PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

DIGITAL ECONOMY BILL

First Sitting

Tuesday 11 October 2016

(Morning)

CONTENTS

Programme motion agreed to.
Motion to sit in private agreed to.
Written evidence (Reporting to the House) motion agreed to.
Examination of witnesses.
Adjourned till this day at Two o'clock.

PBC (Bill 045) 2016 - 2017

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 15 October 2016

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The Committee consisted of the following Members:

Chairs: Mr Gary Streeter, † Graham Stringer

† Adams, Nigel *(Selby and Ainsty)* (Con)
† Brennan, Kevin *(Cardiff West)* (Lab)
† Davies, Mims *(Eastleigh)* (Con)
† Debbonaire, Thangam *(Bristol West)* (Lab)
† Foxcroft, Vicky *(Lewisham, Deptford)* (Lab)
† Haigh, Louise *(Sheffield, Heeley)* (Lab)
† Hancock, Matt *(Minister for Digital and Culture)*
† Hendry, Drew *(Inverness, Nairn, Badenoch and Strathspey)* (SNP)
† Huddleston, Nigel *(Mid Worcestershire)* (Con)
† Kerr, Calum *(Berwickshire, Roxburgh and Selkirk)* (SNP)
† Mann, Scott *(North Cornwall)* (Con)
† Matheson, Christian *(City of Chester)* (Lab)
† Menzies, Mark *(Fylde)* (Con)
† Perry, Claire *(Devizes)* (Con)
Siddiq, Tulip *(Hampstead and Kilburn)* (Lab)
† Skidmore, Chris *(Parliamentary Secretary, Cabinet Office)*
† Stuart, Graham *(Beverley and Holderness)* (Con)
† Sunak, Rishi *(Richmond (Yorks))* (Con)

Marek Kubala, *Committee Clerk*

† attended the Committee

Witnesses

Sean Williams, Managing Director, Strategy, Portfolio, Legal and Regulatory Services, BT Group

Baroness Harding of Winscombe, Chief Executive Officer, TalkTalk

David Dyson, Chief Executive Officer, Three

David Wheedon, Director of Policy and Public Affairs, Sky

Daniel Butler, Head of Public Affairs, Virgin Media

Paul Morris, Head of Public Affairs and Sustainability, Vodafone

Pete Moorey, Head of Campaigns, Which?

James Legge, Head of Political Affairs, Countryside Alliance

Jeni Tennison, CEO, Open Data Institute

Mike Bracken, Chief Digital Officer, Co-operative Group

Public Bill Committee

Tuesday 11 October 2016

(Morning)

[GRAHAM STRINGER *in the Chair*]

Digital Economy Bill

9.25 am

The Chair: Before we begin, I have a few preliminary points. Please switch electronic devices to silent. Tea and coffee are not allowed during sittings. Today, we will consider the programme motion on the amendment paper. We will then consider a motion to allow us to deliberate in private about our questions before the oral evidence sessions, and a motion to enable the reporting of written evidence for publication. In view of the time available, I hope we can take those matters formally, without debate.

Ordered,

That—

(1) the Committee shall (in addition to its first meeting at 9.25am on Tuesday 11 October) meet—

(a) at 2.00pm on Tuesday 11 October;

(b) at 11.30am on Thursday 13 October;

(c) at 9.25am and 2.00pm on Tuesday 18 October;

(d) at 11.30am and 2.00pm on Thursday 20 October;

(e) at 9.25am and 2.00 pm on Tuesday 25 October;

(f) at 11.30am and 2.00pm on Thursday 27 October;

(2) the Committee shall hear oral evidence in accordance with the following Table:

Date	*Time*	*Witness*
Tuesday 11 October	Until no later than 10.00am	BT/EE TalkTalk Three
Tuesday 11 October	Until no later than 10.30am	Sky Virgin Vodafone
Tuesday 11 October	Until no later than 11.00am	Which? Countryside Alliance
Tuesday 11 October	Until no later than 11.25am	Open Data Institute The Co-operative Group
Tuesday 11 October	Until no later than 2.45pm	The British Board of Film Classification NSPCC
Tuesday 11 October	Until no later than 3.00pm	Dr Edgar Whitley, London School of Economics Wireless Infrastructure Group
Tuesday 11 October	Until no later than 4.00pm	Big Brother Watch Open Rights Group
Tuesday 11 October	Until no later than 4.30pm	ProjectsbyIF Open Corporates TUC
Tuesday 11 October	Until no later than 5.00pm	Professor Sir Charles Bean, London School of Economics The Royal Statistical Society
Thursday 131 October	Until no later than 12.00pm	StepChange Citizens Advice Dr Jerry Fishenden
Thursday 131 October	Until no later than 12.30pm	OFCOM
Thursday 131 October	Until no later than 1.00pm	The Information Commissioner's Office

(3) proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 4; Schedules 1 to 3; Clauses 5 to 84; new Clauses; new Schedules; remaining proceedings on the Bill;

(4) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00pm on Thursday 27 October.—*(Matt Hancock.)*

The Chair: On the basis of the motion, the deadline for amendments to be considered at the first line-by-line sitting of the Committee on 18 October is the rise of the House on Thursday 13 October.

Resolved,

That, at this and any subsequent meeting at which oral evidence is to be heard, the Committee shall sit in private until the witnesses are admitted.—*(Matt Hancock.)*

Resolved,

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—*(Matt Hancock.)*

The Chair: Copies of the written evidence that the Committee receives will be made available in the Committee Room. We will now go into private session to discuss lines of questioning.

9.27 am

The Committee deliberated in private.

Examination of Witnesses

David Dyson, Baroness Harding of Winscombe and Sean Williams gave evidence.

9.32 am

The Chair: Welcome to the Digital Economy Bill Committee. We will now hear evidence from BT/EE, TalkTalk and Three. Before calling the first person to ask a question, I should like to remind all Committee members that questions should be limited to matters within the scope of the Bill and that we must stick to the timings in the programme motion that the Committee has agreed. We have until 10 am for this session, so I ask Members and witnesses to be as concise and to the point as they can be.

Nigel Adams (Selby and Ainsty) (Con): Mr Stringer, may I put on the record and bring the Committee's attention to my declaration of interest? I am a director of two telecommunications companies and a shareholder in both; my wife is a shareholder in those companies as well.

Q1 The Chair: That is now on the record. Does anyone else wish to declare an interest? No. Could the witnesses please introduce themselves for the record?

David Dyson: David Dyson. I am the CEO of Three UK.

Baroness Harding: Dido Harding, chief executive of TalkTalk.

Sean Williams: Sean Williams, chief strategy officer at BT Group.

Q2 Louise Haigh (Sheffield, Heeley) (Lab): Thank you for coming to give evidence today. May I start with you, Sean? First, do you think that 2020 and 10 megabits per second are sufficiently ambitious targets for the universal service obligation?

Sean Williams: Yes, I do. We have made clear our willingness to deliver 10 megabits to every premises in the country by the end of 2020 without any further public funding and without even really progressing the USO regulations. On the way to doing that, we will be building on the fact that by the end of next year we should have fibre broadband coverage to 95% of the country.

As we get towards 2020, we will be building further fibre networks, so we expect to be getting more than 24 megabits to 97% or 98% of the country, and then fixed broadband of 10 megabits to 99%. We think that the last 1% needs to be done by 4G and satellite. Although we think about the issue as getting 10 megabits by 2020, in our view the vast majority will actually be getting a lot more than 10 megabits by then.

Q3 Louise Haigh: Baroness Harding, should the USO not have been an open tender process? If it had been, would it not have been right for it to have gone to more than one contractor, given the differences between the problems in inner city areas and those in rural areas?

Baroness Harding: Yes, maybe. I presume that you refer to the BDUK process that has taken place. I am actually very supportive of a universal service obligation. I do not agree with Sean Williams that 10 megabits will be sufficient as we look forward; it is very dangerous to try to set that number through primary legislation because technology is moving so fast. I fear that the rural communities who are furious that they do not have 10 meg today will be furious that they do not have 1 gigabit in three or four years' time. I think you should be more ambitious, otherwise the political problem will never go away.

In terms of how then to get value for money for any form of Government subsidy, taxpayers' money or levy going towards the final few per cent., I agree with the premise of your question. The more competition there is, the better, and it is a huge shame that there was none in the last process. To be fair to the Government of the time, I do not think that was because of how it was designed. The good news is that the market has changed quite a lot since then, and there are now a number of quite small providers building proper fibre-to-the-premises 1 gig services in rural areas, such as Gigaclear. I would be much more hopeful that, looking forward, it will be possible to design a process that is not reliant on one large incumbent.

Q4 Claire Perry (Devizes) (Con): As you know, I represent a very rural constituency. I support what has happened; it is clearly far better than it was five years ago. However, what happens if no USO provider is willing to come forward to deal with the last 500 houses in the Devizes constituency? What should happen then?

The Chair: The acoustics in the room are terrible. If Members and witnesses could really speak up, that would be very helpful.

Sean Williams: To answer from our perspective, we are willing to enter into a binding legal commitment that we will deliver at least 10 megabit broadband to 100% of premises by the end of 2020. Our objective with this is really to give the Government and Ofcom comfort that we can get on and do this.

I would emphasise that I think that there is a lot of competition, as the Baroness just mentioned. We have Virgin expanding their network, we have Gigaclear and Hyperoptic expanding their network and we have the mobile operators expanding networks that can deliver 10 megabit broadband by 4G. There is a lot of competition to deliver this. For our part, we are willing to undertake to make sure that every single premises can get 10 megabits by the end of 2020.

Baroness Harding: The MP for Devizes raised a very good question. I am a firm believer that competition will do the majority of this, and we should try our damnedest to make the private sector fund most of this through competition, but I think there is a fair chance that in three or four years' time a number of your constituents will not have broadband that they think is good enough.

I promise that I will not take up the whole session on this, but I think that the solution is to separate Openreach completely and put a universal service obligation on an independent Openreach. Once you have an infrastructure entity that is not owned by one of the retail providers, that takes away a lot of the industry issues with the public subsidy in some shape or form needed to get proper fibre for that final few per cent.

Q5 Calum Kerr (Berwickshire, Roxburgh and Selkirk) (SNP): Given that broadband speeds have doubled in the past three years, and that the pace of demand is accelerating, I find it staggering that we should say to rural constituents, "You are second-class digital citizens and must accept 10 megabits." How do we bring forward a scheme that ensures that, in areas where they want to go further to ensure that they keep up or even get ahead, the universal service obligation does not peg them at a low speed? How could we design a flexible, regional USO model? Has that been considered by anyone on the panel?

Sean Williams: I do not want to occupy a disproportionate amount of air time here. We think that, by the end of 2020, we will be able to deliver fibre broadband speeds to probably 97% or 98% of households across the whole country, and at least 10 megabits to everybody by then, unilaterally and without any public funding or a USO. That will continue to go on after that as we continue to innovate networks.

We also have a commitment to deliver ultrafast broadband—more than 100 megabits—to 10 million premises, and fibre-to-the-premises deployment to another 2 million premises by 2020. There is going to be an awful lot of network investment, which, by the way, can only happen in an integrated, end-to-end business case.

Q6 Calum Kerr: Mr Williams, do you think that a tactical, on-demand USO only provided by BT can really provide the strategic outcome—a direction toward "gigabit Britain"—that I think we all agree is a matter of when and not if? If we continue to do this in a piecemeal fashion surely all we are going to do is cement the digital divide, rather than close it.

Sean Williams: To get these networks out to as many premises as possible, by as many providers as possible, through competition and commercial market action is exactly the right solution. To get good networks out to everybody, both mobile as well as fixed, it is important that everybody has an incentive to invest. Through competition and commercial investment, we will get to the answer.

Q7 The Minister for Digital and Culture (Matt Hancock): I welcome the commitment from BT to reach 100% of premises by 2020, but I ask for a point of clarification on language. Mr Williams, you referred in the percentages to "fibre" and, separately, to "fibre to the premises". Can you confirm that by "fibre" you mean a combination of fibre and copper and that by "fibre to the premises" you mean pure fibre? The use of the term "fibre" reflects statistics that I understand mean fibre to the cabinet, so I find confusing the offer to households being "fibre plus copper". I would be grateful if you clarified that.

Sean Williams: I am happy to. When I use the term "fibre broadband", I mean fibre to the cabinet, which is a combination of rolling out fibre further into the network but with copper into the end premises. When I use the term "fibre into the premises" I mean fibre all the way into the building. I apologise for being unclear.

When I say we will deliver fibre broadband, it will largely be, in my view, through a combination of fibre and copper, but we are also very positive about fibre to the premises and typically deploy fibre to the premises in all new building sites and in lots of Broadband Delivery UK areas. We are developing fibre to the premises solutions that are particularly targeted at small and medium-sized enterprises. We have made a commitment that we will get ultrafast broadband speeds, which is both fibre and copper, and also fibre-to-the-premises solutions to 1 million SMEs by 2020. We have heard the prioritisation that the Government have put on getting very good broadband speeds to small and medium-sized enterprises and we have made a commitment we will get that to 1 million of them by 2020 as well.

Q8 Claire Perry: I am conscious of what Baroness Harding said about perhaps not setting a quantum, but do you think there should be a separate quantum for SMEs? One of the challenges we have is that there is not enough. We do not have separate legislation or, indeed, powers for cabling to new business parks. If I may ask a supplementary question, in my experience the issue with the USO is often with the broadband speeds in the household; it is not just a question of getting the cable to the front door or the bricks. What could the process be for dealing with those claims and helping householders realise that that might be a problem?

One final question: we would like the USO to be an average speed, rather than being achieved 15% of the time, or whatever the current average regulations are. What are your views on that? Are you prepared to commit to our offering an average USO of 10 megabits per second?

Baroness Harding: At the risk of being dangerously technical, I think we all try to summarise in the form of speed, but actually consumers and businesses would say that reliability and consistency are every bit as important as speed. The small businesses that are customers of TalkTalk would say, "It's not the headline speed I need. I need it to work every single second when my customers are using the chip and pin machine in my small corner shop", for example. So while speed is a useful proxy, it is not perfect.

The Minister gets to the nub of the issue: when you have a proper fibre network that goes all the way to the premises, you have upgrade potential. You just change the card in the rack of computers back at the exchange and you can go from 1G to 100G. You also have a much, much more reliable network. When it rains, water does not get into the copper and it does not stop working.

The small businesses that we talk to are very cross that the fibre-to-the-premises roll-out has missed out a lot of business parks—not necessarily because they want speed, but because they want a reliable service where they can upload as much as they can download and customers can always buy things from them.

I would therefore support being clearer in the detailed regulations that I presume Ofcom would set in specifying the service requirements for small businesses as opposed to consumers.

Q9 Christian Matheson (City of Chester) (Lab): What flexibility would you like to see within the legislation for either the Government or perhaps Ofcom to be able to deem the level of the USO in the manner that Baroness Harding described as technology increases?

David Dyson: I have a couple of points. Covering some of the previous questions, it is impossible to predict what will be the right speed in five years' time. There are two elements to delivering that. One is effective competition. On the second, I agree with Baroness Harding that in those harder-to-reach less economic areas, the separation of Openreach is the only way that you will get assurance that those customers will get the right speed.

Fundamentally, Ofcom needs to have more powers to make the right decisions that effectively create the right competitive environment in the UK—an environment where it is not constantly worried about being litigated. At that point, you have a stronger regulator that will make the right decisions for the right reasons and a lot of these discussions will take care of themselves.

Baroness Harding: You can see from my nodding head that I agree with David. A lot of the provisions in the Bill are very good, pro-consumer, and I would encourage the Committee to look very favourably towards them. David has just alluded to one of them, which is to make sure that you have a stronger regulator that can get decisions taken faster without using up nearly 50% of the Competition Appeal Tribunal's time.

Sean Williams: On the specific question about flexibility, as long as it is stable enough for network investors to deploy a certain investment in order to get to the target and then recover some of their investment money, it can

be flexible after that. If it is too flexible, you never quite know what you are supposed to be investing in, so I think it needs to be definitive for a period and then it can move on progressively as society and the economy moves on.

I agree with Baroness Harding on the subject of reliability. Reliability is a very important metric, but SMEs are not typically the most demanding broadband customers. A big household streaming lots of HD videos is a very demanding broadband supplier. SMEs and large households have different kinds of requirements and we need to work with Ofcom to establish exactly what those standards should be.

It is true that some of the problems happen within the home or within the business premises. It is important to make sure that all the retailers—TalkTalk and all the others—are able to support their customers in the business or home. Making sure those networks and wi-fi work well is also very important, to answer Mr Perry's earlier remarks.

Q10 Kevin Brennan (Cardiff West) (Lab): Sean, do you recognise the figure that improving wayleave rights under the ECC will reduce costs for providers by 40%? Would you like to tell us whether any surplus from that will be used to invest in local communities or will it be going to your profit margins?

Sean Williams: I do not recognise the particular figure, to be honest, but I would not necessarily dispute it.

Q11 Kevin Brennan: Is it in the right ball park? Is that what you are saying?

Sean Williams: It is 40% of what? I do not know exactly where that figure comes from, to be perfectly honest with you, but what I would say is that on the EE network we have a commitment to get to 99%-plus of premises getting 4G, and 95% of the geographical area of the country, by 2020, getting 4G services. Also, that requires us to roll out new masts and new services, and every cost reduction in that vein will support the agenda of rolling out 4G networks everywhere as far as we can.

Q12 Kevin Brennan: So all that will be reinvested into the—

Sean Williams: I think it is all supportive of delivering more roll-out by all the mobile networks, yes.

Q13 Kevin Brennan: Can I ask you, how will we have competition in next generation access? Will certain areas of the country be limited to 10 megabits in the future?

Sean Williams: As I say, I think we are getting lots of competition already. Virgin is rolling out. Hyperoptic, Gigaclear and others, all the 4G networks, Three, EE, Vodafone, O2 are all rolling out competitive networks, so I think the large majority of the country will have availability of choice of provider.

Q14 Kevin Brennan: Will certain areas be limited, do you think, in reaching the 10 megabits?

Baroness Harding: I think the way that you ensure that there is sufficient competition to drive investment and create choice is by having a very strong regulator that does not believe any of us, actually, when we say "Trust us, we will be okay; we will do it for you." If you live in any of the rural constituencies in the country, you do not have Virgin as an alternative. There is only one fixed line network provider. There are only two mast joint ventures for mobile networks, so I would argue that the telecoms market is not competitive enough at all and that the best way Government can ensure that all constituents across the country benefit is by having a much stronger regulator that forces competition. I think you should be very worried when you hear large incumbents saying, "Set up a universal service obligation but don't let it get too far ahead of what we've got in our business case." That is not what business should be doing. Businesses will invest more if they are scared their customers will go elsewhere, not because they have been given a promise by Government.

David Dyson: But also you should be very worried when you hear statements about how BT is planning to take profits from the duct access and reinvest in that, and in cross-subsidising mobile access. That is just fundamentally wrong, and is not supportive of competition.

Christian Matheson *rose—*

The Chair: Is this on this point?

Christian Matheson: Not exactly.

Q15 Nigel Huddleston (Mid Worcestershire) (Con): Far fewer people switch broadband and phone providers than gas or electricity, for example. Do you support the Government's published principles of switching, which will make it easier for consumers to switch?

Baroness Harding: Yes, completely. I think it is extremely confusing for consumers, because how you switch depends on which network you are with today, and which one you are going to. It is not a level playing field among competitors, so, for example, someone leaving TalkTalk who takes mobile phone, broadband and TV—a proper quadplay customer—does not have to speak to TalkTalk at all, as they should not. They head off to whomever they want to go to, and the switching process will work its way through. On the other hand, someone leaving Virgin and going to BT, or leaving Sky TV and coming to TalkTalk, has to speak to Virgin or Sky respectively. We and, I think, Three as well have been campaigning for simpler switching for eight years. Finally we have a Bill that is very much on the consumer side, that will make switching easier and competition stronger. I think it is a great thing.

Sean Williams: And BT completely supports the position.

David Dyson: Three has campaigned for more than a decade on this issue. It is a complete joke that it has taken so long, and it fundamentally goes back to the point that Ofcom needs more powers to make decisions that are in the consumer interest. We are the bottom of the class from a global perspective, in terms of switching. I think Papua New Guinea ranks alongside us as the only country that still has donor-led porting. It is a joke. Ofcom tried to legislate on that five years ago, and Vodafone litigated on a technicality and won. Since then it has been kicked into the long grass. It is a major issue, but the more fundamental issue is that Ofcom does not have the power, right now, to make decisions that are fully in the interests of consumers and competition.

Q16 Nigel Huddleston: Baroness Harding, you mentioned that this is a consumer-friendly Bill in various degrees. Mr Dyson and Mr Williams, are there any other elements of the Bill that you see as consumer friendly that would benefit my constituents, for example?

David Dyson: Absolutely. The electronic communications code reform is critical in being able to roll out more coverage, more capacity and better quality from a mobile perspective. That is a really important step. We hear a lot about coverage, capacity and quality. Ofcom recognises that there is a major issue in consistency of access not just for operators across the country, but for different technologies. That will certainly help, but for me the most important element of the Bill is effectively to give Ofcom the powers to create competition in this market.

Fundamentally for us, the most important decision that Ofcom needs to take in mobile in the next five years is going to happen before the Bill comes through in that spectrum. The UK is bottom of the class not only in mobile number portability, but in spectrum distribution in this market. It is the most fundamental input in terms of a level competitive playing field and Ofcom is about to take that decision in the context that it is always worried about being litigated. The facts speak for themselves. We have a terrible position in the UK right now and I am worried that it will not get any better unless Ofcom has more powers.

Q17 Christian Matheson: I am hearing mixed messages about this industry and its ability to achieve a USO. On one hand, we hear that market forces will achieve it and, on the other hand, we hear that Ofcom does not have enough power and that there is a fear of litigation. Should this Bill be giving greater powers to Ofcom? For example, in areas such as Devizes, which Claire Perry talked about, where there are broadband not spots, should Ofcom deem a provider to provide for that area?

Baroness Harding: The key thing in the Bill is to reform the appeals regime. As David Dyson has just alluded to, between 2008 and 2013, which are the most up to date stats I could get last night, Ofcom accounted for just under 50% of all cases in the Competition Appeal Tribunal. Our industry is important, but it is not that important compared with the whole of the rest of competition issues because the standard of appeal is much lower in telecoms than in any other regulated sector. That means there is a very cautious regulator.

BT has managed to raise $45 million from private equity funds to fund its litigation pot. Ofcom spent £10 million in the last two years on litigation. That is awful use of taxpayers' money. It means you have an industry that is used to appealing every single decision the regulator takes, so the regulator is too cautious. That is why we are saying, "Give them the powers and competition will do the job for you."

Sean Williams: I am sorry, but I completely disagree with that point. First, it is not true to say that everything gets appealed. BT did not appeal a charge control this very year that took a billion pounds of profitability out of BT—in fact out of Openreach—over a three-year period. We did not appeal the previous charge control, which did a similar thing and we did not appeal the one before either.

Ofcom is an extremely powerful regulator that is accountable to nobody but the Competition Appeal Tribunal. No one in the Government can tell it what to do. It has extremely wide discretion. You will not get better decisions out of Ofcom if you reduce the standard of appeal to judicial appeal standard. Is it reasonable, is it fair, is it just that Ofcom can take £3 billion of shareholders' equity value away from them on a judicial review standard? It is not. It is thoroughly unjust.

To keep Ofcom accountable, to keep its decisions high quality and to comply with the regulatory scheme, it is of the utmost importance to require an appeal on its merits. It is required across the communications sector across the whole of the European Union. It is not by any means unique. Ofcom makes many very impactful decisions and that is why it gets many of its decisions appealed to the Competition Appeal Tribunal, very often by the small players in the industry. The organisation that is appealing Ofcom's most recent charge control is CityFibre Holdings, which thinks that Ofcom's decision to drive down Openreach prices will kill off its business plan, not just Openreach's. It is not BT that is appealing that decision. It is very important that the one piece of this that really needs to come out is the change to the appeal regime.

It is also true to say that the Supreme Court of the United Kingdom, only about two years ago, was absolutely clear that the scheme provides for an appeal on the merits.

David Dyson: There are two important points on this. First, Three is 100% supportive of the changes in the Bill in this regard. Secondly, it is really important to note that all the Bill proposes to do is raise the standard of appeal that Ofcom has to the same level as regulators in other industries, which does not feel excessive to me.

Sean Williams: Except that Ofcom has many more powers than any other regulator, including a dispute resolution power that is not available to any other sectoral regulator. That is the cause of many of the disputes and appeals that happen.

The Chair: Order. I am afraid that that brings us to the end of the time allotted. I thank our witnesses on behalf of the Committee.

Examination of Witnesses

Daniel Butler, Paul Morris and David Wheeldon gave evidence.

10.1 am

The Chair: Welcome to this session of the Digital Economy Bill Committee. We will now hear oral evidence from Sky, Virgin Media and Vodafone. We will finish this session at 10.30 am. The time is very tight. May I ask the witnesses to identify themselves?

Paul Morris: I am Paul Morris, head of government affairs and sustainability at Vodafone.

Daniel Butler: I am Dan Butler, head of public affairs and policy at Virgin Media.

David Wheeldon: I am David Wheeldon, group director of policy and public affairs at Sky.

Q18 Louise Haigh: I will start with the question that I asked the last panel. Do you think that 10 megabits per second by 2020 is ambitious enough?

David Wheeldon: That is a very hard question to

answer. The flexibility within the Bill for the universal service obligation threshold to change makes sense, in order to address the likely customer needs. Our view—we have said it very publicly—is that we have to be much more ambitious in terms of connectivity in this country.

We would like to see ubiquitous fibre to the premise, and we believe ultimately that the economy is going to depend on that. The USO will be a useful interim measure until we can get there, but one might hope that, over time, a USO will not be necessary if we have full connectivity across the country.

Q19 Louise Haigh: Are you saying fibre to 100% of premises?

David Wheeldon: Eventually, that is the ambition we should aim for.

Q20 Louise Haigh: How would that be achievable?

David Wheeldon: We believe there is an opportunity to create the right market structure to bring a lot more investment into the industry. We are being held back at the moment by relying on the copper network. There is an argument we have made, as you know, about Ofcom's communications review with regard to the structure of Openreach. That is not directly relevant to this Bill, but ultimately, as far as the USO is concerned, it makes a lot of sense to be able to set a threshold that you may want to vary over time.

Daniel Butler: Virgin Media's starting point is to ask what the purpose of a USO is and what it is designed to achieve. The definition is quite clear: it is to underpin a series of activities that produce some economic and social externalities that are to the broader benefit of society. Ofcom defines those as email, web browsing, maybe a little bit of video streaming and maybe some IP voice. Its use case for a four-person household is that 10 megabits is sufficient to enable all those activities to happen simultaneously.

We view 10 megabits as appropriate for that definition of a universal service obligation. We think that more bandwidth-intensive activities, such as HD streaming and real-time gaming, have a looser connection to the underlying principles of a universal service obligation, because the benefits of those types of activity are primarily to the individual, not to society as a whole, so why should they be subsidised?

I will make one final point, which is that the debate around future-proofing the USO lacks one crucial bit of analysis. Bandwidth requirements might increase over time, but so too does the sophistication of networks in processing higher bandwidth applications. Video streaming is a case in point. When video streaming became ubiquitous, companies started investing in better video compression, and as a result video compression rates have halved every seven years. Networks are getting better at dealing with higher bandwidth applications.

Q21 Louise Haigh: Why should we be limiting ourselves to something that is barely sufficient now? What changes could we see in the Bill that would give us anything like the connectivity that Mr Wheeldon just mentioned?

Paul Morris: You have to make sure that the USO does not get in the way of future ambition. We have to think about how we move from what we have today, which is largely a copper and fibre mix, with the exception of Virgin. We still have telephone lines running broadband, essentially; as David says, we have to move on and be more ambitious. The point is to make sure that the USO does not get in the way of that ambition to do better and to use fibre for homes and businesses. We should make sure that the smaller networks have an option to be involved in the USO, and, if they have the ambition, that they know that a USO provider is not going to over-build them.

There is lots to be done outside the legislation, and clearly we do not need to repeat the mistakes of BDUK. We need to know where the assets are, who can do the work and where the green cabinets are. It needs to make sense and we need to have some kind of register. We need a practical approach and money needs to follow results—not the other way round, which was the other issue with BDUK. We can learn from some issues from the past, and we need to make sure that this USO does not get in the way of what we need to do next, which is to have much more fibre in the ground across the whole country.

Q22 Claire Perry: I represent a fairly rural constituency and I was interested to know what would happen if no USO provider came forward to do the right thing. What should happen in that case? How will the Government be able to mandate that provision?

Daniel Butler: We are not convinced that that situation will arise. What Mr Williams from BT just outlined was that BT was willing to enter into a legal obligation in which it would be the national provider for a universal service obligation. That is how it works today under the fixed telephony USO. Up to a relatively high cost threshold, BT is not allowed to pick and choose which areas and premises it connects and which it does not; it has a legal obligation to fulfil. The model does not need to radically change as we move to a broadband USO.

Paul Morris: Basically, you have to remember that most of these premises will have a telephone line—although not all, I grant you. That is a good start. It is about how we use what is already there well, and how we upgrade it.

Q23 Claire Perry: Exactly, but as I know from personal experience, having a copper line does not guarantee anything like the advertised speeds today. My previous question related to small businesses. Some of the most frustrated people in my constituency are small businesses in business parks, who could benefit hugely from an upgrade. Do you think the Government should be setting a separate USO for a small business, versus a household?

Daniel Butler: The evidence suggests that 10 megabits is sufficient for the average small business. An extensive study conducted by Communications Chambers for the Broadband Stakeholder Group found that in 2015, the average bandwidth requirement for a small business was 5 megabits per second. That was likely to increase to about 8 megabits per second by 2025.

As Mr Williams pointed out in the previous session, the bandwidth requirement of the average small business is likely to be less bandwidth-intense than the average household. The heavy-bandwidth applications that place the most pressure on a household connection—

simultaneous usage and HD video—are less pronounced in a small business environment, where the majority of usage involves accessing Government websites, accessing websites more generally, sending emails and so on.

Q24 Claire Perry: That rather depends on the sort of small business. While that might be true for a farmer, for example, what I want in my constituency is the ability to have the sort of businesses that would locate to silicon roundabout come to a beautiful part of the country where property is much cheaper. I would be cautious about writing off rural areas as only ever being able to access Government websites and check their emails one at a time. I think we should be doing something much more ambitious with obligations—particularly for small business parks, so you have clusters of fibre around those.

David Wheeldon: We would probably part company with Virgin Media here, in as much as we do not think you should be constraining by type of usage in quite that way. All the history and evidence of the data that goes across our networks means we are seeing a continued exponential increase in data usage. Going back to what Daniel said earlier, it is hard to say that specific usages are worthy of a USO intervention and others are not. Those things will change over time, including small businesses—their use cases will change over time.

In the case of businesses and business parks, it is extraordinary that there are business parks, not just in rural areas but in city areas, that do not have sufficient fibre connections. Very often that is to do with the distortions in the market where it is to the benefit of the network operator to be selling expensive leased lines to businesses rather than investing in fibre to all premises.

When we come down to it, this is a problem based around the quality of the infrastructure we have at the moment and the incentives to continue to invest. As Paul Morris said, it is important that we get the USO right, but it must not stand in the way of the massive further investment we believe is required of the nation's network.

Q25 Thangam Debbonaire (Bristol West) (Lab): I am a little shocked to hear Mr Butler say that 10 megabits is okay for the average small business. In my constituency, high-tech industries and digital creative industries need something much more reliable, much more secure and a lot greater than 10 megabits. They are not just uploading the odd film; they are making the films. Can I push you on that? They need secure, reliable, consistent bandwidth. What on earth has blocked the roll-out of that so far in city centres as well as rural areas? What else could the Bill do to push business, provide the infrastructure or give Ofcom the teeth—whatever is needed—to help the high-tech and creative industries grow?

Daniel Butler: This is one part of the market where Paul's concerns about market distortion are particularly pronounced, because the market for small business connectivity is evolving at a rapid pace. Broadband providers are beginning to target the types of use cases you outlined there: high-tech but small business where, realistically, a leased line is not an affordable solution. Virgin Media has been at the vanguard of product innovations to make symmetric business broadband connections available to high-tech businesses in London, but also outside of London, at more affordable, residential-type price points. This is one example where the market is evolving at a very rapid pace.

Business connectivity is starting to address the challenges you have identified. The use requirements I outline are what the evidence suggests is the typical requirement of a small business. Obviously, there will be outliers where the market is the right mechanism to deliver for those companies.

Q26 Thangam Debbonaire: I am not just talking about outliers, Mr Butler. You talked about providing to London and some areas outside London. London is overheating, with great respect to my London colleagues. A lot of these industries are looking to other cities and if they cannot get what they need they are going to stay put in London—and that is not good for the economy, both rural and urban. What else can be done by business or what else do you need in the Bill for this to be put right?

Paul Morris: As you will know, telecoms has got a lot going on at the moment. There are other things going on: we have an Ofcom strategic review, which is looking, in part, at how the relationship between Openreach works with the rest of the industry. There are a number of moving parts, not necessarily in the Bill, that need to be thought about.

I suggest we need to think about what we do next—that is, post-BDUK. I do not necessarily mean Government programme support, but what the ambition of the country is when it comes to traditional infrastructure. We have probably looked at other traditional infrastructure first; now it is time to look more at digital. That is beyond the Bill but it is something that needs to be done, certainly within this Parliament. We also need to start thinking about delivery because, frankly, that will take 10-plus years to do.

We need to look at the strategic review, including the relationship with Openreach. At least two of us here have that as businesses; frankly, that can be a bit more ambitious, deliver a better service, and be in control of its own investment, board and everything. Openreach needs to be independent. If that cannot work, then we have made the case to say that Openreach needs to be separate from BT. That is something that Ofcom needs to look at.

Within the Bill, the universal service obligation—you have both identified an issue. If you look at the Ofcom figures, small businesses are disadvantaged probably more than consumer households because you are not on the traditional phone network, effectively, if you are in a business park. So you have got the right point.

I would suggest that, with the USO the way it is today, we make a small step in the right direction with this idea of how we do more. I think Dan is right: there are connectivity options coming in as well. So it is a mixed picture, but I do agree—I do not think that 10 megabits is enough for most small businesses, unless of course they are one-person bands doing stuff for which they need the phone more than the computer. Again, it all comes down to a mixture of things going on that are in and around the legislation. There are a number of things going on.

Daniel Butler: I add one final point on provisions in the Bill that would help. There are provisions in the Bill

that will reduce the cost of network expansion in the UK—an exercise that Virgin Media is currently undertaking with our £3 billion network expansion. That network expansion is benefiting business parks and small stay-at-home businesses. Last month, we announced 90 new business parks that we were connecting under Project Lightning. The specific way in which the Bill can support that is through reform of the electronic communications code that will lower the cost of and time taken to achieve a wayleave agreement. The measures in the Bill take us part of the way towards that reform, but could be more ambitious.

The Chair: Can I remind Members and witnesses to be as brief as possible? I call the Minister.

Q27 Matt Hancock: No—I was going to ask for more details on which bits of the Bill could help.

The Chair: I will come back to you.

Q28 Kevin Brennan: I remember one of your predecessors in a predecessor company, Mr Butler, explaining to me why they were digging my street up in the 1990s. They basically said, "We are installing a straw to suck money out of people's houses", which I think is the best explanation I ever received of what was involved. On the electronic communications code, how can you assure us that its reform will actually benefit consumers principally and not just allow you to keep more of the money that you suck out of people's houses?

Daniel Butler: The reforms that are envisaged will transform the economics of roll-out. The figures discussed in the previous session were a 40% reduction in the cost of roll-out. The primary way in which that benefits consumers is that that allows us to build to more premises on a commercial basis.

Virgin Media currently plans to build to 4 million premises by 2020. Wayleaves are a considerable line item on the balance sheet for that investment, and also it takes a lot of time to get agreement, so anything we can do to reduce the cost and improve the efficiency of getting those will have the consumer benefit of allowing us to connect up more premises. I mentioned that Government could be more ambitious in this regard. In effect, the Government's reforms will deal with the worst abuses of the systems—that is communications providers' exposure to ransom rents—but Ministers and the Secretary of State increasingly talk about broadband being equivalent to a utility and the reforms do not quite go that far. Water companies have the most advantageous wayleave regimes under their statutes. They do not pay what is called in the valuation jargon "consideration" and, as are result, they pay 60% less—these are Government's figures—than communications providers.

Matt Hancock: I think the explanations coming from the witnesses are excellent. I did not have any other questions.

Q29 Nigel Huddleston: Are the switching proposals in the Bill, which make it easier for customers to switch and give them more power and information, a step in the right direction?

David Wheeldon: They clarify Ofcom's existing powers, so to that extent they are a welcome clarification. We have some concerns about the direction of travel that Ofcom is going in, not least because we see and operate in a market where there is already extensive switching and all the customer satisfaction surveys suggest that the vast majority of customers are happy with it.

What we are worried about is that Ofcom might go down a direction that tries to mandate a certain type of switching between networks that do not have any obvious need or reason to engage with each other. It is one thing in telecoms where you have to exchange customer information and data, but in TV, where you do not have any need to speak to a different TV network or operator, the idea of putting in place a new system where we are required to talk to each other could end up being quite burdensome and bureaucratic.

I hope that, as we engage with Ofcom, we avoid doing that. In the end we want to make this as easy as possible for customers, because that is in all our interests. We compete pretty ferociously with each other on a day-to-day basis, so a system that works for customers is in all our interests. The provisions in the Bill that clarify Ofcom's role are fine.

Q30 Matt Hancock: Could you remind me what proportion of the market Sky has?

David Wheeldon: In the overall broadband market we are below 40%, I believe. In TV, it is 60%—I am not sure quite what the breakdown between us and other pay TV providers is. We compete not just with Virgin and BT and others but increasingly with Netflix and free-to-air. Many of our customers will go to take a free-to-air package from us. So the market is pretty dynamic and I think that at the moment it seems to be working pretty well for customers.

Q31 Drew Hendry (Inverness, Nairn, Badenoch and Strathspey) (SNP): I want to go back to the average speed, which we were talking about earlier. When you provide businesses with average services, and you give them average speed—give them the minimum they need to be average—you are locking them into being average businesses; you are not giving them the opportunity to be more ambitious. How do you square that with a programme of ambition for the 21st century, taking people forward? What do you do to encourage devolved Administrations such as the Scottish Government, and councils, where they want to go further and have faster speeds?

Paul Morris: We have got to figure out a way, and this is going to be a combination of things. We talked about the code earlier; that is part of it. How do you build the network? How do we make that easier? How do we focus on support that, frankly, has been there for more traditional infrastructure? We have talked about some of the other areas, such as how we ensure that Openreach serves its customer base better and has more ambition. That would get you to a point.

As you know, the Scottish Government have been thoughtful in this area. What do we do after that? I know you have got the 100% ambition, and there I think it is a case of a mixture of things. A better Openreach that is more independent, serves its customers better and is more ambitious gets you to a point. You

then have either USO or some kind of intervention potentially in some areas where the industry can look at support and how that works across technologies.

So I think it is a combination of commercial roll-out, see how far we get—we will not know that until we reform the market—and then look at what is left and see where we go from there. I agree with you. I note that there is not a speed limit in the Bill and I think we do need to be more ambitious. Of course, we cannot solve this tomorrow, but we need to recognise that the data usage trajectory is upwards and we need to think in those terms. We do not build a little bit of a better railway; we build a much better railway. We need to think like that.

David Wheeldon: I absolutely concur with that. We look at this as a national service provider. We want to sell our TV services to every customer in the country if we can. We are agnostic about the kind of technology that we use, but increasingly using broadband services to do that is the way we are going. Therefore, if we are going to be ambitious, to enable companies like ours to continue to grow, invest and innovate, we need a national solution, and a national solution will depend upon the national network owner, which is Openreach. In the end, all these roads lead back to Openreach. That is why the structure of the industry does matter; the ability to get capital into the industry to invest in the kinds of future networks we need is critical. That is why we have made such a big noise about the structure of the industry and the Ofcom review. We really believe that it matters, not so much as a broadband provider, but as a user of the network. We want to be able to have a national solution.

Q32 Drew Hendry: Given that Openreach is pinning its position on getting 95% coverage by 4G by 2020, that surely leaves 5% in areas where they will be forced to use satellite. That is a group of consumers that cannot switch and cannot go across. What do you do for those people who find themselves in those geographically disadvantaged areas, where they are not going to be reached by that plan? How can you get that sense of ambition going for those people?

Daniel Butler: The first objective is to minimise the extent to which a backstop intervention, as you characterise it, is required. To our mind, Ofcom said a few things over the summer—it did not just talk about structural separation; it also talked about what the 10-year strategic direction for our sector should be and what conditions would best deliver for investment and for the consumer. It was unambiguous in saying that network competition, having multiple network operators in the ground and available to consumers, is the best driver of investment incentives, the best driver of superfast broadband penetration and the best driver of consumer outcomes.

To tie your two questions together, the Scottish Government have the opportunity to create the best possible environment for the deployment of new infrastructure using the devolved planning powers that they have at their disposal. Virgin Media is in the process of quite an extensive roll-out of our network in Scotland and I think there is an opportunity there to minimise the gap that is required for a universal service obligation to apply.

Q33 Nigel Adams: Returning to broadcast, I have a question for Daniel which may not come as a surprise, since I alluded to it on Second Reading. If you take out line rental and broadband charges, what is the cheapest way that someone can access a public service broadcasted channel, and how much does it cost on your platform?

Daniel Butler: Sorry, Nigel, if you debundle—?

Nigel Adams: The cost of the line rental and broadband charges, what would the charge be?

Daniel Butler: Our basic TV tier does not have a premium. If, as a customer, you get a triple-play bundle with a freeview-like TV service, it is effectively free; there is no added charge for the TV element. We do not sell TV as an individual product, if that is what you are asking.

Q34 Nigel Adams: Yes; it is all bundled in that cost. The reason I allude to it is that, clearly, there is currently no payment made to, effectively, the rights holders. A fair proportion—I would think maybe half—of your content is potentially driven through PSBs. I just wonder why you think that that is a reasonably fair position.

Daniel Butler: We think it is a fair outcome because there are flows of value in both directions—for the pay-TV operators in this market and the PSBs. As part of entering into the public service bargain, the public service broadcasters get a series of regulated benefits. The biggest of those are gifted spectrum and EPG prominence on our platform. EPG prominence guarantees them viewership, which translates into advertising revenue. From them, we get access to content, which is very valuable to our customers—it is much-loved content. That is the UK's PSB bargain. Ofcom assesses that to be a balanced bargain, it does not think that either side is losing out as a result of that bargain, and the fact that PSBs continue to enter into that bargain reinforces the fact that they see it as sufficiently valuable too.

The Chair: I am afraid that brings us to the end of the time allotted for the Committee to ask questions. I thank the witnesses very much on behalf of the Committee for the evidence they have given.

Examination of Witnesses

Pete Moorey and James Legge gave evidence.

10.30 am

The Chair: We will now hear evidence from Which? and the Countryside Alliance. We have until 11 am for this session. Would the witnesses please introduce themselves for the record?

James Legge: I am James Legge, and I am head of political at the Countryside Alliance.

Pete Moorey: I am Pete Moorey, and I am head of campaigns at Which?

Q35 Louise Haigh: Should this Bill not contain a USO for mobile coverage?

James Legge: Yes, we think that it should.

Q36 Louise Haigh: What should that USO be?

James Legge: I think that a minimum at the moment should probably be about 3G but, a little like the USO for broadband, we need to be a bit more ambitious. We also have to realise that there is a big infrastructure problem for about 50% of rural premises. The infrastructure is not there to carry more than 10 megabits per second, and for one in five premises it will not carry more than 5 megabits. So there is not only the level at which the USO is set to begin with, but also the issue of upgrading infrastructure.

Q37 Louise Haigh: Do you think that there is potential for the USO to actually limit the investment for infrastructure in the future?

James Legge: It is important that it is seen in addition to the Government's ambition to deliver superfast broadband at—at the moment—a speed of 24 megabits to 90% to 95% of premises. In my opinion it should really be seen as a safety net, as opposed to a situation in which we say, "Well, we've reached 10 megabits, we can leave it there." If you take into consideration that universal access in the EU is being set at 30 megabits by 2020, and Sweden is looking at 100 megabits in the same timeframe, where we are is good but we have a way to go yet.

Pete Moorey: There is clearly a big issue in terms of mobile coverage. You may have seen the research we did with OpenSignal last week which pointed to the fact that in many parts of the country you can get access to a 4G signal only 50% of the time, while in London it is 70% of the time. Obviously, that is way behind countries such as the US and Canada where it is 80% of the time, and countries such as South Korea and Japan where it is 90% of the time. We have not specifically taken a position on a USO for mobile, but it is definitely something that needs consideration.

The other issue here is around what mobile operators themselves are doing with customers when they are in the phone shop and choosing a package. This includes the information that operators are providing to customers about the signal that they can expect, and indeed the opportunity that customers have to be able to get out of the contract when they are unable to get a signal.

Q38 Louise Haigh: What could the Bill do to achieve the level of investment in infrastructure that is necessary? Is separation of BT from Openreach absolutely vital for this?

Pete Moorey: We are satisfied with the position that Ofcom is taking on Openreach at this stage. One area where we are more concerned is around the way that Ofcom is seeking to regulate the standards for Openreach. We think there is a danger that actually regulators are not often well placed to do that and, as they set very prescriptive rules that operators have to achieve, operators are driven by those rules rather than good consumer outcomes. We would like to see Ofcom flip the way that they are looking at the new standards for Openreach and ensure that they are much more focused around consumer outcomes. That would drive the business to achieve against those measures rather than a set of prescriptive standards, which Openreach or others can say that they have achieved but actually has not resulted in a better service for customers.

Q39 Mark Menzies (Fylde) (Con): On a slightly different point, I have a question for Which? around data sharing. Clearly, there are mixed views as to whether it is a good or a bad thing. I would like to understand what you think that the benefits would be, particularly to vulnerable groups, of the Government having access to this data?

Pete Moorey: In broad terms, we support the measures in the Bill and we see this from two perspectives. There is the work that we have done in our campaigning, particularly on areas such as energy, where we know that year after year the energy suppliers have said that they would like to be able to better target energy efficiency schemes at the most vulnerable households, and that they have struggled to do that. We think a lot of good steps could be taken as a result of that.

The other side is around the role we play in providing products and services for consumers. We run a number of excellent websites—Which? University, Which? Birth Choice, and Which? Elderly Care—which provide people with all the information they need to enable them to make a choice when they come to that decision. We have been hamstrung on occasion in being able to provide the richness of information that people would want when trying to make that decision where local authority data or other public service data have not been available. Taking steps in this direction would help not only Which? to do that better, but a lot of the other service providers in that space.

Q40 Kevin Brennan: On the point about coverage of broadband and mobile, where would we come in the European champions league of coverage? Will the Bill push us up the league at all, in your opinion?

James Legge: I cannot give you a precise figure. I am afraid I do not know the answer to where we lie in the overall league table of Europe.

Kevin Brennan: What do you think?

James Legge: I do not know. Our ambition certainly seems to be less than what the European Union intends to see delivered. I think there is scope for saying 10 is great, but we should be looking at more. We should also make sure that the USO moves up—I think the Bill makes provision for this—because there is no point in leaving it at 10 when we have 300.

Q41 Kevin Brennan: You listed a lot of countries that do better than us when you gave your answer earlier. If the Bill potentially brings some progress, are we running fast enough to keep up with our colleagues on the continent?

Pete Moorey: I think it was me who gave the list of countries. We can come back to you on that with the data we have on 3G and 4G and also on broadband.

Q42 Kevin Brennan: It would be very helpful if you could do that before we meet next week.

Pete Moorey: On the 10 megabit point, clearly for a lot of consumers it will not be enough; for others, it will be a godsend. Ofcom has done a pretty decent piece of work in understanding average consumer use at the moment. It has developed a speed that is probably appropriate to start, but will have to be addressed in

time. The really important issue is how it does that and how it involves consumers in the process. There is a real danger that we get into an arbitrary point of view and say, "Well, it should be 15 or 20 megabits" rather than setting the speed with consumers themselves.

