) The power in section 402(3)(c) for regulations under sub-paragraph (1) or (3) to make consequential provision includes power to make provision which amends, repeals or revokes or otherwise modifies the application of any enactment.

Applications to the court

93 Regulation 3 of the Electronic Communications and Wireless Telegraphy Regulations 2011 (SI 2011/1210) makes provision about the time within which certain applications to the court under this code must be determined.

Appeals in Northern Ireland

94 Article 60 of the County Courts (Northern Ireland) Order 1980 (ordinary appeals from the county court in civil cases) is to apply in relation to any determination of the court in Northern Ireland under this code in the same manner as it applies in relation to any decree of the court made in the exercise of the jurisdiction conferred by Part 3 of that Order.

Part 17

Supplementary provisions

Relationship between this code and existing law

95 (1) This code does not authorise the contravention of any provision of an enactment passed or made before the coming into force of this code.

(2) Sub-paragraph (1) does not apply if and to the extent that an enactment makes provision to the contrary.

Relationship between this code and agreements with operators

96 (1) This code does not affect any rights or liabilities arising under an agreement to which an operator is a party.

(2) Sub-paragraph (1) does not apply in relation to paragraph 61(2) to (5), paragraph 95 or Parts 3 to 6 of this code.

Ownership of property

97 The ownership of property does not change merely because the property is installed on or under, or affixed to, any land by any person in exercise of a right conferred by or in accordance with this code.

Conduits

98 (1) This code does not authorise an operator to do anything inside a relevant conduit without the agreement of the authority with control of the conduit.

(2) The agreement of the authority with control of a public sewer is sufficient in all cases to authorise an operator to exercise any of the rights under this code in order to do anything wholly inside that sewer.

(3) In this paragraph the following expressions have the same meanings as in section 98 of the Telecommunications Act 1984—

(a) "public sewer" and "relevant conduit";

(b) references to the authority with control of a relevant conduit.

Duties for OFCOM to prepare codes of practice

99 (1) OFCOM must prepare and publish a code of practice dealing with—

(a) the provision of information for the purposes of this code by operators to persons who occupy or have an interest in land;

(b) the conduct of negotiations for the purposes of this code between operators and such persons;

(c) the conduct of operators in relation to persons who occupy or have an interest in land adjoining land on, under or over which electronic communications apparatus is installed;

(d) such other matters relating to the operation of this code as OFCOM think appropriate.

(2) OFCOM must prepare and publish standard terms which may (but need not) be used in agreements under this code.

(3) OFCOM may from time to time—

(a) amend or replace a code of practice or standard terms published under this paragraph;

(b) publish the code or terms as amended or (as the case may be) the replacement code or terms.

(4) Before publishing a code of practice or standard terms under this paragraph, OFCOM must consult operators and such other persons as OFCOM think appropriate.

(5) Sub-paragraph (4) does not apply to—

(a) the publication of amendments to a code of practice or standard terms, or

(b) the publication of a replacement code or replacement terms.

Application of this code to the Crown

100 (1) This code applies in relation to land in which there subsists, or at any material time subsisted, a Crown interest as it applies in relation to land in which no such interest subsists.

(2) In this code "Crown interest" means—

(a) an interest which belongs to Her Majesty in right of the Crown,

(b) an interest which belongs to Her Majesty in right of the Duchy of Lancaster,

(c) an interest which belongs to the Duchy of Cornwall, or

(d) an interest which belongs to a Government department or which is held in trust for Her Majesty for the purposes of a Government department.

(3) This includes, in particular—

(a) an interest which belongs to Her Majesty in right of Her Majesty's Government in Northern Ireland, and

(b) an interest which belongs to a Northern Ireland department or which is held in trust for Her Majesty for the purposes of a Northern Ireland department.

(4) Where an agreement is required by this code to be given in respect of any Crown interest subsisting in any land, the agreement must be given by the appropriate authority.

(5) Where a notice under this code is required to be given in relation to land in which a Crown interest subsists, the notice must be given by or to the appropriate authority (as the case may require).