Q43 Claire Perry: I want to focus questions directly on Mr Legge. I represent a very rural constituency. We are very anxious about home building. We now have effective neighbourhood plans that rather than mandating giant developments plonked down wherever anybody wants them, require developers—often small developers—to work with communities. The preamble is to ask you whether you think the new law coming in next year to require automatic superfast broadband connection for sites of more than 100 homes is suitable for rural areas, or whether we ought to be going further and effectively making it a utility provision for all home builders.

James Legge: My view is very much that it should be seen as a utility provision. The whole way in which we have looked at the housing problem in rural areas has transformed over the last 10 years from the idea of plonking mini-towns on the edge of existing communities. We have realised that if you try to do that, all you do is create massive local opposition and nothing gets built. What you want is small-scale development that is sensitive and local to the community, provides local housing, and is affordable, often affordable in perpetuity.

The idea that you will only get broadband provision when you build 100 premises on the edge of a village or in a rural area is undesirable, simply on the grounds that where new properties are going in and we are putting in an infrastructure, it seems absurd not to take the opportunity. We would not say we are not going to put in electricity, water or, ideally, gas as well, although we do not have mains gas everywhere, to be fair. I think broadband is too important.

It is also important to realise that the population trend at the moment is a move from towns to rural areas. There is enormous potential. If you take a population of 10,000, there are more start-up businesses in rural areas. I think London and some of the major urban city centres exceed. The countryside is a largely missed opportunity, but all the signs are there that if it gets broadband it is ready to fire and go further; so the figure of 100 is too urban-centric in thinking.

Q44 Christian Matheson: Mr Legge, you talk about the need for a fair system of site rents for country landowners in terms of wayleaves and access.

James Legge: I do not think that I did—

Christian Matheson: There needs to be,

"clarity over the new system of valuation for site rents that is fair and equitable as well as a robust Code of Practice to ensure landowners, infrastructure providers and mobile phone operators are clear".

Is there not a danger of conflict between looking after the needs of large landowners to get fair wayleave agreements on their properties and potentially preventing the roll-out of broadband and infrastructure services to other rural residents because we are keeping costs higher to benefit the landowners?

James Legge: I think we recognise that the new communications code must reduce the cost of putting in the infrastructure, both on public and private land, and must also encourage the sharing of masts and access to infrastructure. There is a difference between saying that we will do it and, say, paying a private landowner nothing, and paying them something that is reasonable and fair, taking account of the way in which we treat other utilities. I know that our view differs slightly, though, from some of the other landowning organisations that are focused on land ownership. We are very much focused on delivery to the consumer, but we think it should be fair, equitable and clear.

Q45 Matt Hancock: May I clarify that? You said that the new communication code must do those things. Did you mean by that, that it does do those things and that that is right, or that you do not think it fits what you set out? What you set out is entirely concurrent with the Bill.

James Legge: Yes, and we are supportive of that. We support the fact that we have got to start seeing broadband on the same par as a utility, as opposed to something where there is a premium cost to the provider, which limits provision—

Q46 Matt Hancock: I was seeking clarification on whether you are looking for something more than is in the Bill. You were saying that that is what is in the Bill and it is right that that goes through.

James Legge: Not at this stage.

Q47 Nigel Adams: I suspect that the Bill is not going to be subject to the most detailed discussion around the country. However, as a question to both of you, having had an opportunity to analyse the Bill, if we were all pitching this to our constituents across the country, what do you see as the key benefits for consumers?

Pete Moorey: The telecoms sector needs to catch up with where consumers are. That is part of what the Bill is trying to do: we need to recognise that people increasingly see their mobile phones and broadband as essential items. Yet we know that customer satisfaction is very low and that people are increasingly frustrated about their inability to get a signal or to get the broadband speed they are paying for.

There are critical things in the Bill that will start to bring the telecoms sector kicking and screaming into the 21st century. For me, those elements include switching—I think it is incredible that we do not have provider-led switching in the telecoms sector. Automatic compensation is very important. With water, electricity and gas, if we lose a connection we get a compensation payment, but that is not the case in telecoms. The appeals process, which we have heard a lot about this morning, has had a chilling effect on the regulator's ability to introduce measures that would both improve competition in the sector and better protect consumers.

The final area, for us, is nuisance calls, which we know are some of the biggest bugbears that people face—they are sick to death with receiving annoying calls and texts. To put the ICO guidance on nuisance calls into statute is another step towards tackling that everyday menace.

James Legge: Yes, I think that switching and compensation are important: it is important to hold the feet of the telecoms companies to the fire. But there is possibly an opportunity in the legislation to empower the consumer. At the moment, we have a sort of opaqueness

around data and provision. We do not have address-level data. If I want to decide where I am going to get my mobile or broadband from, I cannot just put in my address and find out that the company that provides the best service is x. I have to sign up to someone. Then I can test the level of my service through their internet connection as a customer.

If there was more transparency, and if people had the information to hand, they would be able to make better choices. The market would also be more competitive for mobile or broadband providers, because if they do not provide the coverage, they will lose customers. It is no good waiting for someone to sign up and then find out that switching is jolly difficult, so customers say, "Well, I'll just put up with this and complain". We do that terribly well.

We should be able to say, "No, sorry. You didn't tell me this. I didn't have the data. Your service is appalling. I'm switching, and it is easy." The level of switching at the moment is extremely low. A previous witness suggested that there was general contentment, which is not my experience.

Q48 Calum Kerr: There has been a lot of discussion in this session about fixing mobile coverage. Do you think that the Bill will achieve that? It comes down to licence obligations. If we want to do it, we need to set the right licence obligations. I accept that you are going to get less money.

On the electronic communications code changes, if we want the measures to be about driving more coverage, should we actually just exclude existing sites—you will have a lot of landowners and we will have local government bodies that will lose a lot of money—and say, "Access will change but, in terms of valuations, let's exclude existing sites; this is about you going to new sites and doing them more cheaply"?

James Legge: I had thought—if I have understood the question correctly—that the Minister indicated previously to the House that it was not going to be retrospective.

Q49 Calum Kerr: It is not retrospective, so you will not revisit deals. Essentially, when a site comes up for renewal, the valuation of that land will be treated differently, so costs will drop dramatically. My suggestion is that they should be excluded from a valuation perspective, and the old rules apply for valuation.

James Legge: So you keep the old rules at the renewal point for old sites.

Calum Kerr: So you will still see some price erosion, but not as much.

James Legge: I would have thought that anything that brings the cost down for the providers when it comes to rolling out and upgrading infrastructure—

Q50 Calum Kerr: This is existing infrastructure.

James Legge: But a lot of it needs upgrading.

Q51 Calum Kerr: They will be allowed to do it, but the rental cost of that land would go down.

James Legge: Well, we would agree with that. If the rental goes down and it costs less to upgrade the infrastructure, that is a good thing from our point of view. Presumably that would be under the newer system, not the older one. My understanding—and this may be wrong—is that the new code values land and access in a slightly different way, and the cost should be less to the person putting the infrastructure in. I had a discussion with the Local Government Association about that issue. The LGA said that it would potentially get slightly less money on public land, but that there are savings at the other end. If, for example, you have more efficient provision of digital government—"digital by default"—there could be savings at the other end. The LGA has a slightly mixed view. Yes, it might lose some income but, ditto, landowners will—

Calum Kerr: Okay. I do not think you understood my question, but I will leave it there.

Q52 The Parliamentary Secretary, Cabinet Office (Chris Skidmore): Mr Moorey, let us return to your comments about Which? being hamstrung by a lack of data sharing. Could you give a fuller explanation of that? Will you put on record the views of Which? about the public services delivery power, and the potential benefits that it might bring, particularly to the most vulnerable in society?

Pete Moorey: As I said, we are broadly supportive of the measures in the Bill. We are hamstrung from two perspectives. The first is a service delivery perspective. When we are delivering something such as our Which? elderly care website, we want to have the richest possible data available to help people make decisions. Yet on occasions when we have gone to certain local authority providers or certain care home providers, we have had an inability to gather that data and provide it in a comparable way. There is also the need to get that information in a clear and comparable format so that organisations like us can do that much better. It is something we have worked on a lot over the past few years with regard to universities. We are starting to see some of the data coming through at the kind of level that students want when they are making those choices. Clearly, having such legislation would better allow us to do that.

Q53 Chris Skidmore: Any comments on, particularly, the public services power, and how that might affect it?

Pete Moorey: No, no specific other comments on the Bill itself.

Q54 Thangam Debbonaire: I particularly direct this question at Mr Moorey, because I noticed you mentioned unsolicited calls and the problem of people receiving them despite registering with the Telephone Preference Service. I can declare that I am one of those. I am particularly concerned about the example of a constituent in a neighbouring constituency to mine, Olive Cook, who was one of Britain's longest-serving poppy sellers, having started in 1938. She fell to her death after being plagued by nuisance callers, particularly from charities. My experience has been that there are also private companies making them. Who is it? Who makes nuisance calls? How are they being dealt with? Does the Bill go far enough to ensure that those companies are held responsible—the directors, if necessary? Should they be made more accountable? Can you tell me some more, please?

Pete Moorey: We have made a lot of progress, I think, on nuisance calls over the last three or four years. That is thanks to an awful lot of people around this table. The Government have made progress with the action plan that we have had, and then in setting up the taskforce, which Which? chaired. We have seen changes to the powers of the Information Commissioner's Office, and it is now much better able to take action against nuisance callers, and hit them with bigger fines. Caller line identification has been introduced. However, you are right that there is still an awfully long way to go.

Nuisance calls come from a range of places, all over the place. Frequently they come from claims management companies and lead generators. Sometimes they come from reputable businesses. Sadly, too often they also come from scammers and fraudsters. The important measure in the Bill is putting the Information Commissioner's code into statute, which I think will give it more clout. However, we agree that more could be done about director-level accountability. We recognise that many MPs support that, as do the Scottish Government. Indeed, the Information Commissioner herself, who I believe you are seeing this afternoon, has made supportive noises about it.

We would like director-level accountability to be introduced. It is important, because while in recent years the ICO has used its powers to fine companies, it has collected only four out of the 22 fines it has imposed in the past year. We are concerned that some of the more disreputable firms simply abolish themselves once they are fined—and they are phoenixing. Directors pop up elsewhere and continue the behaviour of making nuisance calls and sending texts. That behaviour needs to be stopped. We need to ensure that those directors are struck off, and that they cannot do the same thing again.

Q55 Thangam Debbonaire: Is the Telephone Preference Service system now completely pointless? My constituents say to me that they feel completely unprotected by it. Could the Bill do more to strengthen it?

Pete Moorey: It is not pointless. Our research shows that if people sign up to the TPS they usually have a reduction in calls. The problem is that there are too many firms out there that either just abuse the Telephone Preference Service and call people who are on the list, or indeed have consumers' consent to call them, because, sadly, the customers have incorrectly ticked a box at some point, and thought they were not giving consent when they were giving it. More needs to be done about the data consent issue. I know that the Information Commissioner's Office is doing more about it.

Q56 Kevin Brennan: So just to be clear, you would welcome amendments to the Bill that would strengthen action, including direct action against directors to avoid the shutting down of shell companies. Is there a case for some kind of aggravated offence where people are on the Telephone Preference Service, or where older people are specifically targeted in such a way?

Pete Moorey: I know there is a local police commissioner who is looking at the issue at the moment—particularly around making scam calls a hate crime. That is an interesting development. There is more that could be looked at in that area. I think a good start in the Bill would be the introduction of director-level accountability.

Kevin Brennan: I introduced a ten-minute rule Bill on this in 2003, so it is depressing that it is still a problem.

Chris Skidmore: I am sure you are delighted at the progress.

Kevin Brennan: It is according to the Government that there has been much progress.

Q57 Rishi Sunak (Richmond (Yorks)) (Con): Mr Moorey, to elaborate on what you said about the provisions in the Bill to reform the appeals process, I think you described the current set-up as having a chilling effect on competition and pro-consumer impacts. It would be great if you would elaborate on what the Bill will do to improve that situation.

Pete Moorey: I think it has. I think the reason why we do not have things like a gain in provider-led switching and automatic compensation in the sector is in part due to the fact that the regulator has not felt able to move ahead with those things without appeal. Indeed, the speed at which the regulator acts is also a result of the appeals mechanism. We see proposals coming from Ofcom, particularly around things like switching, where it seems to go through a process of repeated consultation really out of a fear of being appealed by the companies. So I think it has had a chilling impact, and those are a couple of examples.

As other panel members have said, moving to a system that every other economic regulator in the country uses, which means that you are able to challenge on the process rather than the merits, would therefore be a significant change. I simply do not see the case for the telecoms sector being any different from energy or any other economically regulated sector.

Q58 Nigel Huddleston: A great frustration in rural areas in particular is being promised mobile coverage or broadband speed that is not delivered. What in the Bill can ensure that those speeds are delivered and that coverage is acceptable?

Pete Moorey: The automatic compensation element is an important part of that. If you are not receiving the speed or signal required, there could be a case for compensation. Clearly, a big issue that we want to see addressed that is not in the Bill is around the Advertising Standards Authority code and the fact that companies can advertise that you will get a certain speed when actually only 10% of their customers get that. I know that the ASA and its committees are looking at that, but I think that needs to move forward much quicker. That is clearly not something for the Bill, but it is something we would support.

Q59 Nigel Huddleston: What about terminating contracts?

Pete Moorey: Ofcom has taken a lot of steps in recent years to allow people to terminate contracts when they are not getting the speed they want. I think that is an area that needs to be looked at with regard to mobiles as well. Vodafone has introduced a new rule that means that you can get out of a contract within 30 days if you are not getting the signal you expected. Again, I do not think that is necessarily something for the Bill, but it is certainly something the regulator should be looking at.

The Chair: This will probably be the last question.

Q60 Claire Perry: I wanted to confirm with Mr Legge that he was aware that there are provisions in the Bill to report broadband speed by household. That is something I welcome, and I hope he does too. I suppose that, like me, he is concerned about Mr Huddleston's point about the provision of service speed to many households in rural areas. I hope that, as a representative of a large chunk of the country, he will welcome that as a positive step for many rural households.

James Legge: Yes, we absolutely think the Bill is very much a step in the right direction, but it is like everything: one can always ask for more and hope for more. Certainly, from our point of view, increasing competition and empowering the consumer is one of the most important aspects of the Bill. Otherwise, people are not in a position to make choices and then take action when the companies do not deliver. As I said, it is important that that is seen as a first step and not as, "We have got 10 megabits—then what?"

The Chair: It was not the last question.

Q61 Calum Kerr: Have you considered whether automatic compensation should be not just for download speed but for upload speed? On the USO, have you put forward proposals on other, more granular levels, such as cost and latency as well as upload and download?

Pete Moorey: Our general view on compensation is that it really should be down to the regulator to set the specific areas that are covered. It needs to do that with consumers, and it needs to be based on consumer expectations. We need to look hard at what the consumer expectations in this world are. If you look at things like water and energy, actually a lot of those compensation levels and what they cover have not been reviewed for some time. We would not want a situation in telecoms where an arbitrary figure of £30 or £40 was set for particular things and then over time that was not addressed.

Q62 Calum Kerr: They are on or off-type services, though, which, to go your point, should do what it says on the tin. There should be a more granular—

Pete Moorey: Absolutely, and it should meet customers' expectations for that service.

The Chair: I am afraid that brings us to the end of the time allotted for the Committee to ask questions. On behalf of the whole Committee, I thank the witnesses for their evidence. Thank you very much.

Examination of Witnesses

Jeni Tennison and Mike Bracken gave evidence.

11.2 am

Q63 The Chair: We will now hear oral evidence from the Open Data Institute and the Co-op Group. We have until 11.25 am for this session. Will the witnesses please introduce themselves for the record?

Jeni Tennison: My name is Jeni Tennison. I am the CEO at the Open Data Institute.

Mike Bracken: My name is Mike Bracken. I am the Chief Digital Officer at the Co-operative Group.

Q64 Louise Haigh: Mike, to what extent do you think the Government have achieved their stated objective of open policy making by default?

Mike Bracken: I do not have a strong opinion on that. You would have to ask the person responsible overall for policy in Government or the Minister responsible.

Q65 Louise Haigh: Do the proposals on Government data sharing give you assurance that the Government have sufficiently considered safeguards on privacy, personal data and criteria for data sharing and time limitations?

Mike Bracken: In short, no. The sentiment behind many aspects of the Bill is to be applauded. The Co-op is a big supporter of open data and we see it as the catalyst of a digital economy. There are many complicated issues in this space, privacy and security being highest among them. While we applaud the sentiments of the Bill, there is much detail in the operational management of how data can and should be shared around Government Departments.

While we, of course, are looking for our members' interests in accessing open sets of public data, it is not yet clear that the current sharing agreements of data within Government are appropriate and it would appear that the move away from open registers of data may hamper the appropriate levels of sharing data in Government. It also may be the case that the friction that our members and members of society feel in dealing with duplicate sets of data, inconsistent sets of data and so on, which lead to substantial problems in accessing Government and their services, may not be improved by the current sharing policies as set out.

Q66 Louise Haigh: Do you think it is a backward step in public trust in Government data handling?

Mike Bracken: We think the Bill is a positive forward step in terms of the sentiment behind it—

Q67 Louise Haigh: But in terms of public trust in Government data handling?

Mike Bracken: I could not comment on that. The sentiment of the Bill overall is a positive one, but there is not enough detail on the sharing arrangements within Government and within Government Departments.

Q68 Louise Haigh: Jeni, my first two questions to you, please.

Jeni Tennison: I agree with much of what Mike has said. The important thing for securing public trust in the measures in the Bill is to have them clearly communicated to the public. Currently, the way they are written is quite complicated and it is quite hard to understand what they really mean.

It is also hard to understand the measures in the Bill in the context of the existing data-sharing agreements in the public sector. We would like to see a lot more transparency around what existing measures there are within Government for data sharing and how the Bill fits with those existing measures so that people can really get to grips with the way in which data are flowing through Government.

Mike Bracken: May I add to that? I completely support what Jeni has said. The issue is that, while we agree that making services and data better and easier to

access—the current sharing arrangements are opaque at best—we question the sentiment behind widening those sharing arrangements when they are currently not fully understood. It would appear that that sentiment is driven more by the operational structures of Whitehall and Government agencies than by the needs of users accessing that data.

Q69 Rishi Sunak: Jeni, do you mind giving us some specific examples that I can explain to my constituents about where increased use of data sharing can help their lives, and where public services can be improved, especially for those who are more vulnerable and benefit from public services? Where will data sharing help them to get the right policies to them?

Jeni Tennison: I tend to work in the open data area rather than around data sharing so many of the examples I tend to use are around data that are openly available for anyone to access using Share. The example I tend to use, which helps people to get to grips with it, is Citymapper, which makes data available to us to enable us to navigate around cities very easily.

When you look at the public sector and the kind of decisions it needs to make, such as planning decisions about where to place schools or transport links, where to put more infrastructure, such as physical infrastructure like mobile masts, for example, you can see that having better access to data about people's needs—who they are and what their requirements are—might enable it to make better decisions about where those facilities are needed.

Q70 Thangam Debbonaire: This is for Jeni Tennison about the evidence in the Open Rights Group's submission. In points 37 and 38 in your objections to the definition of pornographic material, you objected to the inclusion of all 18 materials.

Louise Haigh: That is a different witness. That is the Open Rights Group.

Thangam Debbonaire: I am sorry. I mixed you up with someone else. I withdraw my question.

Q71 Chris Skidmore: Mr Bracken, you were responsible for launching the Government's data programme when you were head of the Government Digital Service, so I think that some of the measures in the Bill are very much trying to build on your fantastic work when you were setting a vision for transforming the management and use of data within the Government and driving the use of data as a tool when making decisions in Government. Do you have thoughts about your work in GDS and how the Bill is now building on that work? How do you feel that the powers in the Bill will try to unlock some of the opportunities for better use of data?

Mike Bracken: Obviously, I am here as a member of the Co-op, so I am not going to give a review of my time in Government.

Chris Skidmore: You were closely integrated into this approach.

Mike Bracken: Of course. The first thing is to recognise the positive sentiment in the Bill. There is much in it to admire and applaud and I believe it builds on some of the sentiment for providing better public services that certainly ran through my time in Government, pressed by various Ministers in the Cabinet Office, one of whom is sitting next to you now.

As I said earlier, I think the concern is not the sentiment and support, but in the lack of detail and the operational change that goes with that. Much of the work done previously, to date, has centred around things like single, canonical sets of data, so that there are accurate datasets about individuals, about place, about location, and that they are used within Government. That sentiment too often flies in the face of Whitehall's demand to own its own data, or what it perceives to be its own data, in every piece of Government. That leads to the current sharing agreements around Whitehall, which are opaque at best and create friction for our members, friction for members of society and friction for business. It is harder to find accurate data, it adds an economic downside to people dealing with Government. The Bill currently seems to move away from the sentiment of sorting that problem out. It seems to reinforce the primacy of Whitehall's willingness to share more data in ways that it has been sharing data over time. So while the sentiment of the Bill overall is positive, this area of how data are shared does not seem to be looking at the sort of open registers, those single approaches, that we started to look at in the latter part of the previous Parliament.

Q72 Matt Hancock: Do you agree that those areas in addition that you are looking for are essentially administrative rather than legal changes? That is to say, the Government need to move in that direction, I would argue that they are moving in the direction that you set out, but you would not put that in a Bill; you need to make it happen.

Mike Bracken: Yes. Absolutely, Minister. Too often, there was an assumption that those things would need regulatory or Bill backing. My experience was pretty much 100% that that was not the case; these are largely about administrative and operational management of data across Whitehall and across Departments. Clearly, there are some areas, security being an obvious one, where you need more legal oversight, but primarily it is not so much about a Bill.

Q73 Kevin Brennan: First, I agree with what Jeni said about Citymapper; it has changed my life, it is absolutely fantastic—I actually use the bus now. However, either witness, will the Bill in any way help to avoid another care.data type of scandal?

Jeni Tennison: I will go back to what I was saying around transparency and public trust. For me, the important part of any dealing with private, personal data has to be that we drive towards trust by being open about what is being done with those data, by being transparent about how they are being used, what decisions are being made with them, whom they are being shared with and under what circumstances. Those principles of having openness around the handling of personal data are what will drive public trust in their use. We are in a very difficult space here between trying to balance the right to privacy of an individual with the public good we can get from the use of data. It is a fuzzy and difficult one, one we are going to be working through

for many years, but having transparency and openness about it enables us to have an informed debate about where we are making that balance.

Q74 Kevin Brennan: Will the Bill make a care.data scandal in the future less likely, more likely or make no difference?

Jeni Tennison: For me, it does not go far enough in the need for transparency around where the sharing is going on, which is what I think would be necessary in order to avoid that.

Q75 Kevin Brennan: Finally, should the Bill be strengthened in some way in order to achieve that, and could that be done by an amendment to it, either of you?

Jeni Tennison: I think it could be strengthened by adding some provisions around openness and transparency, putting that at the heart of what you need to do whenever there is a data-sharing arrangement.

Q76 Claire Perry: I appreciate that point, but does either of you agree that there is a real asymmetry of concern between data which an individual may share with a public body and data which individuals share with a corporate body? One thing I am fascinated by, and it relates to so many provisions in the Bill, is that we knowingly or unknowingly give away rights to all kinds of information with every keystroke we make on the internet. We give huge chunks of personal information to corporate bodies which do not have the definition, as per clause 31, of improving the welfare of the individual, but are simply in it for profit. How would either of you help us to address that? Perhaps the Government—rightly, as an elected organisation—are being scrutinised about this, but my constituents are willy-nilly giving away vast chunks of their data, and in some cases giving away private data to very insecure storage facilities, almost without knowing it. It is frustrating for a Government who are trying to do the right thing to make digital government far more effective—as you did, Mike, during your time—to constantly be facing concerns and criticisms that ought properly to be applied to corporate bodies, but never are.

Mike Bracken: I completely understand your point about asymmetry and I agree with that. I would suggest that in corporate, public and private life it is a fair assumption that many people in the country are waking up to how their data have been used, how they have released that data and, increasingly, the repercussions of that, whether on social media, transactional data with a private company or, indeed, the public sector. There is a general awareness of and unease about some of the practices in all three of those sectors.

Having said that, the Government are held to a different account. Our members—we are a member-based organisation—hold the Co-op to a different account. We are the custodian of their data, and we are owned by our members. Many of the services we provide or help to provide to our members, such as wills, probate and funeral care, are deeply emotive at a certain time of life. These services often depend on Government data being in very good shape about place, location and identity. It is a fair correlation to draw that there should be a symmetry between how an organisation like us should be governed and managed, and the rules that should apply to public sector data. That is not to say that all the data regulations which apply to all corporations and trading organisations need to be exactly the same as those for the Government. That would be a political issue far beyond my position to comment on. The Co-op would look to see that the Government uphold the highest possible standards, so that our members can get the best possible use of that public data.

Jeni Tennison: Perhaps I can add a couple of things. Mike has made the point well that the Government need to act as a model for how to do data sharing well, and how to be open and transparent about handling people's personal data. The Government are in a position of authority there. However, the other thing to bring up is that we have a mixed economy for the delivery of public services, including the private sector, charities and social enterprises. There should be some scrutiny over the way in which those organisations are handling personal data in the context of delivering those public services.

Q77 Nigel Huddleston: Do you believe that there is a lot of work to do in terms of clarity, in order to allay some of the fears about which data are being used here? I have had emails from constituents, and there is a perception that Excel spreadsheets will be floating around universities with personal financial data and personal health records. It is nothing like that, is it? It is aggregated and anonymised. What can we do, what can Government do and what can you do to help clarify the opportunity, move the debate on to those opportunities and allay some of those fears about data protection?

Jeni Tennison: I completely agree that there needs to be greater clarity about which data are being shared with whom, and why and how. You say that we are talking here about the transfer of aggregate and anonymised data, but that is not necessarily the case for some of the pieces of data sharing that are in the Bill. Some of it is the sharing of individual-level data, but it is not clear whether those are bulk Excel spreadsheets or through APIs. Those are the kinds of details that actually make a difference to how anybody might think about this trade-off between privacy and the public good.

Mike Bracken: Perhaps another way of thinking about that would be to question whether there needs to be sharing at all. As Jeni said, the sharing of data in Government has many different forms. Hopefully, many of those are secure and anonymised. I have doubts about our overall data-sharing operations, simply because Government is so distributed and there are so much data. Adding more sharing, without a clear landscape under which that is happening, seems to add more risk of privacy violation and more risk to security. Perhaps a way to think about it is access rather than sharing. Many Government Departments, and many organisations, are able to provide individual data points at point of request to people who they trust. You can query a dataset using an application programming interface rather than sharing an entire dataset with Departments. I suspect it is that willingness to share very large sets of data in different ways for the convenience of Government Departments and agencies that is the root cause of the unease around the data sharing part of the Bill.

Q78 Nigel Huddleston: Forgive me, but is that not the point? I said let us focus on the opportunities but already we have gone on to the negatives and the

[Nigel Huddleston]

concerns. It is often commented that by sharing health records we could cure cancer in 10 years. If I asked my constituents if they would share their health information with a university, 99 out of 100 people would say yes. We have to be more ambitious on the communication of the opportunities as well, have we not?

Mike Bracken: The opportunities are great and we are very supportive of that, but I suspect you did not ask each individual constituent if we should share everybody's health data. That is the point. When we ask for data sharing it is down to an individual's point of view. The Government use bulk data too often when what is actually required is only a small amount of data by another Government Department. There are different mechanisms that can do that more safely.

Q79 Chris Skidmore: The research power for data sharing, as presented, has been welcomed by many academics and civil society groups as a means of unlocking data for research for public benefit. Looking particularly at that data sharing with non-public bodies, do you recognise the benefits of that power? In terms of your point about communicating the value of the Bill, we have the research power and other things. Looking at vulnerable groups, such as troubled families, we have other powers that are there for public benefit. How do you feel we should express that public benefit?

Jeni Tennison: The benefits of each of the individual pieces of the Bill are different kinds of benefits to different kinds of people. I think they need to be separated out in some ways and not be muddled up together. That is one of the challenges with the Bill.

Q80 Matt Hancock: Can you set out what some of those might be?

Jeni Tennison: The benefits?

Matt Hancock: Yes.

Jeni Tennison: The research power enables us to provide data to researchers and academics who can then draw broad conclusions about, for example, the state of our economy, or who can give more accurate and up-to-date information about the way in which we are functioning as a society in general. Having those is of great benefit to society. The pieces around fuel poverty and so on are more specific benefits to both individuals who would be touched by that and to the efficiency of the public sector.

Q81 Matt Hancock: And in terms of the data measures to tackle fraud?

Jeni Tennison: I have not looked at the detail of the individual measures for those kinds of benefits.

Q82 Louise Haigh: Is the point not that these benefits cannot be achieved unless the risks are tackled head-on, which is exactly what happened with the care.data issue in the last Parliament? That health data could not be shared because the public did not trust the Government or insurers with that risk. I worked in insurance at the time and that came as quite a blow. Is the point not that the Government need to take on the issues around transparency and trust in this Committee? Mike, on your point about data access, do you think Government are currently geared up to allow that, rather than bulk data sharing?

Mike Bracken: "Government" is a very broad organisation. There are promising moves around registers of data and around reinstating an address register. I do not know quite where that is now. There was a promising move but that now seems to be a little on the backburner—I am not sure. The point is that that question needs to be asked to 20-plus Government Departments and more than 300 agencies and non-departmental public bodies, each of which has a different answer. It is hard to summarise where "government" is at any one point without any open standards between those and without any clear framework under which Government data are already being shared.

The Chair: Order. That brings us to the end of the time allotted to the Committee to ask questions. On behalf of the Committee, I thank the witnesses for their evidence.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

DIGITAL ECONOMY BILL

Second Sitting

Tuesday 11 October 2016

(Afternoon)

CONTENTS

Examination of witnesses.
Adjourned till Thursday 13 October at half-past Eleven o'clock.
Written evidence reported to the House.

PBC (Bill 045) 2016 - 2017

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 15 October 2016

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The Committee consisted of the following Members:

Chairs: † Mr Gary Streeter, Graham Stringer

† Adams, Nigel *(Selby and Ainsty)* (Con)
Brennan, Kevin *(Cardiff West)* (Lab)
† Davies, Mims *(Eastleigh)* (Con)
† Debbonaire, Thangam *(Bristol West)* (Lab)
† Foxcroft, Vicky *(Lewisham, Deptford)* (Lab)
† Haigh, Louise *(Sheffield, Heeley)* (Lab)
† Hancock, Matt *(Minister for Digital and Culture)*
† Hendry, Drew *(Inverness, Nairn, Badenoch and Strathspey)* (SNP)
† Huddleston, Nigel *(Mid Worcestershire)* (Con)
† Kerr, Calum *(Berwickshire, Roxburgh and Selkirk)* (SNP)
† Mann, Scott *(North Cornwall)* (Con)
† Matheson, Christian *(City of Chester)* (Lab)
† Menzies, Mark *(Fylde)* (Con)
† Perry, Claire *(Devizes)* (Con)
Siddiq, Tulip *(Hampstead and Kilburn)* (Lab)
† Skidmore, Chris *(Parliamentary Secretary, Cabinet Office)*
† Stuart, Graham *(Beverley and Holderness)* (Con)
† Sunak, Rishi *(Richmond (Yorks))* (Con)

Marek Kubala, *Committee Clerk*

† attended the Committee

Witnesses

David Austin, Chief Executive, the British Board of Film Classification

Alan Wardle, Head of Policy and Public Affairs, NSPCC

Dr Edgar Whitley, Associate Professor (Reader) in Information Systems and Co-Chair of Privacy and Consumer Advisory Group, London School of Economics

Scott Coates, Chief Executive, Wireless Infrastructure Group

Renate Samson, Chief Executive, Big Brother Watch

Jim Killock, Executive Director, Open Rights Group

Sarah Gold, Founder, Projects by IF

Chris Taggart, Chief Executive Officer, Open Corporates

Paul Nowak, Deputy General Secretary, Trades Union Congress

Professor Sir Charles Bean, Professor of Economics, London School of Economics

Hetan Shah, the Royal Statistical Society

Public Bill Committee

Tuesday 11 October 2016

(Afternoon)

[MR GARY STREETER *in the Chair*]

Digital Economy Bill

2 pm

The Chair: Colleagues and members of the public, welcome to our second evidence session on the Digital Economy Bill. Before we get under way and introduce our first set of witnesses, a number of colleagues wish to declare an interest.

Drew Hendry (Inverness, Nairn, Badenoch and Strathspey) (SNP): I do not have any direct interests, but for full transparency I draw the Committee's attention to my share ownership in Teclan Ltd, which is in the Register of Members' Financial Interests.

Nigel Huddleston (Mid Worcestershire) (Con): Again for full transparency, prior to becoming an MP I worked for Google, in which I have a small share interest at the moment.

Nigel Adams (Selby and Ainsty) (Con): As I stated in the earlier session, I am a director and shareholder of two telecommunications businesses, and I believe my wife is also a director and shareholder.

Examination of Witnesses

David Austin and Alan Wardle gave evidence.

2.1 pm

Q83 The Chair: For this session we have until 2.45 pm. Will the witnesses please introduce themselves for the record?

David Austin: My name is David Austin. I am the chief executive of the British Board of Film Classification.

Alan Wardle: I am Alan Wardle, head of policy and public affairs at the National Society for the Prevention of Cruelty to Children.

Q84 Louise Haigh (Sheffield, Heeley) (Lab): David, am I right in interpreting the amendments that the Government tabled last night as meaning that you are intended to be the age verification regulator?

David Austin: That is correct. We reached heads of agreement with the Government last week to take on stages 1 to 3 of the regulation.

Q85 Louise Haigh: Are you sufficiently resourced to take on that role?

David Austin: We will be, yes. We have plenty of time to gear up, and we will have sufficient resource.

Q86 Louise Haigh: Will it involve a levy on the porn industry?

David Austin: It will involve the Government paying us the money to do the job on our usual not-for-profit basis.

Q87 Louise Haigh: What risks do you envisage in people handing over their personal data to the pornographic industry?

David Austin: Privacy is one of the most important things to get right in relation to this regime. As a regulator, we are not interested in identity at all. The only thing that we are interested in is age, and the only thing that a porn website should be interested in is age. The simple question that should be returned to the pornographic website or app is, "Is this person 18 or over?" The answer should be either yes or no. No other personal details are necessary.

We should bear in mind that this is not a new system. Age verification already exists, and we have experience of it in our work with the mobile network operators, where it works quite effectively—you can age verify your mobile phone, for example. It is also worth bearing in mind that an entire industry is developing around improving age verification. Research conducted by a UK adult company in relation to age verification on their online content shows that the public is becoming much more accepting of age verification.

Back in July 2015, for example, this company found that more than 50% of users were deterred when they were asked to age verify. As of September, so just a few weeks ago, that figure had gone down to 2.3%. It is established technology, it is getting better and people are getting used to it, but you are absolutely right that privacy is paramount.

Q88 Louise Haigh: Are you suggesting that it will literally just be a question—"Is the user aged 18?"—and their ticking a box to say yes or no? How else could you disaggregate identity from age verification?

David Austin: There are a number of third-party organisations. I have experience with mobile phones. When you take out a mobile phone contract, the adult filters are automatically turned on and the BBFC's role is to regulate what content goes in front of or behind the adult filters. If you want to access adult content—and it is not just pornography; it could be depictions of self-harm or the promotion of other things that are inappropriate for children—you can go to your operator, such as EE, O2 or Vodafone, with proof that you are 18 or over. It is then on the record that that phone is age verified. That phone can then be used in other contexts to access content.

Q89 Louise Haigh: But how can that be disaggregated from identity? That person's personal data is associated with that phone and is still going to be part of the contract.

David Austin: It is known by the mobile network operator, but beyond that it does not need to be known at all.

Q90 Louise Haigh: And is that the only form of age verification that you have so far looked into?

David Austin: The only form of age verification that we, as the BBFC, have experience of is age verification on mobile phones, but there are other methods and there are new methods coming on line. The Digital Policy Alliance, which I believe had a meeting here yesterday to demonstrate new types of age verification, is working on a number of initiatives.

Q91 Claire Perry (Devizes) (Con): May I say what great comfort it is to know that the BBFC will be involved in the regulatory role? It suggests that this will move in the right direction. We all feel very strongly that the Bill is a brilliant step in the right direction: things that were considered inconceivable four or five years ago can now be debated and legislated for.

The fundamental question for me comes down to enforcement. We know that it is difficult to enforce anything against offshore content providers; that is why in the original campaign we went for internet service providers that were British companies, for whom enforcement could work. What reassurance can you give us that enforcement, if you have the role of enforcement, could be carried out against foreign entities? Would it not be more appropriate to have a mandatory take-down regime if we found that a company was breaking British law by not asking for age verification, as defined in the Bill?

David Austin: The BBFC heads of agreement with the Government does not cover enforcement. We made clear that we would not be prepared to enforce the legislation in clauses 20 and 21 as they currently stand. Our role is focused much more on notification; we think we can use the notification process and get some quite significant results.

We would notify any commercially-operated pornographic website or app if we found them acting in contravention of the law and ask them to comply. We believe that some will and some, probably, will not, so as a second backstop we would then be able to contact and notify payment providers and ancillary service providers and request that they withdraw services from those pornographic websites. So it is a two-tier process.

We have indications from some major players in the adult industry that they want to comply—PornHub, for instance, is on record on the BBC News as having said that it is prepared to comply. But you are quite right that there will still be gaps in the regime, I imagine, after we have been through the notification process, no matter how much we can achieve that way, so the power to fine is essentially the only real power the regulator will have, whoever the regulator is for stage 4.

For UK-based websites and apps, that is fine, but it would be extremely challenging for any UK regulator to pursue foreign-based websites or apps through a foreign jurisdiction to uphold a UK law. So we suggested, in our submission of evidence to the consultation back in the spring, that ISP blocking ought to be part of the regulator's arsenal. We think that that would be effective.

Q92 Claire Perry: Am I right in thinking that, for sites that are providing illegally copyrighted material, there is currently a take-down and blocking regime that does operate in the UK, regardless of their jurisdiction?

David Austin: Yes; ISPs do block website content that is pirated. There was research published earlier this year in the US that found that it drove traffic to pirated websites down by about 90%. Another tool that has been used in relation to IP protection is de-indexing, whereby a search engine removes the infringing website from any search results. We also see that as a potential way forward.

Q93 Thangam Debbonaire (Bristol West) (Lab): First, can I verify that you both support adding in the power to require ISPs to block non-compliant sites?

David Austin: Yes.

Alan Wardle: Yes, we support that.

Q94 Thangam Debbonaire: Good. That was quick. I just wanted to make sure that was there. What are your comments on widening the scope, so that age verification could be enforced for matters other than pornography, such as violent films or other content that we would not allow in the offline world? I am talking about things such as pro-anorexia websites. We know that this is possible to do in certain formats, because it is done for other things, such as copyright infringement. What are your views on widening the scope and the sanctions applying to that?

Alan Wardle: We would support that. We think the Bill is a really great step forward, although some things, such as enforcement, need to be strengthened. We think this is an opportunity to see how you can give children parity of protection in the online and the offline worlds.

It is very good, from our perspective, that the BBFC is doing this, because they have got that expertise. Pornography is not the only form of harm that children see online. We know from our research at the NSPCC that there are things like graphic violence. You mentioned some of the pro-anorexia and pro-suicide sites, and they are the kind of things that ought to be dealt with. We are supporting developing a code of practice with industry to work out what those harms are—and that is very much a staged approach.

We take it for granted that when, for instance, a child goes to a youth group or something like that, we make sure there are protections there, and that the staff are CRB checked. Somehow it seems that for children going on to the internet it is a bit like the wild west. There are very few protections. Some of the content really is upsetting and distressing to children. This is not about adults being blocked from seeing adult content. That is absolutely fine; we have no problem with that at all. But it is about protecting children from seeing content that is inappropriate for them. We would certainly support that widening, but obviously doing it in a staged way so that the regulator does not take on too much at once. We would certainly support that.

David Austin: I would echo what Alan says. We see this Bill as a significant step forward in terms of child protection. We absolutely agree with the principle of protecting children from a wider range of content—indeed, that is what we do in other areas: for example, with the mobile network operators and their adult filters. Like Alan, I think we see it in terms of more of a staged approach. The BBFC taking on this role is a significant new area of work—quite a challenge to take on board. I think there is a potential risk of overloading the Bill if we try to put too much on it, so I would very much support the NSPCC's phased approach.

Q95 Thangam Debbonaire: Is there anything further that you think needs to be added to the Bill to make the sanctions regime work? I am also thinking—at the risk of going against what you just said, Mr Austin—about whether or not we should be considering sites that are not designed for commercial purposes but where pornography or other harmful material is available on a non-commercial basis; or things not designed for porn at all, such as Twitter timelines or Tumblr and other social media, where the main purpose may not be pornography or other harmful material, but it is available. Do you think the Bill has enough sanctions in it to cope with all of that, or should that be added? Is there anything else you would like to add?

David Austin: There were a few questions. I will try to answer them all, but if I miss any of them please come back to me. In terms of sanctions, I have talked about ISP blocking and de-indexing. We think those could be potentially effective steps. In terms of commercial pornography, we have been working on devising a test of what that is. The Bill states explicitly that the pornography could be free and still provided on a commercial basis. I do not think it is narrowing the scope of the regulation an awful lot by specifying commercial pornography. If there are adverts, if the owner is a corporate entity, if there are other aspects—if the site is exploiting data, for example: there are all sorts of indications that a site is operating on a commercial basis. So I do not see that as a real problem.

In relation to Twitter, which you mentioned, what the Bill says the regulator should do is define what it sees as ancillary service providers. Those are organisations whose work facilitates and enables the pornography to be distributed. There is certainly a case to argue that social media such as Twitter are ancillary service providers. There are Twitter account holders who provide pornography on Twitter so I think you could definitely argue that.

I would argue that Twitter is an ancillary service provider, as are search engines and ISPs. One of the things that we plan to do in the next weeks and months would be to engage with everyone that we think is an ancillary service provider, and see what we can achieve together, to try and achieve the maximum protection we can through the notification regime that we are taking on as part 3 of the Bill.

The Chair: Just before we move on, shall we see if Mr Wardle also wants to contribute to things that should be in the Bill?

Alan Wardle: On that point, I think it is important for us that there is clarification—and I would agree with David about this—in terms of ensuring that sites that may for instance be commercial but that are not profiting from pornography are covered. Again, Twitter is an example. We know that there are porn stars with Twitter accounts who have lots of people following them and lots of content, so it is important that that is covered.

It is important that the legislation is future-proofed. We are seeing at the NSPCC through Childline that sexual content or pornography are increasingly live-streamed through social media sites, and there is self-generated content, too. It is important that that is covered, as well as the traditional—what you might call commercial—porn. We know from our research at the NSPCC that children often stumble across pornography, or it is sent to them. We think that streamed feeds for over-18s and under-18s should be possible so that sort of content is not available to children. It can still be there for adults, but not for children.

Q96 Nigel Adams: Can you give us your perspective on the scale of the problem of under-18s' access to this sort of inappropriate content? I guess it is difficult to do a study into it but, through the schools network and education departments, do you have any idea of the scale of the issue?

Alan Wardle: We did research earlier this year with the University of Middlesex into this issue. We asked young people—under 18s—whether they had seen pornography and when. Between the ages of 11 and 18, about half of them had seen pornography. Obviously, when you get to older children—16 and 17-year-old-boys in particular—it was much higher. Some 90% of those 11 to 18-year-olds had seen it by the age of 14. It was striking—I had not expected this—that, of the children who had seen it, about half had searched for it but the other half had stumbled across it through pop-ups or by being sent stuff on social media that they did not want to see.

It is a prevalent problem. If a determined 17-year-old boy wants to see pornography, undoubtedly he will find a way of doing it, but of particular concern to us is when you have got eight, nine or 10-year-old children stumbling across this stuff and being sent things that they find distressing. Through Childline, we are getting an increasing number of calls from children who have seen pornographic content that has upset them.

Q97 Nigel Adams: Has there been any follow-on, in terms of assaults perpetrated by youngsters as a result of being exposed to this?

Alan Wardle: It is interesting to note that there has been an exponential rise in the number of reports of sexual assaults against children in the past three or four years. I think it has gone up by about 84% in the past three years.

Q98 Nigel Adams: By children?

Alan Wardle: Against children. Part of that, we think, is what you might call the Savile effect—since the Savile scandal there has been a much greater awareness of child abuse and children are more likely to come forward, which we think is a good thing. But Chief Constable Simon Bailey, who is the national lead on child protection, believes that a significant proportion of that is due to the internet. Predators are able to cast their net very widely through social networking sites and gaming sites, fishing for vulnerable children to groom and abuse.

We believe that, in developing the code of practice that I talked about earlier, that sort thing needs to be built in to ensure that children are protected from that sort of behaviour in such spaces. The internet is a great thing but, as with everything, it can be used for darker purposes. We think there is increasing evidence—Simon Bailey has said this, and more research needs to be done into the scale of it—that children, as well as seeing adult content, are increasingly being groomed for sex online.

Q99 Nigel Adams: Mr Austin, what constructive conversations and meetings have you had with ISPs thus far, in terms of the potential for blocking those sites—especially the sites generated abroad?

David Austin: We have not had any conversations yet, because we signed the exchange of letters with the Government only last Thursday and it was made public only today that we are taking on this role. We have relationships with ISPs—particularly the mobile network operators, with which we have been working for a number of years to bring forward child protection on mobile devices.

Our plan is to engage with ISPs, search engines, social media—the range of people we think are ancillary service providers under the Bill—over the next few weeks and months to see what we can achieve together. We will also be talking to the adult industry. As we have been regulating pornography in the offline space and, to an extent, in the online space for a number of years, we have good contacts with the adult industry so we will engage with them.

Many companies in the adult industry are prepared to work with us. *Playboy*, for instance, works with us on a purely voluntary basis online. There is no law obliging it to work with us, but it wants to ensure that all the pornography it provides is fully legal and compliant with British Board of Film Classification standards, and is provided to adults only. We are already working in this space with a number of players.

Q100 Nigel Huddleston: Obviously, the BBFC is very experienced at classifying films according to certain classifications and categories. I am sure it is no easy task, but it is possible to use an objective set of criteria to define what is pornographic or disturbing, or is it subjective? How do you get that balance?

David Austin: The test of whether something is pornographic is a test that we apply every single day, and have done since the 1980s when we first started regulating that content under the Video Recordings Act 1984. The test is whether the primary purpose of the work is to arouse sexually. If it is, it is pornography. We are familiar with that test and use it all the time.

Q101 Nigel Huddleston: In terms of skills and resources, are you confident you will be able to get the right people in to do the job properly? I am sure that it is quite a disturbing job in some cases.

David Austin: Yes. We already have people who have been viewing pornographic content for a number of years. We may well need to recruit one or two extra people, but we certainly have the expertise and we are pretty confident that we already have the resources. We have time between now and the measures in the Bill coming into force to ensure that we have a fully effective system up and running.

Q102 The Minister for Digital and Culture (Matt Hancock): I just want to put on the record that we are delighted that the BBFC has signed the heads of agreement to regulate this area. I cannot think of a better organisation with the expertise and the experience to make it work. What proportion of viewed material do you think will be readily covered by the proposed mechanism in the Bill that you will be regulating the decision over but not the enforcement of?

David Austin: I am not sure that I understand the question.

Q103 Matt Hancock: I am thinking about the scale of the problem—the number of views by under-18s of material that you deem to be pornographic. What proportion of the problem do you think the Bill, with your work, will fix?

David Austin: So we are talking about the amount of pornography that is online?

Q104 Matt Hancock: And what is accessed.

David Austin: Okay. As you all know, there is masses of pornography online. There are 1.5 million new pornographic URLs coming on stream every year. However, the way in which people access pornography in this country is quite limited. Some 70% of users go to the 50 most popular websites. With children, that percentage is even greater; the data evidence suggests that they focus on a relatively small number of sites.

We would devise a proportionality test and work out what the targets are in order to achieve the greatest possible level of child protection. We would focus on the most popular websites and apps accessed by children—those data do exist. We would have the greatest possible impact by going after those big ones to start with and then moving down the list.

Q105 Matt Hancock: So you would be confident of being able to deal with the vast majority of the problem.

David Austin: Yes. We would be confident in dealing with the sites and apps that most people access. Have I answered the question?

Q106 Matt Hancock: Yes. Given that there is a big problem that is hard to tackle and complicated, I was just trying to get a feel for how much of the problem you think, with your expertise and the Bill, we can fix.

David Austin: We can fix a great deal of the problem. We cannot fix everything. The Bill is not a panacea but it can achieve a great deal, and we believe we can achieve a great deal working as the regulator for stages 1 to 3.

Q107 Louise Haigh: My question follows on neatly from that. While I am sure that the regulation will tackle those top 50 sites, it obviously comes nowhere near tackling the problems that Mr Wardle outlined, and the crimes, such as grooming, that can flow from those problems. There was a lot of discussion on Second Reading about peer-to-peer and social media sites that you have called "ancillary". No regulation in the world is going to stop that. Surely, the most important way to tackle that is compulsory sex education at school.

Alan Wardle: Yes. In terms of online safety, a whole range of things are needed and a whole lot of players. This will help the problem. We would agree and want to work with BBFC about a proportionality test and identifying where the biggest risks are to children, and for that to be developing. That is not the only solution.

Yes, we believe that statutory personal, social and health education and sexual relationships education is an important part of that. Giving parents the skills and understanding of how to keep their children safe is also really important. But there is a role for industry. Any time I have a conversation with an MP or parliamentarian about this and they have a child in their lives—whether

their own, or nieces or nephews—we quickly come to the point that it is a bit of a nightmare. They say, "We try our best to keep our children safe but there is so much, we don't know who they are speaking to" and all the rest of it.

How do we ensure that when children are online they are as safe as they are when offline? Of course, things happen in the real world as well and no solution is going to be perfect. Just as, in terms of content, we would not let a seven-year-old walk into the multiplex and say, "Here is 'Finding Nemo' over here and here is hard core porn—off you go."

We need to build those protections in online so we know what children are seeing and to whom they speaking and also skilling up children themselves through school and helping parents. But we believe the industry has an important part to play in Government, in terms of regulating and ensuring that spaces where children are online are as safe as they can be.

Q108 Christian Matheson (City of Chester) (Lab): To follow on from the Minister's question, you feel you are able to tackle roughly the top 50 most visited sites. Is there a danger that you then replace those with the next top 50 that are perhaps less regulated and less co-operative? How might we deal with that particular problem, if it exists?

David Austin: When I said "the top 50", I was talking in terms of the statistics showing that 70% of people go to the top 50. We would start with the top 50 and work our way through those, but we would not stop there. We would look to get new data every quarter, for example. As you say, sites will come in and out of popularity. We will keep up to date and focus on those most popular sites for children.

We would also create something that we have, again, done with the mobile operators. We would create an ability for members of the public—a parent, for example—to contact us about a particular website if that is concerning them. If an organisation such as the NSPCC is getting information about a particular website or app that is causing problems in terms of under-age access, we would take a look at that as well. In creating this proportionality test what we must not do is be as explicit as to say that we will look only at the top 50.

First, that is not what we would do. Secondly, we do not want anyone to think, "Okay, we don't need to worry about the regulator because we are not on their radar screen." It is very important to keep up to date with what are the most popular sites and, therefore, the most effective in dealing with under-age regulation, dealing with complaints from members of the public and organisations such as the NSPCC.

Alan Wardle: I think that is why the enforcement part is so important as well, so that people know that if they do not put these mechanisms in place there will be fines and enforcement notices, the flow of money will be stopped and, crucially, there is that backstop power to block if they do not operate as we think they should in this country. The enforcement mechanisms are really important to ensure that the BBFC can do their job properly and people are not just slipping from one place to the next.

Q109 Claire Perry: Of those top 50 sites, do we know how many are UK-based?

David Austin: I would guess, none of them. I do not know for sure, but that would be my understanding.

Q110 Claire Perry: Secondly, I want to turn briefly to the issue of the UK's video on demand content. My reading around clause 15 suggests that, although foreign-made videos on demand will be captured by the new provisions, UK-based will continue to be caught by Communications Act 2003 provisions. Do you think that is adequate?

David Austin: That is my understanding as well. We work very closely with Ofcom. Ofcom regulates UK on demand programme services as the Authority for Television On Demand, but it applies our standards in doing so. That is a partnership that works pretty effectively and Ofcom has done an effective job in dealing with that type of content. That is one bit that is carved out from the Bill and already dealt with by Ofcom.

Claire Perry: It is already done. Okay. Thank you.

The Chair: We have given the witnesses a good half-hour grilling, so if no one is seeking to catch my eye—yes, Calum?

Calum Kerr (Berwickshire, Roxburgh and Selkirk) (SNP): May I move on to intellectual property?

The Chair: Fire away, sir.

Q111 Calum Kerr: Thank you. There are some welcome measures in the Bill relating to making the protection of intellectual property online as same as it is offline. I note, though, that there is some concern about search engines and how intellectual property would be policed. What is your view on how that will work? Do there need to be additional powers?

David Austin: To be honest, we do not deal with intellectual property. Our core work is the protection of children, and intellectual property is another issue. We do work with an industry for which the protection of intellectual property is very important, but I am afraid I am not the person to ask.

Alan Wardle: I am not an expert on intellectual property, regrettably.

The Chair: Colleagues, are there any other questions for these excellent witnesses? No. In that case, thank you very much indeed, David and Alan, for your evidence. We appreciate it.

Examination of witnesses

Dr Edgar Whitley and Mr Scott Coates gave evidence.

2.30 pm

Q112 The Chair: We have roughly 45 minutes for this group of witnesses, if necessary. Will the witnesses please introduce themselves?

Dr Whitley: My name is Dr Edgar Whitley. I am an academic at the London School of Economics. Of particular importance for this session is the fact that I am the co-chair of the privacy and consumer advisory group of the Government Digital Service.

Scott Coates: Good afternoon. My name is Scott Coates and I am the CEO of the Wireless Infrastructure Group, an independent British wireless infrastructure company that builds and operates communication towers and fibre networks.

Q113 Louise Haigh: In your written evidence, Mr Coates, you talked about the need for greater diversity in the ownership of mobile infrastructure. Does the Bill go far enough on that?

Scott Coates: We welcome the measures in the Bill to improve the speed at which infrastructure can be deployed and to improve the economics of deploying the infrastructure. It is critical to understand that there are different ways of deploying infrastructure. There are different ownership models, for which the Bill could have different impacts. When I say "infrastructure", I mean the kind of mobile and fixed infrastructure that you see in the field, whether that is cables, ducts, cabinets or communication tower facilities.

There are two different types of owners of those types of infrastructure. First, the vertically integrated players are effectively building and operating that infrastructure for their own networks, primarily, and their business case is based on their economic use of that infrastructure. Secondly, you have a growing pool of independent infrastructure companies, of which we are one. We are very different from the traditional, vertically integrated players in that we are investing in infrastructure not for our own network, but to provide access, on a shared basis, to all other networks.

Q114 Louise Haigh: What are the current proportions for ownership?

Scott Coates: If I talk about mobile infrastructure, around a third of the UK's communications towers—of which we think there are around 27,000 in the UK—are independently operated. It is really interesting that, globally, there has been a very firm shift over the past decade towards more independent operation of such upstream digital infrastructure.

Currently, more than 60% of all communication towers globally are held in an entity separate from the networks that use them. In countries such as India or the US, that figure is somewhere between 80% and 90%. There are real benefits that flow from the independent ownership of infrastructure. We are trying to do more in the UK, but the UK currently lags behind in the global statistics I mentioned.

Q115 Louise Haigh: Does the Bill do anything to address that?

Scott Coates: One of the things that we acknowledge and welcome in the Bill is that it is very clear about maintaining investment incentives—not just for the vertically integrated players, but for the independent infrastructure players such as ourselves—

Q116 Louise Haigh: It will not do anything to address the proportion, will it? It will only entrench the division already there.

Scott Coates: I do not think that the Bill does anything to encourage more independent infrastructure. The Government's policy position at the moment is very clear: they want to maintain investment incentives for independent infrastructure. To achieve clarity on this requires that the Bill is worded very carefully.

When we deploy our tariff facilities and infrastructure on or adjacent to land, as things are now one of the definitions of UK land often covers things that sit on that land. One of the potential risks is that if the activities we engage in and the facilities that we deploy are not carefully carved out, they risk being treated as land. Under the new valuations principles in the communications code, that potentially risks giving them no value or low value, which would obviously be devastating to investment appetite. The consequence of that would be further concentration of infrastructure ownership in the hands of the larger, vertically integrated players who have different incentives from us when they approach this.

Q117 Louise Haigh: So there is potential for this to get worse, but what could be done to actually encourage more independently owned infrastructure?

Scott Coates: We would like to see a carve-out that is as clear as possible for the activities that we are engaged in. We would like to see it made absolutely clear that the communications code, which is a compulsory purchase tool to bring land into the telecoms sector, does not drift beyond that focus and risk entering into what is really Ofcom's territory, which is to govern the relationships between telecoms companies.

Q118 Louise Haigh: Dr Whitley, if I may jump to part 5 of the Bill, we heard earlier that there were concerns that the Government have not taken sufficiently into account safeguards around privacy and personal data. Do you think that this strikes the right balance between open policy-making and privacy?

Dr Whitley: My main concern with part 5 is that the detail is just not there. The codes of practice that one would expect to have there, which would give the details about how privacy might be protected, are not present. We have been involved with the privacy and consumer advisory group. As far as I can tell, we had our first meeting with the team who were developing these proposals back in July 2013. We said from the very beginning that we want detail, because when we have specific details we can give advice and suggestions and review it, but we have never had that level of specific detail.

Q119 Louise Haigh: So the proposals do not reflect at all the three years of consultation that have taken place?

Dr Whitley: Obviously, that is reflected in some parts of the proposals, but we asked for more details specifically on how privacy will be protected regarding the data-sharing proposals, and that is still not there.

Q120 Louise Haigh: Should that detail be in primary legislation?

Dr Whitley: Whether it is in primary legislation or in codes of practice, my personal view is that you need a certain level of detail to be able to make an informed decision. Otherwise there will be some vague position of, "We will share some data with other people within Government. Trust us, because we are going to develop some codes of practice that will be consulted on and will then be put in front of Parliament. There will be

protections and it will all be fine". We are saying that there are lots of different ways of doing that. The earlier you give us at least a first attempt at those details, the better we can improve it.

Q121 Louise Haigh: In that period of consultation, was the detail around transparency never discussed?

Dr Whitley: It depends. There has been talk along the lines of there being codes of practice and liaison with the Information Commissioner's Office, so at a very high level there has obviously been some discussion. But at the very specific level—for example, the civil registration clauses talk both about allowing a yes/no check around whether there is a birth certificate associated with a family, while on the other hand there will be bulk data sharing within Government so that different Departments can know stuff and possibly make things better for society.

One half of that seems to be quite specific, and you can see how it could well be designed as a simple "Does a birth certificate exist for this person?" and the answer is yes or no. The privacy protections around that are reasonably well known and not very much data is being shared. Then the other illustration just says, "we will share these data with other bits of Government" and there is nothing there about what kind of privacy protections might be put in place. There are many different ways in which that can be done, but until we have some specific details, we cannot give you sensible reviews as to whether that is a good or not so good way of doing it.

Q122 Nigel Huddleston: Mr Coates, what role should wireless technologies play in achieving the universal service obligation?

Scott Coates: There is no doubt that for the last 5%, maybe a greater proportion than that, wireless technologies have a significant role to play. Six of the seven trials run by the Department for Culture, Media and Sport earlier this year were of a wireless-based structure. I think there is a role for it. It is also interesting, as you look beyond 10 megabits to the future when universal service means something far more substantial than that, that a new disruptive technology is coming.

Everyone is talking about 5G; it does not really exist at this stage, but we know it is going to be ultra-high bandwidth, ultra-low latency, with the potential to be a disruptive technology and replace fixed line to the home. Some countries around the world that have not had the wave of fixed line technology roll-out will be moving straight to wireless as their domestic broadband service.

Q123 Nigel Huddleston: What kind of timescales were you thinking about for the achievement of 5G?

Scott Coates: With 5G, it is really hot and talked about now, but it is still some way off. Mobile operators will market it strongly and talk about it strongly, but there was something last week from France Telecom admitting it does not know what it is yet, and that is the substance of the matter.

As we come in to the early 2020s, at the beginning of the next decade, we will start to see something. Interestingly, the infrastructure that is going to enable it is starting to go down now, so particularly in urban areas; as the concentration of cell sizes needs to get smaller and smaller, the infrastructure needed to power faster 4G services will ultimately be the infrastructure used to power 5G.

Coming back to the structure of the industry, it is critical that there is a competitive infrastructure market for 5G. As a new technology that is a combination of wireless and fibre, it has the opportunity to have multiple infrastructure parties competing. It also carries the risk of being a monopolised infrastructure.

Q124 Nigel Huddleston: Is this roll-out likely through purely commercial models or do you see a role for some kind of Government support here?

Scott Coates: In terms of using wireless to achieve USO, mobile as a technology has a very clean and efficient way of pushing out coverage to rural parts of the population, and that is through the licences. There is another major round of licensing, with something called 2.3 and 2.4, which is coming soon.

There is also 700 MHz, which is a really powerful frequency for delivering coverage into rural areas and which has already been licensed in many European countries. It is not licensed here yet, but the rules of those licences create an opportunity to get coverage out to the most rural parts of the country. You could do things like in Germany, where they said rural areas have to be covered before urban areas. That is the most efficient way of unlocking coverage from a wireless perspective in rural areas.

Q125 Scott Mann (North Cornwall) (Con): One of the biggest challenges facing coastal and rural communities like mine is the problems with undulating coastlines and areas of outstanding natural beauty. I am interested in your thoughts on how we can strengthen the Bill to make sure we get out to some of the rural areas left behind in the past.

Scott Coates: I refer you back to the last question. The most efficient way to deal with that is through the licences. There is licensing coming up that will create an opportunity. Unfortunately, it is going to be a few years before the airwaves that deliver that are available for deployment.

There is a lot of activity happening in the sector at the moment. The mobile operators are very busy investing in their networks and we are working hand in hand with them to help them deliver that. I know we are building new towers in coastal areas right now; I do not know if we are building one in your constituency. So it is getting better. Bear in mind that the Government struck a deal with the mobile operators 18 months ago and the operators are busy investing on the back of that. In the last 4G licence, when the 800 MHz got auctioned, one of the licence lots, bought by Telefónica, required it to cover more of the country, so Telefónica is investing on the back of that as well.

Q126 Claire Perry: I want to push Dr Whitley on the privacy question. I think that what you are asking for, a code of conduct and some clarity, is reasonable, but equally, we cannot know what the demands and the questions might be going forward, or the data requirements. I look back on where Government do share data, querying the national insurance database, or, indeed, the Government ID project, where DVLA records were

queried as a measure of identity, it all appeared to be fine, there were no issues of privacy or data loss, to my knowledge. In a way, should we not be taking on trust—I know that trust is a word people never like to use with Government, whereas we trust corporates all the time with all kinds of data—that we have not had a problem and that the right rules and procedures and the spirit of privacy will be protected?

Dr Whitley: You have highlighted a very privacy-friendly way of checking data that says, somebody has a database and you look it up and you say, "This particular person, or this particular attribute, is it true, yes or no?" Referring to the previous evidence session and the question, "Is this person over 18 and therefore able to access?", yes/no seems a perfectly reasonable way of doing that and that is the kind of thing that we have been encouraging Government to do. As you say, the Verify programme uses exactly those kinds of checks. The problem is that, without that level of detail, it is not at all clear that that is going to be proposed for all parts of the data sharing. Again, with the civil registration data, they say explicitly, "We want to do bulk sharing" and that is, by definition, not a yes/no check. That is, "Here is a set of data that we have that we think will be useful for your Department to match against and thereby tailor particular services."

As the National Audit Office reported a few weeks ago, there were 9,000 data incidents within Government in 2014-15. If you start just moving the data around, you really run the risk of data incidents of varying levels of severity, and if you do not have that detail you have to rely on trust. Is it not better to have that detail, so you can say, "This is what we want to do, this is the way we are thinking of doing it", and ask experts, not only in PCAG but in general, "Do you have any issues or concerns about that and, if you do, what alternative ways might there be for addressing those?"?

Q127 Claire Perry: Do large corporate families do that? Nobody ever reads the Ts and Cs, but if they do, do you give explicit permission for your data to be handled around the Facebook family, for example, in the way that you suggest Government should specify? That is just a question from ignorance.

Dr Whitley: I do not know exactly how Facebook would handle it, but even if you are not worried about the data breach and data loss issue there is just a simple efficiency thing: it is a lot easier to have small pieces of data—yes/no, they are interested in this form of cat food, they are interested in those kinds of holidays, therefore target adverts based on that—than sending huge swathes of data to other parts of the system for duplication and therefore increasing the risk of data loss.

Q128 Claire Perry: It is an operational concern as well as a privacy concern?

Dr Whitley: Yes. From my perspective you start with a privacy concern that says, minimise the data that you are handling, do not have it in duplicate locations all over, but a consequence of starting with that privacy concern is that you also have very clear operational efficiencies; that you are not duplicating data and you are not having large amounts of data in your system, because the more data you hold, the more likely it is that there will be a breach, an attack, an accidental loss or whatever.

Q129 Rishi Sunak (Richmond (Yorks)) (Con): Mr Coates, will you expand a little on your experience, internationally, of licence requirements in broadening coverage to rural areas? What is the specific benefit of independently owned infrastructure for rural communities, in bringing access to places which struggle with mobile signal today?

Scott Coates: I am going to pick on two countries that we have looked at making investments into. Germany, which I mentioned earlier, has an outside-in policy, so you have to cover their rural areas with your new batch of spectrum before you are allowed to deploy it into urban areas. France has got a very interesting model, in which they have compartmentalised the whole country. At the moment the Ofcom licences ensure that Scotland, England and Wales have their own targets, but if you break it down even further, the demands become higher on those targets. We have seen some targets in France where, by compartment, we are looking at 99.6% coverage by 2027. They have given the industry a long time to reach that target, but it is very bold. If people knew it was going to get better, maybe it would become a bit more understandable. This is not like changing a lightbulb; this is infrastructure that needs to be built.

I think there are three benefits of independent infrastructure. First, there is clear evidence that it enables better connectivity. Because our infrastructure is operated independently of a network, we do not have any of the conflicts of interest that normally exist in the vertically integrated model, in which the infrastructure owner is forced to provide access to their competitor. Because we focus only on infrastructure—it is our core business model—we tend to build better infrastructure, and we share it with more networks. There is evidence out there. Ernst and Young looked at this last year and studied independent communication tower ownership across north America and Europe. They compared it with communication towers that are owned as part of mobile networks. They found that there are twice as many networks using the independent infrastructure, compared with the vertically integrated owned infrastructure. That is twice the productivity coming off a piece of infrastructure, which is transformational, when it comes to enabling connectivity, particularly in rural areas.

The second benefit is around investment. At the end of the day, solving these problems comes down to investment. Independent infrastructure opens up a whole new channel of investor and brings a different type of investor into our industry: long-term, low-cost-to-capital infrastructure investors who are targeting infrastructure only. They do not want to invest in the retail operations or in buying premiership football rights; they want to invest purely in infrastructure. We can be a conduit to bring in that capital to invest in infrastructure. Earlier this year, after 10 years of various rounds of financing, our business announced a major fundraising transaction with a UK blue chip infrastructure investor—3i Infrastructure plc—and a north American investor that invests on behalf of state pension plans. That is exactly the kind of capital you want—long-term, patient capital—fuelling the growth of infrastructure.

The final benefit is in and around competition. We create competition at the infrastructure level. On the fixed-line side of the market, you can see some of the challenges from a lack of competition. But we also enable competition at a retail level, because our

infrastructure is open for everyone to use. Mobile operators are the biggest users of our infrastructure, but well over 100 different network use our infrastructure in rural areas. Sometimes that can mean a local wireless broadband company that simply cannot afford to build its own infrastructure and would find it very difficult to get access to a mobile operator on a piece of infrastructure. On average, every one of our towers in the UK supports a non-mobile operator network running over it. Those are the three benefits of independent infrastructure.

The Chair: That is known in the trade as a comprehensive reply. Thank you.

Calum Kerr: There was a Coates who played for Liverpool. He was from Uruguay, so they called him Co-ah-tez.

Scott Coates: He played against England once.

Q130 Calum Kerr: He will again.

I would like to ask you about the USO, and then I would like to come on to the mobile environment. I have a problem with the USO not just because of the lack of ambition and what 10 megabits means for people living in those areas, but because the tactical low-speed USO will not push fibre a lot further. The lines between wired and wireless are blurring all the time, so would a more ambitious USO with faster speeds help you, in terms of pushing fibre further and putting other infrastructure out there?

Scott Coates: I think it comes down to the cost element. The further out you go with fibre, the more expensive it becomes. Our infrastructure in rural areas tends to be bigger pieces of infrastructure, so quite often there is fibre coming through it or it links to a site that has fibre, and that creates more bandwidth to power the wireless services coming over it. More generally, I would say that the USO is a start. No one is going to be happy with 10 megabits in a few years, but I would say that you need to start somewhere and it needs to be manageable from a cost point of view.

Q131 Calum Kerr: I will not ask you, then, whether the Scottish Government's policy to have 30 megabits everywhere is more appropriate. I think that everyone is in agreement that the electronic communications code needed to be reformed, and there are some welcome measures in there, but as an independent infrastructure provider, do you honestly think that that will lead to more coverage by mobile providers, or will it simply give them a better bottom line?

Scott Coates: There are certainly measures that will make it easier to get rid of the bottlenecks and faster to resolve disputes. Running cables to connect up mobile sites has been a real challenge, so being able to fix those problems—that is not really about economics; it is about having faster resolution. Some of the pricing elements I do not think will have a material impact in rural areas when the commercial case to invest is not really there for the mobile operators anyway. The only way you can deal with that is through the licences. The new code will help to remove some of the ransom costs that we see in the industry and certainly give us a much more powerful weapon against those, but on a day-to-day basis, we do not expect to be moving towards compulsory-based conversations with our customers. The industry needs to work on a voluntary basis. That is absolutely essential; it is how it works everywhere else in the world. We have busy infrastructure facilities. We are there on average every 12 days. We need to have a good partnership with our land providers. The code is a really helpful and powerful new tool of last resort, but our whole industry needs to maintain a voluntary basis of engaging as our MO for dealing with landowners.

Calum Kerr: May I ask two quick follow-ups?

The Chair: Very quickly.

Q132 Calum Kerr: Thank you very much. Mr Coates, I thought you gave a great overview of why independent infrastructure is really important. You obviously feel a concern, so is there specific wording that you would like to see in the Bill that we could discuss at the next stage to ensure that you are protected and the value of your assets is not lost?

Scott Coates: Thank you for that question. We have had a really engaging journey with the Minister's officials. They have been very diligent and transparent in engaging with us all the way through this fairly long process on the communications code. Our concern generally is that there is a fine line between the technical drafting that says that what we do on land is not covered by the communications code, and the risk of a legal challenge that it might be and might have nil or low value. What we have really asked for is as much clarity as can be provided. That will help to enhance the investability of our business. We are in a different place from the mobile operators and some other network providers, because we do not get any economic benefit from our own infrastructure; it is built for other people to use, so we are not a net user of infrastructure.

Q133 Calum Kerr: So that is a, "Yes, if possible, please." It is okay; do not answer that. You have already answered. My final quick question is this. Although this is not retrospective, is there any case for excluding existing sites, if this is really about building out more network, in terms of the valuation element, given that a lot of those sites are actually on publicly owned land?

Scott Coates: There is certainly a difference in the substance of a transaction when you are approaching a farmer, a sports club, a university or whatever and asking for access to build a new piece of infrastructure where there is new coverage, and you are having that negotiation in the context of a new communications code that has tighter reference points on pricing. You will have more leverage for that conversation. You will still end up, I believe, paying them a rate way in excess of what zero value would be because that is just how you have those conversations, but it will be less than what is paid today, that is for sure, because you have got this new reference point. The substance of that is very different from the substance of a voluntary agreement you entered into with a firm six or seven years ago and that comes up for renewal in two to three years and the infrastructure is already there.

I think it is important that we have a robust set of tools as an industry but, as I mentioned earlier, it is equally if not more important that the industry acts responsibly and avoids behaviour such as forcing situations

where they need a new compulsory purchase tool, even though they have already got access today. There is definitely a way of engaging on existing sites that should be a bit different from new sites, as part of a package of trying to maintain the voluntary support of the land and property sector for our industry.

Q134 Matt Hancock: Could you set out in more detail—you have already gone into this a bit—about what you mean when you say that the code should include land owned by the infrastructure providers but not the apparatus, and the distinction there in the written evidence?

Scott Coates: It comes back to this. Under UK property law, anything that affixes to land could be considered land. At the moment, the code effectively is to regulate land coming into the telecom sector, not to regulate the relationships between telecoms companies. It carves out from land the apparatus.

I am advised that there is a risk of ambiguity. That is probably the best way I could describe it. It may be challenged down the line. This is an evolving and dynamic industry where we don't exactly know the physical things we are going to be deploying in future. There is a risk that some of the things we do might receive a challenge that it is land not apparatus. I do not know.

Is a new runway at Heathrow infrastructure or land because it sits on top of land? Is the national grid transmission network an infrastructure asset or land because it sits on land? It is a fairly technical point. Like all these things, once the lawyers are running around looking at them, they will find concerns.

All we are saying is that we invest over 20 to 30-year horizons. The more clarity that can be provided is helpful. We acknowledge and clearly appreciate the intent behind Government policy to protect investment and passive infrastructure but more clarity around that will only help the investability of what we do.

Q135 Matt Hancock: Thanks. I am also grateful for what you said about the team at DCMS, who will have picked up on your kind words I am sure. I wanted to follow up on 5G. You talked earlier about the 5G roll-out. This is a bigger-picture question. What do think the Government need to be doing now to ensure that we are in the lead when it comes to the roll-out of 5G?

Scott Coates: People must be exhausted with hearing about the challenges with Openreach and what can be done there. The key thing is to help facilitate our competitive market for infrastructure. So 5G has the ability to be driven by the mobile operators, by the fibre players, by independent infrastructure companies. If you look at the US, half the small cells that power 4G and 5G are actually going in by independent infrastructure players; mobile operators as well as fibre players are in there, too.

It comes down to helping to facilitate as competitive a market as possible. We have started deploying infrastructure in at least one city in the UK: 4G initially, but it will lead to 5G. We would love to be able to get a competitive basis of access, or any access, to BT ducts. We cannot do that, despite the fact that they can access every single piece of our infrastructure.

That is one thing. The other thing is around the planning permissions for affixing equipment to lampposts. We are working in Aberdeen and I have to say that we have had a fantastically positive experience with the local council, which has been amazing and very supportive in everything we have been trying to do there. That experience is not shared across other councils in the UK.

Q136 Matt Hancock: Thanks very much. Dr Whitely, would you say that, done right and should the codes come out right, the clauses in the Bill have the potential to improve public services through better use of data?

Dr Whitley: Absolutely. You could have a side question about whether, for example, focusing on subsidies from energy providers is the best way to deal with fuel poverty, but in terms of that specific focus—if it is done right—then, absolutely. Our concern is that we just do not have the detail as to whether or not it is going to be done right. That has been the frustration over the last three years.

Q137 Drew Hendry: I want to talk about the spectrum licensing issue. We spent a lot of time in earlier sessions talking about the minimum average speed, particularly for SMEs, as being 10 megabits per second and whether or not that was ambitious for the future.

You talked about the outside-in licensing regime that could be possible—and is possible in other countries since it is being deployed, particularly for new tech and for the 700Mhz and the 5G licensing that will come. If that approach is adopted by the UK Government in terms of licensing, is it your belief that it would make that inequality almost go away and that it would deliver much greater equality across the pace of speeds for people to access business and other methods that they need?

Scott Coates: If a policy objective is to ensure that rural areas get a high quality mobile signal, then forcing the industry to invest in rural areas—and effectively funding that by allowing them to pay less money for the licences that they acquire—is the most efficient way to deliver that. It would have positive outcomes, for sure.

Q138 Drew Hendry: So it would achieve that aim, in your view, and it would to a great extent future-proof the need to go to that level of where you are going from 10 megabits per second to a higher level, and then a higher level again. Is that correct?

Scott Coates: Yes. The industry invests in order to stay competitive in areas where the market is working, and—where the licences oblige them—to invest in areas where the market is not working. The infrastructure needed to support some of these new services needs to be high bandwidth to support that, which will then support the uplift into the future in quality and speed of service.

The Chair: Two more questions to this set of witnesses.

Q139 Nigel Huddleston: Dr Whitley, are you excited by the potential opportunities of the use of big data by Government?

Dr Whitley: This is not about big data but data-sharing, but there are opportunities there for big data to be used. There are questions about how you manage it and about how you handle it.

One of the other things that I am involved with is a steering group for the Administrative Data Research Network, which is where administrative data can be used by researchers in very strictly controlled environments to answer interesting research questions, generate hypotheses and explore those hypotheses by matching data from various different Government datasets. But that is done in a very locked down, secure environment with no mobile phones and no taking out of data and so on. So there absolutely are opportunities, but doing it right is what I particularly care about.

Q140 Nigel Huddleston: We are one of the most sophisticated digital economies on the planet and we have some of the brightest brains on the planet. Surely we can work this out.

Dr Whitley: Yes. The process has been going on for three years and we still do not have codes of practice. That is the bit that puzzles me. If we have all these brilliant brains can they not put together even a draft code of practice, so that we can know what we are talking about?

For example, in the consultation around fuel poverty, it talked about gathering data and matching up potential houses and individuals who might benefit or be at risk, and it says that they will inform the licensed energy suppliers as to which of their customers should receive assistance. That, to me, sounds like a push: "Here is a big set of customers that may or may not belong to your company. Check through that list to see whether or not any of them are your customers and give them a fuel discount."

But then a couple of paragraphs further on—this is the consultation relating to the proposals—the Government would simply have an eligibility flag along with customers' names or addresses for doing that. Even in the consultation, it does not seem that these brilliant minds have been applied as well as they could be.

Q141 Nigel Huddleston: Once we work that out, which I am confident we will, where are the opportunities? Where is the up side? Where is the positive stuff coming out of this? How can Government be better as a result of this? I am always an optimist.

Dr Whitley: Done right, there are fantastic opportunities. Government is digitising. The GDS has got lots of experience about how to manage and handle and do attributes checking, which is what most of this is. There are definitely opportunities and the skills, but somehow something has gone wrong with regard to these proposals.

It is not as if the proposals have been rushed through in the past few minutes. We have been looking at these and asking for more details since July 2013 and we are still here without even a resemblance of a code of practice. Part 5 has six codes of practice that need to be developed and none of them is here. Yes, please, but some detail. I am academic; I want to see the detail.

Q142 Louise Haigh: As you say, it is an enormous shift in terms of data sharing within Government. Clause 29 would allow personal data on citizens to be shared if there is a

"contribution made by them to society"

or wellbeing to be gained. That basically covers anything, doesn't it? Why have the Government not produced even a draft code of practice at this stage? How can we possibly be expected to vote on this while plainly placing blind faith in the Government?

Dr Whitley: You are basically saying what I was going to say. If you compare the comprehensive replies that Mr Coates has been able to give, talking about very specific details, with the vague "we don't know anything" comments that I have made, you see that it is a real problem and also an issue for more general scrutiny of technological issues. If you do not have details about the different mobile phone frequencies that you are talking about, you cannot make detailed policy. Yet when it comes to data sharing, there is a sense that it will all work out in the end because we have the right people to do it.

Q143 Louise Haigh: How would you advise the Government to achieve that code of practice?

Dr Whitley: We have consistently said—the Privacy and Consumer Advisory Group particularly, because we have this existing relationship with Government, but civil society and experts more generally—that we are more than happy to engage. We have repeatedly said, "Give us some detail. Don't just come and talk about high-level stuff. Give us the detail and we will give you detailed comments to improve the process."

That has worked very well in relation to the Verify scheme; that is privacy friendly and has a lot of support from the kinds of people who are very concerned about privacy. So the expertise is there and the working relationships are there. Give us an opportunity to help; we want to. It is just that we need something to work on.

Louise Haigh: I hope the Minister has heard that.

The Chair: Thank you very much to Mr Coates and Dr Whitley for some excellent evidence. We are very grateful. We will now move on to our next set of witnesses.

Examination of Witnesses

Jim Killock and Renate Samson gave evidence.

3.13 pm

The Chair: Thank you to our next two witnesses for being here promptly. We will now hear evidence from Big Brother Watch and the Open Rights Group. For this session we again have broadly half an hour to 45 minutes. Will the witnesses please read their names into the record?

Jim Killock: I am Jim Killock, executive director of the Open Rights Group.

Renate Samson: I am Renate Samson, chief executive of Big Brother Watch. We were also a member of the open policy making group and the Privacy and Consumer Advisory Group, to which Dr Whitley referred earlier.

The Chair: Thank you. I turn first to Louise Haigh.

Q144 Louise Haigh: I will pick up where we left off, if that is okay. You were both involved in the consultation process for part 5 of the Bill. Did the proposals come as a surprise to you? Do they make sense to you as data experts?

Renate Samson: No, they do not make very much sense, if I am honest. As I said, we were a member of the open policy making process and we also submitted to the consultation. I am genuinely surprised that after a two-year process, all of a sudden it felt very rushed. There were conversations and meetings happening right up to the Queen's Speech; there was still a general lack of clarity, particularly on safeguards, and many questions were still being asked, such as how, why, when and so on. The next thing we knew, it was in the Queen's Speech and the Bill was published.

Reading through part 5—and I have read through it a lot and scratched my head a great deal, mainly for the reasons given in evidence earlier today—you see that the codes of practice, which would explain an awful lot of what we imagine is meant or may not be meant, just have not been published. I have repeatedly asked for them and been given various expected dates, and we are sitting here today without them but with the Bill already having been laid before Parliament.

We have also done a lot of work on the Investigatory Powers Bill, for which the codes of practice were there right from the start. There was clarity as to what was intended and what was going to be legislated for, straight up. So, I am profoundly disappointed, because data sharing and digital government are hugely important and we seem to be very far away after a very long process.

Jim Killock: It is worth considering why the open policy making process was put in place. Data sharing is known to be potentially controversial. It was knocked out of at least one previous Bill a few years back when proposed by Labour because of the lack of privacy safeguards. Everyone understood that something more solid was needed. Then the Cabinet Office was very keen to ensure it did not raise hackles, that it got the privacy and the safeguards right, that trust was in place. It was therefore a surprise, after that intense process, to get something back that lacked the safeguards everybody had been saying were needed.

We are particularly concerned not only about the lack of codes of practice, but the fact that a lot of these things should be in the Bill. Codes of practice are going to develop over years. We need to know about things like sunsetting, for instance—that these things are brought to a close, that you do not just have zombie data sharing arrangements in place, where everyone has half-forgotten about them and then suddenly they are revived. You need to have Parliament involved in the specifics.

As we have heard, data sharing has a huge range of possibilities, starting with the benign and the relatively uncontroversial: statistics and understanding what is happening to society and Government policy, where privacy is relatively easy to protect. You use the data once, you do the research and that is it. It ranges from that through to the very intrusive: profiling families for particular policy goals might be legitimate, but it also might be highly discriminatory. Getting to the specifics is important.

You need the safeguards in place to say, "These are the kinds of things we will be bringing back; these are the purposes that we may or may not share data for." That way, you know there is a process in place. At the moment, it feels like once this has passed, the gate is opened and it is not necessarily for Parliament to scrutinise further.

Q145 Louise Haigh: We talked earlier about the bulk transfer and bulk sharing of data, and an earlier witness talked about providing data access, rather than data sharing. Should the Government not be pursuing trials on that basis, rather than these enormous powers without any kind of assurances to the public or parliamentarians about how they will be using them?

Renate Samson: It was very specific at the end of the open policy making process that, for example—put the bulk to one side for a moment—but regarding the fraud and debt aspect of the Bill, it had been agreed that three-year pilot projects would take place with subsequent review and scrutiny potentially by the OPM or by another group. They are in the Bill as a piece of legislation with the Minister deciding whether or not it is okay and potentially asking other groups, which are not defined. That is half an answer to half your question. Pilots are an excellent idea if they are pilots, not immediate legislation.

With regards to the bulk powers in the Bill, civil registration documents were a late addition. We are still not clear as to their purpose. The purpose given in the consultation to the OPM process, but also in the background documents relating to the Bill, is a whole mix of different reasons, none of which, I would argue, are clear and compelling or, indeed, necessary and proportionate. But again, as you have heard a lot today, without detail, how can we properly answer your question?

Jim Killock: I have a quick observation on this. We currently have a data protection framework. The European Union is revising its data protection laws; they are somewhat tougher, which is quite a good thing, but we do not know what the future of data protection legislation is in the UK. It might be the same or it might be entirely different in a few years' time.

That is a very good reason for ensuring that privacy safeguards are quite specific and quite high in some of these sensitive areas, because we do not know whether the more general rules can be relied on and whether they are going to be the same. That is not to say that we do not need higher safeguards in any case here, because you are not dealing with a consent regime. People have to use Government and Government have to look at the data, so it is not a mutual agreement between people; you have to have higher safeguards around that.

Q146 Thangam Debbonaire: My questions are directed at Mr Killock and relate to paragraphs 37 and 38 of your submission, "Definition of pornographic material". We heard earlier that both the NSPCC and the British Board of Film Classification support a provision to require ISPs to block websites that are non-compliant. There was also discussion of widening the scope to apply the restrictions to other harmful material that we would not allow children access to in the offline world. Here, you seem to be questioning the value of that:

> "This extension of the definition…also raises questions as to why violent—but not sexual—materials rated as 18 should then be accessible online."

I also question this consistency but the solution, to me, seems to be that we should include other material, such as violent material and pro-anorexic websites, as we talked about earlier. Will you tell us a bit more about what your objection is to creating a framework to keep children as safe online as they are offline?

Jim Killock: We have no objection; it is a laudable aim and something we should all be trying to do. The question is, what is effective and what will work and not impinge on people's general rights? As soon as you look a little beyond pornography, you are talking about much more clear speech issues.

There will be a need to look at any given website and make a judgment about whether it should or should not be legally accessed by various people. That starts needing things like legal processes to be valid. Some of the things you are talking about are things that might not be viewed by anybody, potentially. The problem with all these systems is that they just do not work like that. They are working on bulk numbers of websites, potentially tens of thousands, all automatically identified, as a general rule, when people are trying to restrict this information. That poses a lot of problems.

I also query what is the measure of success here. Because I feel, I suspect, that the number of teenagers accessing pornography will probably not be greatly affected by these measures. There is more of an argument that small numbers of children who are, perhaps, under 12 may be less likely to stumble on pornographic material, but I doubt that the number of teenage boys, for instance, accessing pornographic material will be materially changed. If that is the case, what is the measure of success here? What harm is really being reduced? I just feel that, probably, these are rather expensive and difficult policies which are likely to have impacts on adults. People are saying it is not likely to affect them, but I rather suspect it might, and for what gain?

Q147 Thangam Debbonaire: You have mentioned your feelings and your suspicions but, actually, the British Board of Film Classification already has a system for identifying for instance pro-anorexic, pro-suicide and violent websites. It already has a system for use on mobile networks.

Jim Killock: No, it does not.

Thangam Debbonaire: Yes, it does. They sat right here this afternoon.

Jim Killock: No it does not. The mobile providers have a system that the BBFC—

Q148 Thangam Debbonaire: So a system exists?

Jim Killock: They have a system, which is not wildly accurate that people choose to use. To the extent that they are choosing to use it, there is some legitimacy around that. People choose to have websites blocked and they understand that a certain number of them may be incorrectly blocked, that is OK.

Q149 Thangam Debbonaire: Are you saying that that sort of system does not exist, because we were told that it did earlier?

Jim Killock: This is what they are currently doing: they are blocking websites, which are sometimes the right websites, sometimes not; sometimes the right websites are not blocked. It is essentially automated decision making that comes with the problem that you can only really do this by things like keyword search. There are not enough humans available at the right price to do the review, so all kinds of things get blocked for essentially no real reason. For instance, we have had a widget manufacturer—

Q150 Thangam Debbonaire: Forgive me for interrupting Mr Killock, but there is a good reason. You asked about successful outcomes—and if you are going to ask a question, I am going to answer it—the successful outcome is that children are protected in the online world in the same way as they are protected in the offline world. I have to reiterate this to you: I do not understand why you think it is a risk worth taking that some adults may or may not have their own personal preferences infringed, balanced against the harm which we know is done to children. On teenage boys, just saying that because teenage boys may or may not continue to watch pornography there is no point, that seems to be a very sad conclusion to come to.

Jim Killock: The point is that you can help children to be protected, the questions is, what is the best way? For instance, I agree with the NSPCC's calls for the compulsory education of children. Of course that should be happening and it is not. Similarly, Claire Perry's initiative to have filters available has its merits. Where I have a problem is where adults are forced into that situation, where they are having websites blocked and where there is little redress around that. I caution you around large-scale blocking of websites because we know from our own evidence that a very large number of websites get blocked incorrectly and it has impacts on those people too. The question is, what is effective? I am not sure that age verification will be effective in its own terms in protecting children.

Claire Perry: Mr Killock, it is nice to hear you finally supporting the initiative. Indeed, all of the shroud waving about false blocking was brought out with vigour many times over the past five years—

Jim Killock: We stand by that.

The Chair: Best not to interrupt the questions, Mr Killock. Let the questions be put.

Q151 Claire Perry: My point is that it is sad that the campaign once again from your organisation is that the perfect must be the enemy of the good. I am afraid I would also question this issue of false blocking, and I would appreciate written evidence if you have it. It is a tiny fraction. It has never reached anything like the levels your organisation has claimed, and the processes for notification and unblocking have massively improved over the last five years. My question to you is: at what point does your organisation stop dealing with this world where it is, "Hands off our internet" and start accepting that content provision via the internet, which is just another form of provider, should have exactly the same safeguards as exist in the offline world?

Renate, your points around this are also quite disturbing because you are holding up for a perfect world—

Renate Samson: What points?

Q152 Claire Perry: Around privacy and data recognition. At what point do we accept that what is proposed in this Bill is actually a good step forward? While it may not be perfect, it is a massive step-change improvement on what we have today.

Jim Killock: The first question is: "What is the impact on everyone?"

Q153 Claire Perry: No, the question is: will you provide us with written evidence of this issue of false blocking, in detail, because I happen to think it is completely untrue, your words on this?

Jim Killock: Yes, we can.

Q154 Claire Perry: We would appreciate written evidence by next week. Thank you.

Jim Killock: We have literally hundreds.

Q155 Claire Perry: Hundreds? Of the 1.5 billion websites that are out there?

Jim Killock: The error rate does not appear so large; but when you multiply that by the number of providers that have different blocking systems it becomes quite significant.

Claire Perry: I look forward to the evidence.

The Chair: Do not interrupt the questions, or the answers.

Jim Killock: On the wider question, what is effective, the question is how are children protected, versus what is the impact on adults. At the moment we do not know, because the system is not in place, what that effect on adults will be; but we have to be concerned that adults should feel free to access legal material, no matter what it is. They should not feel like they are being snooped on or having their privacy or anonymity removed.

I was encouraged by some of things that were said earlier, but I have to say that when we sent some technical observers to hear about the systems that are likely to be put in place—the sort of things that vendors want to do—we heard a rather different story. The sorts of things they want to do include harvesting user data, maybe using Facebook and other platforms, to pull in their data to verify people's age by inference. These things were not privacy friendly. Let us assume that the BBFC has a job, as apparently it does. It would be good if it had clear duties around privacy and anonymity, to make sure that it has to put those things first and foremost when it is choosing and thinking about age verification systems.

Q156 Claire Perry: As a supplementary, does your organisation campaign against age verification on gambling sites on the internet?

Jim Killock: No, we do not.

Q157 Claire Perry: Even though exactly the same issues of privacy could apply?

Jim Killock: I think they are rather different, are not they?

Q158 Claire Perry: Why? They are legal.

Jim Killock: The first thing is that gambling sites are dealing with money. They have to know a little bit about their customers. They need to do that for fraud purposes, for instance. The second thing is, I think, it is much harder to argue that there is a free expression impact for gambling, compared with accessing legal material, whether it is pornographic or not.

Q159 Claire Perry: So your interest is not about legality. It is about your interpretation of legal and illegal material.

Jim Killock: It ultimately is about what the courts think is the boundary around free expression, and what sort of things are impacting on people's free expression and privacy. That is our standpoint. What we are asking for, the same as you, is the same standards online as offline. One of those standards is human rights and what we are entitled to do.

The Chair: Let us hear from Ms Samson; and then we are moving on.

Renate Samson: Just to be clear, we submitted evidence and we have concerns about part 5 of the Bill. The questions you have been asking Mr Killock—I am unclear; are you asking me about the same issues you are asking him?

Claire Perry: No, specifically about the part 5 questions.

Renate Samson: Okay. We have not, in our evidence and our concerns, asked for a perfect Bill, although I do not believe there is any harm in trying to make the best piece of legislation we can. The work that we do with the Privacy and Consumer Advisory Group and as part of the open policy making process is about having engagement, to ensure that we are the leading light in data sharing, but also data protection. As Mr Killock has mentioned, we are currently looking at the Data Protection Act 1998. That will probably expire in May 2018, and we will get the general data protection regulation. Right now the measure in question does not even refer to that, or, indeed, to the Investigatory Powers Bill. It refers to the Regulation of Investigatory Powers Act 2000 and the DPA. Also, it will probably fail on a number of the key points of the GDPR, in relation to potential profiling, consent of the individual, and putting the citizen at the heart of data sharing and data protection.

I am not looking for "perfect", but I think "perfect" is a good place to head towards.

Q160 Nigel Adams: My question is for Mr Killock, with regard to what the Bill is seeking to do in terms of equalisation of copyright offence penalties. I just wondered why your organisation was not in favour of rights holders—the tens of thousands of content creators. Why is your organisation not keen on the idea in the Bill?

Jim Killock: That would be a misrepresentation. We are quite clear in our response. We are worried about the impact of this on people who should not be criminalised and who we thought the Government were not trying to criminalise in this case. Our position is that if the Government are going to extend the sentence and have the same sentence online as offline for criminal copyright infringement—that is to say, 10 years—then they need to be very careful about how the lines are drawn, because the offences are quite different. Offline, in the real world, criminal copyright infringement covers a number of acts. It is all about copying and duplication. Essentially, it is about criminal gangs duplicating DVDs and the like. Online, making that separation is harder, because everything looks like the same act—that is to say, publication. You put something on the internet, it is a publication. So how do you tell who is the criminal and who is the slightly idiotic teenager, or whatever it happens to be? How do you make sure that people who should not be threatened with copyright criminal sentences are not given those threats?

We particularly draw attention to the phenomenon of copyright trolling. For instance, there is a company called Golden Eye International, a pornographer which specialises in sending bulk letters to Sky customers, BT

customers and so on, saying, "Please pay us £300 because you downloaded a film that is under copyright." These are obviously pornographic films and they then wait for people to pay up. They have no specific knowledge that these people are actually the people doing the downloading, all they know is that somebody appears to have downloaded.

Q161 Nigel Adams: Sorry to interrupt, but the idea of the Bill is not to go after people who are downloading content, it is purely for those who are uploading content for commercial gain. That is the whole purpose.