(6) In this paragraph "the appropriate authority" means—

(a) in the case of land belonging to Her Majesty in right of the Crown, the Crown Estate Commissioners or, as the case may be, the government department that has the management of the land in question;

(b) in the case of land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy of Lancaster;

(c) in the case of land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints;

(d) in the case of land belonging to Her Majesty in right of Her Majesty's Government in Northern Ireland, the Northern Ireland department having the management of the land in question;

(e) in the case of land belonging to a government department or a Northern Ireland department or held in trust for Her Majesty for the purposes of a government department or a Northern Ireland department, that department.

(7) Any question as to the authority that is the appropriate authority in relation to any land is to be referred to the Treasury, whose decision is final.

(8) Paragraphs 51 (offence in relation to transport land rights) and 72(5) (offence in relation to notices on overhead apparatus) do not apply where this code applies in the case of the Secretary of State or a Northern Ireland department by virtue of section 106(3)(b).

Meaning of "occupier"

101 (1) References in this code to an occupier of land are to the occupier of the land for the time being.

(2) References in this code to an occupier of land, in relation to a footpath or bridleway that crosses and forms part of agricultural land, are to the occupier of that agricultural land.

(3) Sub-paragraph (4) applies in relation to land which is—

(a) a street in England and Wales or Northern Ireland, other than a footpath or bridleway within sub-paragraph (2), or

(b) a road in Scotland, other than such a footpath or bridleway.

(4) References in this code to an occupier of land—

(a) in relation to such a street in England and Wales, are to the street managers within the meaning of Part 3 of the New Roads and Street Works Act 1991,

(b) in relation to such a street in Northern Ireland, are to the street managers within the meaning of the Street Works (Northern Ireland) Order 1995 (SI 1995/3210 (SI 19)), and

(c) in relation to such a road in Scotland, are to the road managers within the meaning of Part 4 of the New Roads and Street Works Act 1991.

(5) Sub-paragraph (6) applies in relation to land which—

(a) is unoccupied, and

(b) is not a street in England and Wales or Northern Ireland or a road in Scotland.

(6) References in this code to an occupier of land, in relation to land within sub-paragraph (5), are to—

(a) the person (if any) who for the time being exercises powers of management or control over the land, or

(b) if there is no person within paragraph (a), to every person whose interest in the land would be prejudicially affected by the exercise of a code right in relation to the land.

(7) In this paragraph—

(a) "agricultural land" includes land which is being brought into use for agriculture, and

(b) references in relation to England and Wales to a footpath or bridleway include a restricted byway.

Arbitrations in Scotland

102 Until the Arbitration (Scotland) Act 2010 is in force in relation to any arbitrations carried out under or by virtue of this code, that Act applies as if it were in force in relation to those arbitrations.

General interpretation

103 (1) In this code—

"agriculture" and "agricultural"—

(a) in relation to England and Wales, have the same meanings as in the Highways Act 1980,

(b) in relation to Scotland, have the same meanings as in the Town and Country Planning (Scotland) Act 1997, and

(c) in relation to Northern Ireland, have the same meanings as in the Agriculture Act (Northern Ireland) 1949;

"bridleway" and "footpath"—

(a) in relation to England and Wales, have the same meanings as in the Highways Act 1980,

(b) in relation to Scotland, have the same meanings as Part 3 of the Countryside (Scotland) Act 1967, and

(c) in relation to Northern Ireland, mean a way over which the public have, by virtue of the Access to the Countryside (Northern Ireland) Order 1983 (SI 1983/1895 (NI 18)), a right of way (respectively) on horseback and on foot;

"code agreement" has the meaning given by paragraph 29(5);

"Crown interest" has the meaning given by paragraph 100(2) and (3);

"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;

"land" does not include electronic communications apparatus;

"landowner" has the meaning given by paragraph 37(1);

"lease" includes (except in relation to Scotland) any leasehold tenancy (whether in the nature of a head lease, sub-lease or underlease) and any agreement to grant such a tenancy but not a mortgage by demise or sub-demise;

"relevant person" has the meaning given by paragraph 19(1);

"restricted byway" has the same meaning as in Part 2 of the Countryside and Rights of Way Act 2000:

"road"—

(a) in relation to Scotland, has the same meaning as in Part 4 of the New Roads and Street Works Act 1991;

(b) in relation to Northern Ireland, has the same meaning as in the Roads (Northern Ireland) Order 1993 (SI 1993/3160 (NI 15));

"site provider" has the meaning given by paragraph 30(1);

"street"—

(a) in relation to England and Wales, has the same meaning as in Part 3 of the New Roads and Street Works Act 1991, and

(b) in relation to Northern Ireland, has the same meaning as in the Street Works (Northern Ireland) Order 1995 (SI 1995/3210 (NI 19)).

(2) In this code, references to the alteration of any apparatus include references to the moving, removal or replacement of the apparatus."'—*(Mr Hayes.)*

This introduces the electronic communications code which makes provision about the manner in which electronic communications infrastructure can be installed and maintained.

Brought up, read the First and Second time, and added to the Bill.

New Schedule 3

THE ELECTRONIC COMMUNICATIONS CODE: CONSEQUENTIAL AMENDMENTS

'Landlord and Tenant Act 1954 (c. 56)

1 In section 23 of the Landlord and Tenant Act 1954 (tenancies to which provisions on security of tenure for business etc tenants apply) after subsection (4) insert—

"(5) This Part does not apply to a tenancy the primary purpose of which is to grant code rights within the meaning of Schedule 3A to the Communications Act 2003 (the electronic communications code)."

Landlord and Tenant Act 1987 (c. 31)

2 In section 4(2) of the Landlord and Tenant Act 1987 (disposals which are not relevant disposals for purposes of tenants' right of first refusal) after paragraph (da) insert—

"(da) the conferral of a code right under Schedule 3A to the Communications Act 2003 (the electronic communications code);".

Landlord and Tenant (Covenants) Act 1995 (c. 30)

3 In section 5 of the Landlord and Tenant (Covenants) Act 1995 (tenant released from covenants on assignment of tenancy), after subsection (4) insert—

"(5) This section is subject to paragraph 15(4) of Schedule 3A to the Communications Act 2003 (which places conditions on the release of an operator from liability under an agreement granting code rights under the electronic communications code)."

Business Tenancies (Northern Ireland) Order 1996 (SI 1996/725 (NI 5))

4 In Article 4(1) of the Business Tenancies (Northern Ireland) Order 1996 (tenancies to which the Order does not apply) after paragraph (k) insert—

"(l) a tenancy the primary purpose of which is to grant code rights within the meaning of Schedule 3A to the Communications Act 2003 (the electronic communications code)."

Land Registration Act 2002 (c. 9)

5 The Land Registration Act 2002 is amended as follows.

6 In Schedule 1 (unregistered interests which override first registration) after paragraph 9 insert—

"Rights under the electronic communications code

9A A code right within the meaning of Schedule 3A to the Communications Act 2003 (the electronic communications code), other than a right conferred by a lease."

7 In Schedule 3 (unregistered interests which override registered dispositions) after paragraph 9 insert—

"Rights under the electronic communications code

9A A code right within the meaning of Schedule 3A to the Communications Act 2003 (the electronic communications code), other than a right conferred by a lease."

Communications Act 2003 (c. 21)

8 The Communications Act 2003 is amended as follows.

9 (1) Section 394 (service of notifications and other documents) is amended as follows.

(2) In subsection (2) omit paragraph (d).

(3) After subsection (10) insert—

"(11) In its application to Schedule 3A this section is subject to paragraph 88 of that Schedule."

10 (1) Section 402 (power of Secretary of State to make orders and regulations) is amended as follows.

(2) In subsection (2) after paragraph (a) insert—

"(aa) regulations under paragraph 24 of Schedule 3A,

(ab) regulations under paragraph 92 of that Schedule which amend, repeal or modify the application of primary legislation,".

(3) After subsection (2) insert—

"(2A) A statutory instrument containing (whether alone or with other provisions)—

(a) regulations under paragraph 24 of Schedule 3A, or

(b) regulations under paragraph 92 of that Schedule which amend, repeal or modify the application of primary legislation,

may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

(4) After subsection (3) insert—

"(4) In this section "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."