Jim Killock: Unfortunately, that is not how the language of the offence reads. The test in the offence is that somebody is "causing a loss", which is defined as not paying a licence fee, or is "causing the risk of loss", about which your guess is as good as mine, but it is essentially the same as making available, because if you have made something available and somebody else can then make a copy, and then infringe copyright further and avoid further licence fees, basically that is a criminal act. So file sharers, whether they are small or large, all appear to be criminal copyright thieves. Similarly, people who are publishing things on websites without licence are also potentially criminalised. Those things can be dealt with much better and more simply through civil courts and civil copyright action. What we are calling for is either to get rid of those things which are attacking individuals and wrongly bringing individuals into scope, or to put thresholds of seriousness around the risk of loss and/or causing loss. Something like, "Serious risk of causing significant loss" would be the way to deal with this. Similarly, "Causing serious loss".

Q162 Nigel Adams: But if you are knowingly uploading creative content online for commercial gain, to my mind it does not matter whether it is 50 quid or 50,000 quid, you are knowingly stealing someone's content.

Jim Killock: The commercial gain is not part of this offence. That is what I am saying. The offence is purely to cause loss—in other words, to not pay a licence fee—or to cause risk of loss. There is no "commercial" in it. So you have to put the threshold somewhere. You have an offence for the commercial activities and, separately, individuals who cause risk of loss or fail to pay a licence fee.

Q163 Nigel Adams: What do you think is a reasonable limit? Where would you set the limit?

Jim Killock: In terms of taking someone to court, there is no particular limit. If I cause £20 of damage to somebody where I should have paid it, the small claims court should be available and I should be able to either prosecute someone or be prosecuted in a civil court in the normal way. The question of how much is "serious" is, in all likelihood, something we should probably leave to the discretion of judges. It will not be very easy to fix a particular amount, but I think "serious" is usually the word used.

Q164 Nigel Huddleston: As you have already recognised, this part of the Bill has already been subject to a consultation. There were 282 responses to that consultation, with the majority of them being broadly supportive. You have raised quite a few perfectly valid concerns, but do you accept that there is broad public support for the sharing of data when there is a clear social upside?

Jim Killock: I think we are all clear that data sharing should be enabled. The question is how you do that without it being a completely wide open process. The principle is not something that anyone has ever objected to.

Renate Samson: On the consultation that you referred to, you just told me that there were 282 submissions and that most of them were broadly supportive, but the Government response did not indicate who was supportive and who was not, and I have not seen the submissions on the website to be able to see for myself who was broadly supportive and who was not.

Having been part of the open policy making process, I would say that several people in that room had a large number of concerns. They were not concerns to prevent data sharing, but concerns to ensure that data sharing could happen in the safest way possible, and not just in terms of privacy. That way, not only can Government benefit from it and clear processes can be established in Government, but the citizen can understand why their data are being shared and can then be supportive of it and can trust that their data are going to be looked after. It is about the citizen being able to feel as though their personal data, which are now part of the air we breathe in a connected, digital society—we cannot function without our data—are safe and secure. It is about not only data being private, because there are varying degrees of privacy, particularly when you are sharing, but the Government understanding that.

Q165 Nigel Huddleston: I am not sure whether we got a clear answer there. The Commons Library published a briefing, which includes statistics from an Ipsos MORI survey that you have probably seen before. The things that get public support are things such as:

> "Creating a DNA database of cancer patients…Using data from electronic travel cards…to improve the scheduling of buses or trains…Using police and crime data to predict and plan for crimes that might take place in future".

There is a clear public upside for some of the most vulnerable and hurt people in society; are we ever going to reach a point where you are satisfied with the use of data?

Renate Samson: You took evidence this morning from two witnesses whom you asked a very similar question, and I support the answers that they gave. People are happy to share data if they understand why and are asked. I believe that the answer you were given earlier referred to the individual. If you ask me whether I am happy to share my data to cure cancer, I go away and I make the decision about whether or not I am happy to do that. As you have pointed out, the majority of people are probably going to say, "Yes, of course." Big Brother Watch has no desire to restrict that. We are asking for information that we feel is lacking from part 5 of the Bill. We are asking for information for the individual so that they can give their consent based on proper guidance. That is going to be a key part of data protection law going forward.

This is about the way the questions are being asked. Similar questions have been asked throughout the day. We are not trying to say no. We have never said no. We are just trying to say, "Please present us with as much information as possible, so that we can see how."

Jim Killock: It is really in the interests of Government to get this right, because in the long term it is a matter of trust. We know that accidents happen. If at least the

safeguards are in place and as many accidents are avoided as possible, and if people are not left embarrassed at either data leaks or programmes that turn out to be intrusive or prejudicial against people, then you have won. That really was the purpose of the open policy process: to ensure that the risks were understood so that the Government could legislate on the basis of dealing with the complex risks rather than heading straight into a situation where they got a huge backlash and/or stored up problems for the future.

Renate Samson: May I add something quickly? The first line of Big Brother Watch's submission says that we support data sharing across Government. I want to be very clear on that.

My second point is about individuals doing well out of this. The Bill, well, the factsheets accompanying the Bill, refer to wellbeing. I direct you all to the Supreme Court's review of the named persons scheme in Scotland, where it was deemed that wellbeing was not a high enough bar—it did not meet the bar of "vital", which the Data Protection Act requires. We want to do this properly so that people can benefit, but let us ensure that it is proper—that is not perfect, but the best it can possibly be.

Q166 Matt Hancock: A couple of questions. Would you be happy to share your blood type data to help cure cancer?

Renate Samson: I do not even know what my blood type is. To answer your question, I don't know. I would have to give it serious consideration, just as I would seriously consider whether I would be prepared to donate organs after I die. It is not something to which I can give you a snap answer.

Q167 Matt Hancock: Okay. You referred to the open policy-making process, which was a big process with lots of people involved, and the large majority are content with that process. Have you read all the individual responses to the consultation?

Renate Samson: No, because I do not know where they are published. I looked for them but I could not find them.

Q168 Matt Hancock: They are on the internet, so you are very welcome to have a look at them.

Renate Samson: My understanding is that I would have to go into every single organisation's website separately to look at them. They are not collated on the consultation's website itself.

Q169 Matt Hancock: No, they are all published online.

Renate Samson: On the consultation's website itself?

Q170 Matt Hancock: They are all published online. In an earlier exchange, you talked about the broad purposes of the Bill and the problem with parliamentary scrutiny of those purposes. I would just like to understand a bit more about what you meant.

Renate Samson: Sorry. Could you repeat that?

Q171 Matt Hancock: In an earlier exchange with Louise, you talked about the broad purposes of the Bill and how they are defined. You said that those purposes are very broad, and I think you said something like, "and therefore it can mean whatever the Government wants it to mean". I do not understand that, because any sharing of data must be for purposes very specifically set out, for instance supporting troubled families and supporting families in fuel poverty. I think it would be very hard to be against those goals.

Renate Samson: Forgive me, I do not recall that being quite as you have said; I know that Dr Whitley said something very similar to what you just said. Our concern is that I cannot give an answer, because I do not feel as though the Bill has defined clearly what data sharing is or what are personal data. I cannot give an answer without being able to understand what the Government intend to do with regards to data sharing. Troubled families and the retuning of televisions are not included in the Bill, they are referred to in the factsheet accompanying the Bill.

Q172 Matt Hancock: They are referred to in secondary legislation, which will be scrutinised by Parliament.

Renate Samson: I feel—I can only say how I and Big Brother Watch feel—that having looked through the Bill in great detail, we have more questions than answers. If the codes of practice had been published, it might not have been necessary for me to be sitting here, because I would probably know exactly what is the intention. However, based on what has been published so far, I do not feel that it is clear.

Jim Killock: Future secondary legislation is quite a weak way of Parliament safeguarding a process like this, because essentially you then need to ensure that civil society, Parliament and everyone make sure that all the relevant safeguards are included in each statutory instrument.

Q173 Matt Hancock: No, the safeguards are in the Bill. It is the purposes that are in the statutory instruments. It is interesting—

Jim Killock: I do not think that the safeguards are in the Bill.

Renate Samson: Could you explain where they are and what they look like? I cannot see them other than the reference to the misuse of data, and we absolutely support the proposal that those guilty of that could be subject to a prison sentence.

Q174 Matt Hancock: Okay. I want to refer to another point that I did not understand. You said that the problem with the Bill was that it referred to RIPA and the Data Protection Act 1998.

Renate Samson: Because that is current legislation.

Q175 Matt Hancock: But what exactly would you propose?

Renate Samson: My concern, and this is not a telling off, is that a large chunk of RIPA will no longer be applicable by the end of year when the Investigatory Powers Bill comes in, and the Data Protection Act is about to be replaced with the general data protection regulations. Of course it cannot say that on the face of the Bill and none of the supporting documentation even refers to those two pieces of legislation.

Q176 Matt Hancock: It just seems a totally odd point, because the Investigatory Powers Bill is not yet law and, as you can see from the screen, it is being debated in the Lords today. GDPR is not in domestic law yet.

Renate Samson: We were trying to be "assistive"—if that is a word—in that there are elements of the Bill about which not just Big Brother Watch but other individuals and organisations are concerned that if it passes, when the general data protection regulations come in, it will not adhere to that law. It was merely a note of what is coming down the line so we have legislation that has longevity.

Q177 Matt Hancock: I do not think it is possible to legislate on the basis of other legislation that has not yet passed.

Jim Killock: GDPR is passed; it is just not implemented.

The Chair: Thank you to our two witnesses. Thanks very much indeed for your evidence. We release you.

Examination of Witnesses

Sarah Gold, Chris Taggart and Paul Nowak gave evidence.

3.50 pm

Q178 The Chair: We will now hear oral evidence from Projects by IF, OpenCorporates and the TUC. We have three witnesses, so, colleagues, could we have more concise questions and I am sure concise and expert answers? Could the witnesses please introduce themselves for the record?

Chris Taggart: My name is Chris Taggart. I am the CEO and co-founder of OpenCorporates, which is the largest open database of companies in the world.

Paul Nowak: My name is Paul Nowak I am the deputy general secretary of the TUC. We represent 52 affiliated unions who in turn represent about 5.7 million workers.

Sarah Gold: I am Sarah Gold, director and founder of Projects by IF: a design studio that helps companies understand privacy and security by making products and services that empower people.

Matt Hancock: Thank you very much for coming. I want to put on the record something relating to what happened at the end of the last session. For anyone who is interested and has not yet had the chance to find the responses to the consultation on data sharing, they are available on gov.uk/government/consultations/better-use-of-data-in-government. All the responses to the consultation are there.

The Chair: We are better informed.

Q179 Louise Haigh: Paul, the Government have delayed by a year outlining their digital strategy. Could you give the Ministers a hand here? What would you like to see in a digital industrial strategy?

Paul Nowak: There are a number of points in the Bill where we think there are positive steps forward: things like the universal service obligation. I am happy to talk about some of those points. The missed opportunity for us is really getting a handle on what the emerging digital economy means for working people. Tomorrow, we will have the outcome of the court decision on Uber. That is just one example of where changing technology potentially affects working people's lives. We believe there should be a proper framework and employment law should properly reflect the change in the world of work. The point was made by a number of MPs on Second Reading that the Bill missed a trick in terms of that new framework of rights and responsibilities for people who work.

Q180 Louise Haigh: What would that framework look like?

Paul Nowak: It would tackle issues around, for example, employment status. We have this curious interface between the new, emerging digital economy and what I would characterise as some old-fashioned exploitative employment practices. It is great that we can all order new goods and services online via eBay, but often the person who delivers that package will be working so-called to an app and they will be so-called self-employed, driving their own vehicle and with no rights to paid holidays, maternity or paternity leave and so on.

So a framework of laws that is fit for the digital age. It is welcome that the Government have announced that Matthew Taylor will be looking at some of these issues, but I would have thought that for a Digital Economy Bill there is a gap in the Bill itself.

Q181 Louise Haigh: Has the TUC been consulted on that by the Government?

Paul Nowak: We have had no engagement in terms of the process I described with Matthew Taylor and, as far as I am aware, we have had no input in terms of the Bill and the thinking around what a decent framework of employment rights will look like to respond to that emerging digital economy.

Q182 Louise Haigh: What about the digital skills gap—where could the Bill go further there?

Paul Nowak: That is not something that we have looked at particularly, but I think it goes without saying that the need for digital skills will go well beyond those core digital industries. The proof of the pudding will be in the eating. We are pleased that the Government are now talking about industrial strategy, and we think that the digital economy should play a key role at the heart of that industrial strategy. It is not just about digital industries themselves; it is about how those digital industries can support jobs in our manufacturing, engineering and creative industries, but you need to make sure that people have the skills—not just at one moment in time, but ongoing skills throughout their working lives—to enable them to adapt to the changing world of work. For example, one of the things that we have pushed heavily through our Unionlearn arm is equipping people with those skills, but making the case that people should have access to careers advice and guidance all the way through their working lives rather than just at the point at which they leave school, college or university.

Q183 Louise Haigh: Sarah and Chris, I do not know whether you were here for the earlier sessions, but we have heard quite a few concerns about the data-sharing

proposals in part 5 of the Bill. Do you share the concerns about the lack of privacy safeguards in those proposals?

Sarah Gold: I do. There are quite a few pieces of information missing that I would like to see in the Bill to protect individuals' privacy. I think I heard Jeni Tennison talk earlier about openness and transparency, and I agree with her that one of the major pieces that is missing from the Bill is transparency about how people's information will be used.

For me, this is also a missed opportunity to talk about consent, which is increasingly becoming a design issue, not necessarily just one of policy. That means making sure that there are steps in place to ensure that people understand how their data will be used, by whom, for how long and for what purpose. That is really important, because currently, the only models of consent we seem to default to are terms and conditions, and I have to ask the Committee: when was the last time any of you read or understood a set of terms and conditions?

Q184 Louise Haigh: Claire Perry brought up the poor standards in the private sector earlier. Presumably you agree that the Bill misses an opportunity to deal with consent for the private sector's use of data as well.

Sarah Gold: It does, because I think the Government should set best standards on this. There is a real opportunity to do that, and I cannot see that on the face of the Bill.

Chris Taggart: I broadly agree. There was a comment in one of the submissions that despite this being a Digital Economy Bill, it felt like it was from almost 10 years ago. We have the ability to treat data in a much more granular way—dealing with permissions, rights and so on; having things selectively anonymised; having things almost time-boxed, and so on. It struck me that it felt like the Bill was using the broad brush of how we used to exchange data 10 years ago. That seemed like a missed opportunity, particularly given that what we are talking about here is Government to Government. While it is very difficult for the private sector—or even between the Government and the private sector—to come up with some of those solutions, when you are talking essentially about one organisation, particularly one where there is the ability to legislate that everything should happen in the right way, it seems to be a missed opportunity.

I was asked a couple of years ago to be on the Tax Transparency Sector Board, which talked about opening up some of the tax data. Of course, pretty much no data were actually opened up, but some of the discussions were interesting. For example, the Bill talks a lot about individuals, which is absolutely right—I believe that we have innate human rights—but from a tax point of view, individuals and companies are exactly the same thing. There is no difference. HMRC was saying, "Hey, look, whatever we think and whatever we would like to do, we have no ability to treat individuals and companies as the same." The idea of allowing companies to tick a box and say, "Yes, we'd like our tax to be reported and to be open about it," or saying, "These offenders will be treated differently if they are corporate offenders," for example—many countries do report tax offences by companies—was not even possible because of the underlying legislation. There is a sense that that sort of attitude slightly pervades some of this. Again, I am extremely in favour of the Government being more effective and efficient and using information sharing for that, but I would like the Bill to be as good as it possibly can be.

Finally, there are little things—I used to be a journalist but now I am a full-time geek—such as what is being reported? What things have been shared? How are those organisations being identified? The Government do not even have a coherent way of identifying Government Departments or non-departmental public bodies. Those sorts of things. There is a lot more that could be done to make this a genuinely effective Bill.

Q185 Thangam Debbonaire: Mr Taggart, you mentioned something about its feeling like it is 10 years out of date. I want to bring us bang up to date by chucking in a Brexit question. Is there anything that the three of you could very quickly add to the discussion about what might need to be in the Bill given that we are now in Brexit? Brexit has implications for the digital economy, about which I am sure you know more than me.

Chris Taggart: I will try to be brief. One is to do with policy aspects of what happens. I believe you are hearing from the Information Commissioner later. What happens to data protection in a post-EU UK? From our perspective, the UK has generally taken a slightly different perspective on data protection from the information commissioners in some other countries and is generally taking things like public interest into account and treating paid-for and free information the same, which we welcome. We have some concerns about the general data protection regulations because of that sort of stuff and some of the stuff that is coming from the EU. There are some potential benefits, but there are also some downsides about whether people's rights will be defended. I think the digital economy becomes much, much more important, and my position here is as an advocate of open data and the potential for open data in driving a thriving digital economy. As a digital entrepreneur, I think we are missing some significant opportunities for that. If you were to sit down today and do a digital economy Bill with the knowledge that in a couple of years we perhaps would not be part of the EU, I think we would be doing something quite different.

Paul Nowak: May I pick up the point about post-Brexit? I think there is growing political consensus that one of the implications of the decision on 23 June is that we need to think seriously about how we invest in our national infrastructure. For the TUC that goes beyond Heathrow, Hinkley, High Speed Rail. It talks to issues around, for example, high-speed broadband. It is about thinking about how this Bill would interface with, for example, announcements that might come in the autumn statement about investment in high-speed broadband. I note that the Chair of the Committee talked about the interface between rail and high-speed broadband, which is something that should be borne in mind. Again, valid points were made on Second Reading about requirements for developers to incorporate high-speed broadband into new housing developments, which is absolutely essential. I reiterate the point I made earlier about seeing this in the context of the wider approach to industrial strategy and how the digital economy can support other parts of the economy that are going to be even more important as we move forward post-Brexit.

Sarah Gold: For me, particularly looking at privacy, security and personal data, it is about the age of some of the language used in the Bill. Even talking about

data sharing feels to me like the wrong language. We should be talking about data access. Data sharing suggests duplication of databases, with data being slopped around different Departments, whereas data access suggests accessing minimum data via APIs or by using the canonical Government registers, which is an excellent project that is not mentioned in the Bill but should be.

Q186 Nigel Huddleston: There is a lot in this Bill, everything from BBC regulation to child protection, the universal service obligation and making switching easier. Can each of you say what are the top two or three positive features of the Bill that you believe will be of benefit to your members, clients or, indeed, the general public?

Chris Taggart: Yes. First of all, I agree that what I would like to see is that the Government—

Nigel Huddleston: I do not think that was the question. I asked what you like about the Bill that would be of benefit to your clients or customers. It is quite long.

Chris Taggart: To be perfectly honest, we operate in the new economy in places like Canary Wharf. We are a growing company and so on. I do not think there is anything in there that is going to benefit us as a growing, innovative digital company, to be honest.

Q187 Nigel Huddleston: The universal service obligation? Easier switching? None of that?

Chris Taggart: No.

Q188 Nigel Huddleston: You do not think that is a benefit?

Chris Taggart: Not to us. If you are talking about whether there are benefits to the wider world and to the UK as a whole, yes, I do not have an argument, but you asked whether it is of any direct benefit to us and I said no. There are plenty of things I could put into the Bill that would be of benefit and would be very simple to implement and so on, but in terms of measures in the Bill that would be a direct benefit to us and to the thousands of innovative digital companies in the UK that are making a difference to things like open data and financial services and solving real world problems and so on? Maybe it was not the intention for it to do that, and it does not.

The Chair: A clear answer.

Paul Nowak: If I could start on a positive and then give you a couple of areas where I think the Bill could be strengthened, the universal service obligation is something we would support. I note the discussion on Second Reading that 10 megabits per second is just a starting point. If you want a digital economy that is fit for the future you need to go well beyond that, but the universal service obligation is welcome. Some of the points in clause 4 are important, in terms of protections for musicians and other creative performers. Useful suggestions were made on Second Reading about how some of those provisions could be strengthened, such as ensuring online providers are accountable for any illegal pirated materials that they host and making sure the Government are prepared to step in if voluntary approaches to those sorts of issues fail. That would be a positive set of issues.

I have concerns about the interface between the Bill and the BBC. I know that the NUJ—which is one of our affiliates—is particularly concerned about the role of Ofcom as a potential regulator of the BBC. I am particularly concerned about the BBC taking on responsibility for TV licences for over-75s, not just in terms of the budgetary implications for the BBC but in terms of the BBC effectively taking responsibility for a key part of our social security system.

There are some positives, and the one I would draw out first and foremost is the universal service obligation. No matter what job someone does or where they live, having access to decent high-speed broadband is increasingly essential.

Sarah Gold: I agree with the overall sentiment of the Bill—that having better access to data and to the right infrastructure can lead to better services and a more open society. One of the details I think is good is the significant consequences for individuals should they be part of data misuse. That is really necessary and I see that as a positive step.

Q189 Drew Hendry: Sarah Gold has given us a really good example of how we could approach terms and conditions in a different way. As somebody who actually went through the Apple iPad terms and conditions three days ago I can tell you it is a mind-numbing experience, so I have great sympathy with that view. What examples can we take into account from other countries that are dealing with these issues as the Bill goes forward? My question for Paul Nowak is what is required to protect workers' rights with the onset of new, disruptive technologies?

Sarah Gold: In terms of other countries, that is not something I am an expert in. I know that Estonia's e-citizenship cards can be used as a form of identity across many services, which is certainly helpful. There is an emerging question about what forms of identity individuals, particularly those who are less affluent, will be able to access. That is increasingly becoming a design problem. My work and work at projects by IF is more focused at the moment on UK-based companies and how they approach different forms of consent. We are thinking about privacy through a design lens. We are thinking about the minimum viable data that a service needs to operate and how we can display information in a simple, readable way so people can understand what they are giving away and why, and also get back shared insights. I can speak about some of the emerging trends in technology, such as general transparency and certificate of transparency, which I think have very interesting applications, and about how we can begin to see better forms of consent and permissions across the services. Unfortunately, I am not an expert on other countries.

The Chair: Thank you. Mr Nowak is an expert, I am sure.

Paul Nowak: I have maybe three things to say. First, going back to the point I made before, we should absolutely clarify some of the issues about employment status. I do not think it is acceptable that a multinational corporation can hide behind an app or say, "You're employed by an algorithm." It needs to be recognised that it does not matter whether you are getting your work via an app; you are still an employee. If you were a

small building contractor, you could not get away with claiming that the person who works for you day in and day out is an independent contractor. HMRC would be down on you like a ton of bricks. I think you need to tackle those issues.

There is a set of issues about what I call sectoral approaches. We know that these new disruptive technologies have an impact across whole sectors. I mentioned parcels delivery. It is no longer the default that the man or woman who delivers your parcel is directly employed by Royal Mail and drives a Royal Mail vehicle. They could be "self-employed" and driving their own vehicle. They may be doing two or three different jobs. There is an argument that we should be thinking about how we bring together players right across a sector at the sectoral level, involving employers, new entrants, trade unions, the Government and others, to think about issues to do with not just employment regulation but skills.

I think it flags up a set of interesting issues about having an employee voice at every level. It is very welcome that the Prime Minister has raised the issue of workers on boards. I think that the value of having an employee voice from the shop floor all the way up is important. I note that, on Second Reading, Huw Merriman made the point that the BBC is a good place to start—the new BBC board can have employee representation. Ensuring that there is an effective employee voice, by whatever means somebody is employed, is important. Crucially, that is about social partnership and dialogue, and engaging workers and unions in thinking about what the best form of that employee voice is and how we ensure that people are not exploited in a particular sector.

Chris Taggart: To pick up on something that Sarah said, the truth is that we live in a data world these days. We cannot move from one side of the street to the other without interacting with data. Everything we do—every phone call we make, every website we visit, every time we use a smartphone—is about interacting with data. Unfortunately, individual citizens are increasingly the products—the data—so we really need to be thinking about what citizens' rights look like in a data-centric world in which the data could be held anywhere.

It is about not just the legal rights, but the effective rights. One of the things that companies such as Google are doing is disintermediating. Sometimes you may have local monopolies, but you may end up with one global monopoly. Who owns the information from smart meters, and so on? The person who pays the electricity bill, the electricity company, the Government or some third party that can see when you turned on the lights, when you went to bed and those sorts of thing? We really need to be thinking about what rights, abilities and agency comes with being a citizen in the modern world. I think that means having access to the data we need—official registers—and licences that actually work for us, and having a critical eye on some of the emerging global power structures of data.

Paul Nowak: That point about data throws up some profound questions for the employer-employee relationship. For example, it is entirely reasonable for TfL to want to know where their buses are at any given moment of the day or night, but it is less reasonable for an employer to access information about whether or not I turn on my phone at seven o'clock or eight o'clock, or about where I might happen to be outside normal working hours. That speaks to the need for the Government to think about how you facilitate and encourage employers and employees to reach reasonable agreement about the use of data. What is the line? It is going to be different in different sectors and different jobs, but the important thing is that there is a shared understanding of what data are collected, what they are used for and how they might be used. I suspect that in a lot of workplaces that is just not a live conversation.

Sarah Gold: Also, who in the workplace has permission to access that information? That is certainly not clear on the face of the Bill, which suggests that any sharing between civil servants would be okay. That really makes me feel quite scared.

The Chair: Thank you. We have two more questioners: Nigel Adams followed by Louise Haigh.

Q190 Nigel Adams: Mr Nowak, you alluded earlier to the element of the Bill that you support and referred to musicians. The Bill is trying to bring in measures that would equalise the measures for copyright theft. That is a really good thing to try, and the Musicians Union is very supportive of that measure. Is there anything else that you think would strengthen the Bill in terms of protecting rights holders? We have a huge problem in this country of content creators—rights holders—not getting rewarded because their work is put online illegally. There is quite a bit of work that the tech companies could be doing, but how do you think we could strengthen this area to protect many of your members?

Paul Nowak: I reiterate the points that I made before, but perhaps I can also make an offer. That is certainly an issue on which our Federation of Entertainment Unions—including the Musicians' Union, the National Union of Journalists, the Broadcasting, Entertainment, Cinematograph and Theatre Union and Equity—would welcome the opportunity for further engagement with the Committee, and we could certainly provide more written information.

First of all, though, we should ensure that online providers are held accountable for any material outside of copyright that they host online. The second point that I made before is that if there is no voluntary, agreed way forward, the Government should be prepared to introduce a code of practice. If you are a musician, the online world and the emerging digital economy clearly throws up all sorts of opportunities, but there is also a real risk. It is not about the creation of a piece of work over three or four minutes; the hours, the days, the weeks that went into the creation of that piece of work could quite easily be dissipated and lost, and somebody else is profiting from the input you have made. It is not an area in which I am an expert, but our entertainment unions would certainly wish to give more evidence.

Q191 Nigel Adams: That is useful. It is not only about musicians; there are also the people who create content, such as authors, artists and writers.

Paul Nowak: For your information, the latest TUC affiliate is the Artists' Union England, which represents visual artists. We represent people right across the creative industries, including the musicians, the Writers' Guild of Great Britain, Equity, which represents actors, and, as I say, visual artists. We would be happy to feed in more information directly from those unions.

Q192 Louise Haigh: Thinking about algorithms beyond the workplace, we know that Uber, for example, will charge more if your battery is low. Having worked for an insurer before I was elected, I know that the amount of data that is available to insurers to set prices would make your hair curl. How much transparency should there be around the algorithms that companies use to set prices, while protecting the intellectual property of those algorithms?

Chris Taggart: That is a fantastic question, and it comes to the heart of our ability to understand our world and influence it. I take quite strong, almost like democratic first principles with this: you need to be able to understand the world and have the ability to understand the world, and then to be able to influence it. That is what democracy is about. If we do not understand the world—if we do not understand that we are being given this particular news story in this particular way; that we are being given this particular price; that we are being influenced to walk down this street rather than that street in order to do this—then we really do not have that possibility. A question that is not asked often enough but that is starting to be asked more in academic circles is: what are the algorithms on which our lives depend? If we do not understand that we are being driven by algorithms, still less what those algorithms are, how do we have agency? How do we have free will, if you like? I think it is a really important question.

I think that increasingly we will see that we need transparency around that, and that with transparency there is always the ability for there to be negative downsides. You could argue that, by having courts open, people can just walk in off the street and see that this person over there is being prosecuted; some neighbour, or whatever. But if we are not starting to ask those sorts of questions and staring to come up with some informed answers, we will be in a world where we have lost the ability to ask those sorts of questions.

Paul Nowak: I am not particularly well versed in this area, but I suppose that it is a little bit like the terms and conditions question. You could provide so much transparency that it would give the illusion of people being informed, and I think what you want to do is to allow people to understand what are the potential implications of those algorithms. So, if you are using Uber you know that if there is a spike in demand or a lack of supply, you are likely to pay more, and what the implications of that might be, and what the parameters of that are. I do not think that means that Uber needs to make all of its software open source—frankly, that would mean nothing to me—but I want to know when I get in what the fair contractual exchange is between me and the company that is providing the service.

Sarah Gold: I am very well versed in this area but I have very little time to talk about it, which is very frustrating. However, I think that looking at how individuals can question algorithms is very important; I agree with both of your comments. Particularly in GDPR, there is a clear piece that is about people being able to question automated decisions that are made about them.

As a design problem, that is really fascinating. For instance, if you think about when you buy flights on browsers, I think that everyone has probably seen that when you go back to book the flight again, your IP address has been tracked, you are a cookie, and so you see the same flight booked for—it costs you more. So you go into kind of incognito mode to check that.

What I am quite interested in at the moment is that sort of incognito testing of algorithms, so that you can see how your inputs might change an output. In the context of Uber and insurance, I am very interested in this emergence of insurance for, say, a single day of driving or for a particular route, and being insured—say, it costs you far more to go down the M1 than just the A1. And you should be able to understand why that decision has been made about you, because it has a significant consequence for your life.

However, that comes down to the quality of the training data, too, and that comes back to some of the terms of the Bill—we should be working towards greater data minimisation, I think, and also the ability for people to be able to audit not only those data, to correct those when they go wrong, but to provide an audit of data access. While it may not mean everything to all of us, because not all of us are developers, I think that for those individuals who are able to scrutinise the code and check for digital rights management or security vulnerabilities, or biases in data sets, that information is really crucial, because it is those individuals who are our greatest defence against data misuse or fraud.

The Chair: Thank you very much indeed; that is a high note on which to conclude. I thank our three witnesses for your evidence. We may now release you and we will call our final two witnesses for the afternoon to come forward.

Examination of Witnesses

Professor Sir Charles Bean and Hetan Shah gave evidence.

4.24 pm

The Chair: Welcome to our two final witnesses today; I am sure you will keep us on our toes in our final session. Could you please introduce yourselves for the record?

Hetan Shah: I am Hetan Shah, Executive Director of the Royal Statistical Society.

Professor Sir Charles Bean: Charlie Bean, London School of Economics and soon to be Office for Budget Responsibility.

Q193 Louise Haigh: We have heard from witnesses today about a lot of the negatives and potential pitfalls of data sharing across Government. I have nothing against the Government's intentions here, but do you share the concerns of previous witnesses about the lack of safeguards for privacy in part 5 of the Bill?

Professor Sir Charles Bean: You will have to excuse me; since I was not here for your earlier discussions, I am obviously not aware of what earlier witnesses have said and what their reservations are. My interest obviously is in the use of the information for statistical purposes. It is important that there is a clear and well understood framework that governs that, and there clearly need to be limitations around it.

I have to say that I think the current version of the Bill strikes a reasonably sensible balance, but there are bits that will clearly need to be filled in. The Office for

National Statistics will need to spell out a set of principles that govern the way it will access administrative data, and so forth.

Q194 Louise Haigh: Do you think there is any framework in part 5 around the sharing of data?

Professor Sir Charles Bean: Sorry—

Louise Haigh: You said you are satisfied that it strikes the right balance. Do you believe there is any framework in terms of the principles for data sharing in part 5?

Professor Sir Charles Bean: By "appropriate balance", I mean in terms of the statistical authority having in-principle access to the administrative data that it needs to do its work, subject to certain limitations.

Q195 Louise Haigh: Do you believe there should be transparency for—

Professor Sir Charles Bean: I certainly believe in transparency. I am a big fan of transparency. Anyone who has worked at the Bank of England would like transparency.

Hetan Shah: May I come in and build on this? Privacy is absolutely critical to maintaining public trust, and in a sense we think the Bill has missed a trick here. On the research side, the framework is embedded on the face of the Bill. In our view, the ONS has a very good track record—it has maintained 200 years of census data, it has the best transparency, it publishes all the usage of the data and it has already criminalised the proceedings of misuse of data—but that has not been put on the face of the Bill. A tremendous amount could be done to reassure by taking what is already good practice and putting it on the face of the Bill, and I think that will answer the issue for the statistics and research purposes.

Q196 Louise Haigh: My full question was not, "Do you believe in transparency?" It was going to be: do you believe in transparency in terms of how citizens' data will be shared with the Government and between Government agencies? That principle, as you say, is not only not on the face of the Bill but not anywhere in the Bill. We have been asked by the Government to rely on codes of practice that have not even been drafted yet.

Professor Sir Charles Bean: I agree that transparency about the principles that will govern sharing of information makes a lot of sense.

Q197 Louise Haigh: As you say, Mr Shah, for Government data sharing to work requires public trust, and digital government and the use of your statistics absolutely requires trust that the Government will handle data with due purpose and cause.

Hetan Shah: Another thing is that the UK Statistics Authority is directly accountable to Parliament, not the Government. That actually makes the statistics and research strand more accountable compared with other parts of the Bill. I remind you of that, which is very important.

Q198 Matt Hancock: I would be interested if you could explain and put on the record some of the consequences you see of having this Bill and the underlying secondary legislation on the statute book. What impact will that have on the areas in which you are experts?

Professor Sir Charles Bean: The key thing is that it greatly improves the gateways that enable the Office for National Statistics to use administrative data—tax data and the like—in the construction of official economic statistics. We are well off the pace compared with many other countries. Scandinavian countries, Canada, the Irish and the Dutch make very heavy reliance on administrative data and only use surveys to fill in the gaps. Here, the Office for National Statistics is essentially an organisation that turns the handle, sending out 1.5 million paper forms a year and processing those. Essentially, you are acquiring the same information again that you have already got in some other part of the public sector, where the information is being collected for other purposes.

The key gains here I see as twofold. First, because you access something close to the universe of the sample population rather than just a subset, which would normally be the case with a survey, you potentially get more accurate information. It is potentially also more timely, which for economic policy purposes is important.

The other side of the coin is that by enabling you to cut back on the number of surveys you do, there is a cost gain, which I should say would probably not mainly be a gain to the ONS, because they have to do the processing of the administrative data, but a gain to the businesses and households who are currently spending time filling in forms that they would not need to do if more use was made of administrative data.

Q199 Matt Hancock: Mr Shah, what do you see as the impact of the data sharing clauses?

Hetan Shah: I completely agree with Charlie Bean that we are really in danger of being left behind compared with where other countries are on this agenda. The European statistics peer review, which happened last year, said that this was the key weakness in our statistical system. If you look at bodies like New Zealand, Finland and Canada, they all have this ability to access, so we have got to have it. We are spending £500 million on the census and you have got a lot of that data that you could be using through administrative data.

Similarly, on inflation, which is a critical economic indicator, at the moment we send out people with clipboards to take price points of 100,000 items in 140 locations around the country every month, but there is scanner data that tells you the price that people paid. This could really revolutionise. It is not statistics for statistics' sake; it is to answer the questions that parliamentarians and policy makers have on issues about social mobility and productivity. For all these questions you are asking yourselves, we need the data. And if we are criticising the ONS about not being quick enough, we need to give them the powers to be quicker.

Q200 The Parliamentary Secretary, Cabinet Office (Chris Skidmore): In terms of the provisions in the Bill on sharing data for research purposes, could you shed a bit more light on how that will benefit the wider research community? I was also wondering what the immediate priorities will need to be for the UK Statistics Authority as the accrediting body for the infrastructure provided by the research powers in the Bill.

Hetan Shah: The Bill creates a permissive power and it really streamlines what at the moment is quite a complex legal environment for researchers accessing

Government data. This makes it much clearer that if a researcher meets a set of conditions—the research is in the public interest, the researcher is accredited and it will use the research in a safe haven, as it were, and so on—they are able to access that Government data.

We gave some case studies in our evidence of research that is obvious, such as what affects winter mortality and understanding the productivity gap. Those are questions that researchers want to investigate, but they cannot get hold of the data from Government Departments. To be fair to the Government, there is concern from their side about handing over data when the legal framework is not clear enough. I think this process will really streamline that.

One caveat is that it is slightly odd that health data are out of scope. Most of the biggest concerns that researchers have are in trying to build the relationship between survey data and, often, the health outcomes in certain areas. I understand the reasoning behind this: because of care.data there were some concerns. Health is very important. Our view is that the Bill should build in the scope for health data and then allow for future legislation to say how that will be dealt with, in particular once Fiona Caldicott, the national data guardian, has consulted on her framework, which is happening right now.

Professor Sir Charles Bean: I would endorse a lot of that. I should say that in Canada, where I spent some time talking to Statistics Canada in the course of doing my review, they have exactly this model. There are clearly defined criteria under which researchers can get access, with a sort of prescribed laboratory where they can use it. I think there is something like 30 requests a year to use information, so it is quite heavily used.

Certainly when I was talking to people here during the statistics review, the issue was raised during the consultation process by people such as the Institute for Fiscal Studies, who wanted access to the microdata to be able to study the impact of tax structure on decisions and so forth. The difficulty of getting that microdata inhibited good research. I am sure the demand is there.

Q201 Chris Skidmore: Several witnesses have expressed various degrees of concern about issues of privacy, whether merited or not. In terms of what is taking place in Canada, have you seen any data leaks or anything that would raise concerns about what we are pursuing?

Professor Sir Charles Bean: I am certainly not aware of any leaks or anything. They are clearly very concerned about making sure that personal information is not divulged. It is very important that the information made available is not only anonymised but cannot be reverse engineered to find out who the agent concerned might be.

If you are looking at information on companies, there may well be, if you are not very careful, information that might be reverse engineered to find out that the name of the company is probably such and such. It is very important that you have good processes to make sure that the information that is provided to researchers is sufficiently anonymised but, as I say, the Canadian experience suggests that you can do that quite happily.

Q202 Scott Mann: One of the biggest contributing factors for people moving house is having access to a decent broadband signal. Have you done any statistical or economic modelling of population densities and movement away from cities to rural areas? Is that a piece of work that you would be prepared to do to find out the economic benefits to rural areas as part of the USO?

Professor Sir Charles Bean: That is not really my territory.

Hetan Shah: Ditto. I am here to talk about the stats and research clauses. I do not know about the other bits, I am afraid.

Q203 Thangam Debbonaire: You have both talked about other European countries and Canada. Forgive me for not knowing whether this is the correct term, but are we talking here about big data? Is that the term I hear bandied about? Either way, could you tell me a bit more about the benefits and outcomes in terms of policy information? Give us a bit more information about what these other countries are doing better and how their politicians are better equipped as a result.

Professor Sir Charles Bean: I think most people use the term "administrative data" to refer to large information held within the public sector that accrues as a by-product of whatever the public authority is doing. Tax information is a classic example, and it is something that is obviously potentially of use to the Office for National Statistics in constructing economic statistics. Big data is a wider concept that embraces the vast range of information that is generated by various sorts of private sector organisations, which includes the scanner data that Hetan mentioned. It is the sort of information that is generated by the likes of Google and phone companies. Big data is much broader.

There is a question about the extent to which you can use big data in the construction of official statistics. I think there are two obvious areas that you might want to exploit. One is scanner data for constructive price indices, which Hetan has already mentioned. The other area where I could see private sector big data being of considerable use is on payment information—information from payments processors and payments providers.

Of course, there is a vast amount of other information that is generated by the private sector. Some of that information might be useful for shedding light on new puzzles or new phenomena in the economy. One might want to be a little bit wary about relying on them to build the regular official statistics because you cannot be sure they are always going to be there, whereas you will probably have a reasonable presumption that the payments information and scanner data will continue to be available, and the Office for National Statistics could therefore use them on a regular basis.

Hetan Shah: I can give a couple of examples or case studies. One is pensions. In this country we have made quite a lot of changes in recent years around pensions policy, but it is very hard to track the impact of that. The Bill will allow for the ONS to bring together the benefits and pensions data, which are held by the DWP, the HMRC data, and also to go out to companies or to either regulatory bodies or federated bodies and get their data and bring those together so that we can see what auto-enrolment has actually meant, in terms of the amount people are putting into their pensions, and you can actually start tracking policy.

Another example is international student migrants, which is clearly a hot topic at the moment. At the moment there are Home Office data in one place, the

Higher Education Statistics Agency holding useful data in another place and there are labour market data held in a third place. You could bring all those things together to actually track the impact and the numbers and so on, which at the moment we just do not have a good handle on. Those are the sorts of things that are possible if you give your statistical office access to the aggregate data from other Departments and also some access to private sector data.

Q204 Thangam Debbonaire: Is that the sort of data other countries are using in that way?

Hetan Shah: Yes, that is right. Other countries have different set-ups, as it were, but these are the sorts of puzzles they can solve because they can bring those data together in different ways.

Q205 Nigel Huddleston: Mr Shah, you have partly answered my question, so I will turn to Professor Sir Charles Bean first. What kind of Government data would you personally like to get access to; what would you do with it; and how would the public benefit from your having it?

Professor Sir Charles Bean: You do not mean me personally? Presumably you mean the Office for National Statistics and the UK Statistics Authority?

Nigel Huddleston: Absolutely.

Professor Sir Charles Bean: First and foremost, I would say the tax data that HMRC holds—value-added tax, income tax and corporation tax. Value-added tax is particularly useful because it tells you something about inputs and outputs of businesses. It is potentially quite good, up-to-date, timely information on activity in the economy. I should say, when I was on the Monetary Policy Committee, we used to get informal briefings each month from the Treasury representative on what they knew about the tax receipts coming in that month, but having more detailed information about what was going on would be potentially very useful. In principle you can envisage building the national income accounts almost entirely on that sort of information if you have access to it, and you can make sure that the income-outcome expenditure sides are all balanced. That, as far as I am concerned, is by far and away the most significant thing.

I think it would be quite useful to bring in another dimension here about why administrative data are useful. There is obviously a lot of interest in regional issues. As it is at the moment, most regional information is collected to align with administrative areas of one sort of another, but those are not always the most natural units to be looking at for studying a phenomenon. If you think of Wales, north Wales is not actually trading with south Wales, it is trading across with Manchester and Liverpool, while south Wales is trading across with Bristol and so forth. If you want to think about the regional economics, you need things that allow you to look at those nexuses, rather than the information you might be given on the Welsh economy. If you have administrative data, with regional, locational identifiers, you can in principle aggregate the information in whatever way is best suited to the particular issue that you want to look at.

In terms of thinking about statistics for the 21st century, we need to be thinking about a framework that is actually quite fluid and flexible, rather than one in which everything is pushed into a set of standard definitions for GDP and stuff like that, and standard regional definitions and so forth. When you have access to the underlying micro information, providing you have appropriate identifiers that you can manipulate and link, you have open to you all sorts of possibilities that we do not currently have.

Q206 Nigel Huddleston: Mr Shah, do you have anything to add to that?

Hetan Shah: I have just a couple of examples. One is systemic financial risk. Post 2008, I think there was a recognition that we had focused too much on the risk for individual financial institutions and not looked at risk at a systems level. There is a possibility of doing that. The Prime Minister has indicated an interest in how the labour market is changing with the rise of zero-hours contracts and so on. Using a mixture of administrative and private sector data would allow us to start to get a handle on how the economy is changing.

The Chair: We have two questioners left: Louise Haigh and then Claire Perry.

Q207 Louise Haigh: Mr Shah, you keep mentioning access to data, but the problem we heard earlier is that the Bill talks not about access to data but about data sharing, which implies duplication. We should really be moving towards data minimisation. Do you think that the language of the Bill should reflect access to data, rather than data sharing?

Hetan Shah: My view is that for the clauses on statistics and research the Bill is pretty clear that it is about data access.

Q208 Louise Haigh: It discusses the transfer of data. It does not talk about your accessing data. It does not mention the technology through which you would do it. There are no codes of practice alongside how it would happen. It is very broad and explicitly talks about data sharing in certain areas.

Hetan Shah: I think I said this earlier, but in case I was not clear I shall repeat it. For statistical and research purposes, statisticians and researchers are interested only in aggregates; they are not interested in us as individuals. It is a key point that the relevant clauses are quite different from some of the other parts of the Bill. Others have indicated in their evidence that this area should be seen as slightly different.

It is also worth noting that there are safeguards that have been tried and tested over many years. There is the security surrounding the data—the ONS will not even let me into the vault where they hold the data. You need to be accredited and to sign something saying that you will not misuse the data. If you do, you will go to jail. The trick that has been missed has been not saying all that, because it is almost assumed that that is how the ONS works. My suggestion is that if you want to strengthen that part of the Bill, you should just lay out the safeguards that are already common practice in the ONS.

Q209 Claire Perry: Thank you both for setting out some very factual and helpful arguments as to why the provisions are a good thing, particularly when it comes

to aggregate statistics. I was struck by a quote in your report published in March, Professor Sir Charles. You mentioned the

"cumbersome nature of the present legal framework",

which the Bill will clearly help to solve, and you also said that there was a

"cultural reluctance on the part of some departments and officials to data sharing"

and, in many ways, to working together, as we know from experience. How do we solve that problem and get Departments to realise how helpful some of these datasets might be?

Professor Sir Charles Bean: A key thing about the Bill is that it shifts the onus of presumption. There is a presumption of access unless there is a good reason not to comply or explain, if you like, as opposed to the current arrangement, which is that the data owner has the data and you say, "Can you please let us have a look at it?" There is civil service caution. I was a civil servant very early on in my career, so I am aware of how civil servants think. Inevitably, you are always worried about something going wrong or being misused or whatever. That plays into this, as well.

In the review I said there are really three elements and I think they are mutually reinforcing. There is the current legal framework, which is not as conducive as it could be; there is this innate caution on the part of some civil service Departments, or even perhaps on the part of their Ministers on occasion; and then the ONS has not been as pushy as it might have been. It is partly that if you know it is very difficult to get in—people are not very co-operative at the other end and the legal frameworks are very cumbersome—you are less inclined to put the effort in, and you think, "Oh, well, let's just use the surveys, as we've always done." So I think you need to act on the three things together, but they are potentially mutually reinforcing if you get the change right.

Hetan Shah: This is one area where I think the Bill could be strengthened. At the moment, the ONS has the right to request data; similarly, the researchers have the right to request data. The Department can still say, "No", and in a sense the only comeback is that there is a sort of name-and-shame element of, "Parliament will note this", as it were. My worry, given the cultural problems that have been seen in the past, is that that may not be enough. So why do we not do what Canada does? It just says, "The ONS requests", and the Department gives.

Q210 Claire Perry: It is a presumption in favour of sharing?

Hetan Shah: Yes, precisely. Similarly, with research you could have the same situation where, as long as the researcher meets the code of practice this required, the presumption would be in favour.

The Chair: Thank you. Chris Skidmore has just caught my eye for a final quick question.

Q211 Chris Skidmore: Professor Bean, in terms of the current legal framework and the problems with it as it exists, am I right in saying that there is an issue with legislation that was passed in the previous Government, under Gordon Brown's premiership, that caps the use of data and research material, and which needs to be addressed quite urgently?

Professor Sir Charles Bean: Yes, I think it does need to be addressed. The existing Act was introduced with the intention of trying to improve the ability to share data, but it just has not operated in the way that people maybe hoped it would. In practice, having talked to the ONS and other Departments, it sounds like an extremely cumbersome process. So I think this is a case where the original legislation may have been well intentioned, but—

Q212 Chris Skidmore: Will there be a problem even with accessing some datasets after a certain point in time—?

Professor Sir Charles Bean: There is a point after 2007, yes. You have to specifically write into the legislation that, in principle, the information can be shared, yes, whereas these information-sharing orders—

Q213 Chris Skidmore: So that is creating a real problem in the infrastructure that needs to be addressed?

Professor Sir Charles Bean: Yes.

The Chair: Thank you, colleagues. Thank you very much indeed to our final two witnesses; you gave very clear and expert answers. Thank you; it is much appreciated.

Ordered, That further consideration be now adjourned.—*(Graham Stuart.)*

4.52 pm

Adjourned till Thursday 13 October at half past Eleven o'clock.

Written evidence reported to the House

DEB 01 Christian Action Research and Education (CARE)

DEB 02 The Royal Statistical Society

DEB 03 Compact Media Group

DEB 04 Dr Jerry Fishenden, Co-Chair, Cabinet Office Privacy and Consumer Advisory Group

DEB 05 Electrical Safety First

DEB 06 Good Stuff Limited

DEB 07 Action on Hearing Loss

DEB 08 medConfidential

DEB 09 TalkTalk plc

DEB 10 Big Brother Watch

DEB 11 National Trust

DEB 12 Citizens Advice

DEB 13 Open Rights Group

DEB 15 Three: Submission on Consumer Issues

DEB 16 Three: Submission on Rural Coverage

DEB 17 Country Land and Business Association (CLA)

DEB 18 Children's Charities' Coalition on Internet Safety

DEB 19 Co-operative Group

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

DIGITAL ECONOMY BILL

Third Sitting

Thursday 13 October 2016

(Morning)

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Examination of witnesses.
Adjourned till Tuesday 18 October at twenty-five minutes past Nine o'clock.
Written evidence reported to the House.

PBC (Bill 045) 2016 - 2017

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Monday 17 October 2016

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The Committee consisted of the following Members:

Chairs: †Mr Gary Streeter, Graham Stringer

Adams, Nigel *(Selby and Ainsty)* (Con)
† Brennan, Kevin *(Cardiff West)* (Lab)
† Davies, Mims *(Eastleigh)* (Con)
† Debbonaire, Thangam *(Bristol West)* (Lab)
Foxcroft, Vicky *(Lewisham, Deptford)* (Lab)
† Haigh, Louise *(Sheffield, Heeley)* (Lab)
† Hancock, Matt *(Minister for Digital and Culture)*
Hendry, Drew *(Inverness, Nairn, Badenoch and Strathspey)* (SNP)
† Huddleston, Nigel *(Mid Worcestershire)* (Con)
Jones, Graham *(Hyndburn)* (Lab)
† Kerr, Calum *(Berwickshire, Roxburgh and Selkirk)* (SNP)
† Mann, Scott *(North Cornwall)* (Con)
Matheson, Christian *(City of Chester)* (Lab)
† Menzies, Mark *(Fylde)* (Con)
† Perry, Claire *(Devizes)* (Con)
† Skidmore, Chris *(Parliamentary Secretary, Cabinet Office)*
† Stuart, Graham *(Beverley and Holderness)* (Con)
† Sunak, Rishi *(Richmond (Yorks))* (Con)

Marek Kubala, *Committee Clerk*

† attended the Committee

Witnesses

Peter Tutton, Head of Policy, StepChange

Alistair Chisholm, Creditor Liaison Policy Officer, Citizens Advice

Dr Jerry Fishenden, Co-Chair, Cabinet Office's Privacy and Consumer Advisory Group

Lindsey Fussell, Consumer Group Director, Ofcom

Tony Close, Director of Contents, Standards, Licensing and Enforcement, Ofcom

Elizabeth Denham, UK Information Commissioner

Steve Wood, Deputy Commissioner (Interim), the Information Commissioner's Office

Public Bill Committee

Thursday 13 October 2016

[Mr Gary Streeter *in the Chair*]

Digital Economy Bill

11.30 am

The Chair: Welcome. I remind everyone to switch electronic devices to silent. First, I believe that Calum Kerr would like to declare an interest.

Calum Kerr (Berwickshire, Roxburgh and Selkirk) (SNP): I would like to declare that I am a trustee and voluntary director of Advice Direct Scotland, which also operates as Citizens Advice Direct.

Examination of Witnesses

Peter Tutton, Alistair Chisholm and Dr Jerry Fishenden gave evidence.

11.31 am

The Chair: We will hear oral evidence first from StepChange, Citizens Advice and Dr Jerry Fishenden from the Cabinet Office's privacy and consumer advisory group. Before I call Louise Haigh to ask the first question, I remind all hon. Members that questions should be limited to matters within the scope of the Bill and that we must stick to the timings in the programme motion that the Committee agreed to. For this session, we have until 12 o'clock. Will the witnesses please introduce themselves for the record?

Peter Tutton: Hello everybody. My name is Peter Tutton and I am from StepChange Debt Charity.

Dr Fishenden: Good morning. My name is Jerry Fishenden. I am a technologist working with private and public sector clients. Today, I am here in my capacity as co-chair of the Cabinet Office's privacy and consumer advisory group.

Alistair Chisholm: Hello. My name is Alistair Chisholm and I am here from Citizens Advice.

Q214 Louise Haigh (Sheffield, Heeley) (Lab): I will start with part 5 and ask about debt collection. My questions are particularly aimed at StepChange and Citizens Advice. What concerns do you have about the principles of public authority debt collectors when dealing with their creditees?

Peter Tutton: Sorry, did you say local authorities?

Louise Haigh: No, just the public sector.

Peter Tutton: We recently did a poll of our clients and asked them which of the different types of creditor they face treats them the most unfairly. Our clients are all people in heavy financial difficulty; they are really struggling and under pressure. Of the top five creditors that treated them the most unfairly, four were Government Departments or agents collecting Government debt.

We are concerned that the way in which public debt is collected is not subject to the same sort of oversight and scrutiny as private sector debt. Organisations from banks to payday lenders are part of a regulated sector that still has problems, but those problems can be addressed. In the public sector, we do not see the same kind of control and oversight, or even any sense of regulation about how that should be done. As a result, we see a lot of problems, with the sort of debt collection practices that we might have seen 20 years ago from banks now coming from the collection of public debt.

Q215 Louise Haigh: Can you give us an example of those kinds of problems?

Peter Tutton: With central Government debt, it will be things such as persistent aggressive phone calls; old debts suddenly popping up with no explanation; and people trying to arrange affordable payment, getting short shrift and being told, "Pay this or else." With local government debts, bailiffs are used and there is a lack of any kind of mechanism to make affordable, sustainable payments, which are at the core of what people need.

Our clients typically have six debts. They are often in difficulty because they have lost their job or become ill, and they need a period to recover control of their finances. We need creditors to show some forbearance and help people to make affordable, sustainable repayments. When that happens, about 60% of people say that their finances start to recover straight away. When that does not happen, none say that.

If people get shouted at and told to pay money they cannot afford, they actually go and borrow somewhere else—about a third of our clients went to a payday lender when they received an aggressive payment demand that they could not afford—or they do not pay another bill. The financial chaos continues, and gets worse and worse.

Alistair Chisholm: There is a particular issue around the way in which debts can be disputed. There is a difference between the way in which that is dealt with in the public sector and in the private sector. I certainly agree that the Government need to apply to their own collection activities the standards and protections they have asked financial, energy and water services to offer to consumers. The Bill is an opportunity to make that change and, if they do, sharing data can be helpful.

We see a lot of cases in which bad data sharing has a wasteful effect on Government and a detrimental effect on our clients. For example, in a survey of our advisers last year, 55% of them had seen more than one case the previous 12 months in which a debt was sent to a bailiff but in which the debtor's council tax benefit had actually not been processed. It is a common, systemic problem that bits of Government do not use their own data to try to resolve people's problems. That is an opportunity for the Government, but there are big risks.

Take the recent debacle with Concentrix and Her Majesty's Revenue and Customs, in which the Government were using credit reference data and, it seems to me, tracing data to find people who were guilty of cohabiting. They were accusing those people of having a tax credit debt and it turned out they were not guilty of that at all. If mistakes like that are ricocheting around public sector debt collectors, the detriment could be much worse. For this power to work we need a shift in the way the Government collect debt. It needs to be allied with the best practices in the private sector, particularly—

Q216 Louise Haigh: Sorry, but what precisely could the Bill do to address that?

Alistair Chisholm: The Bill says that people who are sharing data should "have regard to" a statement of good practice, but we do not have that statement of good practice and "have regard to" does not seem to me to be very forceful. There are three particular things I think would help to change Government debt collection so they could use data sharing more safely. They could set affordable payments in the way the private sector does; the Government could introduce the standard financial statement that the banks, energy and water companies and the advice sector are going to be using from March next year. They could introduce fair dispute resolution; if the debt is reasonably disputed, stop collecting it until the complaint is investigated. Banks are not allowed to collect it then but public sector creditors routinely do it.

Finally, the big shift we have seen in commercial credit in recent years is the decision to place the legitimate interests of the consumer at the centre of debt collection activities, which means to help them rather than to have an unnecessary adversarial relationship. So, fair payments, fair disputes and being helpful could transform debt collection from being aggressive, adversarial and often wasteful to being helpful and to helping people to rehabilitate themselves.

Q217 Louise Haigh: Dr Fishenden, if we can move on to you in relation to part 5, specifically the measures on data sharing. Do the proposals reassure you that the Government have given sufficient consideration to privacy, data security and data ethics?

Dr Fishenden: The policy intent is clear and I suspect you will not hear much disagreement with that. The consultation did not find that either; people were broadly in agreement. The measures described in part 5 are fairly general and vague. There is a lot of reference to the codes of practice, which have still not have appeared.

In general, given that it is about seven years since the previous data sharing proposals were withdrawn for being too wide-ranging and vague and for work to be done on them to make them more specific and build in protections and controls, I am quite surprised that we are back with a Bill that seems aspirationally in the right place but that has none of the detail that allows us to check the sort of security, data protection and controls that will be needed.

There is not even any definition in the Bill of what data sharing means, which gives me a problem. Some people seem to assume it means people copying data around, and I guess that is implied in the bulk data provisions—it seems to imply movement of data between parties. Good cyber-security practice would be to leave the data with their original owner, who can gate access to those data or, as I described in my written submission, can confirm aspects of them.

A specific example could be applying for a blue badge. All that is needed to process that claim is to confirm with the DVLA that a person is a registered driver, that they have a legitimate driving licence and that they own the vehicle for which they are applying for the blue badge; to know from the DWP that they are registered disabled; and the local authority undertaking that process needs to check that person is a resident. There is not actually a flow of data going on there; it is merely a process whereby, to get a blue badge, you confirm the person is disabled, is a registered driver and is living within the local authority boundaries.

I find it quite surprising that the Bill does not have a definition of what data sharing is, either legally or technically. In the absence of the codes of practice, it is very hard to know what it actually means.

Q218 Louise Haigh: In your experience, is it unusual for the Government not to have published at least draft codes of practice alongside legislation of this nature?

Dr Fishenden: I would have assumed that they would be drafted in concert with the Bill, because to test the provisions in the Bill, you would need to run them back past the codes of practice to check that the two work together. I am a bit confused about why they have not appeared, because I cannot see how the Bill would have been drafted without them.

Q219 Rishi Sunak (Richmond (Yorks)) (Con): I have a question for Mr Chisholm. I put on record my thanks to your organisation for the wonderful work that it does in my constituency—and in everyone else's, I am sure—in helping some of the more vulnerable people in society. It is a fantastic organisation. We hear a lot about the big picture of how technology can help people and make their lives better, but you guys are at the coalface, helping vulnerable people. Will you explain how some of the measures in the Bill on data sharing are going to make your life easier and deliver tangible benefits to vulnerable people?

Alistair Chisholm: As I said before, there are definitely cases in which the Government or local authorities do not use their own data to help people when they could. For example, when somebody is paying their magistrate's fine directly from their benefits, sometimes the benefits change, so the flow is disrupted and the payments stop.

We often see cases in which somebody then has a bailiff at their door and they are threatened with imprisonment when, in fact, they want to pay. The Government actually know that there has been a temporary interruption to their benefits, or that somebody is shifting from jobseeker's allowance to employment and support allowance. If those data were joined up—obviously in a way that protected consumers as they need to be protected—the debt would continue to be paid, the problem would not be escalated, and the person would have a stable financial arrangement that enables them to meet their obligations. There are opportunities like that.

It is really important to say that it is now time for the Government to do what they have asked the private sector to do in the way they collect data. They need to adapt their systems so that payments are affordable and debts can be reasonably disputed, and so that people are helped.

Q220 Rishi Sunak: Beyond debt collection, are there other areas in which data sharing can be used to ensure that the right services or the right support is getting to people who need it?

Alistair Chisholm: In the public sector?

Rishi Sunak: Yes, when the Government are delivering public services. You may have something to say about energy, or perhaps other areas.

Alistair Chisholm: Absolutely, yes. The clause in the Bill under which energy companies and the DWP will share data to help people to access support that is there but that they do not always get is an excellent idea. I very much support that measure. People who are vulnerable are sometimes less able to manage those systems, so if you can join them up effectively, that is very helpful.

Q221 Nigel Huddleston (Mid Worcestershire) (Con): My colleague has already elicited some comments from you, Mr Chisholm, about how you can see the most vulnerable benefiting from the Bill. Can you give some other examples of situations you have come across in which you could see the Bill helping individuals?

Alistair Chisholm: Are you talking about debt?

Nigel Huddleston: Debt first. We can perhaps move on to switching and other things.

Alistair Chisholm: On average, our clients have five debts. Having multiple contacts and competing demands for money from different creditors is very distressing. Government debt collecting in particular often goes down a very fixed furrow, once it has started. Having to deal with that is overwhelming, so a more sensible and joined-up approach to how people manage all that will be very valuable for people, as long as their proper rights are respected in the process.

Q222 Nigel Huddleston: What about other aspects of the Bill? In evidence sessions earlier in the week we focused a lot on switching, the universal service obligation and the ability to cancel contracts if you are not getting a good service. My experience is that for the people who come to my surgeries, who are often the same people who go to the CAB, those elements often come into play. Have you seen any other similar elements of the Bill that would be helpful or beneficial?

Alistair Chisholm: Yes. We are big fans of changing the switching process in the mobile phone industry so that it is aligned with how banks and energy companies do it. The poor consumer will not have to do a kind of "Dear John" telephone call to the organisation they are leaving. Instead, the organisation that they are moving to has to help them through that process. I think that that will be helpful for the way the market operates.

Quite often, you get the best deal only when you ring up and have your leaving phone call. In fact, those deals should be available to everybody. If the switching is moved to the lead company, I think that will help ensure competition and more fairness across the mobile phone market. It will just be easier. It will no longer be the consumer's responsibility to liaise between two firms; they will be helped. We are very much in favour of that.

On the universal service obligation, we know that there are more than 1 million people who cannot access broadband—particularly in rural areas. Some of our clients have to pay thousands of pounds to access services. That is very difficult, and sometimes impossible, for people, so we are very much in favour of broadband becoming the universal service that it needs to be.

Q223 The Parliamentary Secretary, Cabinet Office (Chris Skidmore): I would like to ask Citizens Advice two questions. The first is about clauses 30 to 35, which relate to the warm home discount. There are already data-matching powers for those in receipt of a guaranteed element of pension credit, but obviously we are expanding that out to try to find anyone who is eligible. What difference will that make to your customers and what outcomes will it have? Can I possibly press you on some examples? You have been talking a lot about process, but it is important to get on the record what the outcomes of this expansion of the data-sharing power will be.

Alistair Chisholm: The warm home discount is money provided by energy companies to reduce the bills of people who are in financial difficulty or are on low incomes. When we talk to those firms about how people access those discounts, they say it is difficult for them to establish whether people are entitled to it, so people who should get the help do not get it. Sharing the data should smooth that.

Peter Tutton: Something like 10% of our clients would be within the old definition of fuel poverty: they spend more than 10% of their income on fuel. We have seen the number of people in gas and electricity arrears rise quite sharply from where it was in about 2010. The link with Government debt is interesting. The people we see with fuel debts are also likely to have things like council tax debts, and they are generally more likely to be people with disabilities. There is a group of vulnerabilities. People are struggling to make ends meet in difficult circumstances. They are on low incomes and under pressure from debts.

There are some questions about the warm home discount itself, and there was a recent consultation. Can it be extended to more companies? Can we look at the people who are eligible for it and extend the eligibility? The bits in this Bill about identifying fuel poverty could be helpful. If you think through the bit about the Government debt collection and put some principles in place to help financially vulnerable people, you start to get a policy package that drills down to the problem. We are quite supportive, if we can get back that sense of supporting vulnerable people and helping people to recover control of their finances. That is the key to all of it.

The Chair: May I ask for snappier questions and concise answers? Otherwise, we will not get everyone in.

Q224 Chris Skidmore: That leads nicely on to my second question, which is about the debt-collection power and sharing data. You stated in evidence that it

"will create improved opportunities for better treatment of people in vulnerable situations".

Can we get some examples of how you think that will work?

Peter Tutton: Alistair said that CAB clients tend to have five debts if they come in for debt advice, and it is about the same for us. Certainly, we see people with multiple contacts and creditors. I was looking today at a client who said they get 25 calls a day about debt collection. That is an extreme case, but that sense of constant demands that you do not know what do with is common. The importance of that is that it builds stress.

About half the people we see say they have been treated by a GP or a hospital for debt-related health problems. If we can reduce that stress and simplify the approach so people get less contact from creditors, that

will help. It is helpful for us as advisers if, rather than having to deal with different bits of Government, we can deal with one. It saves us money, and we can recycle that money to help more people.

Again, it all depends. If it is one big collection stick, rather than three little collection sticks, it is not going to make things better. If you make it one contact, that contact must be based on some good principles and practices. That is what will make the difference.

Q225 Thangam Debbonaire (Bristol West) (Lab): I want to move us on to talk about nuisance calls and the direct marketing code in clause 77. First, do you think the proposals go far enough? Do you think that the nuisance calls section should be strengthened? Is there a justification for having an aggravated offence for targeting elderly and/or vulnerable people? Any thoughts on any of those from any of the three of you?

Peter Tutton: That is an interesting point about targeting people who are vulnerable; it is something to explore. We are quite keen on more action on nuisance calls. We would like to see a kind of code of practice; it would be a start. At the moment, the Information Commissioner's Office guidance is not followed. When people give their details to a trader on the internet, and they say you want a loan or they are interested in a loan, that goes out into the ether and it is traded like currency. A third of our clients tell us that they are receiving an average of 10 nuisance calls for credit and other services a week—they are bombarded all the time. These are financially vulnerable people and they are being targeted, as you say.

As for the aggravating offence, this could be strengthened; the code of practice needs to address how that happens. There are a bunch of things you could do on nuisance calls. Some of the worst things are financial services—high-cost credit and things like that—where the Financial Conduct Authority could do something. It could just ban what it calls unsolicited real-time financial promotions.

So, yes, we think anything to look at that and strengthen that up is good. Make sure that if you put your details in as a consumer, you should know where they are going, so you cannot be contacted by anyone; there should be some boundaries to that. And there is the idea of some stronger controls on how and when direct marketing can be used. Currently, you sort of have to opt into not being called; maybe it should be an opt-out. There are some things we could do to strengthen the regime up.

Thangam Debbonaire: Dr Fishenden, have you got anything to add to that?

Dr Fishenden: I guess on the specific point it would be my concern that, without understanding what all the data sharing is—we have just heard that people get their data farmed and used, and then abused, and they get lots of spam calls; if we do not really understand how the data will be secured, and the public sector starts sharing it more widely, that very same information about a vulnerable household or a household in fuel poverty is gold dust to the payday loan companies and others, which would be very keen to access that same data.

My concern is the lack of the detail that would enable us to understand how we get the upside of enabling people in fuel poverty or whatever to get the help they can from the energy companies, without that same data —depending on what "data sharing" means—potentially fuelling all these other parties that are highly undesirable to intrude into those same people's lives.

Thangam Debbonaire: Thank you. Anything else from Mr Chisholm?

Alistair Chisholm: I think I may have to ask some colleagues to help me with the aggravated offence question; I cannot answer that, because I do not know. One thing that I would say is that increasingly we have been working with the commercial sector around scams awareness. We run a scams awareness week with trading standards and lots of firms every week, and it would be great to have public sector debt collectors getting involved in that work, educating people. Also, that helps the people on the frontline, who are collecting those debts for Government, to understand the kind of problems that people are facing. There are kind of soft initiatives and it would be nice to see the Government participating more in that area.

The Chair: Thank you. We have got seven minutes and three colleagues to go. Claire Perry.

Q226 Claire Perry (Devizes) (Con) Mindful of the concern that Dr Fishenden has raised about data protection and privacy, I just really wanted to press Mr Chisholm a little bit. Thank you for your submissions and what you described. You made it very clear that we are asking some people who are in the most vulnerable circumstances to deal with a multitude of problems. It is difficult enough managing one's own financial ins and outs as somebody who does not face particular restrictions in life. Would you agree that if we can appropriately deal with the privacy issue, which I believe we can, clauses 30 to 35 and 40 to 47 are actually helping those who are in most need of our collective help?

Alistair Chisholm: I have not got the clauses in front of me, but I roughly know what you are referring to—

Claire Perry: Sorry, it is around information provision to electrical suppliers, where you very eloquently described that people can automatically get the warm home discount but they may have to go through several hoops, and also the issue around netting-off of Government debt collection, if you like.

Alistair Chisholm: I think that the sharing of DWP data with energy suppliers is sensible and will help more people. For Government debt collection sharing to give the benefits that it could, it is very important that the approach to debt collection is aligned with best practice. So we need both those things in place, but, definitely, where data are not shared well, that hurts people.

Peter Tutton: I agree entirely. The key to it is getting the good practice in place, and that will bring the benefits.

Claire Perry: But facilitating this sharing can only be helpful for those who are most in need of help.

Peter Tutton: Well, it could be harmful, as I say, if it ends up as one contact for a big load of Government debt all put together—that is a really aggressive contact—and a bigger debt means a more aggressive approach. That could be more harmful, but if we get the right debt collection principles in place, it can only help.

Q227 Kevin Brennan (Cardiff West) (Lab): We are about to start line-by-line consideration of the Bill. If you were on the Committee and had a chance to put down an amendment to the Bill, what would it be?

Peter Tutton: In the bit about debt collection, I would like to see some of the principles of the sort Alistair talked about by which Government debt collection should work: helping people to affordable, sustainable repayments; making sure debt problems are not made worse; an emphasis on helping vulnerable households to recover control of their finances—that sense that there is a wider public benefit in dealing with debt. Debt costs over £8 billion a year in on-costs: health, lost productivity and so on.

Kevin Brennan: Email that to us later. What is yours, Dr Fishenden?

Claire Perry: It is outrageous to outsource your job!

The Chair: Please continue, witnesses. We are running out of time.

Dr Fishenden: I would like to see some precision around what is meant by data sharing. Some earlier drafts from about three years ago reflected much better cyber-security and privacy practice around defining what that meant and how we would make sure it was not slopping people's personal data around, but just confirming specific pieces of data to enable someone to make a decision or undertake a process.

Alistair Chisholm: It is not enough to say on data sharing powers that the organisation should "have regard to" the code of good practice. It must be stronger than that. We need something in the Bill to make sure that the code of practice is not just a one-page set of high-level principles, but will make a difference. That means some conversations with collecting Departments that might have to be quite robust on occasions. Stronger protection around debt protection practices are needed.

Q228 Calum Kerr: Building on that question, if you are sending Mr Brennan emails, copy me in.

We have seen in this session a number of Members trying to drag out of you the positive benefits of data sharing. I hope we have all bought into the positive benefits, but if that is done in the wrong way, there may be a mess with unintended consequences which could be disastrous for individuals. Dr Fishenden, your exasperation with what is in the Bill is shared by other witnesses. We are faced with whether we can strengthen it in such a way that it is workable, or whether we should just oppose it, despite all the benefits. What is your view on whether it is saveable—clearly there is a desire for this—and can you help us to put in enough guarantees so that there will not be unintended consequences?

The Chair: Very quick answers please.

Peter Tutton: There is an opportunity here and we will be very happy to help and to work with all of you to make sure there is benefit from that opportunity.

Dr Fishenden: It is important not to lose the opportunity to do the right thing. My concern is the complete lack of detail and, seriously, how quickly that can be put in the Bill in both legal and technical terms. If we have sight of the codes of practice, there may be elements in them that could be in the Bill itself to help to narrow down and define the scope of what it is talking about and to get those safeguards embedded in primary legislation.

Alistair Chisholm: The way that people in financial difficulties are treated has been transformed in this country since 2008 and the pocket where it has not is the public sector, so please do not miss the opportunity to sort that out. Let us work on good principles. It really can be done.

The Chair: Thank you very much indeed, witnesses, for being so expert and so concise. It is much appreciated.

Examination of Witnesses

Lindsey Fussell and Tony Close gave evidence.

12 noon

The Chair: Colleagues, we will now hear oral evidence from Ofcom. Welcome and thank you very much for joining us this morning. For this session we have until 12.30 pm. Could the witnesses please introduce themselves for the record?

Lindsey Fussell: I am Lindsey Fussell. I am director of the consumer group at Ofcom.

Tony Close: My name is Tony Close. I am the director of content standards, licensing and enforcement. I look after broadcasting at Ofcom.

Q229 Kevin Brennan: Hello. In relation to the new appeals process, which will bring Ofcom in line with other industry regulators, is Ofcom fully prepared?

Lindsey Fussell: Yes, absolutely. It is a measure that we have been seeking for some time and we are delighted to see it in the Bill. I have a few comments on why. As you say, the standard brings us in line with almost all other public authorities. Ofcom very much welcomes robust challenge to our proposals—it increases public and market confidence in us. We are fully confident that the new standard will enable that, while also enabling us to take forward the really important consumer measures in the Bill, such as auto-compensation and switching, which I know have the support of many people in Parliament as well as the public.

Q230 Kevin Brennan: On switching, the Bill improves powers to collect information. How do you envisage publishing information on telecoms, such as service quality, broadband speed and so on?

Lindsey Fussell: That is, again, a really important part of the Bill. At present, our information powers do not enable us to ask providers to give us information that they have not retained, or to give it in a particular format, so it is very hard for us to publish comparative data, which is what we know that consumers and the public really value. We have already announced in the digital communications review that we will publish our first quality of service report next March, which will contain a great deal of data comparing different providers and the quality of service they give. The powers in the Bill will give us the ability to expand that data over time and give the public more information to enable them to make informed choices.

Q231 Kevin Brennan: On nuisance calls, which is an issue that has been running for a long, long time, over many years there have been increases in fines and various other measures. How much of a real difference do you think the Bill will make? Could it go further in trying to tackle the issue?

Lindsey Fussell: As you say, that is an incredibly difficult issue and one that is evolving over time. In contrast to five years ago, we notice now that the complaints about nuisance calls—as you may know, Ofcom deals particularly with silent and abandoned calls—are increasingly less about large firms and more about much smaller companies. We frequently see numbers that are spoofed or unreliable. It is a different kind of problem that we are now tackling.

The powers in the Bill relate specifically to direct marketing calls, which are within the remit of the Information Commissioner's Office. We very much welcome the measure to put its guidance on to a statutory footing and to make it easier to enforce against companies that do not comply.

Q232 Thangam Debbonaire: I want to turn to the BBC. How do you think we can ensure that the BBC's distinctiveness and public service commitments are upheld in this new role?

Tony Close: That is a great question, and a tough one to start with. The first thing to make clear is that it is very much for the BBC and its new unitary board to set out its strategy in the first instance and explain to all of us how it is going to ensure that the BBC's output is distinctive, creative and engaging. Ofcom clearly has a role holding the BBC to account. What we are not going to do is try to micromanage the BBC. We do not want to be making decisions about individual programmes, such as whether "Eastenders" is or is not distinctive, but of course we have a role looking at the output of the BBC as a whole to make sure it is fulfilling all its public service duties. I am not going to pretend that we have the answer right now. We are doing an enormous amount of preparatory work to be ready for 3 April in order to ensure that we will be able to hold the BBC to account for the distinctiveness of its output as a whole.

Q233 Thangam Debbonaire: Could you say a bit more about what safeguards are in place for that public service duty and role?

Tony Close: Currently the BBC is still regulated by the BBC Trust. There is a job for us to ensure that there is a framework in place by 3 April or shortly after, to ensure that the BBC is held properly to account. That has many component parts. I suspect that it has a set of metrics. There is an element where you would be looking for consumer feedback on how the BBC is delivering to consumers in their view—whether it is genuinely distinctive or considered to be distinctive by members of the public and whether the audience themselves believe that the BBC is delivering on its obligations and its public purposes.

Q234 The Minister for Digital and Culture (Matt Hancock): We have had some debate, which you may or may not have followed, on the electronic communication code, and about whether the changes in the Bill, which are designed to reduce the cost of rolling out mobile infrastructure, should go further and mirror the rules around the water industry. I would be interested in your reflections on what the consequences would be, should we make that change.

Lindsey Fussell: Ofcom very much supports the Bill's provisions on the electronic communications code, because we believe that they will assist with the faster roll-out of mobile infrastructure and its maintenance. We do not have particular expertise to offer on the precise provisions in the Bill, particularly on land valuation. What we are doing is working collaboratively with a very broad range of stakeholders to draw up a code of practice on the way that negotiations should work going forward.

Matt Hancock: Thank you; so you do not want to go further on the details, but you are working on implementation.

Lindsey Fussell: I am afraid I do not think I have anything helpful to offer on that.

Q235 Matt Hancock: Okay. The other area where we have had questions is on Ofcom appeals. It would be very interesting to hear your take on why it is necessary to make the changes to the appeals that are set out.

Lindsey Fussell: Yes, of course. As I said to a member of the Committee earlier, Ofcom absolutely welcomes its decisions being challenged. It is actually vital, for an independent regulator, that that happens, because it goes to the very heart of our credibility; but we believe that it is entirely appropriate for us to be held accountable to the same standards as almost every other public authority.

The need for robust challenge clearly needs to be balanced against the need for us to be able to take forward measures such as switching and auto-compensation in a way that is rapid and can meet consumer interests. Our concern with the current arrangements is that while Ofcom has a pretty good record on its success in appeals we are the most appealed-against regulator, and in particular our appeals come from the largest providers with, frankly, the deepest pockets. We want to have an appeal standard that absolutely enables any bad decisions or wrong decisions we take to be overturned, but also enables us to take forward the really important regulation and changes that consumers want, as quickly as possible.

Q236 Mark Menzies (Fylde) (Con): All our constituents are victims of nuisance calls. Do you think the law as it currently stands is sufficient to protect them? What measures in the Bill do you think will offer enhanced protection, and when we are dealing with companies that are out to drive a coach and horses through the law, what measures do you think we can put in place to provide protection for customers? If I could lead you down a path, at the moment, if you want to lodge a complaint against a company you have to have the phone number and the website address. When I have asked nuisance call companies, "Can I have your phone number; can I have your website address?" guess what? They have neither of those things.

Lindsey Fussell: We absolutely recognise that nuisance calls remain a huge concern to consumers. We estimate that consumers in the UK will receive about 4 billion nuisance calls this year. If I sit, as I have, and listen to calls coming into our contact centre, I know how distressing and frightening some of them can be to consumers.

As I mentioned earlier, the provisions in the Bill relate to the powers of the Information Commissioner, relating particularly to direct marketing calls. That forms a substantial proportion of the concerns that I know consumers have, and it is great to see the Information Commissioner being given more power to enforce against companies that break the rules, including companies that either do not have consent, or have very aged consent, if I can put it that way, for those calls to be made.

Ofcom's specific interest is in silent and abandoned calls, which can be especially frustrating and frightening for more vulnerable consumers, particularly. We believe that the best way—because of the nature of the companies, as you have been saying, that are now making the majority of the calls—is to encourage more network blocking of those calls before they reach the consumer. That is something that we are making good progress on with a number of companies. You may have seen recent announcements from Vodafone in this space.

We also encourage companies to roll out software—and BT, again, is doing so shortly—free of charge to consumers to give consumers more power to block calls themselves. It is a really difficult problem but we are absolutely not complacent about trying to tackle it.

Q237 Calum Kerr: Perhaps I can bring you on to the universal service obligation. While we are frustrated by the lack of ambition in terms of the speed offers, if designed correctly it need not hold back regions and countries that want to go further. As you design the scheme, could you perhaps reassure me that it will not hinder but help a Government, such as the Scottish Government, who want to aim for 30 megabits and not 10 megabits?

Lindsey Fussell: Absolutely. As you know, our research shows that the current level of 10 megabits per second is suitable for consumers who need to access at least a reasonable level of communication service. Ofcom is supportive of the fact that the level needs to be reviewed over time, and we would expect it to rise. On our specification, as you know we will be providing advice to the UK Government by the end of this year. We will absolutely look at both the nature of that specification and what 10 megabits could mean in different contexts, and also at how we would future-proof that specification so it is able to deliver faster speeds under a USO if required to in future.

Q238 Calum Kerr: I think there are mechanisms, for example voucher schemes—of which BDUK already has some experience—that could provide foundational funding that allows 30 megabits to be the target, rather than settling for 10 megabits. I hope that is something that will be made possible. You talk about a review period for speed. How often do you think the speed should be reviewed?

Lindsey Fussell: To be honest with you, I think it is probably a bit of a trap. The answer is that it is very difficult to tell. I suspect that, if we were all sat here a decade or even five years ago, we would not be talking in the way we are now. Setting a definitive review period will probably feel too short or too long, depending on how technology develops. The Government have placed the power in the Bill to direct us to carry out reviews, and we will obviously do so whenever asked.

Calum Kerr: The danger is that we leave it open-ended, we all get busy and it does not happen. Mr Streeter, may I ask one more question?

The Chair: One more.

Q239 Calum Kerr: The very good document from the Minister and DCMS gives us a bit more information on the USO and talks about upload, download, latency and capacity. One of the other factors is cost. I get frequent complaints from constituents, as I am sure my colleagues do, that they do not receive a service that, as Ronseal would say, "Does what it says on the tin." To what extent are you going to go to a granular level and look at the service, and also include cost as a key metric, so people are getting what they pay for or paying for what they get?

Lindsey Fussell: I understand. The Government have made public the letter that has been given to Ofcom and have specifically asked us to look at the cost of different technological solutions. That will clearly give a range of factors to weigh up when the Government decide how to implement the USO. Some of the issues you go to about how the USO will be enforced and how we will measure performance against it are implementation issues that we will have to consider once we know what type of USO we are implementing. It might be worth saying that, to the extent that we designate a universal service provider, either in one or in several areas, we would have the ability to enforce if they do not meet the commitments they signed up to and to provide the appropriate remedy.

Q240 Nigel Huddleston: I have a question for each of the witnesses. Starting with Mr Close, under the Bill, Ofcom will be given quite significant new oversight responsibilities over the BBC. Can you confirm what skills and attributes Ofcom currently has in terms of broadcasting, and are you confident, given this substantial increase in responsibilities, that you will have the skills and resources to do this job in the future?

Tony Close: There are two parts to my answer. I will begin with the specific provisions in the Bill and then talk about skills. The Bill removes some constraints that were placed in the Communications Act 2003 on our ability to regulate the BBC. We already regulate the BBC but we are subject to some constraints. At the moment, for example, we cannot consider the competitive impact of a significant change to the BBC's website. The Bill removes those constraints so we can discharge the full range of functions that the charter and agreement would give Ofcom.

Are we currently sufficiently skilled to regulate the BBC to a high standard? Absolutely. We have been regulating broadcasting and making complex editorial judgments for the past 13 years, covering 2,000 separate television and radio broadcasters. Do we need more people and more skills to ensure that we do a great job from day one? Yes, and we are doing that at the moment by ensuring that we have the right number of people and the right skill mix.

Q241 Nigel Huddleston: Ms Fussell, you will be given powers in the Bill to acquire speed test information at premises level. Will you be using those powers? How will you be sharing that information? How may the customer benefit?

Lindsey Fussell: That is part of the new information powers that we were talking about earlier. We intend to publish that information, but we will obviously be doing so in a way that is fully consistent with data protection laws. We hope that it will be a huge benefit to consumers who, for example, are thinking of moving house or want to know what their existing property can achieve. At the moment, when people are given broadband speeds, they are often given speeds that relate to similar consumers in similar areas. This will enable them to have really specific information and, we hope, empower them to make a choice about which type of provider and service they are looking for.

The Chair: Kevin Brennan wishes you to send him some emails.

Q242 Kevin Brennan: Yes. May I ask a couple of questions on automatic compensation? How do you envisage that working? Do you have experience of doing this sort of thing? I would like to hear your general comments, and I will then ask a specific question.

Lindsey Fussell: Yes, of course. We are delighted that the Bill clarifies Ofcom's power to introduce auto-compensation. We think it is an incredibly important step to make sure that consumers get redress when they do not receive the quality of service they are expecting—we know from the consultation we did on the digital communications review that quality of service is the thing that customers feel most strongly about—and we also hope that it will incentivise providers to improve their service quality and enhance the attractiveness of joining them for the public. It goes hand in hand with the proposal we were talking about before on the quality of service report in terms of publishing and making available more comparative service information so consumers have an informed choice.

Q243 Kevin Brennan: On the basis that compensation delayed is compensation denied, would you support the compensation effectively being paid on the next bill that the customer receives rather than their having to wait for a bank transfer at the end of the financial year or something?

Lindsey Fussell: We have already published what we have called a call for input, which has closed, on our first thoughts on auto-compensation. We will be publishing a full consultation on it early next year. We have said already that our instinct is that the compensation should be financial. Clearly, we will need to test that in consultation.

Q244 Kevin Brennan: What is the alternative to financial?

Lindsey Fussell: I imagine you could think of other sorts of services or things that could be offered to consumers to try to put problems right. We are currently actively considering whether we should set maximum periods in which compensation should be paid. I think that goes to your point, and that is certainly something that we will explore in the consultation and our proposals.

Q245 Kevin Brennan: Taking it off the next bill would be a good idea if it were achievable. Finally, given that we are now at the stage of line-by-line consideration of the Bill, is there anything that you would suggest as an amendment to improve it?

Lindsey Fussell: As I have said, we are delighted that many of the measures that we have been pressing for for some years are included in the Bill, and we very much hope that it commands support.

Kevin Brennan: So there is nothing you would suggest.

Tony Close: May I add one point? We have been contacted recently by a number of stakeholders who are keen to see improvements in the provision of access services such as subtitles and audio description in the video on demand sector. Action on Hearing Loss has been in touch, and it is keen to see Ofcom given very similar powers to those it already has in relation to linear television to set challenging but proportionate targets for access services in a code for video on demand services. We would welcome such an amendment.

The Chair: Claire Perry has the final question.

Claire Perry: It is not really a question. May I put on the record that the Government today announced a delay repay scheme to compensate automatically for 15-minute delays to railway journeys, so it is wonderful to see Ofcom supporting the moves that regulators of other industries are introducing?

The Chair: Thank you, Claire, for your out of order contribution. Thank you very much to our two expert witnesses from Ofcom. You have been very concise and clear and rattled through your answers expertly. Thank you. We now release you. We will have a three-minute comfort break.

Examination of Witnesses

Elizabeth Denham and Steve Wood gave evidence.

12.22 pm

Q246 The Chair: We now welcome witnesses from the Information Commissioner's Office. I know you would like to make a brief statement before we begin but perhaps first you could introduce yourselves for the record.

Elizabeth Denham: I am Elizabeth Denham, Information Commissioner for the UK, and with me is my colleague Steve Wood, the deputy commissioner. I am the newly appointed Information Commissioner—in fact this is my first appearance after my appointment. I started the same week that the Digital Economy Bill was introduced. Thank you very much for the invitation to come and speak to you today. The ICO is the UK's independent regulator for data protection and freedom of information and for the regulation of direct marketing.

This is an important and sprawling Bill related to encouraging the digital economy and digital services. We support many aspects of it, including the permissive rather than mandatory requirements for data sharing. We also recognise and appreciate the lengthy consultation period that the Cabinet Office led on the data sharing provisions.

The remit of our office extends only to the data sharing provisions in part 5 and the direct marketing code in clause 7. I have sent some evidence to the Committee, but the main recommendations in our submission are to

clarify the privacy safeguards and put them on the face of the Bill. That will build trust and important transparency for the public.

Our other main recommendation in the written evidence is to reference directly our data sharing code of practice, which was drafted in 2011, and to require other data sharing codes of practice to be subordinate to that data sharing. This will assist the practitioners in better understanding the framework and lead to more harmonisation and consistency.

We also think it is important for Parliament to review all aspects of data sharing, not just the clauses relating to fraud, after an appropriate time. It is also my intention, using the powers in the Data Protection Act 1998, to review and to report back to Parliament two to three years into this regime with due regard to bulk data sharing.

The Chair: Very helpful. Thank you very much indeed.

Q247 Kevin Brennan: Congratulations on your appointment. Would you support moves to introduce director-led accountability so that directors are held to account on nuisance calls rather than just the companies?

Elizabeth Denham: Yes, I would support extending liability and accountability to directors. Our office has issued fines that totalled about £4 million in the last year, but the problem is that we have been able to collect only a small proportion of those fines because companies go out of business and, as in a game of whack-a-mole, appear somewhere else. It is important for us to be able to hold directors to account for serious contraventions.

Kevin Brennan: So an amendment in the Bill to achieve that would be helpful.

Elizabeth Denham *indicated assent.*

Q248 Kevin Brennan: For the record, the witness nodded in reply to that question.

On age verification, attention has been drawn to the consequences of failing to think through plans, including the possibility that information on passports and driving licences could be misused when collected as part of an age verification system. Could you comment on that and are you aware of any evidence that might mitigate those risks in that part of the Bill?

Elizabeth Denham: I will ask my colleague to respond to that.

Steve Wood: Our concern about an age verification system is that the hard identifiers that could be collected, such as passports, might need to be secured because of the vulnerability of those pieces of data being linked to other pieces of data and used by the organisation that collects them. We hope that any solution would take a "privacy by design" approach, which very much minimises the amount of data that is taken and may use different ID management systems to verify the age of the individual, rather than a lot of data being collected. It is important that data minimisation is at the heart of any solution. It would be a concern for us if a wide range of solutions was put forward to collect those hard identifiers.

Q249 Rishi Sunak: We hear a lot about how technology can benefit people and that the Government need to harness technology to do just that. Indeed, some data sharing is already going on in the delivery of Government services. Can you describe how the measures in the Bill will provide greater legal certainty and clarity in that area because we want to make sure we are doing things in the right way? Your thoughts in that regard would be helpful.

Elizabeth Denham: This Bill is an enabler. It facilitates data sharing for the improvement of Government services. I think the public welcome that and they expect seamless Government services in some cases. The idea that all data must stay in ivory towers or silos does not make sense when building digital delivery services. That said, we all know that trust and transparency are critical to maintaining the public's trust in data sharing.

The transparency that needs to be clear in the Bill is on two levels. First, at the point of data collection and in ways that are easy for citizens to access, they should understand the purpose of and how their data will be shared, and they should have the ability to challenge that.

Secondly, there needs to be another layer of safeguards and transparency scattered throughout some of the draft codes of practice, but not in the Bill. That is the transparency that comes from privacy impact assessments, from reviews by our office, and from Parliament looking at revised codes of practice. It is really important that we pay attention to both those levels. Civil society is going to pay attention to published privacy impact assessments; but right now there is no consistency across all the codes of practice for those kinds of safeguards. I believe that some improvements are needed to the Bill.

Q250 Thangam Debbonaire: I wanted to just go back to age verification, if you do not mind, Mr Wood. You made a good deal in your evidence and in your response to my colleague's earlier question about the concerns that you have—and I get those. Can you push this a bit further and say what you would think was an adequate system of evidence providing for age verification? What would work?

Steve Wood: I will qualify the answer by saying we come at it from a data protection perspective, so our interest is making sure that the personal data of those individuals who would be going through that process is protected, rather than the wider policy issues relating to verification of access to that content; our the key concern is to make sure that the verification system does not lead to disclosure of information if it is not necessary. As tools like federated identity management have developed, it is often possible to use another service—another third party service—to verify the identity of the individual, which could be done using a variety of third party services that are out there. That means that the site owner that provides that pornography service would not need to collect and see all the details about the individual's age and so on, but that that is provided by a secure, accredited third party service.

The Government's Verify service has taken some good steps in looking at these different solutions about how identity management can now be developed using these third party services; so it is that sort of approach that we are looking to, rather than a very open-ended approach, as I said earlier, allowing a wide range of information. As to the level and standard of identity, I think that is a different question, but we are really focused on making sure the personal data collected is the bare minimum to make that requirement work.

Q251 Mark Menzies: All of us have constituents who are victims of nuisance calls. Many of these are vulnerable people, and elderly. What measures do you think we could add to the Bill to strengthen protection for such people?

Elizabeth Denham: I think a very good step in the Bill is to put our direct marketing code of practice on a statutory footing. I think that is really important. What I mentioned earlier about directors' liability is another really critical step. The Government have incrementally taken steps over time, such as mandatory call identification, that have helped us in our enforcement. Also, lowering the threshold for the requirement as to harm has allowed us to proceed with enforcement actions and fines; but at the end of the day when it comes to list brokers and sharing the data, the source of the data is the problem. That is why I am very keen to see directors' liability built into statute.

Q252 Mark Menzies: At the moment, for a customer to lodge an official complaint, they have to be able to identify the caller through a phone number or a website address. I know, because I have tried. They refuse to give that data. What enforcement steps can we introduce so these rogues and scam artists will reveal such information?

Elizabeth Denham: It is a serious problem. We have had more than 160,000 complaints in the last year from citizens about nuisance calls and nuisance texts. We have stepped up our enforcement. Some of the challenges come from the bad actors being outside our boundaries. Also, we are a member of various enforcement forums with memorandums of understanding that allow us to co-regulate and jointly investigate and enforce; but it is a difficult challenge and there are many tools that we need in our toolbox. I do not know whether my colleague has anything to add to that.

Steve Wood: The other area we have been interested in is to make sure that for all calls that are made for marketing purposes the line identification must be displayed, although as the commissioner says, when the operators are coming from abroad that poses additional challenges in terms of enforcing, and looking at the identity of those individuals.

Q253 Chris Skidmore: I have three questions. First, the commissioner's submission mentions the benefits of justified, proportionate data sharing and how it could improve the delivery of public services for the public and improve policy decision making within Government. Will you expand on that point with reference to the Bill? Which data-sharing powers would be particularly useful when it comes to future policy making and helping vulnerable customers?

Steve Wood: We can see the benefits of data sharing across a wide range of areas including some mentioned in the Bill, such as fuel poverty. We recognise the public interest in those areas. Our interest in the public interest definitions of different areas where better data can join up Government is to ensure that data sharing is always proportionate.

As a regulator under the Freedom of Information Act 2000, we understand the concept of public interest because we are constantly balancing that in a number of different areas. It is about ensuring that the data are minimised to the extent that those proper public interest objectives can be delivered.

We very much recognise the range of benefits of joining up digital public services. That range of areas in the Bill includes: public services; fraud, error and debt; and research and statistics. Those are well-recognised areas. Our concern is to ensure that the personal data used in those situations meet the requirements of the Data Protection Act 1998.

Q254 Chris Skidmore: This has been touched on already; we have heard a lot about technology solutions—having a wide variety of open data—being the answer to the Government's problems. Do you agree that, when it comes to the mechanism by which the data sharing takes place, it is essential to have legislation in place? That is a really important point, on which I would like to hear the commissioner's personal views.

Elizabeth Denham: Are you are asking whether the data-sharing provisions in part 5 of the Bill are necessary to authorise data sharing for these kinds of purposes?

Chris Skidmore: Yes.

Elizabeth Denham: I am not convinced that it is a legal requirement. The Data Protection Act contains provisions for data sharing. I think that the intention of the Bill is to clarify for practitioners, and to facilitate and give comfort about the sharing of information to support good public interest purposes. I see this Bill, in terms of data-sharing provisions, sitting alongside the Data Protection Act and giving some clarity. The codes of practice certainly need to give clarity. But right now there is a recipe for confusion because they are not aligned with one another and they do not have regard to the hierarchy that the data-sharing code, under the Data Protection Act, would assist.

Q255 Chris Skidmore: I have a final question. We have touched, in previous evidence hearings, on the nature of consent and individual knowledge about data sharing. What are the challenges with using consent-based data-sharing models? Do you accept that there is a necessity for data sharing to be used for the benefit of particular vulnerable groups in society without the need for consent?

Elizabeth Denham: The provision in part 5—the kind of data sharing that is envisioned—is not a consent regime. In many cases, citizens do not have a choice. There is one provider and the data need to be shared for good public interest purposes. Consent is not a silver bullet.