Consequential repeals

11 In consequence of the amendments made by section (The electronic communications code) and this Schedule, Schedule 3 to the Communications Act 2003 is repealed.'—*(Mr Hayes.)*

This amendment makes amendments which are consequential on the introduction of the electronic communications code.

Brought up, read the First and Second time, and added to the Bill.

Clause 46

REGULATIONS AND ORDERS

Amendments made: 71, in clause 46, page 52, line 31, leave out "or".

This amendment and amendment 72 make provision about the procedure applying to the powers to make amendments in secondary legislation conferred by amendment NC19.

Amendment 38, in clause 46, page 52, line 32, after "17" insert ", (Mayoral development orders)".—*(Mr Hayes.)*

This amendment applies the affirmative procedure to regulations under the new clause in amendment NC8 where the regulations amend, repeal or modify the application of an Act.

Mr Hayes: I beg to move amendment 70, in clause 46, page 52, line 32, after "section 17" insert "(1)(a)"

This amendment provides that the negative procedure applies to regulations under clause 17(1)(b) where transitional or transitory provision or savings which modify the application of an Act are made in respect of Part 1.

I do not want to detain the Committee unduly. In essence, the amendment adjusts clause 46 in a manner that affects part 1 of the Bill only. It concerns the ability of the Secretary of State to make regulations under clause 17 that contain

"transitional or transitory provision or savings"

[Mr Hayes]

in connection with part 1. By far the most likely use of that power is in connection with the power to appoint Highways England as a strategic highways company by order under clause 1. The power will allow any procedures or processes initiated by the Highways Agency and which are incomplete at the point of transition to be transferred seamlessly to the new company, without interrupting important operational matters.

It is not our intention, given that the transitional provisions described above are routinely required where functions are passing from one body to another, to require a debate under the affirmative procedure for such regulations; that would be disproportionate. Accordingly, the amendment has been laid so as to ensure that transitional or transitory powers or savings made under clause 17(1)(b) attract the negative resolution procedure, even if they may be said to modify the effects of primary legislation. Consequential regulations, and other regulations under clause 17(1)(a), will continue to attract the affirmative resolution procedure where they revoke, amend or modify primary legislation.

Amendment 70 agreed to.

Amendment made: 72, in clause 46, page 52, line 33, at end insert "or

() regulations under section (The electronic communications code) which amend, repeal or modify the application of primary legislation within the meaning of that section,".—*(Mr Hayes.)*

The explanatory statement for amendment 71 also applies to this amendment.

Clause 46, as amended, ordered to stand part of the Bill.

Clause 47

EXTENT

Amendments made: 39, in clause 47, page 53, line 27, leave out first "section" and insert

"sections (Mayoral development orders)(2) to (4) and".

This amendment provides for the power to make regulations in the new clause in amendment NC8 to extend to England and Wales only.

Amendment 40, in clause 47, page 53, line 32, after "45" insert

", section (Reimbursement of persons who have met expenses of making electrical connections)".

This amendment makes provision for the new clause inserted by amendment NC9 to extend to England and Wales and Scotland.

Amendment 45, in clause 47, page 53, line 35, at end insert—

'( ) Part 5A (Public Works Loan Commissioners) extends to England and Wales, Scotland and Northern Ireland."

This amendment is consequential on NC10. The reference to Part 5A is a reference to a new Part expected to be formed by NC10.

Amendment 73, in clause 47, page 53, line 35, at end insert—

'( ) Part 5B (the electronic communications code) extends to England and Wales, Scotland and Northern Ireland, save that an amendment or repeal made by that Part has the same extent as the provision to which it relates.

( ) The power in section 411(6) of the Communications Act 2003 (power to extend provisions of Act to Channel Islands and Isle of Man) is exercisable in relation to the amendments of that Act made by or under Part 5B." —*(Mr Hayes.)*

This amendment and amendments 43, 75 and 76 make consequential amendments on extent and commencement and to the long title to allow for the introduction of the electronic communications code. The reference to Part 5B is to a new Part expected to be formed by amendments NC19, NS1 and NS3.