If, as is the case here, you are not using consent as a basis for sharing information, the other obligations rise. The need for transparency, safeguards, parliamentary scrutiny and independent oversight are even more important when you are not relying on consent. Those other obligations need to be strengthened.

Q256 Louise Haigh: Apologies for my brief absence from the Committee. Ms Denham, do you believe that the proposals in part 5 comply with the EU's general data protection regulation?

Elizabeth Denham: There may be some challenges between the provisions and the GDPR. Obviously the GDPR will come into effect in 2018 unless we leave Europe before that date. There are some new controls for individuals that are built into the GDPR. There would

be a need to carefully review the provisions of this Bill against the GDPR to ensure that individuals could have the right to be forgotten, for example, so that they could ask for the deletion of certain types of data, as long as that was not integral to a service. That is one example.

Steve Wood: To build on those points, the GDPR will strengthen the rights of individuals, particularly in the area of transparency that the commissioner has mentioned already. Article 12 talks about the importance of clear and accessible information to individuals. This Bill will need to operate alongside the GDPR's enhanced and strong requirements to make sure that the key concepts in that legislation are upheld. The other key concepts we take from European data protection more generally are the those of necessity and proportionality, which is where there will be some important areas to measure the intention of the Bill against the GDPR.

Q257 Louise Haigh: We have heard your concerns about the draft codes of practice, which I also find very concerning. Of course, we do not know because we have not seen any draft codes of practice. Would you advise Members to vote on Government powers of that nature without seeing such draft codes of practice? Who else should be consulted on such codes before they are made law?

Elizabeth Denham: We have seen some of the draft codes of practice, and we have been making comments, but I think it would be preferable for Parliament to review all the codes of practice so that they can see and discuss the entire framework before the passage of the Bill. The codes are an important part of the framework.

Q258 Kevin Brennan: To follow up on that, do you believe that we ought to see the draft codes of practice prior to consideration of these parts of the Bill in Committee?

Elizabeth Denham: That is my view, yes.

Q259 Louise Haigh: In your first speech as Information Commissioner you made much of the need for businesses to establish trust in relation to data sharing, with which I obviously completely agree. Do you think this Bill could have done more to put safeguards around data sharing in the commercial space?

Elizabeth Denham: Again, I think that trust and transparency go hand in hand. Part 5 is about Government data sharing and sharing with Government providers, so the focus there needs to be on transparency and trust. All Governments are really struggling with this issue, especially in the face of new technologies. How can you make transparency easy and understandable? We have just issued a privacy notice code of practice, which we introduced last Friday. What would help this Bill is if there was a reference to following our privacy notice code of practice, which again is across the public and the private sector and would lend more trust among the public.

Q260 Nigel Huddleston: The UK is one of the most advanced digital economies in the world, yet we heard from witnesses on Tuesday that, in terms of Government data sharing, we are well behind the curve, well behind other countries—that is partly because they are probably more focused on the opportunities. Does this Bill, in your experience, bring us more in line with the best practice you are seeing in other countries?

Elizabeth Denham: I think the approach that the UK is taking in this Bill is a responsible approach. My recommendations are to up the safeguards and improve the transparency. Breaking down the data sharing by type, function and purpose of data is a good way forward. There are some draconian data-sharing regimes in other parts of the world, which are concerning to data protection commissioners. I generally think that the approach here is right, but there could still be some strengthening of the Bill. That would go a long way to assuring more public trust and therefore more buy-in and participation in the digital economy and digital services.

Q261 Kevin Brennan: If the Bill were not amended in the ways you have suggested, where would that leave us in terms of privacy protection and data protection in the international league table?

Elizabeth Denham: We would not be first at the table in terms of privacy safeguards, and I think we have an opportunity for this Bill to be very strong in supporting the digital economy, digital services and data privacy. I very much encourage Parliament to look at the recommendations that we have made. If no amendments are made, yes, we are slipping behind. If you take a look at what Australia has done recently, they have put a provision in law that any re-identification of de-identified data has a sanction and a penalty next to it. I think that is an excellent idea, and it is another recommendation that we have made here. If no amendments are made, we will make this work from our perspective. We will be coming back to Parliament with a report on what is happening on the ground so that citizens can understand it.

The Chair: Thank you very much for some very clear evidence, Ms Denham and Mr Wood. We now release you.

Ordered, That further consideration be now adjourned. —*(Graham Stuart.)*

12.46 pm

Adjourned till Tuesday 18 October at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

DEB 20 National Farmers Union (NFU)

DEB 21 Media Lawyers Association

DEB 22 News Media Association

DEB 23 Local Government Association

DEB 24 Digital Accessibility Special Interest Group (DSAG), The British Computer Society

DEB 25 Alliance for Intellectual Property

DEB 26 Institute of Chartered Accountants in England and Wales

DEB 27 Internet Service Providers Association (ISPA UK)

DEB 28 Committee on Fuel Poverty (CFP)

DEB 29 National Union of Journalists

DEB 30 Andrews & Arnold Ltd

DEB 31 StepChange Debt Charity

DEB 32 Pete Moorey, Head of Campaigns, Which?

DEB 33 The Children's Society

DEB 34 Girlguiding

DEB 35 The Phone Mast Company Ltd

DEB 36 UK Information Commissioner

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

DIGITAL ECONOMY BILL

Fourth Sitting

Tuesday 18 October 2016

CONTENTS

Clauses 1 and 2 agreed to.
Clause 3 under consideration when the Committee adjourned till Thursday 20 October at half-past Eleven o'clock.
Written evidence reported to the House.

PBC (Bill 045) 2016 - 2017

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 22 October 2016

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The Committee consisted of the following Members:

Chairs: † Mr Gary Streeter, Graham Stringer

† Adams, Nigel *(Selby and Ainsty)* (Con)
† Brennan, Kevin *(Cardiff West)* (Lab)
† Davies, Mims *(Eastleigh)* (Con)
† Debbonaire, Thangam *(Bristol West)* (Lab)
† Foxcroft, Vicky *(Lewisham, Deptford)* (Lab)
† Haigh, Louise *(Sheffield, Heeley)* (Lab)
† Hancock, Matt *(Minister for Digital and Culture)*
† Hendry, Drew *(Inverness, Nairn, Badenoch and Strathspey)* (SNP)
† Huddleston, Nigel *(Mid Worcestershire)* (Con)
† Jones, Graham *(Hyndburn)* (Lab)
† Kerr, Calum *(Berwickshire, Roxburgh and Selkirk)* (SNP)
† Mann, Scott *(North Cornwall)* (Con)
† Matheson, Christian *(City of Chester)* (Lab)
† Menzies, Mark *(Fylde)* (Con)
† Perry, Claire *(Devizes)* (Con)
† Skidmore, Chris *(Parliamentary Secretary, Cabinet Office)*
† Stuart, Graham *(Beverley and Holderness)* (Con)
† Sunak, Rishi *(Richmond (Yorks))* (Con)

Marek Kubala, *Committee Clerk*

† attended the Committee

Public Bill Committee

Tuesday 18 October 2016

[MR GARY STREETER *in the Chair*]

Digital Economy Bill

9.25 am

The Chair: Colleagues, today we begin line-by-line consideration of the Bill. Before we start, I repeat that Members may, if they wish, remove their jackets during Committee meetings. Will everyone ensure that all electronic devices are turned off or switched to silent mode?

The selection list for today's sitting is available in the room. It shows how selected amendments have been grouped together for debate. Amendments grouped together are generally on the same or similar issues. The Member who has put their name to the leading amendment in a group is called first. Other Members are then free to catch my eye to speak on all or any of the amendments in that group. A Member may speak more than once in a single debate, and I will work on the assumption that the Minister wishes the Committee to reach a decision on all Government amendments.

Please note that decisions on amendments do not take place in the order in which the amendments are debated, but in the order in which they appear on the amendment paper. In other words, debate occurs according to the selection and grouping list, and decisions are taken when we come to the clause that the amendment affects. I hope that explanation is helpful.

We are still waiting for Mr Hancock, but we will continue. I will use my discretion to decide whether to allow a separate stand part debate on individual clauses and schedules following debates on relevant amendments. [*Interruption.*] The Minister has arrived.

Ordered,

That the Order of the Committee of 11 October be amended as follows: in paragraph (1)(c), leave out the words "and 2.00 pm".—*(Matt Hancock.)*

Kevin Brennan (Cardiff West) (Lab): We have no objection to the change, although I hope the Minister is a bit more punctual in future and takes more note of what the programme motion says, since we are supposed to start at 9.25 am and he has just arrived at 9.27 am.

The Chair: Thank you. This is not a flying start, colleagues. I am sure we can up our game as we move on. There will be no meeting of the Committee this afternoon. The Committee will next meet on Thursday at 11.30 am.

Clause 1

UNIVERSAL SERVICE BROADBAND OBLIGATIONS

Calum Kerr (Berwickshire, Roxburgh and Selkirk) (SNP): I beg to move amendment 56, in clause 1, page 1, line 14, after "the" insert "upload and download".

The Chair: With this it will be convenient to discuss amendment 83, in clause 1, page 1, line 15, after "services" insert "and mobile network coverage".

Calum Kerr: I welcome the opportunity as a new boy in the Bill Committee process to go first. This is the first time I have spoken in this place with my jacket off.

We support the universal service obligation and think it is a positive move, but one of our concerns is the lack of detail on it. The document put out by the Government last week was welcome and provided more context. However, something that is continually missing when talking about speed is that speed is about not just download but upload. We are trying to make that more explicit. The amendment is a small word change, but it is required as we start to recognise what broadband and connectivity is all about. It is more than just the headline speed at which we can download at certain times of the day.

Louise Haigh (Sheffield, Heeley) (Lab): I rise to support amendment 83, which stands in the name of my hon. Friend the Member for Cardiff West and I, and amendment 56, tabled by the hon. Member for Berwickshire, Roxburgh and Selkirk.

All members of the Committee agree that we must do everything we can to ensure that individuals have access to superfast and, soon, ultrafast broadband. It is not only important but, in an ever more connected age, an absolute necessity for both businesses and residences. That is why we support the Government's tacit aim to designate broadband effectively as a utility in the same way that water and energy are classed as a must-have in the modern world.

We will speak later about our concerns about the universal service obligation, but broadly we believe that there is coalition of support for a much more ambitious USO. That is why we were pleased to hear that the USO can be amended in secondary legislation later when it becomes outdated. However, I fear that, by the time it is introduced, it will already be becoming seriously outdated and, indeed, by 2020, it may feel like a relic of a bygone age when superfast and ultrafast broadband, even in rural areas, will be readily accessible. That is the subject of our new clause, which we will consider shortly.

On amendment 56, it is absolutely right to specify upload and download in the Bill. As we have seen all too often, businesses and residences see a particular speed advertised with no correlation between what they can download and upload. For someone with a business and working from home, accessing online services and transferring files to them can take a lot of time if the upload speed is not up to scratch. That is an obvious cost to businesses. It is not merely an irritant, but a loss in pounds and pence, and in productivity to the UK economy.

There is no mention in the Bill of upload speeds in the USO. That leads to a broader problem of lack of ambition throughout the Bill. Factors such as distance from the telephone exchange and other considerations such as old household wiring can slow down speed. That is why the USO, although welcome, will seem extraordinarily dated in just half a decade, when the roll-out of the USO will have been completed and there will be little appetite for providers or the Government to return to those hard-to-reach places for some time.

On tackling upload and download speeds, we would have preferred the USO to be under the superfast designations from the beginning. An example of the impact of superfast roll-out on one small business demonstrates this perfectly. Within the first year of having superfast broadband, the business reported a 30% increase in sales. We should be ambitious for our small businesses. Instead, this USO potentially condemns them to distinctly average speeds for a decade.

Amendment 83 is a probing amendment to test the Government's ambition, which certainly needs to be tested throughout the Bill. It is based on a simple principle. We are at the start of a digital revolution that will transform how we work and how we communicate and interact with one another. Access to water and electricity in the home bookmarked our evolution to a more civilised society, so the essentials of the modern era should be similarly guaranteed. The Bill does that in part for broadband and we strongly believe it should cement further ways to roll out universal or near universal coverage for mobile communication.

We broadly support the changes to clause 2 and the amendments to the electronic communications code. Assisting mobile network operators in some of the challenges facing them is obviously important. That includes access to land and knocking down some of the absurd hurdles they must jump through to make what most people would consider sensible adjustments to infrastructure to update existing technology with little visual impact.

The Bill contains changes to a highly complex piece of legislation, which the industry has been seeking to change for some time. Indeed, the Law Commission commented that the legislation is not one of Parliament's finest efforts. We recognise that. It clearly is not. However, although simplification and amendments to the code are important, there can be little doubt that mobile network operators will receive a substantial boon. That is why this amendment is so important and it is puzzling that the Government did not include it.

Evidence to the Committee suggested that the Bill could reduce the cost of site rental for mobile network operators, which make up a substantial portion of their costs at 40%. With the operators receiving effectively all they have asked for—no one blames them with such a complex and restrictive code—it is clear that our sights must be set firmly on delivery and the Government should not set their ambitions too low. That is what our probing amendment covers and why it is important that, during the passage of the Bill, we receive at least some commitment to improved targets on mobile network coverage.

We are slightly dismayed that the industry will benefit from such a clearly beneficial piece of legislation and that the Government will impose few or no conditions on them beyond what has already been agreed. We are aware that the £5 billion investment and the statutory target were tied to changes to the code, but we are not convinced that the benefits for consumers are greater than the benefits that are being approved for mobile network operators and we would certainly welcome greater reassurance on that from the Minister.

Let us look quickly at the targets set out in the binding agreement in 2014, signed by the then Culture Secretary, the right hon. Member for Bromsgrove (Sajid Javid). They were: guaranteed voice and text coverage by each operator to 90% of the population and full coverage to 85% by 2017. Currently, only 46% of premises have access to 4G from all mobile network operators and a substantial 7% of the population—1.5 million homes nationwide—do not have basic voice or text coverage across the three networks.

The failed Mobile Infrastructure Project, supposed to reach the final notspots, closed in 2015-16. It had erected only 76 of 100 masts, leaving a substantial number of homes without the prospect of having complete voice and text coverage. Given that 71% of businesses rated mobile network access as "critical" or "very important" to their business we believe that mobile network coverage, as broadband is tacitly designated in this Bill, should also be considered a utility. That is what our probing amendment seeks to test.

Clearly, everyone in the country, if asked, would agree. Businesses that rely on mobile networks, local authorities and individuals that use them to communicate would welcome a right to have mobile network coverage within their place of work or at home. This is extremely achievable but the Opposition are concerned that institutional defensiveness from the major network operators is getting in the way of full or near universal coverage for consumers. More than 99% of residents in the UK have access to 2G or 3G of some kind and 90% have access to 4G of one kind. However, for all operators, the figure drops to just 46%.

The infrastructure is in place and it understandably infuriates people working in an office or at home when their colleagues can get network coverage and access to data services while they cannot. While we recognise the concerns around commercial incentive, surely it is right that, once the current phase of the roll-out is complete and significant gaps in full coverage across all mobile network providers still remain, we at least reconsider the case for national roaming and national infrastructure, as is commonplace on the continent.

We are a relatively small island and it should not be the case that commercial defensiveness makes the aspiration of near universal coverage far from a reality. That is why we will table another new clause relating to this part of the Bill to test it before the whole House. It will establish a review of the roll-out of mobile network coverage, which is a critical piece of infrastructure for businesses, residents, and emergency services. As yet, due to what appears to be institutional wrangling and commercial defensiveness, this coverage is not being extended to the entire population in a way they would expect.

As we know from evidence given to the Committee last week, currently more than 60% of communications towers globally are held in an entity separate from the networks that use them. The review will have to take another look at greater diversity in mobile infrastructure and national roaming in order to deliver a universal service. In countries such as the United States, the figure for independent infrastructure is more like 90%. In the United Kingdom, as the Committee knows, it is more likely that that infrastructure is erected on an economic case for the network and operated for the benefit of the network that makes the investment. That is fine up to a point, in that it undoubtedly encourages competition among network providers in areas where they can receive a substantial return, but it makes

[Louise Haigh]

universal network coverage more difficult to achieve when there is 90% of coverage for 4G of some kind, but only 46% for all kinds.

Our review will also look at open data and how, by routinely publishing costs, location of masts, service quality and plans for roll-out, consumers, particularly in rural areas, but also in urban "nearly and notspots" can make better decisions about which network operator to use.

Throughout the Bill, Labour Members will look to the Government to turn the £1 billion concession, however welcome, for the mobile industry into something approaching a near universal service for the country. We should be ambitious about the kind of mobile network coverage we can deliver and not shy away from the challenge.

The Minister for Digital and Culture (Matt Hancock): It is a pleasure to get going on the Bill proper and to respond to the first amendments. It is undoubtedly true that reliable fast broadband is now seen as the norm and not the nice-to-have—that unites the whole Committee. We are committed to ensuring that everyone can enjoy the benefits of decent broadband connectivity. It was in our manifesto and it is one of the core purposes of the Bill.

Amendment 56 seeks to ensure that the guidance around the characteristics of the connection is in the Bill—for instance, that the USO can include both upload and download speeds. I entirely understand the intent and the clause as drafted is sufficiently flexible to allow for that. The statement of intent that the hon. Member for Berwickshire, Roxburgh and Selkirk referred to, which was shared with the Committee last week, outlines a broad range of factors that need to be considered in designing the USO, including the level of service. That includes not just download and upload speeds, but the appropriateness and level of other parameters such as latency and capacity—and potentially customer service.

Ofcom has been commissioned to provide detailed technical analysis and recommendations to support decision making on the design of the broadband USO. Allowing Ofcom to do that work and ensuring that it is specified in detail is better than putting that on the face of the Bill, because it will allow us precisely to future-proof the design of the USO in the way that the hon. Gentleman demands. The decisions on the scope of the USO, the technical specifications, including download and upload speeds, and any service standards need to be taken in the light of Ofcom's advice, which is to be provided by the end of this year, before the Bill concludes all its stages.

Amendment 83 seeks to include mobile coverage within the scope of the guidance on the broadband USO. The hon. Member for Sheffield, Heeley made many good points and put them eloquently and powerfully. The position is that the universal service directive, which currently provides the regulatory framework for the broadband USO, is about the provision of a fixed internet connection of an appropriate speed to a fixed location. Depending on who is designated as the universal service provider or providers, and on the specification of the USO, there is scope for the USO connection to be provided using mobile technology. However, the directive does not require the USO to include mobile geographic coverage.

In any event, as the hon. Lady said, through the use of licence conditions we have delivered on a commitment to near universal mobile coverage. I would question, therefore, whether there is a case for a USO for mobile, because of those commitments. The licence obligations to which the hon. Lady correctly referred are part and parcel of a deal that included the reform to the electronic communications code—so everything that she asks for was covered in that deal. It is precisely because the two are linked that they are fair, both to the industry and, more importantly, to consumers. As she said, the mobile network operator roll-out plans provide for £5 billion of investment, as a result of that deal and commitment.

Christian Matheson (City of Chester) (Lab): When we talk about notspots, we are not just talking about parts of the highlands of Scotland. Indeed, parts of rural Cheshire, just a few miles from Chester, are not covered. Does the Minister honestly think that the deal he is talking about is working well?

Matt Hancock: The deal is to be delivered by the end of 2017. We will hold the MNO's feet to the fire, because it has a legal and contractual requirement to deliver on that by the end of next year. I know the area of the country that the hon. Member talks about very well—it is where I spent the first 18 years of my life. There are some parts where the mobile signal is no better now than it was back then. In Suffolk this weekend, I found large swathes of my own constituency to be without a mobile signal, so I feel the hon. Gentleman's pain. That is why delivery on this commitment by the MNOs is so important. The deal as agreed, which is a legally binding commitment, will result in nearly 100% of UK premises receiving 3G/4G data coverage, and 98% coverage to the UK landmass by the end of 2017.

That includes the new emergency services contract, which is being delivered by EE. That has to have a huge spread over the geography of the UK, and the same infrastructure will be available to customers of that provider. The deal sufficiently provides for the demands that were eloquently put by Opposition Front Benchers and, more importantly, clause 10 will enhance Ofcom's powers to enforce the licence conditions, which we all agree are sensible, against the MNOs.

9.45 am

Calum Kerr: We welcome anything that increases mobile coverage commitments. The Government have done a deal with mobile operators for increased coverage, but the people who will pay for that increased coverage are the local authorities, the Forestry Commission and the landowners—they will suddenly find their rents drop through the floor to nothing. The Government could have revisited the annual licence fees that they collect from the mobile operators and done a deal on that basis, rather than making someone else pay for the increased coverage.

Matt Hancock: The hon. Gentleman leaps ahead to the next clause, and no doubt we will have that debate, but I think it is entirely fair for landowners and those on

whose land the infrastructure is provided to get a similar return on the value of the land to them, rather than on the value once the land has this infrastructure. That is the change that we will be making because, ultimately, we have put in place a deal to get better service for customers, to get more geographic coverage and to reduce the costs of rolling that out, which is the right deal for the country.

As the hon. Member for Sheffield, Heeley calls for exactly what is to be delivered and as there are other clauses in the Bill to ensure that that delivery happens, I hope that the hon. Member for Berwickshire, Roxburgh and Selkirk will withdraw his amendment.

Calum Kerr: I am willing to withdraw the amendment because the document that came out last week provides a level of clarity. There remains a concern that the Bill is light and passes off the detail, which is both an opportunity and disconcerting. This is an opportunity to do something transformational with broadband, but the Bill is not transformational in itself. It will come down to the detail. We were keen to see more specific clarification in the document, but I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Calum Kerr: I beg to move amendment 57, in clause 1, page 2, line 4, at end insert—

"(4A) In subsection (4) after "OFCOM" insert ", the devolved administrations in Scotland, Wales and Northern Ireland,"

The Chair: With this it will be convenient to discuss new clause 10—*Procurement process*—

"(1) The Secretary of State must ensure an open procurement process is held in respect of the allocation of the universal service order.

(2) The Secretary of State must appoint a body to undertake an alternative dispute resolution role to arbitrate in instances of disagreement over designation."

Calum Kerr: We have discussed the USO and what it could mean, particularly in last week's evidence sessions, but there is an opportunity to go further. If the USO is simply passed over to BT because it is willing to provide 10 megabits to everybody by 2020, I am afraid that 10 megabits will be the ceiling rather than the floor. We should be considering how we facilitate a USO that empowers communities and devolved Administrations to go further. The Scottish Government have made a commitment to reach 30 megabits over the course of the Parliament, by 2021, and a flexible USO—particularly a voucher scheme, rather than a monetary or contractual agreement with the likes of BT—could help them to deliver.

Through our amendment we seek to ensure proper consultation and the involvement of not only the Scottish Government but all the devolved Administrations. Previous dialogue has been largely tokenistic, so we need to set it out in the Bill and insist that there is proper consultation that empowers the regions of the UK to take the USO as a platform, as a floor of their ambition, rather than as a ceiling.

Louise Haigh: New clause 10 would require the Secretary of State to ensure that there is a completely open procurement process, and an alternative dispute resolution role to arbitrate in instances of disagreement over the designation.

We welcome the Minister's clarification last Wednesday about the statement of intent in relation to the USO. However, we want to mention—I am sure it will not be the first time in this Committee—how rushed and unsatisfactory the publication of Bill documents has been. Some of the documents that should accompany the Bill are yet to be published. I know from talking to people in the industry that that is their concern as well.

I was pleased to note from the statement of intent that the Minister intends the USO to act as an effective complement to commercial, community and publicly-funded roll-outs of broadband, and that it will not displace any planned roll-out of higher speed broadband. There is an argument that there should be a combination of the USO and Broadband Delivery UK to fulfil the last 5%, given that the work of BDUK is still ongoing.

The industry has raised concerns that a USO could risk distorting the UK's broadband market and potentially hamper the goal of universally available good quality broadband access, if it is not designed in the right way, with the industry and consumers in mind. I note what the Minister said earlier about Ofcom's being better situated for future-proofing, and I agree. I will discuss that on clause 1 stand part if that is acceptable, Mr Streeter. It is important that there should be parliamentary scrutiny of Ofcom's role in the consultation.

The USO should not displace any planned roll-out of higher speed broadband. I mentioned the industry's concerns that it could distort the UK broadband market. If it is done badly, there is a risk that it will undermine commercial investment, in hard-to-reach areas where industry is able profitably to deliver good quality broadband at competitive prices, or by passing on to existing users any rising costs that come about as a result of the USO.

For example, TechUK has argued that the Government should strictly limit the USO to the most remote areas of the UK. Failure to limit the availability of a USO tightly means there is a risk that commercial investment will be diverted, and that there will be wasteful intervention. It is suggested that urban areas, and any rural areas where there is a prospect of market investment, should be explicitly excluded from the USO. It would be helpful to hear the Minister's thoughts on that and on how Ofcom will take forward the consultation.

Furthermore, satellite connectivity should be considered in scope for the most remote households. It is already available to virtually all households in the UK, and it can be the most cost-effective route to providing superfast broadband. Essentially, we believe—and I hope that this is the Government's intention—that the USO should be seen as a safety net to prevent social exclusion, facilitate access to online public services, and encourage social and economic development.

The question is whether we need a more transparent and competitive regime for that to happen. Smaller providers are currently put off, because they do not know whether BT currently has plans for, or is working in, any place at any given time. There are allegations from other players in the industry that when smaller providers move into areas where BT is not investing or working, it swoops in, purely to crowd out the competition.

The Government's statement of intent cites thinkbroadband estimates that suggest about 4% of premises are unable to receive speeds above 10 megabits per second. That really should be open data available to

[Louise Haigh]

the public and all service providers. We clearly need to know where the assets are, who can do the work and where the cabinets are. There should be a register that contains all that information and is available to make the market more competitive and efficient.

For the process to be trusted, transparent and fair, all the information should be in the open and part of the procurement process, allowing as many providers as possible to participate to ensure that the playing field is as level as possible. It was therefore also welcome that the Government's statement of intent included consideration of different types of providers, such as regional providers and smaller ones using innovative technologies.

Clearly, it was less than desirable that the BDUK process ended up with only one contractor. We do not believe that we can lay the blame for that entirely on the design of the contracting process, but we think that much greater care needs to be given in the future to ensuring that a richer diversity of providers is catered for in the process.

We should also ensure that the Government are not effectively blackmailed by providers to protect their market position. The mess-up around the procurement process for the roll-out of the broadband framework in 2012 left BT as the only supplier, after Fujitsu pulled out. That was condemned by the Public Accounts Committee for failing to deliver meaningful competition or value for money.

It is also important that the Government consider different tenders for the different problems we are faced with in the last few per cent. For example, we could have one contractor for the rural areas and another for the inner-city areas, as they obviously present different challenges. We could do with some further clarity from the Minister on that.

The amendment is merely designed to be probing. Does the Minister genuinely envisage that anyone other than BT will implement the universal service obligation? How will the tender process be designed? Given the Government's commitment to encouraging SMEs and community providers to tender, will the likes of Broadband for the Rural North be considered? If the Minister can provide some clarity on that either now or later in writing, I will not press the new clause to a vote.

Matt Hancock: I will try to respond to all the points as briefly as I can, because the hon. Lady in particular raised a huge number of pertinent points. The two Front Bench teams are very much on the same side on this matter, so I want to give her the reassurance I can, but as quickly as I can, given that she asked a huge number of very good questions.

First, amendment 57 is about ensuring that devolved Administrations are consulted. Section 65(4) of the Communications Act 2003 already imposes a requirement to consult with Ofcom and other such persons as the Secretary of State considers appropriate. Since the broadband USO is an extremely important consumer measure that will benefit all parts of the United Kingdom, I cannot conceive of a situation where the devolved Administrations would not be consulted as plans to introduce a broadband USO are put in place, so I do not think the amendment is necessary. We would expect wide and extensive consultation across a wide cross-section of stakeholders.

We will consult on proposals for secondary legislation once we have considered Ofcom's report. The second consultation will cover the detail of the USO and provide an opportunity to comment on the design of the USO and how it is implemented. I hope that that takes into account the concerns of the hon. Member for Berwickshire, Roxburgh and Selkirk.

New clause 10 would require the Secretary of State to ensure that there is an open procurement process for the designation of universal service providers. Again, that is covered under section 66 of the 2003 Act, which enables Ofcom to set out the procedure for designation in regulations and requires that the procedure

"be efficient, objective and transparent; and…not to involve, or to tend to give rise to, any undue discrimination against any person".

I think that addresses the concerns as directly set out in the new clause.

It was music to my ears to hear a Labour Front Bencher talk about the need for a competitive regime, which clearly puts her at odds with her leadership. I agree in principle that the USO is designed as a safety net. Some people want much greater broadband speeds and connectivity, and it is not unreasonable for people to pay if they want very high connectivity speeds, but we believe there is a public service in having a universal service so that everyone is given the opportunity to have decent connectivity on which to live their lives. As the hon. Lady said, that could involve communicating with the Government, which is increasingly done online, or engaging in communications around healthcare and basic banking, and 10 megabits per second allows for that.

The hon. Lady mentioned satellite technology. Satellite is in scope—in fact, all technologies are in scope. The legislation is purposely designed to be technology blind. What people care about is connectivity. The technology is for the implementation, the policy makers and the engineers. Citizens care about how good, reliable and quick their connectivity is.

The hon. Lady made one error and I want to bring her up to speed. It is not true that there is just one contract in BDUK. Its open competitions have now been won by BT, Gigaclear, Call Flow Solutions, Airband, UK Broadband and Cotswolds Broadband. There has been progress since the Public Accounts Committee report that she mentioned and a whole plethora of providers have now successfully bid into the BDUK contracts.

Louise Haigh: I am aware that in phase 2 other providers have been successful in tendering, but in phase 1, as the Minister is well aware, there were problems and Fujitsu pulled out, leaving BT as the only contractor. That is why our new clause goes further than the law currently enables Ofcom to go, by ensuring the appointment of a body to undertake an alternative dispute resolution role, so that we can learn the lessons from BDUK. I appreciate that the Minister may not be able to commit to that today, but will he at least take it away and consider it for the USO?

10 am

Matt Hancock: I think that those lessons were learned about three or four years ago, so I do not think that the new clause is needed. That is why, in the second phase of the BDUK contracts, we managed to succeed in getting six different providers to bid successfully, precisely because we learned the lessons from what I agree was an unsatisfactory outcome of the first contract. So the hon. Lady is right; it is just that I think that that work has been done and so it is not necessary to legislate on it.

The hon. Lady also made the point about open data on where cabinets have been put in place and part-fibre broadband or superfast broadband has been delivered. BT has given me a commitment that it will make those data openly available. I have yet to see them, but I look forward very much to their being made public very soon; I was given that commitment some weeks ago by BT and I am surprised that they are not yet public. I will take that up with BT immediately after this—I wonder whether it might have heard what I have just said.

Given those assurances both on consultation with the devolved Administrations and on delivery of a competitive regime, with distortions to competition taken into account by Ofcom, I hope that hon. Members will withdraw or not press the amendments.

Calum Kerr: I thank the Minister for his words and I take on board his comments, but I will not withdraw the amendment. The challenge is the degree to which consultation is effective and actually feeds into the process. I know from personal experience, having met Ofcom and spoken to the Scottish Government, that much of the engagement to date between the Scottish Government and Ofcom on areas such as the USO has been tokenistic. It needs to go much further.

I have myself facilitated a workshop with the Scottish Government, the Scottish Futures Trust and Ofcom. Sharon White has met Fergus Ewing, the Minister responsible for these matters in Scotland. I think that we have to be far more explicit in legislation, because that will ensure not just a tokenistic consultation but proper engagement in the process so that in areas where the Scottish Government have set a higher target—30 megabits, superfast, for 100% of the Scottish population—the USO is designed in a way that supports and helps that. If it is done in a UK-wide, pragmatic sense, that will not help, so I will press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 9.

Division No. 1]

AYES

Brennan, Kevin
Debbonaire, Thangam
Foxcroft, Vicky
Haigh, Louise
Hendry, Drew
Jones, Graham
Kerr, Calum
Matheson, Christian

NOES

Davies, Mims
Hancock, rh Matt
Huddleston, Nigel
Mann, Scott
Menzies, Mark
Perry, Claire
Skidmore, Chris
Stuart, Graham
Sunak, Rishi

Question accordingly negatived.

Calum Kerr: I beg to move amendment 58, in clause 1, page 2, line 13, leave out "The Secretary of State may" and insert—

"Within 12 months of this Act coming into force, the Secretary of State shall".

The Chair: With this, it will be convenient to discuss the following: amendment 59, in clause 1, page 2, line 16, at end insert—

'(1A) The report shall consider the comparative costs of introducing the universal service order in rural and urban areas, and identify measures to ensure costs in rural areas are not disproportionately higher than in urban areas."

Amendment 82, in clause 1, page 2, line 21, at end insert—

"72B Universal service order: annual report

(1) The Secretary of State must lay before each House of Parliament an annual report about the implementation of the universal service order for all areas pursuant to the provisions of this Act.

(2) The annual report must include information on—

(a) the number of premises that have been supplied with the minimum download speed as specified in the USO secondary legislation

(b) the number of premises that have been required to cover some of the cost of connection,

(c) of the premises in (b) the average cost of connection per premises covered by residents, disaggregated by local authority area,

(d) the number of premises that have chosen not to be connected via the universal service order after being provided with an estimate, and

(e) the amount of time on average it takes to provide an estimate and connect a premise, disaggregated by local authority area.

(3) The annual report must be laid before each House of Parliament as soon as practicable after 31 March each year."

New clause 9—*Review of broadband delivery UK*—

'(1) The Secretary of State shall commission an independent evaluation of the delivery of superfast broadband by Broadband Delivery UK.

(2) The evaluation under subsection (1) shall consider—

(a) The financial impact on customers of a single provider delivering superfast broadband;

(b) Value-for-money for the taxpayer, and

(c) Competition in the delivery of superfast broadband.

(3) The Secretary of State shall lay the report of the review before each House of Parliament by 1 July 2018."

Calum Kerr: That Division was rather exciting; it woke everybody up and got them away from their iPhones and iPads.

Inevitably, the focus of this first part of the Bill is on the USO, trying to make it fit for purpose and ensuring that we get the outcome that I believe we all want: better connectivity all across the country.

Amendments 58 and 59 would put into the Bill something ensuring a proper evaluation of how this USO is implemented and how it is borne out. There is a real concern that, as I have heard, the USO could follow similar lines to the telephony USO. If we remember what the telephony USO is, people have the right to demand a phone line up to a certain cost; I think it is £3,400, but I stand to be corrected if that is wrong. Thereafter, they pay the difference.

[Calum Kerr]

If we really mean universal broadband, what we must not have is a scenario whereby, although there is a USO, people in rural areas still end up paying more for a lesser service, which is what we have today. I am sure that we have all had complaints from constituents that, "I pay the same amount per month as someone else in an urban area for an on-the-surface 10 meg service, but I get only 1.5 or 2 meg."

Let us accept that that is the reality on the ground—that people pay different amounts for different levels of service—but let us also put something in the Bill that actually means that stock is taken and a review is conducted. It should seek to ensure that in the future such problems do not happen and that people in rural areas—in fact, any people with a poor broadband service—get a fair speed with a fair price and all the other measures that the Government are introducing, as a result of the USO.

I should say at this point that we also support amendment 82, which puts rather more meat on those bones that I have just outlined.

Louise Haigh: We have had quite an exciting start to the Committee. The Minister turned up late; one Government Member went astray; and we nearly had a Government rebellion from the new PPS in the voting. *[Laughter.]* I hope that we continue in this vein. I also hope that the Minister is sensitive with his brand new PPS; I hope that she is not up for the chop this early in their relationship.

I will speak to amendment 82 and new clause 9, which would place a requirement on the Secretary of State to lay an annual report before Parliament on progress of the USO and to commission an independent review of the progress of BDUK respectively. As we have said, we very much welcome the USO. It could be somewhat more ambitious and it should extend to mobile, but we believe that it is an important step in the right direction. The purpose of these amendments is for Parliament to be kept abreast of progress, both on the USO and on the continued roll-out by BDUK.

Clearly, there have been issues with the roll-out of BDUK, not least the fact that, as we have just discussed, BT was the sole beneficiary of the contract in phase 1. If we are to avoid a repeat of that, we need to ensure not only that the procurement process is right but that Parliament takes a proper oversight role in assessing the performance and whether it is on target.

For example, we heard on multiple occasions last week about the problems around the fact that business parks have not been connected to superfast broadband, let alone ultrafast broadband. Similarly, we have heard of issues around local authorities being threatened with legal action should they so much as discuss procurement with a supplier other than the official one.

MPs' mailbags are full of correspondence on issues about Openreach and about broadband more generally, so it is only right that they should have full disclosure on progress on an annual basis.

The first phase of the procurement process for BDUK included a mandatory requirement for copper local loop access rather than fibre, which meant old and outdated technology was being used and paid for with taxpayers' money, entrenching the problems with existing infrastructure and holding back the future-proofing of the network.

There was also a requirement in that procurement process for the use of open access networks, which are the slowest option available, as opposed to local access networks which are much faster. It is good to see Ofcom consulting on the design of the USO over the next couple of months, and I am sure that they will learn from these mistakes. It is vital that this process is as transparent as possible, to ensure the best structure and outcome for consumers across the country.

On Second Reading the Minister called on Members to promote the take-up of broadband in areas where BDUK is providing access to broadband, so that local communities could benefit from the gainshare. That is absolutely right, and I am confident that relevant Members will be doing just that, but what are the Government doing to promote this? Are they, for example, paying for advertising and promotional materials? Is the Minister confident that access is the same as capacity, and that there is sufficient capacity in the cabinets in those areas where BDUK has been rolled out to allow take-up?

A very compelling case was put forward on Second Reading by the hon. Member for North Swindon, who described the problems he had with his local council and the lack of availability for his constituents even after BT had ticked all the boxes in that area under the BDUK contract. It seems to us that common sense dictates that BDUK should be measured on take-up rather than simply access to broadband. This is so that areas can be assured of their return from the gainshare, and also so that we can be absolutely sure that residents are able to use the broadband in practice rather than having access to it only in theory.

It is also important that we have a review of the progress of BDUK to consider whether they should be given any further direction or powers in relation to accessing land or infrastructure, for example. The statement of intent published last week references the question of how often, and on what basis, a USO may need to be reviewed. Again, we would have liked to see that in the Bill. I hope we can have clarity from the Minister on that because, as we all know, the minimum speed and quality of access that we all require are travelling in one direction only and at an exponential rate. It is difficult to imagine that 10 megabits will still be considered acceptable in 2020, let alone 2025, given that superfast is now defined as 24 megabits. The European Commission is hoping to set a new target for broadband and mobile coverage, which will aim to ensure that all European households can get a minimum internet download speed of 100 megabits per second by 2025.

The existing digital agenda for Europe programme currently seeks to ensure that every home in the EU can access a 30 megabits-plus capable, next generation access, superfast broadband connection, with 50% subscribed to a 100 megabits-plus service by the year 2020. At present it is widely expected that BT's commercial G.fast roll-out, which will commence from next summer, and Virgin Media's ongoing cable network expansion should bring broadband speeds of around 100 to 300 megabits to most of the UK, around 60% to 70%.

Calum Kerr: The hon. Lady is making some excellent points. The EU, which has apparently been holding us back for so long, is now leaving us behind as they run

off to 100 megabits by 2025 while we set our ambition at 10 megabits by 2020. That is an excellent point. It comes back to the critical importance of how this USO is designed. Simply allowing BT to continue with more of the same, stretching their copper assets further, is not going to hit the long-term vision that is required. That is what this Government need to do. They need to set a target for fibre. I hope that when the Minister speaks tomorrow morning at the broadband convention he will say more about that, because we need to show far more ambition.

The Chair: Order. I remind all colleagues that interventions should be short.

Louise Haigh: I absolutely agree with the hon. Member for Berwickshire, Roxburgh and Selkirk. Several issues relating to our withdrawal from the European Union will affect not only the measures in the Bill—particularly on spectrum divergence—but the UK digital economy as a whole. I know that the industry is extremely concerned about the implications of Brexit.

BT has also promised to extend G.fast to most UK homes by 2025, but this is unlikely to push the overall coverage figure much beyond 60% to 70% as by then Virgin Media will have already been able to deliver into much of the same areas. That goes to the point made by the hon. Gentleman, because it leaves the final third who are still out of the loop. On top of that, 5G-based mobile broadband should also be able to deliver 100 megabits-plus, and that will play a role, although mobile performance is notoriously variable and delivers much slower speeds outside urban areas. Once again, the challenge will be to bring ultrafast speeds to the final third, which would probably require a repeat of the Broadband Delivery UK programme, albeit with G.fast instead of VDSL as the main technology, and another round of public funding. That is why we need those commitments to fibre and other technologies. The former Digital Economy Minister has already hinted at that.

10.15 am

We must review the progress of the USO on at least an annual basis, hence amendment 82, which sets in stone how often the USO should be reviewed by Ofcom to ensure that those who rely solely on the USO will not be left behind while the rest of the country develops faster broadband and mobile coverage. It is right that the minimum service level is set in secondary legislation so that it can be easily amended as and when necessary, but we must know how the USO is to be reviewed and how Parliament and consumers will be involved in that process, rather than an arbitrary target being set that is convenient for Government and providers.

It is good to see that the Government will be consulting on proposals for secondary legislation once Ofcom has reported, including on the detail of the USO and its design and implementation. It would also be helpful to know who the Government intend to consult. Will it be a full public consultation in the usual timeframes or will it be with Government-appointed consultees?

Given that at this stage we are being asked to vote based on very little detail, we should have the opportunity to hear from the Minister annually about the progress of roll-out and how on target that is. Hon. Members of all parties will have an interest and will want to be kept updated, not least because the Government have had to revise the target dates for several of their broadband commitments a number of times. The original date of completion for universal access to 2 megabits was 2012, but the coalition Government changed that to 2015 and later revised it to 2016.

On superfast, there has been a similar history of delay and missed milestones. The Government had originally targeted 2015, but revised the target to 90% of homes by December 2016 and then altered it to 95% of premises by 2017. It will not now be fully delivered until 2022. Labour left office with fully costed plans for universal broadband access by 2012, something that has still not been achieved by this Government. Five million people still do not have broadband, thanks to the Government's bungling procurement and lack of vision for a competitive, future-proofed digital infrastructure. It is only reasonable that the Minister reports to the House on an annual basis on the progress made on the very laudable USO and the continued roll-out of BDUK.

Christian Matheson: It is a great pleasure to see you in the chair this morning, Mr Streeter. May I also say what a pleasure it is to see the Minister for Digital and Culture. I think it is the first time we have served together. He is of course a Cheshire man like me, and we are all very proud of him in Cheshire. Indeed, when I met headmaster Chris Ramsay of King's school recently, he asked me to urge the right hon. Gentleman to come back and visit his alma mater. I encourage him to do so, though he might not want to do any political campaigning while he is there.

I rise in support of amendment 82 in the name of my hon. Friend the Member for Sheffield, Heeley. It is absolutely right that what is becoming a piece of essential national infrastructure, and one which is developing all the time, should come under the purview of Parliament. My view on the roll-out of broadband, which is not shared by all hon. Members, is that BT has done a very good job of getting a decent proportion of the country up to a decent standard fairly quickly, using existing infrastructure. However, as we have seen, the continued reliance on copper local links can hold back the development of that infrastructure. There has been very little scrutiny of that infrastructure development in Parliament. It is good to see my fellow members of the Select Committee on Culture, Media and Sport, the hon. Members for Mid Worcestershire and for Selby and Ainsty, in this Committee. Our Select Committee's report was one of the few areas where Parliament has been able to scrutinise the development of broadband, and scrutinise we did, strictly and fairly, as I am sure the hon. Gentlemen would agree.

Calum Kerr: I feel somewhat left out because the hon. Gentleman does not know where I went to school, but never mind. He is making an excellent speech on this whole area of BT and its contract. I agree with him. It is very easy to kick BT, but it is delivering on its contract and what it has been asked to do. Does he agree with me, though, that as we set a 10 megabits objective, it is important also to consider the future, because if BT continues to sweat copper assets we are going to come unstuck at some point. Simply going for now and not thinking about tomorrow is too short-sighted and it is catching up with us already.

Christian Matheson: I absolutely agree with that suggestion. BT has used copper assets well to manage to get a large proportion of the country up to a decent standard quickly. The Minister made a good point in the evidence sessions when he challenged the BT director of strategy on the number of premises that were connected to fibre, by suggesting that in fact those premises were all connected not by fibre, but by copper loop to a box that was connected by fibre. The Minister was absolutely right to make that proposal. My hon. Friend the Member for Sheffield, Heeley made an extremely valuable point about the controversies that continue within the telecoms industry. It is not an industry that sits comfortably with itself; everyone seems to be at each other's throats. There is competition, there is healthy competition and there are outright dog-eat-dog hostilities. I wonder whether they fight too much among themselves and take their eyes off the ball when it comes to serving the consumer. A proper, annual parliamentary process that can focus the attention of the industry, as well as of Ministers, and give Parliament the chance to consider how this important and critical piece of national infrastructure is rolling out would be extremely valuable. To quote the Minister, it would hold the industry's feet to the fire annually.

The hon. Member for Berwickshire, Roxburgh and Selkirk is right: we should not be limiting our ambition. The amendment proposes an annual review to see how far we can take our ambition in the forthcoming period. I hope to see—as the hon. Gentleman suggests—a roll-out of fibre to premises as the baseline standard in coming years. The one concern I have about the industry, which the amendment touches on, is that we will be driving forward with higher capacity and capability standards across 80% of the country, but those areas that are currently notspots will remain notspots. I hope that will be covered by other parts of the Bill, and that the Minister will address that. This amendment, though, will focus the attention of the industry on delivery by requiring it to report annually to Parliament via Ministers and via Ofcom. We can see who is delivering and who is not, and why not. It is an excellent amendment, and I am pleased to support my hon. Friend.

Claire Perry (Devizes) (Con): I sympathise with many of the things that the hon. Member for the City of Chester has said. I cannot promise that I will not visit during a political campaign, because it is a seat I would like to see returned to the fold, despite his good efforts.

While I understand the spirit in which amendment 82 and new clause 9 have been tabled, I reject their premise. We heard clearly in the evidence sessions what is wrong with the Government—and, indeed, one provider—trying to over-specify and push out a solution. I know from my own constituency that, although there has been decent progress, it has not gone far enough—I absolutely agree with the hon. Gentleman on that. There are specific communities—for instance Shalbourne, a beautiful village—where there are insoluble notspots. These houses seem unable to be connected to the exchange because they connect to a Hampshire exchange, not a Wiltshire one, so all the good work Wiltshire council has done putting in local taxpayers' money and working with BT Openreach is of no benefit whatsoever to those constituents. In Worton, where we actually had the discussion with BT, there is a dividing line right down a street: some houses are connected and some are not. We all know that that is increasingly very bad for house prices and really does affect people's mindset when they move into the constituency. In my area, the Lydeway business park, which includes a very fine farm shop and other small businesses, is desperate to get better broadband connectivity, but we cannot seem to get it.

We heard from TalkTalk and other witnesses that the job is not to specify what the solution should look like and have lots of arduous burdens on Government to report back, but to empower consumers to say, "Let's go out and talk to Gigaclear." Or we could look at what has been done in a part of Cumbria, represented by one of my hon. Friends, where communities have come together, worked with farmers to waive fees for crossing land and come up with a community-led solution.

Empowering consumers, as the Bill will do, would enable them to demand a legal right to a decent level of broadband connectivity. I accept that 10 megabits per second is an aspiration for many premises already—they do not get anything like it—and I completely accept the point that that may not be enough in future.

We also heard in the witness sessions that technology in terms of compressing more and more data and information down existing fibre or copper is improving all the time. It might actually be sufficient for some families. I have managed to upgrade with the cabinet in Upavon to about 15 down and 10 up. It is nowhere near enough when all the kids are home and they are on Netflix and other things but it is not bad. If I yell at them loudly enough to get off the wi-fi, I can actually get my constituency work done, albeit from home.

I contrast that with what it was like before when, if the hamsters pedalled fast enough, I might have been able to send one email an hour. It is a massive improvement to productivity in the Perry household.

Calum Kerr: I hope the hon. Lady would not yell at me to get off the wi-fi. She is making some good points but I would try to draw her back to the substance of the amendments. There is no focus on technology. We want to ensure that the USO is delivering for all our constituents. All we want is a review to monitor progress and ensure that the design is fit for purpose. It is not about technology so I urge the hon. Lady to think again.

Claire Perry: I accept the spirit of what the hon. Gentleman is saying, but I did sit until recently on the inter-ministerial Committee looking at how to upgrade the digital services right across the country.

It is clear that Ofcom is taking its responsibilities very seriously, both to report on the number of premises that are connected and to tighten up on some of the issues where broadband companies advertise the maximum speed a customer might ever get if connected rather than the average speed. Ofcom is a very good regulator under Ms White's chairmanship and it is absolutely stepping up to the plate.

I am afraid that I cannot support the amendment or the new clause because they are stuck in the past, looking at how we push out a good solution rather than empowering consumers to pull through the best solution that works for them. That solution might look very different in my constituency of Devizes from how it might in Cheshire or the highlands of Scotland. We have

made decent progress but it is not far enough. I applaud the Government for bringing forward both the USO as an underlying obligation and the flexibility to amend that as technology changes.

Thangam Debbonaire (Bristol West) (Lab): I rise to support the amendments under discussion and thank my hon. Friend the Member for Sheffield, Heeley for an excellent speech and for leading the debate, particularly on amendment 82.

I want to ask this of the Committee. Do we want to be ambitious? For me, this is about ambition. Do we want an economy that has the nuts and bolts, the things we require, to make it fit for the 21st century and the challenges it is already throwing up? Do we want our tech and creative industries, such as those that operate in my constituency of Bristol West, to be able to perform their functions, or do we want them to move away?

Nigel Huddleston (Mid Worcestershire) (Con): I hope the hon. Lady does not mean to talk down the UK digital success story of 12.4% of GDP. I am sure she is aware that that is the largest in the G20 and compares with a European average of just 5.7%. We need to keep the progress going but we already have huge achievements, have we not?

Thangam Debbonaire: Yes, of course, I agree but I do not want that to slow down. I am ambitious because of that record and want it to continue, if possible, at an exponential rate of growth. Having such a low level of ambition in the USO will, I think, hold back the success stories that the hon. Gentleman so rightly talks about and that I have in my constituency. The medical and university sectors and researchers throughout industry all say to me that the issue is both upload and download speeds, as well as ensuring that they can compete with their competitors in Europe and beyond. As my hon. Friend the Member for Sheffield, Heeley said, the European ambition is for 100 megabits per second—10 megabits is just a fraction of that.

10.30 am

Amendment 82 would ensure that we assess whether we are meeting our obligation and, if possible, going beyond it. It would be wonderful if the assessments were carried out and it was found that we were exceeding the USO, but we will not know unless there is a requirement to assess, so the annual report that my hon. Friend has requested is a good plan. I disagree with the hon. Member for Devizes, although I know her constituency well. I would like there to be a push factor for her constituency as well as a pull factor. Yes, constituents will want to make their own choices, but if good, high-quality reports are laid before Parliament, we parliamentarians will be able to support our constituents and they will be helped to make good choices.

Claire Perry: If the hon. Lady knows my beautiful constituency, she is always welcome to come and have a cup of coffee and admire it. The last time it was anything other than Conservative was 1921, so she is welcome to visit but not to campaign. Surely she, like me, welcomes Wiltshire Council's commitment of taxpayers' money to the programme and the fact that 91% of premises have now been passed by the BT programme. We are not there yet, but we have made enormous progress.

The Chair: Although the Committee is going really well and everyone is doing great, we are now straying slightly into Second Reading territory. Let us keep our comments focused on the amendments and new clause in hand and we will all get along swimmingly.

Thangam Debbonaire: Thank you, Mr Streeter. I do not have much else to say, but I say to the hon. Lady that I do indeed know her constituency well because one of my sisters was born in Devizes. She mentions 91% and Wiltshire Council's excellent commitment, but what about the other 9%?

Before I sit down, I refer briefly to what Vodafone's Paul Morris said in one of the oral evidence sessions last week. He said:

> "I do not think that 10 megabits is enough for most small businesses".—[*Official Report, Digital Economy Public Bill Committee,* 11 October 2016; c. 16, Q26.]

If it is not enough—if a telecoms provider acknowledges that it is not enough, and if tech companies in the creative industries and others in my constituency are telling me that it is not enough—I do not understand what would be so wrong with having an annual report to measure how we are doing. I thank you for allowing me the time to make that point, Mr Streeter, and I commend the amendment to the Committee.

Nigel Adams (Selby and Ainsty) (Con): Before I make a brief remark, I draw the Committee's attention to my entry in the Register of Members' Financial Interests.

I fully support the spirit of the amendments and new clause, but I am not entirely sure whether the Committee should support it. Surely it is the Culture, Media and Sport Committee's job to hold BDUK and the Department to account for their progress. I told you I would be brief, Mr Streeter.

Matt Hancock: We have had support of spirit throughout this sitting. The amendments and the new clause are all about reviews of and reports on progress. I have reviewed my broadband this weekend, and I can report that while I was looking at myself discussing the importance of broadband in East Anglia on a local TV programme, I was actually under my desk because my broadband went down. I know how frustrating it is when one's broadband goes wrong. I am very grateful to the BT engineers who are working to fix it right now. That is my report.

The best comment was made by my hon. Friend the Member for Selby and Ainsty about the Select Committee. Reports and reviews are important, but the Select Committee is there to ensure that Parliament has its say. More than that, as Ofcom carries out its consultations, it will of course report on progress.

I wish to pick up on a few of the comments that were made. The hon. Member for City of Chester, which is a great city and the city of my birth—the Bill is all about connectivity and we have been making all sorts of connections in this sitting—made the argument very strongly for the importance of not only getting better

[Matt Hancock]

connectivity, but describing it right. I will have no truck with people who say they are providing a fibre solution when, in fact, it is a part-fibre solution. Fibre-to-the-cabinet is not fibre and anybody who says so is taking people for fools. We should talk about fibre when we mean a full fibre connection that goes all the way from the fibre backbone into the premises. Anything short of that is merely part-fibre.

That point demonstrated some of the confusion from Opposition Front Benchers and shows why it is so important to get these things right, instead of just calling for a report when that is already going to happen. The hon. Member for Sheffield, Heeley called for use of G.fast, which is an important interim technology. However, she then said, "and therefore, it is important we have more fibre." G.fast is not a fibre technology; it is a copper-based technology. While it is important and useful interim technology that will undoubtedly increase speeds, it is not full fibre.

Calum Kerr: The Minister is slightly taking liberties there. The reality is that G.fast is distance-constrained to about 300 to 400 metres, so fibre will have to be pushed much further. I am sure that the hon. Member for Sheffield, Heeley is aware of at. It comes ack to the same principles: we need more ambition and we need to push fibre further. Yes, G.fast will have a place, but it will not fix my or my colleagues' rural challenges.

Matt Hancock: Exactly, absolutely right. We are seeing the long-feared Labour-SNP alliance in action. The hon. Gentleman is right that G.fast is a useful technology but it is not a full fibre technology and is, by physics, distance-constrained, although BT continues to do important work on driving as much delivery out of copper as possible.

There is one other point that it is important for the Committee to consider: there was a simultaneous call from the Opposition for the statement of intent to be included in the Bill and for there to be flexibility in the speed of the USO. These two things are inconsistent; it takes time to change primary legislation. It is incredibly important that we can revise the USO potentially—and hopefully—upwards. It is wrong to set a USO speed now for several years hence. I think we agree on that. We should not, therefore, put the speed on the face of the Bill.

The Scottish Government have said they want 30 megabits per second by 2021. We, of course, want the USO before then and we want the speed to reflect the reality of the time. Demands are increasing very quickly, so I would not want to put a figure on it for five years hence, as the Scottish Government have done. That is a mistake and it is far better to do it as we are planning in this Bill.

Louise Haigh: The Minister is slightly misinterpreting what I said, which is particularly cruel given that I have only been a week in the job. I did not say G.fast was equivalent to fibre. I said that BT would be pushing it out to 60% to 70% and that was why we need much more ambitious targets from the Government on fibre for that final third, in order to deliver coverage for the entire UK.

With regard to the statement of intent, I have said several times that we support its being in secondary legislation, but we want to see elements of it, including the design of the USO, the procurement process and review, to be in the Bill, to avoid being asked to vote blindly on details we do not yet have.

Matt Hancock: I am delighted to have that clarification. I am also glad that the hon. Lady welcomed the fact that Ofcom is doing the consultation, which is necessary before we can put those details in place. The way the provisions are structured in the Bill is the right way to proceed.

In ensuring that we get the best possible broadband connectivity, we must make sure that we have both a vision of the future with high-speed and superfast—and then ultrafast—connectivity, and flexibility to get there in the most cost-efficient way possible. That unites the Committee in purpose, and the Bill as it stands provides for it.

Finally, following the mention of the Labour Government by the Opposition, I will not rise to any partisan points other than to note that in 2003, the then Labour Government legislated to set a USO. They set the USO in stone in legislation and instead of including a review clause, they set it at 28 kilobits per second. Let that be a lesson to anyone who wants to put more on the face of the Bill. It is far better to ensure that we can constantly keep pace with technology, as the Bill does.

Calum Kerr: I am enjoying this; the debate is getting a little more spirited. I hope that some Government Committee members will vote the wrong way for their party and the right way for the people of this country and their connectivity. We are not advocating that a figure is put in the Bill. At no point have we suggested that. We have been advocating greater ambition and a desire to ensure that the USO is designed and rolled out to meet the demands of our constituents and the expectations of the country. Unless the Minister or anyone else can tell me that this place is particularly good at doing perfect legislation that always gets the desired outcome, it seems eminently sensible that we put in place a review process. On that basis, I am happy to withdraw the amendment and instead support amendment 82.

The Chair: Does the hon. Lady wish to say anything more about the amendments?

Louise Haigh: We have heard support for the spirit of the amendment and for the Select Committee to review the progress of the USO. The amendment certainly does not specify to which element of Parliament the report should go. We would be satisfied with progress being reported to the Select Committee. Government Committee members will be interested in, and their mailbags will be full of concerns on the progress of the USO, so they should have the ability to review that. Also, I was not old enough to vote in 2003, so I do not think I can be held responsible for decisions made then.

Calum Kerr: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment proposed: 82, in clause 1, page 2, line 21, at end insert—

"72B Universal service order: annual report

(1) The Secretary of State must lay before each House of Parliament an annual report about the implementation of the universal service order for all areas pursuant to the provisions of this Act.

(2) The annual report must include information on—

(a) the number of premises that have been supplied with the minimum download speed as specified in the USO secondary legislation

(b) the number of premises that have been required to cover some of the cost of connection,

(c) of the premises in (b) the average cost of connection per premises covered by residents, disaggregated by local authority area,

(d) the number of premises that have chosen not to be connected via the universal service order after being provided with an estimate, and

(e) the amount of time on average it takes to provide an estimate and connect a premise, disaggregated by local authority area.

(3) The annual report must be laid before each House of Parliament as soon as practicable after 31 March each year."—*(Louise Haigh.)*

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 10.

Division No. 2]

AYES

Brennan, Kevin
Debbonaire, Thangam
Foxcroft, Vicky
Haigh, Louise
Hendry, Drew
Jones, Graham
Kerr, Calum
Matheson, Christian

NOES

Adams, Nigel
Davies, Mims
Hancock, rh Matt
Huddleston, Nigel
Mann, Scott
Menzies, Mark
Perry, Claire
Skidmore, Chris
Stuart, Graham
Sunak, Rishi

Question accordingly negatived.

The Chair: I am a nice person, so we will have a brief stand part debate on clause 1.

10.45 am

Question proposed, That the clause stand part of the Bill.

Louise Haigh: I know that we covered this issue on Second Reading, but I was not the shadow Minister at the time. This legislation is not a Bill for the digital economy. The tech sector has been waiting for some time for the Government's digital strategy and vision for this crucial area of our economy; to say that it is disappointed with the lack of ambition and strategic direction in the Bill would be a gross understatement.

We heard a damning indictment from one witness last week. He described his business as a tech start-up in Canary Wharf, and said that the Bill would do absolutely nothing to help it. To call it the "Digital Economy Bill" is quite insulting given that it is actually a collection of disparate measures—a mixture of amendments from across a range of Departments vaguely tied together using the word "digital". Over the next few sittings we will focus on where the Bill could be improved, and I am sure that on Report we will return to what the Bill requires if it is genuinely to aid, boost and improve the digital economy.

On clause 1, we need to do much more than produce a mere headline USO. If we are talking about access to digital services, what are we prepared to do to support that access? Does that support simply cover subsidies on infrastructure in more remote areas, or should it also cover education? If it is more than just enabling access, we need to make sure digital skills and knowledge are embedded in our education system as well as providing for the older generation.

Similarly, as we discussed earlier, we need to think beyond mere access and ask ourselves what sort of targets we want on usage. What goals follow the strategy of the USO? It is brilliant if everyone has 10 megabits per second, but how many people are able to use the internet? How many young people are studying IT or related classes? What percentage of the workforce are in technical-related roles? The fact is that not only is the USO unambiguous, but it is long overdue. As I said earlier, Labour left fully costed plans to deliver superfast by 2012.

In 50% of rural premises the infrastructure is simply not there to carry more than 10 megabits, and for one in five premises it will not carry more than 5 megabits. It was suggested to us by a couple of witnesses that the USO was simply in line with BT's proposed business plan. The chief executive of BT confirmed this to us: they can implement the USO by 2020 without any further public money, with 24 megabits to 97% or 98% of the country, fixed broadband of 10 megabits to 99%, and the last 1% likely to be done by 4G or satellite. The question is, therefore, why this legislation is necessary. One witness explicitly said:

"I think you should be very worried when you hear large incumbents saying, "Set up a universal service obligation but don't let it get too far ahead of what we've got in our business case." That is not what business should be doing. Businesses will invest more if they are scared their customers will go elsewhere, not because they have been given a promise by Government".—[*Official Report, Digital Economy Bill Public Bill Committee,* 11 October 2016; c. 10, Q14.]

If we are really to tackle the issues in our broadband market, the evidence we have seen suggests that the USO is—at best—nice to have, but at worst it is a serious market distortion. In fact, the Government should be considering much deeper issues such as the structure of the market, much-needed investment in infrastructure, the need for planning reform to enable the roll-out of 5G and the need to be much more imaginative around future licence auctions. For example, as we have heard time and again, there is the German model to license outwards-in so that those who are missed out on previous rounds are serviced first.

Furthermore, we have heard in one form or another that all roads lead back to Openreach, and the Bill really could have been an opportunity to reflect on that. Baroness Harding believed that

[Louise Haigh]

"competition will do the majority of this, and we should try our damnedest to make the private sector fund most of this through competition".

She concluded that,

"the solution is to separate Openreach completely and put a universal service obligation on an independent Openreach".—[*Official Report, Digital Economy Bill Public Bill Committee,* 11 October 2016; c. 6, Q4.]

We heard in evidence that Openreach could and should be much more ambitious, deliver a better service and be in control of its own board, but evidence was given that, to achieve that, Openreach needs to be completely independent. It was argued that we have not been able to see how far a competitive commercial roll-out can go because we do not currently have a competitive commercial market, and we cannot have that market reform until, at the very least, we separate out Openreach.

One witness said:

"if we are going to be ambitious, to enable companies like ours to continue to grow, invest and innovate, we need a national solution, and a national solution will depend upon the national network owner, which is Openreach...That is why the structure of the industry does matter; the ability to get capital into the industry to invest in the kinds of future networks we need is critical".—[*Official Report, Digital Economy Bill Public Bill Committee,* 11 October 2016; c. 19, Q31.]

Ofcom has been unambiguous in saying that network competition—having multiple network operators on the ground and available to consumers—is the best driver of investment incentives, of superfast broadband penetration and of consumer outcomes. We would like the Minister to set a clear timeframe today for the response to the Ofcom consultation on Openreach. The consultation closed two weeks ago and, as I understand it, Ofcom are now in private consultation with BT. The public and Parliament need to know when we can expect the Ofcom response and what the next steps in the process will be.

Christian Matheson: Does my hon. Friend agree that one of the problems with Openreach is that, because it does not have a customer-facing aspect, its customer service and consequently its reputation have been extremely poor?

Louise Haigh: That is certainly one of the issues. I personally have poor experience with Openreach and I am sure many members of the Committee and their constituents will have, too. Public satisfaction with Openreach customer service is incredibly low and needs urgent investigation. However, we need more detail on some areas that have not been put in the Bill, but which were included in the statement of intent, as mentioned earlier.

An example is the fact that connections will be subject to a cost threshold, above which consumers will still have the right to fast, reliable broadband, but may have to contribute to the cost of connection. That is not much of a surprise, as it happens with the USO for telephone lines. There, the cost threshold is £3,400. Is it possible for the Minister to provide any guesstimate about the threshold for the broadband USO? Once again, we are being asked to vote on legislation that does not include vital details that could make the entire proposal almost completely useless. If the threshold is set too low, the right will essentially be meaningless for the vast majority of consumers, who already miss out, are on unacceptably low broadband speeds and are forced to pay unacceptably high prices. Will the threshold have any form of parliamentary scrutiny, or is this really enabling legislation that will allow the Minister to get his head around the details after the fact?

As we have discussed, we do not believe that the headline figure of 10 megabits is sufficiently ambitious, and nor is a headline speed sufficient when considering the quality of broadband available to the population as a whole. That point was raised by several hon. Members on Second Reading, and by the hon. Member for Mid Worcestershire in evidence sittings. It is a source of great frustration in rural areas, in particular when customers are promised mobile coverage or broadband speed that are not delivered. The Bill does little to correct that. Yes, it provides for automatic compensation, but I am confident that customers would much rather have coverage—and reliability of coverage—than recompense.

The Minister did not answer questions about BDUK earlier, so I will put them again, if that is all right, Mr Streeter. Is the Minister confident that access is the same as capacity, and that there is sufficient capacity in the cabinets in areas where BDUK has been rolled out to allow take-up? Does he believe that BDUK should be measured on take-up rather than access to broadband? I should be grateful if the Minister also updated the Committee on conversations with the Advertising Standards Authority about its code, so that companies can advertise a certain speed only when a certain percentage of their customers in that area get that speed. The ASA and its committees have been looking at that issue for some time, but surely the Bill is the perfect opportunity to speed up the process and provide much needed certainty and lower prices for rural customers.

Finally, we welcome plans to deliver superfast broadband connection to sites with more than 100 homes from January. That was raised time and again on Second Reading. It is absurd not to have minimum levels of broadband in new homes when we would never consider not connecting water or electricity to any new home, regardless of the numbers on the site. As the Countryside Alliance pointed out, the figure of 100 is too urban-centric, as rural areas are moving towards small-scale developments. I hope that the Government will keep the commitment under review and ensure that the figure is reduced in future, if necessary.

We must absolutely not let the USO get in the way of investment in developing super and ultrafast capabilities across the whole UK. We heard evidence stressing the threat that communities that might be pleased with 10 megabits today will be furious about not having 1 gigabit in three or four, or potentially 10 years' time. Indeed, providers such as Virgin, and even smaller ones, such as Gigaclear, are now building proper fibre to the premises, providing up to 1 gig in extremely rural areas; so I fear that the target will quickly become completely outdated, even given the flexibility built into secondary legislation.

Overall, the Opposition support the commitment, with all the caveats I have outlined, and I am happy to support clause 1 to stand part of the Bill.

Rishi Sunak (Richmond (Yorks)) (Con): Ninety per cent. of UK households can access superfast broadband this year, and that number is set to improve in the next 12 months. However, many of the households that do not have access are in places such as my constituency in rural North Yorkshire, creating a digital divide between those who have access and those who do not. On behalf of my constituents, I welcome clause 1, which provides a safety net so that on reasonable request and at an affordable price they will have access to some measure of broadband connectivity.

Week in, week out, while I am doing my job, I see the benefits that that will bring, and the problems experienced today. Of course, economic development is important. My area is known for its tourism, but when I speak to the owners of holiday cottages or bed-and-breakfast accommodation, they tell me they must advertise across the world on the internet. When people come to visit the beautiful Yorkshire dales, when they have finished their day's walking in the beauty and splendour of Swaledale, they want to come home and check their emails. It is important that my owners can provide that service.

I was at a school last weekend talking to a group of young pupils who are embracing a new course on coding. Obviously, we are not blessed with Silicon Valley yet in the Yorkshire dales, but they were accessing the resources of Code Academy online at school and wanted to continue that at home in the evening.

Beyond that, the internet keeps families together—not just grandparents who want to see their new grandchildren living abroad on Skype, but also a father to whom I spoke the other weekend who is unfortunately going through a difficult divorce. He told me that his children, with whom he was desperate to maintain a good relationship, were less keen to spend the weekend at his house because of his poor broadband connection.

The Government are moving to a "digital by default" approach to delivering public services, which is commendable, but it is important that everybody, especially farmers in rural areas, have the means to access those Government services.

For all those reasons—the tangible differences that the Bill will make to people's lives—I welcome the Government's delivering on their manifesto commitment to put in place the universal service obligation. The Government have the view that this should be an economy and society that works for everyone. Providing good digital connectivity to everybody is certainly part of making that aspiration a reality. On behalf of my constituents, I wholeheartedly welcome and support the measures in clause 1.

Calum Kerr: We also support clause 1. I will not repeat the points I made during the debate, but I want to bring a couple to the fore and ask the Minister one specific question, which I hope he will answer. We should not just be looking at closing the divide in the short term; we should be looking at a longer-term fix. We should consider what a minimum speed is today, but we should also be looking to what that might become in the future.

The hon. Member for Sheffield, Heeley pointed out that the EU target is 100 megabits per second by 2025. While we can aim for 10 megabits per second, if we do not set a horizon of where we want the target to go, we risk putting sticking plasters all over the country and getting solutions that will have no lifespan. We will all be back here in a few years' time, saying, "I wish we'd listened to the hon. Member for Sheffield, Heeley who wanted an annual review." We would know that this provision had not been delivered.

Let us try to avoid that scenario and ensure that as the USO goes through the process, what Ofcom designs not only looks at where we are today, but where we want to go in the future. When the Minister gives the main event speech tomorrow at the INCA event, which is advocating a strategy for gigabit Britain, he should set forward a truly ambitious vision of what the UK can offer in this space. Perhaps his response will provide me with some reassurance.

As we have looked at amendments, I have tried to ensure that not only have the Scottish Government and other Administrations been consulted, but they are part of the formulation of the USO. Consultation can be tokenistic or it can be fully engaged and evolved. We need to be fully involved in the design of this process, so that where we set an ambition, a target of 30 megabits per second, the USO supports it—for example, through foundational funding through a voucher scheme. Where any one of the regional councils want to do the same and set an ambitious higher target, the USO should support that, rather than offer a solution that forces them into a corner.

Will the Minister reassure me that the USO designed by his Government with Ofcom will support devolved Administrations and regions and provide foundational funding—not just 10 megabits, take it or leave it?

Nigel Huddleston: There is obviously a growing consensus and recognition of the importance to all our constituents of the universal service obligation. As always, the devil is in the detail. I understand that some of those details will be provided or revealed in secondary legislation. I do not buy some of the concerns expressed today about a possible lack of scrutiny in the progress of the USO. As a member of the Culture, Media and Sport Committee, alongside other members of this Committee, I am confident that we will continue to do that job robustly and effectively to raise issues and concerns.

I cannot imagine how many times we have heard issues related to broadband and mobile brought up in the Chamber, in Westminster Hall and elsewhere in this place, so we can scrutinise in multiple ways. We also have to be careful that we do not constrain our ambition by thinking of current technology and current speeds. It is important that we go with the flow and update our ambitions accordingly as technology develops.

11 am

My hon. Friend the Member for Richmond (Yorks) has raised many points about the importance of the universal service obligation and its enrichment of the rural economy. We are trying to diversify farming incomes for all sorts of reasons, and it is pivotal that farmers should be able to transact online, communicate and sell their wares across the world.

I have constituents who are trying to sell confetti, for example, and they are doing a great job online. I even have an abbey in my constituency that is selling incense online and, again, it could not have done that if not for

broadband. We need improvements, and we are seeing significant improvements. We need to recognise that a universal service obligation is pivotal in changing the lives of many of our constituents. It is not just inconvenient not to have a decent broadband or mobile signal; it is life changing in some cases because it inhibits economic productivity and affects our constituents' livelihoods. I therefore thoroughly support the universal service obligation and applaud the measures in this clause.

Matt Hancock: We all agree that broadband is a modern necessity, and I am delighted at the Committee's tone in supporting the goals we have set out to drive connectivity across the whole of Britain. The legal framework for introducing a USO seems to have been warmly received on both sides of the Committee. I will respond to the individual points that have been made.

First, on the ambition, thankfully we now have a Bill to introduce the framework for delivering the high level of connectivity that we need. Baroness Harding told us in our first evidence session that

"I think it is a great thing."—[*Official Report, Digital Economy Public Bill Committee,* 11 October 2016; c. 10, Q15.]

We also heard the Bill described as an "incredibly important step". As Pete Moorey from Which? said:

"There are critical things in the Bill that will start to bring the telecoms sector kicking and screaming into the 21st century."—[*Official Report, Digital Economy Public Bill Committee,* 11 October 2016; c. 24, Q47.]

That is support for the importance and direction of the Bill.

On the specific point, Ofcom's consultation on the market structure, which the hon. Member for Sheffield, Heeley mentioned, closed on 4 October and Ofcom will respond shortly. The timing is a matter for Ofcom, and it would be improper of me to pre-empt it. She is right that the threshold will be determined by the consultation, and it is wrong to try to pre-empt that consultation process. Instead, we should do things properly.

The hon. Lady will no doubt welcome an update on new homes. We have a new commitment that any development of more than 30 homes, rather than more than 100 homes, will have fibre connections and, as of 1 January, building regulations will require superfast connections in new buildings. The sensible suggestion from both sides of the House that new houses should be built with what is needed for the future has now been enacted.

Christian Matheson: I am pleased to hear that building regulations are changing. Will the Minister also have conversations with his colleagues in the Department for Communities and Local Government to change planning regulations so that newly built premises, properties and estates are ducted and cabled ready for connection?

Matt Hancock: I will look into that. I will be surprised if that does not happen already, but I will take it up.

Claire Perry: Will the Minister make representations that the threshold of 100 houses for the mandatory provision is perhaps a little high, certainly for those of us in rural constituencies?

Matt Hancock: I repeat what I have just said: the floor of 100 homes has come down to 30 homes for fibre connections, but all new buildings will be required to have access to a superfast connection from 1 January. Those points have been taken on board.

Calum Kerr: Will the Minister clarify, especially given his comments earlier about what fibre means, whether that is fibre to the premises or access to superfast over copper?

Matt Hancock: To channel the Prime Minister, fibre means fibre. If hon. Members want to know what fibre means, it means fibre.

On the point about measuring BT and BDUK on take-up not access, both BT and BDUK are measured on take-up as well as access. Both are important. In fact, the contracts have take-up embedded in them, because the clawback from higher take-up allows money to be spent on further roll-out. The contracts that are being rolled out at the moment are from that clawback. The hon. Lady is therefore absolutely right that both take-up and access are important, and in the county-by-county figures from BDUK we have both take-up and access.

I also strongly agree with the hon. Lady on advertising. The Advertising Standards Authority has consulted for some time on descriptions of both "up to" speeds and pricing arrangements, both of which can be wholly misleading. I very much hope that the ASA will come out with new rules shortly—it has been working on that for some time. However, advertising is policed on a non-statutory basis and I think it would be a significant step for us to legislate on that matter because we do not want political interference in the rules around advertising. That is a step that I do not want to take. I do want the ASA to come to its conclusions as soon as possible. I hope that that answers all the questions that were asked on that point.

Louise Haigh: I appreciate that the Minister may not want to pre-empt the Ofcom consultation, but will there be any parliamentary scrutiny of the proposals that Ofcom will bring forward, or will we leave it to Ofcom and accept what it brings forward in terms of design, cost threshold and everything else we have debated this morning?

Matt Hancock: Of course there will be parliamentary scrutiny, because the Bill provides for the USO details to be put in place via secondary legislation. There will be scrutiny then and, as my hon. Friend the Member for Selby and Ainsty pointed out, there will also be the opportunity for Select Committees to scrutinise in their usual way. I hope that without reading the rest of my speech, which is all about how important and wonderful broadband is, the Committee will accept what I have said as a full response.

Calum Kerr: Perhaps the Minister missed my request. Will he reassure me that the schemes put in place will be designed to support national commitments such as the Scottish Government's 30 megabits and other regional commitments? The issue is all down to how the USO is designed. If it is simply put out as a 10 megabit service—take

it or leave it—it will not help, whereas a regional, flexible model such as the voucher scheme that BDUK has done before could provide the foundational funding.

Matt Hancock: In short, although the precise design is subject to the Ofcom consultation, my view is that the potential in the Bill for the USO is more ambitious than the Scottish Government's, because theirs is to be delivered later and has already specified a speed. Instead, we have proposals coming in sooner and with uprating built in from the start.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clause 2

General conditions: switching communications provider

Question proposed, That the clause stand part of the Bill.

Louise Haigh: The Opposition are happy to support the clause. As we know, there are currently extremely low levels of switching in the market, with 5.9 million mobile users having never switched owing to concerns with the process and 2.5 million people saying they have experienced a major difficulty such as the amount of time it took or loss of their number. Every year, more than a million people are either double-billed or lose service in attempts to switch.

I understand that Ofcom has been considering how to make switching work for over eight years, and I am informed that the decision on switching has been delayed because of previous appeals and the current appeal regime, which we will come on to later in the Bill.

The powers for Ofcom to introduce gainer provider-led switching are welcomed by Opposition Members, as the figures clearly show there is little appetite to switch mobile provider at present, despite the clear lack of trust in mobile service providers themselves. In the last year, almost half of consumers have not switched providers; of those who have switched, 46% of them did so more than a year ago.

As Members are aware, at the moment switching providers is beyond arduous. Individuals have to contact their own provider and then the provider they wish to switch to. They have to terminate their old contract and then activate their new contract. This creates additional costs, time and hassle, and means that consumers are not able to compare all the deals available to them easily.

These proposals are welcome, but do the Government intend gainer provider-led switching to cover both mobiles and bundles? Clearly, many mobile networks also operate in other areas, such as internet and television, so would it not make it even easier for consumers if they could switch all at once if a better offer was provided? We look forward to hearing the Minister's comments on that.

It would also be helpful if the Minister could put on the record what discussions he has had with Ofcom and mobile providers about the range and depth of information that will be available. Clearly, the lack of open data in this market holds back switching, but as we discussed earlier it also holds back investment and competition. It is very welcome to hear that BT has offered that information, but we would be grateful to hear exactly what data it is making available. Data on internet availability—such as costs, product offerings, location of cabinets and masts, access method, service quality, service faults, and planned network upgrade and dates—would all be enormously beneficial if they were published as open data.

That would be a considerable step towards creating a more effective market. It would not only help with switching but would enable an operator, community group or local authority to decide whether to build a new network for an area if there were no other plans to do so.

Nevertheless, these measures are very welcome and we on the Labour Benches are pleased to support them.

Matt Hancock: Consumers should be able to benefit from choice and competition in the UK communications markets, and I am very grateful for the cross-party support for these measures.

The central case is that changing suppliers should be quick and easy, and can benefit all. However, the reality is that no matter how attractive a deal may look, or how dissatisfied a customer may be with their current service, the rigmarole or the perceived rigmarole involved in changing provider deters switching. This clause makes it explicit that Ofcom has powers to facilitate easier switching in the communications sector.

It will be for Ofcom to consult on and define which communication services will be subject to switching processes. Ofcom is consulting on triple play—so fixed line, broadband and pay TV switching—with a view to simplifying the processes to switch multiple services as well. The clause will help to cement Ofcom's power and will put in place processes to instil in consumers the confidence to shop around. That is the purpose of the clause.

There are ongoing discussions with Ofcom about the range and depth of information that is provided. Of course, the measure complements the information powers given to Ofcom in part 6 of the Bill, which we will come on to. So, once consumers have better information to hand about the services on offer, they can then switch to the service that is most suitable for them with confidence and the minimum of fuss.

Ofcom has existing powers to set conditions on electronic communication service providers, and this clause makes it explicit that Ofcom may set general conditions to facilitate switching. Such conditions could require providers to comply with defined processes, such as gaining provider-led switching. This approach would mean that consumers would no longer need to contact their existing provider when they want to move, and of course the gaining provider has the incentive to make these things as easy as possible.

I hope that all these things will help to boost switching and therefore make this market more competitive.

I beg to move that the clause stand part of the Bill.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Clause 3

AUTOMATIC COMPENSATION FOR FAILURE TO MEET PERFORMANCE STANDARDS

11.15 am

Calum Kerr: I beg to move amendment 60, in clause 3, page 2, line 35, at end insert—

"(db) require a communications provider to allow an end-user to terminate a contract on repeatedly failing to meet a specific standard or obligation;".

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

Amendment 84, in clause 3, page 2, line 35, after "obligation", insert "within reasonable timescales".

New clause 2—*Ability of end-user to cancel telephone contract in event of lack of signal at residence—*

"A telecommunications service provider must allow an end-user to cancel a contract relating to a hand-held mobile telephone if, at any point during the contract term, the mobile telephone is consistently unable to obtain a signal when located at the end-user's main residence.".

Calum Kerr: The area of compensation is one that we have all probably been hearing about from our constituents for quite some time. Before speaking to the amendments, which are about mobile coverage, let me first welcome the important move in the Bill that not only puts compensation in place but makes it automatic. Telecoms and connectivity can feel like the dark arts to some of our constituents and it is important that whatever is put in place does not depend on their understanding the details of what they are entitled to. However, the point has already been made today that when people sign up for a broadband service, there should be far clearer, granular detail on what they should expect. We have wrestled today with what a USO should be; we have talked about download; we have talked about upload; the Minister rightly mentioned other areas such as latency and data limits; and of course cost comes into it.

In terms of compensation, it is important to recognise that broadband is different from telephony. Telephony is fairly binary—it is on or off. It works or it does not. There might be some interference, but it remains a fairly binary service. Broadband, however, is defined by many different characteristics.

As we look at a compensation regime, we need to look at the speed expectations. When someone signs up for a broadband service, they sign up for a service that is, by definition, contended. It is shared, which is why, as those who have ever been at home when the kids all get home from school, broadband speeds sometimes plummet. That is the reality of the service that is signed up for and that reality has to be accepted on a contended service—those who want a less contended service need to sign up for an appropriate service with BT or another provider—but there should still be levels of expectation. There should be a top-line download speed, an average speed and, in my view, a baseline speed, below which the service does not drop.

As we look at compensation, I would like to see some flexibility. Given the complete lack of information in the Bill—in keeping with the earlier clauses—there is the ability here for Ofcom to show flexibility and design an appropriate system. The telecoms providers all have huge challenges to face on their performance standards—the digital communications review called them out. BT was singled out, but it was not the only one. They all have a way to go in improving their service standards, so a compensation regime should be designed to incentivise them. We have to remember that this is about incentivising good performance, not about penalising bad performance, although the two obviously go side by side. We should design a scheme that is automatic and ensures people are compensated but that, most importantly allows people to get the service that they are promised and the providers are contracted for. That is important.

My hon. Friend the Member for Inverness, Nairn, Badenoch and Strathspey instigated work on the areas addressed in amendment 60 and new clause 2 some time ago. There are huge chunks of the country, not least the highlands but also the equally beautiful Scottish borders in my constituency, where there are notspots—in fact, it feels like there are more notspots than onspots most of the time, as I found on my summer tour. My hon. Friend brought forward proposals, which were put to the then Minister and Ofcom, to allow individuals who have signed up for a mobile service and then found that they cannot get proper service at home to be allowed out of their contract. Some providers—I think Vodafone was mentioned in the evidence session—have started to offer that. I hope that—hope is not a strategy, as we always used to say, but sometimes it is all we have—the Government will accept the sense of the amendment and new clause and put it in the legislation, to make it absolutely clear that, if I sign up for a mobile service and cannot use my device in my home, I am entitled to cancel that contract.

Louise Haigh: I rise to support the amendment in my name and the name of my hon. Friend the Member for Cardiff West. I also support the amendments tabled in the name of the hon. Member for Berwickshire, Roxburgh and Selkirk. I understand from the debate and the statement of intent that the baseline speed mentioned—10 megabits per second, as the Minister clarified—is the absolute minimum. The Opposition welcome the Government's proposals to amend the requirements on automatic compensation, which will bring broadband services in line with other essential services such as energy and water. That recognition naturally extends to a form of automatic redress when things go wrong.

Calum Kerr: I am sorry to intervene so quickly, but this is an area where we need a bit of clarity. We have said that 10 megabits per second is a minimum, but as I understand it, it is a minimum maximum speed. It does not mean that under the USO, users will always get 10 megabits per second; it means that they sign up for a service where the maximum is 10 megabits per second. I think that is an important point to clarify.

Louise Haigh: We look forward to the Minister's clarification.

More than 13 million households suffer from some form of broadband problem. It is about time that automatic compensation was introduced. As we know, seeking redress and compensation is often difficult for consumers, and brings little reward; many simply give

up. Currently, users must lodge a formal complaint with their provider, then escalate that complaint to the ombudsman after eight weeks if they are not happy with the response. The onus certainly should not be on the customer to prove that they have lost service or that the service has not met the standard required. Where possible, automatic compensation should be made when a service provider becomes aware of a possible loss or reduction in service.

However, as has been mentioned, the legislation is not entirely clear on how the provision will be enforced, although we welcome the broad powers given to Ofcom. For example, if the fault is with the service provided to the retailer by Openreach, will the retailer pass on the compensation to the consumer who has been affected? How much will then reach the consumer? What will the level of compensation be? *Which?* has called for households to get £75 in compensation each time their broadband connection goes down, in line with compensation levels for power cuts. Will there be separate levels of compensation for broadband being slow or not working at all? Will the compensation cover planned network outages? Will the new regime come into effect on Royal Assent? Has Ofcom now completed all necessary consultation work?

Our amendment simply seeks to provide compensation within reasonable timescales. Consumers certainly would not want compensation payouts to drag on and on or broadband providers to drag their feet when there has been a clear outage and they are entitled to compensation. The automatic compensation model for the energy market is that it should be paid within 10 days of the customer claiming, or within 10 days of the end of the power cut if they are being paid automatically. That seems reasonable, but the Minister and Ofcom might have other ideas about what is reasonable.

Either way, we believe that it is important to set a clear timescale to ensure that consumers know exactly what they are entitled to, when they are entitled to it and how to go about claiming it if it is not forthcoming. We welcome the provisions and the recognition that consumers have a right to broadband and therefore a right to compensation if it goes wrong, but we would like assurances written into the Bill that compensation will be paid quickly.

The Chair: Order. We will adjourn in about two minutes, but let us hear from Mr Hendry before we continue on Thursday.

Drew Hendry (Inverness, Nairn, Badenoch and Strathspey) (SNP): I commend my hon. Friend the Member for Berwickshire, Roxburgh and Selkirk on his comments about the need for proper compensation, particularly for those promised services either explicitly or through advertising that has led them to believe that they will get those services. It is incumbent on us to do something about advertising that promises people broadband "up to" speeds that have no chance of being delivered, when they cannot even get reasonable speeds in their area. As a result, rural areas can suffer a double effect; they are over-promised and then drastically under-delivered.

I am wary of the time, so I will speak briefly in support of the new clause. Residents of Fort Augustus in my constituency went for three months without the mobile signal that they were contracted to receive, without any compensation, redress or ability to change to another provider during that time. This should be an easy aspect for the Government to sign up to. I hope that the Minister will follow on from his predecessor.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till Thursday 20 October at half-past Eleven o'clock.

Written evidence reported to the House

DEB 37 Energy Networks Association

DEB 38 Arqiva

DEB 39 Alec Muffett

DEB 40 Relish

DEB 41 Vanessa Cuthill

DEB 42 Children's Media Foundation

DEB 43 Dron & Wright on behalf of London Fire & Emergency Planning Authority (LFEPA)

DEB 44 NSPCC

DEB 45 Broadband Stakeholder Group

DEB 46 Digital Policy Alliance

DEB 47 Fisher German on behalf of various clients

DEB 50 Anti-Counterfeiting Group

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

DIGITAL ECONOMY BILL

Fifth Sitting

Thursday 20 October 2016

(Morning)

CONTENTS

Programme order amended.
Clauses 3 and 4 agreed to.
Schedules 1 and 2 agreed to, with amendments.
Schedule 3 disagreed to.
Clauses 5 to 14 agreed to, some with amendments.
Clause 15 under consideration when the Committee adjourned till this day at Two o'clock.

PBC (Bill 045) 2016 - 2017

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Monday 24 October 2016

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The Committee consisted of the following Members:

Chairs: Mr Gary Streeter, † Graham Stringer

† Adams, Nigel *(Selby and Ainsty)* (Con)
† Brennan, Kevin *(Cardiff West)* (Lab)
† Davies, Mims *(Eastleigh)* (Con)
† Debbonaire, Thangam *(Bristol West)* (Lab)
† Foxcroft, Vicky *(Lewisham, Deptford)* (Lab)
† Haigh, Louise *(Sheffield, Heeley)* (Lab)
† Hancock, Matt *(Minister for Digital and Culture)*
† Hendry, Drew *(Inverness, Nairn, Badenoch and Strathspey)* (SNP)
† Huddleston, Nigel *(Mid Worcestershire)* (Con)
Jones, Graham *(Hyndburn)* (Lab)
† Kerr, Calum *(Berwickshire, Roxburgh and Selkirk)* (SNP)
† Mann, Scott *(North Cornwall)* (Con)
† Matheson, Christian *(City of Chester)* (Lab)
† Menzies, Mark *(Fylde)* (Con)
† Perry, Claire *(Devizes)* (Con)
† Skidmore, Chris *(Parliamentary Secretary, Cabinet Office)*
† Stuart, Graham *(Beverley and Holderness)* (Con)
† Sunak, Rishi *(Richmond (Yorks))* (Con)

Marek Kubala, *Committee Clerk*

† attended the Committee

Public Bill Committee

Thursday 20 October 2016

(Morning)

[GRAHAM STRINGER *in the Chair*]

Digital Economy Bill

11.30 am

The Chair: The Minister has asked for and been granted the Chair's permission to take his jacket off. If other right hon. or hon. Members also wish to take their jackets off, they have permission to do so.

The Minister for Digital and Culture (Matt Hancock): I beg to move,

That the Order of the Committee of 11 October be amended as follows—

(1) In paragraph (1), after sub-paragraph (f) insert—

"(g) at 9.25 am on Tuesday 1 November;".

(2) In paragraph (4), for "5.00 pm on Thursday 27 October" substitute "11.25 am on Tuesday 1 November".

On Tuesday night, the House approved a motion to extend the Committee. This amendment will provide the additional time required thoroughly to scrutinise the Bill.

Louise Haigh (Sheffield, Heeley) (Lab): I thank the Government for replacing the sitting that we lost on Tuesday because of the debate that they scheduled on the BBC motion. We do not oppose this amendment, but the Government have tabled more than 130 amendments to the Bill since we agreed the programme motion, in good faith, on the basis that the Bill has 84 clauses. It is now clear that the Bill was not ready to come to Committee.

Not only have the Government tabled more than 130 amendments but they have made significant announcements about who the regulator will be. We welcome the significant publication of the codes of practice that will accompany part 5, but we should have had them earlier in the process. It is the job of Her Majesty's loyal Opposition to scrutinise the Bill and table amendments, and we will not accept any criticism if the Committee does not get through the whole Bill. The Government should be prepared to add time if we do not make that progress.

Matt Hancock: We have been very accommodating on the timings. Not only did we remove the Tuesday afternoon sitting at the request of the Labour party, but we added another sitting at the end. We cancelled the sitting last Thursday afternoon at the request of the Labour party, despite the fact that we wanted it to happen. In fact, the amount of scrutiny in Committee will be less than we originally proposed, at the request of the Labour party. We will not have any truck with that one.

Kevin Brennan (Cardiff West) (Lab): How many amendments has the Minister tabled?

Matt Hancock: Amendments have been tabled by Members on both sides of the Committee. The argument that we should not table amendments in Committee is an argument for having Bills come out of the parliamentary process in exactly the same form as they go in. Even the Government would not make that case. The central point here is that we offered plenty of time, which was agreed on a cross-party basis, and the Labour party has asked to reduce that time. In considering whether there has been enough time in Committee, those who read the transcript in the weeks and months to come ought to recognise that the Government have been as accommodating as possible, but that we had to give way to the Labour party's request for less time and scrutiny in Committee.

Claire Perry (Devizes) (Con): We have a Minister who is engaging with the nuts and bolts of a Bill that was prepared long before he came to office. I, for one, am delighted that we have an active Minister who is determined to make this exceptionally important Bill as good as it can be. I do not accept this criticism. It is excellent that the Government are tabling these amendments and allowing time to consider them.

Matt Hancock: I obviously agree.

Kevin Brennan: I note that the Minister has not answered my question, and I am not sure that he even knows how many amendments he has tabled. Of course it is appropriate to table amendments, but it is not appropriate to introduce a Bill that is so unready that the Government have already tabled more than 130 amendments. That is not good practice, and he knows very well that it is not; I do not know why he is contesting that fact. We want to proceed with the business, but we put our point on the record. I hope that he and his officials take note.

Matt Hancock: People reading the transcript will notice that we have eaten up another five minutes discussing the process.

Kevin Brennan: You were two minutes late when we started.

Matt Hancock: No. I want to get on to the scrutiny of the Bill, but I will take on board the Labour party's point that it does not think amendments are a good idea. I think the whole point of the parliamentary process is to make amendments. With that, I hope that we can get on with the Bill.

Kevin Brennan: On a point of order, Mr Stringer. If the Minister thinks that that is the attitude he should adopt in Committee to the Opposition when they are making a legitimate point about how ready the Bill can be for scrutiny if he has to introduce more than 130 amendments, he has got a lot to learn about how this place works. I put it clearly on the record that we think it is vital that amendments to a Bill are discussed, but the purpose of Committee is mainly is to ensure that the Opposition have that opportunity.

The Chair: I have given the hon. Gentleman some latitude, but that was not a point of order or a matter for the Chair. May I remind right hon. and hon. Members that interventions should be brief and to the point?

Question put and agreed to.

Clause 3

AUTOMATIC COMPENSATION FOR FAILURE TO MEET PERFORMANCE STANDARDS

Amendment proposed (18 October): 60, in clause 3, page 2, line 35, at end insert—

> "(db) require a communications provider to allow an end-user to terminate a contract on repeatedly failing to meet a specific standard or obligation;"—*(Calum Kerr.)*

Question again proposed, That the amendment be made.

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

Amendment 84, in clause 3, page 2, line 35, after "obligation", add "within reasonable timescales" insert".

New clause 2—*Ability of end-user to cancel telephone contract in event of lack of signal at residence*—

> 'A telecommunications service provider must allow an end-user to cancel a contract relating to a hand-held mobile telephone if, at any point during the contract term, the mobile telephones is consistently unable to obtain a signal when located at the end-user's main residence.'

Drew Hendry (Inverness, Nairn, Badenoch and Strathspey) (SNP): I will not repeat the comments I made previously, but I want to focus again on new clause 2. I was explaining that consumers often face an impossible position. I gave an example from my constituency of something that happens around the UK. Indeed, uSwitch produced a report this morning that shows that across the UK nearly a third of consumers have either patchy or no signal inside their home, which is a real deficit in the product that they thought they were buying. Some of that will be down to there being no reasonable coverage in the area, and some of it will be down to other factors, but it is often down to a failure of the telecoms company that provides the service.

I will repeat the example that I gave from my constituency, because I think it is important. In Fort Augustus, my constituents had to do without their mobile telephones between January and May 2015, even though they had contracts, because the operator could not fix a problem. They were told that the only way to deal with that was to pay £200 to cancel the contract. That is flatly unacceptable. I have listened carefully to what has been said this morning; the Government stated clearly that they want to make the Bill as good as it can be, so let us make sure that we put in the new clause.