Clause 47, as amended, ordered to stand part of the Bill.

Clause 48

COMMENCEMENT

Amendments made: 41, in clause 48, page 54, line 16, after "passed," insert—

"(ca) section (Mayoral development orders) and Schedule (Mayoral development orders) come into force—

(i) in so far as they confer power to make provision by regulations or by development order within the meaning of the Town and Country Planning Act 1990, on the day on which this Act is passed, and

(ii) for all other purposes, on such day as the Secretary of State appoints by regulations,".

This amendment and amendment 43 make provision about the commencement of the new clause inserted by amendment NC8 and the new Schedule inserted by amendment NS1.

Amendment 42, in clause 48, page 54, line 26, after "37" insert

", section (Reimbursement of persons who have met expenses of making electrical connections)".

This amendment makes provision for the new clause inserted by amendment NC9 to come into force on the day appointed by the Secretary of State in regulations.

Amendment 46, in clause 48, page 54, line 29, at end insert—

'( ) Part 5A (Public Works Loan Commissioners) comes into force at the end of the period of two months beginning with the day on which this Act is passed."

This amendment is consequential on NC10. The reference to Part 5A is a reference to a new Part expected to be formed by NC10.

Amendment 74, in clause 48, page 54, line 29, at end insert—

'(6B) Part 5B (the electronic communications code) comes into force on such day as the Secretary of State appoints by regulations."

The explanatory statement for amendment 73 also applies to this amendment.

Amendment 43, in clause 48, page 54, line 31, leave out "or (b)(ii)" and insert ", (b)(ii) or (ca)(ii)".

The explanatory statement for amendment 41 also applies to this amendment.

Amendment 75, in clause 48, page 54, line 31, leave out "or (6)(c)" and insert ", (6)(c) or (6B)".—*(Mr Hayes.)*

The explanatory statement for amendment 73 also applies to this amendment.

Clause 48, as amended, ordered to stand part of the Bill.

Clause 49

SHORT TITLE

Mr Hayes: I beg to move amendment 7, in clause 49, page 54, line 41, leave out subsection (2).

This amendment removes the words inserted by the Lords to avoid questions of privilege.

This amendment removes the standard-form provision added on Third Reading in the other place to avoid the issue of privilege. That is the usual means by which proper recognition is given to the privileges of the Commons in respect of financial matters, while allowing the provisions of the Bill to be properly considered in its passage through the other place. It has served its purpose and should now be removed.

Amendment 7 agreed to.

Clause 49, as amended, ordered to stand part of the Bill.

Title

Amendments made: 44, in title, line 15, after "incentives;" insert

"to make provision about the reimbursement of persons who have paid for electricity connections;".

This amendment is consequential on amendment NC9.

Amendment 47, in title, line 15, after "incentives;" insert

"to make provision for enabling the Public Works Loan Commissioners to be abolished;".

This amendment is consequential on NC10.

Amendment 76, in title, line 15, after "incentives;" insert

"to make provision about the electronic communications code;". —*(Mr Hayes.)*

The explanatory statement for amendment 73 also applies to this amendment.

3.45 pm

Richard Burden: On a point of order, Sir Roger. Having changed the Bill's long title, we have now reached the conclusion of our proceedings. It is probably good that the Bill already contained provision for invasive non-native species, because we have seen quite a few of them added to the Bill, and it is good that the long title was able to accommodate that. We have had some good discussions in Committee, and I have certainly learned many new things. I was previously unaware of the existence of killer shrimps, which caused a lot of mirth until we were brought up rather sharpish with the explanation that it is an important issue—at which point we all quickly adopted a more serious pose. If I were to pick out a debate in Committee that attracted a lot of attention, it would not be the one about the Highways Agency or about shale gas, but the one about invasive non-native species.

We will be reporting the Bill to the House in a while and, on a serious point, there are still things that need to be discussed. There is the electronic communications code, which we talked about today, and we already know that there is a need for further scrutiny on issues relating to shale gas extraction, Highways Agency reform and other things. Through you, Sir Roger, I put to the Minister some of the things that were raised in Committee. Two days on Report is not too much to ask.

This has been a good-natured Committee. At some stages I wondered where the safari would go next in political philosophy and literature. We have heard about Yeats and, today, St Augustine. We have heard numerous references to Burke, and Disraeli has been here, too. Opposition Members have been able to manage C.S. Lewis—

Stephen Williams: Gladstone.

Richard Burden: Gladstone was mentioned. Sorry, I forgot the Liberals—we do that quite often. We were able to mention Shakespeare and C.S. Lewis. Throughout this Committee I have been working out where I could work in references to Tom Paine and Gramsci. I did not manage it, but I have it on the record in these closing remarks.

The Committee has been conducted with good humour, for which I particularly thank the Minister. He has approached the debates both inside and outside this room with good humour and a genuine desire to involve Opposition Members. A number of commitments have been given that will strengthen the Bill. We still have reservations that will no doubt lead to Divisions on Report, but I think a number of our discussions will be taken away by the Minister, whom I thank for the courtesy that he has shown, even when being dumped upon by Ministers from other Departments into moving things that I suspect he would rather not have moved. Other Government Front Benchers have also shown great courtesy.

I thank my colleagues on the Opposition Front Bench for taking on board those aspects of the role that do not fall within my areas of responsibility. They have exercised great scrutiny of the Government's proposals. I thank the Whips for keeping us in order. There was a frisson about the programme motion at the start, but we got there in the end. I thank all Members on both sides of the Committee. Their contributions have added wisdom to the Committee.

I thank the staff. The staff from the Departments never say anything, but they have to keep alert at all times to pass notes. Legislative debates could not happen without them. I also thank the staff on the Opposition side. They are not civil servants, but we rely on them to give us the briefings that enable us to exercise our responsibilities. I want to say thank you to them. I also thank the staff involved in recording and clerking proceedings. They deserve acknowledgment, and I gladly do so.

Finally, I thank the people who kept us in order throughout—you, Sir Roger, and Mr Hood. You have conducted the proceedings in an efficient and friendly way, and I would like to say thank you to you as well.

Andrew Miller: Further to that point of order, Sir Roger. Unusually, I rise on this occasion to add to the tributes from my hon. Friend the Member for Birmingham, Northfield, with whom I first served on a Committee in 1992. This is the last Bill Committee that I will serve on, as I am leaving the House at the general election. I volunteered to make this my valedictory Bill on the basis of my interest in hydraulic fracturing, but it became even more interesting when the Minister was slightly dumped on with the subject of mobile phone codes, which is also something I am really interested in. It has therefore been an appropriate Bill on which to finish my career in the House.

You and I have known each other all of that time, Sir Roger, and we have even gone through the Lobby together on a number of occasions. You may not care to admit that too frequently in the Conservative ranks, but I thank you, because I count you among my friends in this place, and I thank Mr Hood as well.

[Andrew Miller]

In particular, this has been a great Bill Committee to finish on because of the spirit in which it has been conducted. It is a great pity that only a handful of people are watching here and that we are not going to get a huge amount of television coverage, because some incredibly serious issues have been discussed, but in the spirit of true debate, rather than simply the slanging matches that occur on the Floor of the House. With those remarks, I say a fond farewell to all my friends here.

Mr Hayes: Further to that point of order, Sir Roger. It is a pleasure to follow the hon. Gentleman. I want to say some things about substance and some things about style—as Gramsci said, by the way, those two things are inseparable.

On substance, it is right to say that this Committee has been serious but good humoured. Is it not odd how often people outside the House—constituents and friends—ask how legislation is formed? It is surprising that people ask that question, given that these Committees, after all, are held in public; none the less, they do. They will know if they watch the proceedings of the Committee or if they read the record of it in *Hansard* that legislation is formed on the basis of a proper discourse—a discourse that helps Government to hone their thinking through the argument that originates in these Committees. That is precisely what has happened on this occasion. There are matters to take further, and I have committed to do so, before and on Report. That is thanks to the contribution of Members across the Committee, and I am grateful to them for that.

On style, that has been defined by many people—by you, Sir Roger, and Mr Hood. You have exercised your immense power over us with a delicacy and generosity for which you are well known. The civil servants, the staff of the House and the staff of Members have provided and equipped us with the good arguments that we have imperfectly articulated. The members of the Committee have come here diligently, often to listen to me for immense lengths of time, which I regard as a pleasure, although they may not, and I am big enough to know that. There was a moment when my hon. Friend the Member for Daventry described me as precious, but, disappointingly—as I had hoped he would describe me as a shining and smooth pearl—he said that I was a rough gem. I had always thought I was so smooth, but now I know that I am really just rough.

I know the shadow Ministers well and offer them thanks, because they have been immensely diligent in their scrutiny of the Bill—as, by the way, I anticipated they would be, as I have known them all for a number of years. I offer thanks to my colleagues on the Government Benches, particularly my hon. Friends the Members for Bristol West and for Hastings and Rye, who shared the burden of representing the Government's interests with immense style. I thank the Whips, to whom, rather like God, we are in the end all answerable, for their smooth and sophisticated—*[Interruption.]* What people forget is that when I was a Whip I used to pass these notes. Let me just tear it up. *[Laughter.]* There.

And finally, I want to draw on three literary sources, or one political and two literary. I spend a good deal of my life late at night either listening to Miles Davis, as I did last night, or reading Proust, as I did afterwards. Proust said:

"We must never be afraid to go too far, for truth lies beyond."

The Government's job is to push forward, and to bring to the House legislation that makes a difference. That is what we have tried to do with this Bill.

Members will not be surprised that next I am going to quote Disraeli, who said that

"all power is a trust; that we are accountable for its exercise; that from the people and for the people all springs, and all must exist."

Challenged to do so by the hon. Member for Birmingham, Northfield, I end with the bard himself—I offer thanks for this to my hon. Friend the Member for Stratford-on-Avon, who provided it to me just a few moments ago. Let us go from this place in this spirit. See me, but imagine, if you will, Olivier:

"God, if thy will be so.

Enrich the time to come with…smiling plenty and fair prosperous days!"

The Chair: On the issue of further discussion, the right hon. Gentleman will understand that that is entirely a matter for the usual channels, not for the Chair—indeed, neither was anything that has been said, all of which has been completely out of order. Nevertheless, as we are all completely out of order, it strikes me that one day someone will make a movie called "The Scourge of the Killer Shrimps". I am sorry that the red squirrel did not appear to make it into *Hansard* on this occasion, but I am delighted that St Augustine found a proper place in the Committee, because he landed in the beautiful Isle of Thanet.

I say, wholly genuinely, to my friend the hon. Member for Ellesmere Port and Neston that I am sure everyone on the Committee will wish him a long, active and happy retirement. It has been a pleasure to enjoy his friendship for a very long time.

An observation was made about the good humour of the Committee. I am sure that Mr Hood would join me in congratulating both sides of the Committee on the conduct and spirit in which its discussions have taken place. The right hon. Member for Greenwich and Woolwich will recall a transport Bill in the dim and distant past that he and I had the joy of sharing together, and it was in a similar spirit. I do not think there has been a Bill Committee since that I have felt was quite as good humoured as this one. I congratulate all Members on that conduct. I only wish that people outside this place saw rather more of what happens on a consensual basis in Committee.

With all that, I add my thanks to you all, particularly the Officers of the House, without whom we simply could not do our job. We appreciate them and the work that they do hugely, and that, in this difficult time and climate, the fact that they do their best to keep us safe.

Bill, as amended, to be reported.

4 pm

Committee rose.

Written evidence reported to the House

IB 40 Centrica
IB 41 Central Association of Agricultural Valuers
IB 42 Gravesham Borough Council
IB 43 Claire Robertson
IB 44 Which?
IB 45 National Farmers' Union
IB 46 Chiltern District Council
IB 47 The Open Spaces Society
IB 48 Sam Miller
IB 49 National Grid Plc
IB 50 The Carbon Catalysts Group
IB 51 South Bucks District Council
IB 52 Rail Delivery Group
IB 53 District Councils' Network