I first raised this issue with the UK Government in July 2015, and I was told at that time that there was merit in what I was saying. Ofcom accepted that, and said that it, too, felt that something should be done. The Minister's predecessor, the right hon. Member for Wantage (Mr Vaizey), said in November 2015:

> "We have a number of principles when we look at this market. One is that consumers should not be trapped in contracts in which they are not getting the coverage they expected to get. Ofcom is discussing with mobile providers the possibility of their offering redress, which would include allowing customers to leave a contract when service was unacceptable."—[*Official Report*, 24 November 2015; Vol. 602, c. 1335.]

Let us please ensure that we do something about that, and put the new clause into the Bill.

Matt Hancock: The clause is all about making it easier for customers to claim compensation for service failures. This is all part of the fact that broadband is now a utility rather than a "nice to have". Amendment 60 seeks to make it explicit that Ofcom can set general conditions to require communication providers to allow an end user to terminate a contract when a service repeatedly fails. New clause 2, which we have just been talking about, would specify that consumers can terminate a contract if mobile coverage is substandard at the main residence. There are already a number of options available to consumers who wish to cancel a contract due to poor coverage or connection, and we do not think that those additional options are necessary.

Before purchasing a contract, consumers can use Ofcom's coverage checker, and if a contract is purchased online or over the phone, and the consumer finds that the coverage is a problem, they can cancel during the statutory cooling-off period—the first 14 days. Some companies offer extended periods, such as a 30-day network guarantee, during which customers can test the coverage and, should they be dissatisfied, cancel without penalty. Customers are entitled to leave a contract if they are mis-sold a service—if they are advised that they would get coverage in a certain location, but subsequently discover that they cannot.

Drew Hendry: I am listening carefully to the Minister. Those protections are important, and if somebody is mis-sold a product at the point of sale, a cooling-off period is valuable. However, the Minister is not addressing situations such as that in the Fort Augustus example that I gave. The people who got that contract were not able to get the service after the cooling-off period. That is happening across the UK.

Matt Hancock: It is reasonable that the period in which people can cancel be limited, because companies have to know, once they have entered into a contract, that it is valid. I think that the way that is done currently, through cooling-off periods, is appropriate. There is also a broadband speed code of practice, which is about the speed that people get. As of the end of September, seven providers have implemented the business broadband speeds code of practice, which allows business customers to exit a contract without penalty if download speeds are not at the guaranteed minimum.

Drew Hendry: I hear very clearly what the Minister says, but this is about people who have bought into mobile contracts and are not able to get coverage. Does the Minister think it is acceptable that somebody who is without a service for four months has to pay £200 to cancel their contract?

Matt Hancock: No, I do not, but I do think it is useful for the period in which contracts can be cancelled to be limited. The law currently provides for that.

[Matt Hancock]

Amendment 84 seeks to define the parameters of any general condition that Ofcom sets regarding compensation to customers. It is our intention that providers should offer prompt and proportionate compensation when their services do not meet agreed standards. It is right that any decision by Ofcom to set general conditions needs to be based on evidence drawn from its consultation process and applied proportionately. In June, Ofcom issued a call for input on the aim and scope of the automatic compensation scheme, and it will consult on the introduction of the regime in early 2017. We support Ofcom in that approach. I think that the way the clause is drafted is the right way to drive the policy, but until we have the benefit of Ofcom's consultation, it would be wrong to constrain the parameters of a general compensation condition.

With that explanation, and given my point that there is already a time-limited period in which contracts can be cancelled, I hope that hon. Members will withdraw their amendments.

Calum Kerr (Berwickshire, Roxburgh and Selkirk) (SNP): I am disappointed but not surprised that the Minister will not consider the change. There seems to be an unwillingness to amend the Bill other than by adopting one of the hundreds of Government amendments. I hoped that we might enter into a more constructive spirit.

We agree that the clause itself is a good move. As I said in my opening remarks, there is an opportunity to go to a high level of granularity—I contrasted the black-and-white, binary nature of telephony to the complex world of broadband—and I would like the Minister to assure us that the devolved Administrations will play a key role in that. Scotland is a disproportionately rural environment, and we must ensure that the rural voice is heard, although these issues are not unique to Scotland, or to my constituency, or that of my hon. Friend the Member for Inverness, Nairn, Badenoch and Strathspey. This must go to a granular level and incentivise good performance, rather than provide compensation, as is currently set out in the Bill. All that our constituents want is a good level of service, rather than some money back for poor service.

11.45 am

I encourage the Government to provide reassurance about engagement with devolved Administrations and, where applicable, regions of England and Wales. The Government like to point to other areas where certain points are already covered, but I do not see the harm in putting these things in the Bill. Perhaps the Minister can tell me why he thinks that is a bad idea, given that he says that the issues are already covered in other ways. We support the clause, but we will press our amendment 60 and new clause 2 to a vote.

Matt Hancock: I hope I can give assurances that might prevent the hon. Gentleman from pressing his amendment to a vote.

Ofcom's consultations will of course include the Scottish Government, as well as rural areas of the rest of the United Kingdom. My explanation for not wanting to legislate through the Bill for redresses already provided for in law is that it is generally good practice for a particular redress to be covered in law just once. We might otherwise end up with a problem of overlap, which can make it harder to claim redress. That is why I have set out where I think redress is already available. Although of course we want to ensure that people who cannot get coverage or do not get good enough broadband speeds through the contract that they have signed up to have the opportunity to come out of that contract, we should not double legislate.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 10.

Division No. 3]

AYES

Brennan, Kevin
Debbonaire, Thangam
Foxcroft, Vicky
Haigh, Louise
Hendry, Drew
Kerr, Calum
Matheson, Christian

NOES

Adams, Nigel
Davies, Mims
Hancock, rh Matt
Huddleston, Nigel
Mann, Scott
Menzies, Mark
Perry, Claire
Skidmore, Chris
Stuart, Graham
Sunak, Rishi

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

Matt Hancock: Clause 3 will make it easier for customers to claim compensation for service failures and, we hope, help improve customer satisfaction and drive the sector to deliver on its service commitments. The clause is about providing not only compensation but incentives that we hope will make such compensation unnecessary. The clause makes explicit Ofcom's power to set general conditions on communications providers, requiring them to adhere to automatic compensation regimes as defined by Ofcom. It is part of Ofcom's remit to protect the interests of end-users.

Telecommunications customers increasingly view their digital connectivity as essential, just as power and water are essential. The clause helps to deliver on those higher expectations. According to research by Ofcom, customers suffering from a loss of broadband service incur on average a direct financial cost of £18, spend an average of four hours trying to resolve the issue, and have to contact their provider an average of three times. Automatic compensation will mean that customers will receive standardised compensation for specific service failures, either without having to complain directly or through a streamlined process.

Ofcom has made a call for inputs and will be consulting with customers, customer groups, industry and all parties that want to enter the consultation, including devolved Governments. It will define which services and service quality issues will be eligible, how much the compensation will be, and the fault-identification and payment processes. The consultation process will ensure that the compensation scheme is fair and proportionate, mitigating the risk of additional costs being passed on to customers.

Clause 3 accordingly ordered to stand part of the Bill.

Clause 4

THE ELECTRONIC COMMUNICATIONS CODE

Question proposed, That the clause stand part of the Bill.

Louise Haigh: Clause 4 contains changes to the highly complex electronic communications code, as we heard earlier in the debate. We recognise and support the amendments tabled in the Minister's name, which seek to clarify the web of legal technicalities and ensure that it interconnects with the existing legal landscape; that the new code does not infringe on access to land where the person does not agree to that access being obstructed; and that subsisting agreements continue in place.

Our primary concern is to ensure that the significant savings that the clause will clearly create for the mobile industry are invested in their entirety into infrastructure and roll-out for the public benefit.

We would also like to explore what consideration has been given to how we can ensure that independently-owned infrastructure can have a significant role in the sector and, if possible, make up a larger proportion of our infrastructure in line with the global market. The much-discussed difficulties of the broadband roll-out highlight the issues when infrastructure is owned by a private monopoly. We should seek to break up this market as much as possible. For that to happen, investment incentives for independent infrastructure need to be maintained as they are under the current ECC.

The assets of these small infrastructure providers, which are a valuable part of the market, are dependent on land. We would like a commitment from the Minister that further inevitable redrafts continue to carve out electrical communications apparatus from the definition of land. The benefit of independent infrastructure is the much higher capacity available for all networks to use on an open and non-discriminatory basis. Operators in this space filled more substantial towers, which send signals much further than an average mobile operator-owned mast. That is particularly important in rural areas, where more than half their investments have been made. More networks operating from better infrastructure enable transformational improvements in capacity.

The sector also unlocks significant new inward investment with a low cost of capital from the same funds that invest in UK energy, transport and utility assets. Clearly, significant investment is needed in the UK's wireless infrastructure. Improving mobile connectivity needs substantial and sustained investment. New communication masts are needed in rural and suburban areas to improve coverage. In urban areas, to support the exponential growth in mobile data usage and provide ubiquitous high-speed connectivity, 5G networks will need hundreds of thousands of small cells connected with a dense network of fibre.

Analysis from Ernst & Young highlights that independently operated towers across Europe and North America host, on average, twice as many networks as vertically-owned towers. The UK is now lagging behind competitive telecoms markets around the world in respect of adopting the more efficient independent model; more than 60% of global and 80% of US masts are now operated independently of the networks that use them. Independent infrastructure can deliver investment in a way that maximises its productivity and enables the greatest level of connectivity.

Furthermore, we are aware that the industry has concerns about the clause given what is known as "stopping up". That is the procedure that highway authorities use to decommission stretches of public highway. Under the new code, when streets are stopped up, the occupier of the land can give notice to quit and mobile operators would not then be able to cover the cost of relocation.

As I understand it, unlike the other reforms, this reform is intended to apply retrospectively, so we would be interested to hear the Minister's thinking. More broadly on the clause, clearly the Minister and officials are attempting to make revisions to this enormously complex code, which obstructs or interferes with the means of access to this land.

There is a broader point. Despite the additional powers that the Bill provides to telcos over the landowners, in practice there absolutely must remain a solid working relationship between the two. As we heard in evidence last week, if good relationships are not continued, the industry might as well just go home for the next four to five years and forget about further expanding the network, such is the importance of good relationships and access to allow for upgrading and installing new infrastructure.

Industry evidence suggests that, on average, infrastructure facilities will need to be accessed every 12 days, so we must ensure that the legislation strikes the right balance between increasing access, which will help to upgrade the network, and maintaining a good relationship with the landowners who will help that roll-out.

The clause is intended to improve mobile coverage, so I will go back to something that the Minister said on Tuesday in Committee:

"That is why delivery on this commitment by the MNOs"—

that is, by the mobile network operators—

"is so important. The deal as agreed, which is a legally binding commitment, will result in nearly 100% of UK premises receiving 3G/4G data coverage, and 98% coverage to the UK landmass by the end of 2017."—[*Official Report, Digital Economy Public Bill Committee,* 18 October 2016; c. 124.]

Those figures were not immediately familiar to me at the time. As I understand it, they were not in the legal agreement between the Government and the mobile network operators, which only requires guaranteed voice and text to each operator by 2017 to 90% and full coverage to 85% by 2017.

I believe that the Minister may have been referring to the new emergency service contract, which is being delivered by EE. That is exactly the point I was making: that is only one operator. Furthermore, is it not the case that currently only 46% of premises have access to 4G from all mobile network operators and that there remains a substantial 7%, or 1.5 million homes nationwide, that do not have basic voice or text coverage across the three networks?

The roll-out of this vital infrastructure by EE for the benefit of emergency services is obviously welcome and the coverage figures for the UK landmass are impressive. However, that does not constitute universal coverage, as it will be only for the benefit of EE customers, unless some kind of agreement that we are not aware of has been reached. Clearly, although that means that data coverage is reaching all corners of the UK, there is no parity of provision across the mobile network operators and that near-universal coverage, which is so needed, is still far from a reality.

[Louise Haigh]

New clause 20, to which we will return later, seeks to do something about that. It would empower the Secretary of State to commission a strategic review of mobile network coverage and to consider measures to enable universal coverage for residences across all telecommunications providers. That would enable the Government to take a second look at ways, including national roaming, genuinely to extend coverage across 3G and 4G to all network providers, because, as the Minister said in Committee on Tuesday, it is no good having full coverage with one provider if the others are not covered.

Calum Kerr: That was an excellent introduction from the Opposition spokesperson, highlighting a lot of the issues. I will try not to repeat them.

What I will do, however, is start by welcoming these overdue changes to the electronic communications code. We absolutely need to make it much easier for infrastructure to be rolled out—not just for masts; this also applies to the likes of Virgin, which is very concerned about wayleaves and access and how it can roll out wire networks. We very much welcome anything that will help increase coverage across the whole of the UK, and in particular across Scotland.

12 noon

I have concerns about aspects of the Bill. As I said on Tuesday, what the Government have essentially done is to make a deal with operators, and the people who will pay for the increased coverage are our local authorities—our fire services, which host these masts, or in Scotland the Forestry Commission Scotland. So we are taking from one public pot of money, which can arguably ill-afford to lose it, and giving it to mobile operators.

The Government would have done much better, as they looked to support roll-out, to, yes, make access much easier and look at aspects of access, but when it came to cost, to have had a discussion about annual licence fees and paid for the expansion themselves, rather than passing the buck to other groups indirectly.

One of the issues to consider is existing sites. We appreciate that the Bill is not retrospective, but as existing sites come up for renewal, the new law will inevitably apply and that will mean that the rental income for local authorities and so on will drop significantly. We would like to know whether the Minister considered, as part of this, excluding existing sites or having a sliding scale that over time might mean that income dropped but not quite as drastically as it now will as renewals come up.

The hon. Member for Sheffield, Heeley made excellent points about independent infrastructure. We will come on to some of our thoughts about that later, but it is particularly important when it comes to 5G. As the Minister declared at the Broadband World Forum yesterday, fibre is the future. We totally agree with that, but what fibre is needed for also is infrastructure. A lot more cells will be required. We do not want an environment in which they are prohibitively expensive, so we think that these moves will help that. We also do not want every operator feeling the need to put up all their own infrastructure. We would like to encourage, as the hon. Lady says, any mechanism, any incentive, that will encourage more and more mast sharing, because we are going to need many more masts.

My final point is that although there has been some consultation with the Scottish Government, that should continue and deepen. I am sure that in this room we are all aware—one does not have to be an expert, as the right hon. Member for Surrey Heath (Michael Gove) would put it, to know—that Scots law is different from English law. Yesterday, he did not know that education, the NHS and other matters were devolved, but that is by the bye. With Scots law, we have to be particularly careful, so I ask the Department and the Government to ensure that they continue that dialogue and that, in areas where there is an impact on Scots law, we are properly and fully consulted so that it works as we intended.

Matt Hancock: Clause 4 amends the Telecommunications Act 1984 and the Communications Act 2003 to give force to the new electronic communications code, which is in schedule 1 to the Bill. That includes repealing the existing code, which is currently set out in schedule 2 to the 1984 Act and schedule 3A to the 2003 Act. So in a sense the clause is short because it gives effect to a lot of detail set out elsewhere.

I will answer some of the questions. Of course we consult the Scottish Government on many of these matters, just as we consult local authorities all around England and the Welsh and Northern Ireland Governments. Communications are a reserved matter, but obviously how they are delivered in each jurisdiction is important.

Let me address the point about 5G and the importance of fibre. Fibre is the future. A very strong fibre backbone is very important for the roll-out of 5G; hon. Members on both sides of the Committee agree on that. However, that does mean that getting down the cost of sites is important. I agree with the hon. Member for Berwickshire, Roxburgh and Selkirk that this is not about single mobile phone providers having sites. Wireless infrastructure providers make up one third of the market. That is lower than in other countries, but it is important.

This comes down to the question of cost. It is wrong to argue that because some of these sites are hosted by the Forestry Commission and other parts of the public sector, we should not reduce the cost and make it easier to roll out infrastructure; you can't have your cake and eat it. We want to make it easier to roll out infrastructure. That is why we think it is good that the costs come down. However, most of these deals will remain commercial deals. What we are putting in place is a lower backstop, which I think is the right approach.

On the points made about the MNO deal for coverage, the hon. Member for Sheffield, Heeley is precisely right in her analysis of what I said. The figures that I gave on Tuesday are for the expected national result of the individual contractual requirements. I agree with her, of course, that it is better to have all MNOs available in one place, but having one rather than none is the first and most important step.

Dealing with notspots is the most important stage; the next is dealing with partial notspots: areas of the country covered by some but not all providers. That is why there is a difference between particular contracts and the figures that I gave, although EE's contract—partly

because it has the emergency service contract, which will come into force at the end of next year—has the widest expected future coverage of all the MNOs. The hon. Lady is exactly right. I would just say that we must not let the best be the enemy of the good; let us keep the roll-out going.

On the point that the hon. Lady made about stocking up, we are engaging with stakeholders to consider the concerns, and we will ensure that there is no retrospective effect. On the distinction between land and apparatus, we think that there is one, and we want to ensure that the revised code delivers access to viable sites. That is fundamental to the legal framework underpinning the deployment of electronic communication apparatus, and it must be the case regardless of whether it is on land owned by the operator or any other market player.

There is clearly a delicate balance to be achieved when considering what must be left purely to commercial agreement and what should be regulated in the code. Restricting the scope of legislation too far is likely to be counterproductive to ensuring that viable land remains on the market. We believe that the revised code achieves that balance effectively. I hope that I have made the case effectively for the revised code, and I hope that it helps ensure that we can roll out wireless infrastructure more widely across Britain. I commend the clause to the Committee.

Question put and agreed to.

Clause 4 accordingly ordered to stand part of the Bill.

Schedule 1

The electronic communications code

Matt Hancock: I beg to move amendment 12, in schedule 1, page 82, line 29, leave out “and keep”.

The code will deal with cases where apparatus has already been installed on land. Amendments 12, 13 and 14 therefore provide for installing apparatus and keeping apparatus on land to be treated separately, and for rights described in sub-paragraphs (c), (ca) and (d) to be described consistently with this.

The Chair: With this it will be convenient to discuss Government amendments 13 to 45.

Matt Hancock: This is a series of Government amendments to improve the new code. Amendments 12 to 14 are minor drafting amendments to clarify that the new electronics communications code will allow already installed apparatus to be kept on land, and to ensure consistency of terminology in paragraph 3 of the code. The remaining amendments are to part 6 of the new code, which deals with the right to remove electronic communications apparatus from land and related rights.

Amendment 24 inserts a new paragraph 36(a) into the code to provide that an owner or occupier of neighbouring land has a right to remove apparatus from other land where it obstructs access. If apparatus is installed on land A, the owner or occupier of land B can require removal where it obstructs or interferes with access to their own land. Amendment 25 inserts another new paragraph into the code to provide that an owner or occupier of neighbouring land also benefits from the right to require an operator to disclose whether it owns the apparatus, as it is important for neighbours to know that.

Amendments 15, 18, 26 to 30 and 32 to 35 are consequential on amendment 24 and 25. Amendment 37 inserts new paragraphs 38(a) and (b) to provide that the right to require removal of apparatus applies not only to those with an interest in land but also to a person whose right to require removal of apparatus arises from statute or other legal basis. It is necessary to establish the procedures by which such parties can require the removal of the electronic communications apparatus.

Amendments 16, 23, 40, 41, 43 and 45 are consequential on amendment 37. Amendment 38 clarifies how a person with an interest in the land can, when there is no longer apparatus on that land, ask the court to restore the land to its original condition, and amendments 19, 20, 39, 40 and 44 are consequential on that.

Amendment 31 clarifies that a landowner or occupier can require the removal of apparatus only in accordance with the procedure set out in the code. Amendment 36 ensures that proceedings before a court to enforce removal cannot finally be determined until any application for new rights made by the operator has been concluded, and amendment 17 is consequential on that.

Paragraph 36 of the new code provides for conditions that must be met before a landowner has the right to require the removal of apparatus from their land, and amendment 21 clarifies paragraph 36(2). Amendment 22 clarifies that a person whose code agreement was not subject to part 5 can apply to remove electronic communications apparatus when the code rights have ceased to apply to them.

Amendment 12 agreed to.

Amendments made: 13, in schedule 1, page 82, line 30, at end insert—

(aa) to keep installed electronic communications apparatus which is on, under or over the land,”.

The code will deal with cases where apparatus has already been installed on land. Amendments 12, 13 and 14 therefore provide for installing apparatus and keeping apparatus on land to be treated separately, and for rights described in sub-paragraphs (c), (ca) and (d) to be described consistently with this.

Amendment 14, in schedule 1, page 83, line 2, leave out from “installation” to end of line 4 and insert

“of electronic communications apparatus on, under or over the land or elsewhere;

(ca) to carry out any works on the land for or in connection with the maintenance, adjustment, alteration, repair, upgrading or operation of electronic communications apparatus which is on, under or over the land or elsewhere,”.

The code will deal with cases where apparatus has already been installed on land. Amendments 12, 13 and 14 therefore provide for installing apparatus and keeping apparatus on land to be treated separately, and for rights described in sub-paragraphs (c), (ca) and (d) to be described consistently with this.

Amendment 15, in schedule 1, page 86, line 26, leave out

“The reference in sub-paragraph (2)”

and insert

“A reference in this code”.

This applies the extended meaning of “means of access to or from land” across the code. It is consequential on amendment 24.

Amendment 16, in schedule 1, page 95, line 2, after “36” insert

“or as mentioned in paragraph 38A(1)”.

This is consequential on amendment 37.

Amendment 17, in schedule 1, page 95, line 10, leave out "or" and insert "and".

This is consequential on amendment 36.

Amendment 18, in schedule 1, page 102, line 1, leave out

"with an interest in land".

This is consequential on amendment 37.

Amendment 19, in schedule 1, page 102, line 3, at end insert

"or the restoration of land,".

This is consequential on amendment 38.

Amendment 20, in schedule 1, page 102, line 6, after "removal" insert

"of apparatus or restoration of land".

This is consequential on amendment 38.

Amendment 21, in schedule 1, page 102, line 14, after "never" insert

"since the coming into force of this code".

This provides for a condition for having a right to require removal of apparatus to be met if the only right there has been to keep the apparatus on the land was a right that came to an end under the code that Schedule 1 to the Bill replaces, or that ceased under that code to be binding on the landowner.

Amendment 22, in schedule 1, page 102, line 24, at end insert ", or

( ) where the right was granted by a lease to which Part of this code does not apply.".

Part 5 of the code (termination of agreements creating code rights) does not apply to certain leases governed by landlord and tenant law. The amendment provides for the ending of code rights under such a lease and under Part 5 to be treated in the same way for the purposes of rights to require removal of apparatus.

Amendment 23, in schedule 1, page 103, line 17, at end insert—

'( ) This paragraph does not affect rights to require the removal of apparatus under another enactment (see paragraph 38A).".

This is consequential on amendment 37.

Amendment 24, in schedule 1, page 103, line 17, at end insert—

"When does a landowner or occupier of neighbouring land have the right to require removal of electronic communications apparatus?

36A (1) A landowner or occupier of any land ("neighbouring land") has the right to require the removal of electronic communications apparatus on, under or over other land if both of the following conditions are met.

(2) The first condition is that the exercise by an operator in relation to the apparatus of a right mentioned in paragraph 13(1) interferes with or obstructs a means of access to or from the neighbouring land.

(3) The second condition is that the landowner or occupier of the neighbouring land is not bound by a code right within paragraph 3(f) entitling an operator to cause the interference or obstruction.

(4) A landowner of neighbouring land who is not the occupier of the land does not meet the 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 cause the interference or obstruction, 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) In the application of sub-paragraph (4)(b) to Scotland the reference to a covenant enforceable by the landowner is to be read as a reference to a contractual term which is so enforceable.".

New paragraph 36A makes provision for a landowner or occupier of neighbouring land to have a right to require removal of apparatus that obstructs or interferes with a means of access to that land.

Amendment 25, in schedule 1, page 103, line 27, at end insert—

'(1A) A landowner or occupier of neighbouring land may by notice require an operator to disclose whether—

(a) the operator owns electronic communications apparatus on, under or over land that forms (or, but for the apparatus, would form) a means of access to the neighbouring land, 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 that forms (or, but for the apparatus, would form) a means of access to the neighbouring land.".

This is consequential on amendment 24. Paragraph 37(1A) provides for a landowner or occupier of neighbouring land to have the rights in paragraph 37 to require an operator to disclose whether it owns apparatus or has code rights relevant to the neighbouring land.

Amendment 26, in schedule 1, page 103, line 33, after "(1)" insert "or (1A)".

This is consequential on amendment 25.

Amendment 27, in schedule 1, page 103, line 34, after "landowner" insert "or occupier".

This is consequential on amendment 25.

Amendment 28, in schedule 1, page 103, line 37, after "landowner" insert "or occupier".

This is consequential on amendment 25.

Amendment 29, in schedule 1, page 103, line 38, after "landowner" insert "or occupier".

This is consequential on amendment 25.

Amendment 30, in schedule 1, page 103, line 47, after "landowner" insert "or occupier".

This is consequential on amendment 25.

Amendment 31, in schedule 1, page 104, line 2, leave out from beginning to "requiring" in line 9 and insert—

(1) The right of a landowner or occupier to require the removal of electronic communications apparatus on, under or over land, under paragraph 36 or 36A, is exercisable only in accordance with this paragraph.

(2) The landowner or occupier may give a notice to the operator whose apparatus it is".

The amendment clarifies that a landowner or occupier can require removal of electronic communications apparatus only in accordance with the procedure set out in paragraph 38.

Amendment 32, in schedule 1, page 104, line 23, after "landowner" insert "or occupier".

This is consequential on amendment 24.

Amendment 33, in schedule 1, page 104, line 33, after "landowner" insert "or occupier".

This is consequential on amendment 24.

Amendment 34, in schedule 1, page 104, line 40, after "landowner" insert "or occupier".

This is consequential on amendment 24.

Amendment 35, in schedule 1, page 104, line 41, after "landowner" insert "or occupier".

This is consequential on amendment 24.

Amendment 36, in schedule 1, page 104, line 42, at end insert—

'( ) On an application under sub-paragraph (6) or (7) the court may not make an order in relation to apparatus if an application under paragraph 19(3) has been made in relation to the apparatus and has not been determined.".

This provides that the court cannot order removal of apparatus under Part 6 of the code if there is an outstanding application under paragraph 19 (to keep the apparatus installed) that has not been determined.

Amendment 37, in schedule 1, page 104, line 42, at end insert—

"How are other rights to require removal of apparatus enforced?

38A (1) The right of a person (a "third party") under an enactment other than this code, or otherwise than under an enactment, to require the removal of electronic communications apparatus on, under or over land is exercisable only in accordance with this paragraph.

(2) The third party may give a notice to the operator whose apparatus it is, 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 85 (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) Within the period of 28 days beginning with the day on which notice under sub-paragraph (2) is given, the operator may give the third party notice ("counter-notice")—

(a) stating that the third party is not entitled to require the removal of the apparatus, or

(b) specifying the steps which the operator proposes to take for the purpose of securing a right as against the third party to keep the apparatus on the land.

(6) If the operator does not give counter-notice within that period, the third party is entitled to enforce the removal of the apparatus.

(7) If the operator gives the third party counter-notice within that period, the third party may enforce the removal of the apparatus only in pursuance of an order of the court that the third party is entitled to enforce the removal of the apparatus.

(8) If the counter-notice specifies steps under paragraph (5)(b), the court may make an order under sub-paragraph (7) only if it is satisfied—

(a) that the operator is not intending to take those steps or is being unreasonably dilatory in taking them; or

(b) that taking those steps has not secured, or will not secure, for the operator as against the third party any right to keep the apparatus installed on, under or over the land or to re-install it if it is removed.

(9) Where the third party is entitled to enforce the removal of the apparatus, under sub-paragraph (6) or under an order under sub-paragraph (7), the third party may make an application to the court for—

(a) an order under paragraph 39(1) (order requiring operator to remove apparatus etc), or

(b) an order under paragraph 39(2) (order enabling third party to sell apparatus etc).

(10) If the court makes an order under paragraph 39(1), but the operator does not comply with the agreement imposed on the operator and the third party by virtue of paragraph 39(5), the third party may make an application to the court for an order under paragraph 39(2).

(11) An order made on an application under this paragraph need not include provision within paragraph 39(1)(b) or (2)(d) unless the court thinks it appropriate.

(12) Sub-paragraph (9) is without prejudice to any other method available to the third party for enforcing the removal of the apparatus.

How does paragraph 38A apply if a person is entitled to require apparatus to be altered in consequence of street works?

38B (1) This paragraph applies where the third party's right in relation to which paragraph 38A applies is a right to require the alteration of the apparatus in consequence of the stopping up, closure, change or diversion of a street or road or the extinguishment or alteration of a public right of way.

(2) The removal of the apparatus in pursuance of paragraph 38A constitutes compliance with a requirement to make any other alteration.

(3) A counter-notice under paragraph 38A(5) may state (in addition to, or instead of, any of the matters mentioned in paragraph 38A(5)(b)) that the operator requires the third party to reimburse the operator in respect of any expenses incurred by the operator in or in connection with the making of any alteration in compliance with the requirements of the third party.

(4) An order made under paragraph 38A on an application by the third party in respect of a counter-notice containing a statement under sub-paragraph (3) must, unless the court otherwise thinks fit, require the third party to reimburse the operator in respect of the expenses referred to in the statement.

(5) Paragraph 39(2)(b) to (e) do not apply.

(6) In this paragraph—

"road" means a road in Scotland;

"street" means a street in England and Wales or Northern Ireland.".

New paragraphs 38A and 38B provide for a right to require removal of electronic communications apparatus to be available to not only to a person with an interest in land (see paragraph 36(1)) but also to a "third party" whose right to require removal of apparatus arises pursuant to an enactment, or on some other legal basis.

Amendment 38, in schedule 1, page 104, line 42, at end insert—

"When can a separate application for restoration of land be made?

38C (1) This paragraph applies if—

(a) the condition of the land has been affected by the exercise of a code right, and

(b) restoration of the land to its condition before the code right was exercised does not involve the removal of electronic communications apparatus from any land.

(2) The occupier of the land, the owner of the freehold estate in the land or the lessee of the land ("the relevant person") has the right to require the operator to restore the land if the relevant person is not for the time being bound by the code right.

This is subject to sub-paragraph (3).

(3) The relevant person does not have that right if—

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

(i) conferred a code right (which is in force) entitling the operator to affect the condition of the land in the same way as the right mentioned in sub-paragraph (1), 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 relevant person.

(4) In the application of sub-paragraph (3)(b) to Scotland the reference to a covenant enforceable by the relevant person is to be read as a reference to a contractual term which is so enforceable.

(5) A person who has the right conferred by this paragraph may give a notice to the operator requiring the operator to restore the land to its condition before the code right was exercised.

(6) The notice must—

(a) comply with paragraph 85 (notices given by persons other than operators), and

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

(7) The period specified under sub-paragraph (6) must be a reasonable one.

(8) Sub-paragraph (9) 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 restore the land to its condition before the code right was exercised;

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

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

(a) an order under paragraph 39(1A) (order requiring operator to restore land), or

(b) an order under paragraph 39(2A) (order enabling landowner to recover cost of restoring land).

(10) If the court makes an order under paragraph 39(1A), but the operator does not comply with the agreement imposed on the operator and the landowner by virtue of paragraph 39(5), the landowner may make an application to the court for an order under paragraph 39(2A).

(11) In the application of sub-paragraph (2) to Scotland the reference to a person who is the owner of the freehold estate in the land is to be read as a reference to a person who is the owner of the land.".

New paragraph 38C makes provision about restoration of land where restoration does not involve the removal of apparatus.

Amendment 39, in schedule 1, page 105, line 2, at end insert—

'(1A) An order under this sub-paragraph is an order that the operator must, within the period specified in the order, restore the land to its condition before the code right was exercised.".

This is consequential on amendment 38.

Amendment 40, in schedule 1, page 105, line 3, after "landowner" insert

", occupier or third party".

This is consequential on amendments 24 and 37.

Amendment 41, in schedule 1, page 105, line 15, after "landowner" insert

", occupier or third party",

This is consequential on amendments 24 and 37.

Amendment 42, in schedule 1, page 105, line 15, at end insert—

'(1A) An order under this sub-paragraph is an order that the landowner may recover from the operator the costs of restoring the land to its condition before the code right was exercised.".

This is consequential on amendment 38.

Amendment 43, in schedule 1, page 105, line 16, after "paragraph" insert

"on an application under paragraph 38".

This is consequential on amendments 24 and 37.

Amendment 44, in schedule 1, page 105, line 24, after "(1)" insert "or (1A)".

This is consequential on amendment 38.

Amendment 45, in schedule 1, page 105, line 25, after "landowner" insert

", occupier or third party".—*(Matt Hancock.)*

This is consequential on amendments 24 and 37.

Question proposed, That the schedule, as amended, be the First schedule to the Bill.

Matt Hancock: This schedule is the reformed electronic communications code, which is to be inserted into the Communications Act 2003. The debate we have just had on clause 4, which repeals the previous code, explains precisely why the new code is important. This is all about making sure that the law is up to date. The code was established by the 1984 Act and has not been substantively amended since then. The legal framework just has not kept pace with rapid changes. Our debate on clause 4 demonstrates why it is important to get this right.

The revised code forms part of a series of measures to improve this country's communications infrastructure. We have worked closely with the devolved Administrations to make sure that the code will work effectively in all jurisdictions. The code has 17 parts, each dealing with the rights and responsibilities of site providers and operators, and I will quickly go through each part.

Part 1 is about the concepts in the code, including some of the definitions. Part 2 sets out how code rights are conferred and on whom they are binding. Part 3 sets out the automatic rights to assign code rights and addresses the upgrading and sharing of apparatus. Part 4 sets out the circumstances in which a court can impose an agreement where one cannot be reached between the parties—that is a crucial element of the code—including the procedures to be followed in such circumstances.

Parts 5 and 6 address how parties can bring an agreement to an end and how landowners can have apparatus removed. Parts 7 to 10 address the regime in place for land that requires distinct treatment due to its particular characteristics, such as transport land. Parts 11 and 12 provide rights for third parties to object to apparatus. Part 13 addresses the right to lop trees. Parts 14 and 15 make provision for compensation notices under the code. Part 16 provides for enforcement and dispute resolution, and it introduces the power for the Secretary of State to make regulations to transfer jurisdiction on code cases to the Upper Tribunal (Lands Chamber). Lastly, part 17 contains supplementary provisions, including on general interpretation, and addresses the definition of "land".

The crucial reason for the changes is that part 2 is structured to underpin consensual agreements for code rights. As we discussed, consensual agreements are important, but, where agreement cannot be reached, part 4 means that a court has the power to impose code rights against a site provider in favour of an operator. The court can calculate the price an operator should pay a site provider for code rights.

12.15 pm

The new code, in recognition of not only the need for communications but the clear importance of digital communications to the economy, seeks to limit the cost of deployment. Paragraph 23 introduces a "no scheme" basis of evaluation to ensure that land is assessed not at the value to the operator but at the value to the landowner. Any potential savings made by wireless infrastructure providers under the new land valuation should be passed through to network operators.

Part 5 introduces clear and efficient rules and procedures for terminating, renewing or modifying agreements when existing agreements come to an end. A key innovation is that agreements will continue in force, even after expiry, until terminated or renegotiated to give greater security of apparatus for the operator and greater security of income to the landowner. It is essential that that is all

underpinned by an efficient and expert forum for dispute resolution. The new code enables the jurisdiction disputes to be transferred in Scotland and Northern Ireland to specialist land tribunals and in England and Wales to the Upper Tribunal (Lands Chamber). Specialist expertise here is important. Ensuring effective broadband and mobile coverage is critical and the code provides a modern and rigorous legal foundation for the roll-out of apparatus.

Question put and agreed to.

Schedule 1, as amended, accordingly agreed to.

Schedule 2

THE ELECTRONIC COMMUNICATIONS CODE: TRANSITIONAL PROVISION

Matt Hancock: I beg to move amendment 46, in schedule 2, page 138, line 17, leave out "under paragraph 2(1)" and insert—

"for the purposes of paragraph 2 or 3".

This provides that the subsisting agreements covered by the transitional provisions in Schedule 2 include agreements under paragraph 3(1) of the existing code (agreement to confer a right to obstruct access) as well as paragraph 2(1).

The Chair: With this it will be convenient to discuss Government amendments 47 to 54 and Government amendment 1.

Matt Hancock: This is a group of technical amendments. Amendments 46 to 54 are to schedule 2, which contains transitional arrangements for moving from the existing code to the new code introduced by the Bill. The amendments will clarify and simplify the transitional provisions in the schedule. Amendment 1 is a drafting change to make clear that the power in clause 5 to make transitional provision in connection with the new electronic communications code includes the power to make saving provision.

Amendment 46 agreed to.

The Chair: With the leave of the Committee, I propose that we combine the questions on Government amendments 47 to 54 as a single question.

Amendments made: 47, in schedule 2, page 138, line 28, at end insert—

'(2) A person who is bound by a right by virtue of paragraph 2(4) of the existing code in consequence of a subsisting agreement is, after the new code comes into force, treated as bound pursuant to Part 2 of the new code.'

This provides that a person who was bound by a right pursuant to a subsisting agreement (see paragraph 2(4) of the existing code) continues to be treated as bound by that agreement, under the provisions of Part 2 of the new code (see paragraph 10 of the new code).

Amendment 48, in schedule 2, page 138, line 31, after "are" insert "— (a)"

Amendments 48, 49 and 50 are consequential on amendment 46 and provide for references in the new code to a "code right" in relation to a subsisting agreement to have the corresponding meaning depending on whether the agreement was for the purposes of paragraphs 2(1) or (3(1) of the existing code.

Amendment 49, in schedule 2, page 138, line 31, leave out "the agreement" and insert—

"an agreement for the purposes of paragraph 2 of the existing code"

Amendments 48, 49 and 50 are consequential on amendment 46 and provide for references in the new code to a "code right" in relation to a subsisting agreement to have the corresponding meaning depending on whether the agreement was for the purposes of paragraphs 2(1) or (3(1) of the existing code.

Amendment 50, in schedule 2, page 138, line 33, at end insert—

'(b) in relation to land to which an agreement for the purposes of paragraph 3 of the existing code relates, a right to do the things mentioned in that paragraph.'

Amendments 48, 49 and 50 are consequential on amendment 46 and provide for references in the new code to a "code right" in relation to a subsisting agreement to have the corresponding meaning depending on whether the agreement was for the purposes of paragraphs 2(1) or (3(1) of the existing code.

Amendment 51, in schedule 2, page 139, line 11, leave out sub-paragraph (1) and insert—

'5A (1) This paragraph applies in relation to a subsisting agreement, in place of paragraph 28(2) to (4) of the new code.

(2) Part 5 of the new code (termination and modification of agreements) does not apply to a subsisting agreement that is a lease of land in England and Wales, if—

(a) it is a lease to which Part 2 of the Landlord and Tenant Act 1954 applies, and

(b) there is no agreement under section 38A of that Act (agreements to exclude provisions of Part 2) in relation the tenancy.

(3) Part 5 of the new code does not apply to a subsisting agreement that is a lease of land in England and Wales, if—

(a) the primary purpose of the lease is not to grant code rights (the rights referred to in paragraph 3 of this Schedule), and

(b) there is an agreement under section 38A of the 1954 Act in relation the tenancy.

(4) Part 5 of the new code does not apply to a subsisting agreement that is a lease of land in Northern Ireland, if it is a lease to which the Business Tenancies (Northern Ireland) Order 1996 (SI 1996/725 (NI 5)) applies.

6 (1) Subject to paragraph 5A, Part 5 of the new code applies to a subsisting agreement with the following modifications.'

The amendment provides for the interaction of landlord and tenant law and Part 5 of the new code (termination and modification of agreements) in the case of subsisting agreements (see paragraph 1(4) of Schedule 2).

Amendment 52, in schedule 2, page 140, line 17, leave out

"the following provisions of this paragraph" and insert "sub-paragraph (3)"

This is consequential on amendment 53.

Amendment 53, in schedule 2, page 140, line 21, leave out sub-paragraphs (4) to (10)

This relates to applications under paragraph 5(1) of the existing code (power of court to dispense with need for required agreement). The effect of the amendment is that, if an application has been made to the court before the new code comes into force, the procedures under the existing code apply, but any resultant order takes effect as an order made under the new code.

Amendment 54, in schedule 2, page 142, line 7, leave out paragraphs 19 to 22 and insert—

'19A (1) This paragraph applies where before the repeal of the existing code comes into force a person has given notice under paragraph 21(2) of that code requiring the removal of apparatus.

(2) The repeal does not affect the operation of paragraph 21 in relation to anything done or that may be done under that paragraph following the giving of the notice.

(3) For the purposes of applying that paragraph after the repeal comes into force, steps specified in a counter-notice under sub-paragraph (4)(b) of that paragraph as steps which the operator proposes to take under the existing code are to be read

as including any corresponding steps that the operator could take under the new code or by virtue of this Schedule.'—*(Matt Hancock.)*

The amendment replaces transitional provisions for requiring the removal of apparatus. It provides for paragraph 21 of the existing code to continue to apply if a notice under that paragraph has been given, but treats an operator seeking rights to keep the apparatus installed as seeking rights also under the new code or transitional provisions.

Schedule 2, as amended, agreed to.

Schedule 3

The electronic communications code: consequential amendments

Question proposed, That the schedule be the Third schedule to the Bill.

The Chair: With this it will be convenient to discuss Government new schedule 1—*Electronic communications code: consequential amendments.*

Matt Hancock: Schedule 3 contains consequential amendments that accompany the electronic communications code found in schedule 1. They amend existing legislation to ensure that implementation aligns and is consistent with other existing legislation. Since the introduction of the Bill, a number of additional necessary consequential amendments have been identified. New schedule 1 substitutes a new, revised and more comprehensive schedule, which contains an expanded list of necessary consequential amendments. I will therefore move new schedule 1 at the appropriate point in our proceedings.

Schedule 3 disagreed to.

Clause 5

Power to make transitional provision in connection with the code

Amendment made: 1, in clause 5, page 3, line 23, leave out "or transitory" and insert ", transitory or saving"—*(Matt Hancock.)*

The amendment adds power to make saving provision in connection with the coming into force of the new electronic communications code.

Clause 5, as amended, ordered to stand part of the Bill.

Clauses 6 and 7 ordered to stand part of the Bill.

Clause 8

Regulation of dynamic spectrum access services

Matt Hancock: I beg to move amendment 2, in clause 8, page 8, line 16, leave out "imposed" and insert "specified".

This amendment reflects the fact that a notification under new section 53E of the Wireless Telegraphy Act 2006 will specify a penalty rather than imposing it.

The Chair: With this it will be convenient to discuss Government amendments 3 to 6.

Matt Hancock: Amendments 2 to 6 are all technical amendments, to enable Ofcom to register dynamic spectrum access service providers and to set out what Ofcom can do where there is a contravention of the restrictions or conditions of registration.

Amendment 2 agreed to.

Amendments made: 3, in clause 8, page 8, line 19, at end insert—

'( ) The amount of any other penalty specified under this section is to be such amount, not exceeding 10% of the relevant amount of gross revenue, as OFCOM think—

(a) appropriate, and

(b) proportionate to the contravention in respect of which it is imposed."

This amendment ensures that the penalty based on the relevant amount of gross revenue applies only where the daily default penalty specified under new section 53F(4) of the Wireless Telegraphy Act 2006 does not apply.

Amendment 4, in clause 8, page 9, line 21, leave out subsection (1).

This amendment is consequential on amendment 3.

Amendment 5, in clause 8, page 9, line 25, leave out "this section" and insert "section 53F".

This amendment is consequential on amendments 3 and 4.

Amendment 6, in clause 8, page 12, line 21, after "penalty" insert "specified".—*(Matt Hancock.)*

This amendment brings new section 53L(5) of the Wireless Telegraphy Act 2006 into line with new section 53F(5) of that Act.

Question proposed, That the clause stand part of the Bill.

Louise Haigh: As the Committee is aware, spectrum which covers the electromagnetic frequency range from 3 kHz to 3,000 GHz is a central ingredient of all forms of wireless technology. The Opposition agree that making better use of spectrum is obviously essential to facilitate the development of the UK's digital communications infrastructure. This is a national asset and it is important that the Government are constantly reviewing the way in which we can make better use of spectrum, particularly white space, which are used parts of the allocated spectrum.

It is also clearly important for Ofcom to have the power to police—for want of a better word—spectrum and it is important that, for instance, mobile network operators are achieving the coverage set out in their licence. We therefore support the specification of financial penalties if coverage requirements are not satisfied.

However, we would like reassurance on two issues: first, that amendment 2 does not water down the penalties that Ofcom can impose. The explanatory notes are not entirely clear and at present it seems as if, rather than allowing Ofcom to impose a penalty if coverage requirements are not satisfied, it simply must have regard to a potential penalty. We would welcome clarity from the Minister on that point.

My second, wider point is that, in the aftermath of Britain's exit from the European Union, it is important that we continue to maintain influence in the allocations and regulation of spectrum. As the Minister will know, at present the EU member states harmonise spectrum access conditions EU-wide to ensure an efficient use of radio spectrum. In cases where there are conflicts between different usages of spectrum, they establish policy priorities. This is especially important with new and emerging technology, where the EU will ensure that fair allocation and reallocation of frequencies is harmonised across the European Union. In the aftermath of our exit from the EU, we must continue to communicate effectively with our European partners, as a pan-European strategy will still be in our interest. Will the Minister ensure that

he continues to work closely with those partners, particularly as our loss of influence is unlikely to be compensated by our involvement in international forums?

Matt Hancock: I am very grateful for the Opposition's support of the reforms to the way that spectrum is allocated. Spectrum is a finite asset and it is incredibly important that our digital communications, and especially wireless communications, increase so that we make best use of it. It is very good to see cross-party recognition of the importance of that management and that Ofcom play an excellent role in adjudicating on this.

I shall take the hon. Lady's second specific question on the EU first. Of course we will continue discussions with neighbours about allocations. Ultimately, there are many spectrum frequencies that are dealt with on a global basis—for instance, those that are used in aviation. It is therefore important that we have international discussions, both in the EU and around the rest of the world. I can assure the hon. Lady that those discussions and that collaboration will continue. Indeed, some of it is going on as we speak.

On the hon. Lady's first point about watering down the penalties, the way in which this is structured does not require a penalty, in case there are reasons not to have one, but allows for penalties. I think that gives Ofcom the necessary wiggle room, should it need it.

Question put and agreed to.

Clause 8, as amended, accordingly ordered to stand part of the Bill.

Clause 9

Statement of strategic priorities

Question proposed, That the clause stand part of the Bill.

Louise Haigh: We are grateful for the Minister's reassurances in response to our concerns about clause 8. However, given those concerns, we think it is important that the statement of strategic priorities is updated in the aftermath of Britain's exit from the EU and that consultation should begin right away. The statement of strategic priorities becomes much less clear after Brexit, when the Government will be required to take on significantly more of the burden and have much greater regard for the international element of spectrum access, as we will not be able to rely on European policy.

Clearly, Brexit will significantly alter the policy priorities of the Government in the operation of spectrum. We know that Ofcom is an international thought leader in this area, which may aid the Government. However, we believe that the statement must be amended to avoid any confusion and that that should be done in full consultation with industry.

Matt Hancock: The hon. Lady is dead right that we have to ensure that the strategic priorities take into account our exit from the European Union. Of course, some parts of spectrum that have very short distances can be set domestically, not least because there is a physical boundary of a minimum 26 miles between the UK and any other country. There are longer frequencies that have a bigger range, where minimising interference is important. Some are used on a global basis, in which case global agreement is required.

The issue has to be taken into account, and we will take on board the hon. Lady's suggestion about ensuring that we have a statement of Government priorities post-Brexit that is appropriate to the UK outside the EU needing to engage with the EU, as well as with the rest of the world, and that domestic priorities are set where possible.

12.30 pm

Calum Kerr: Spectrum licensing is our most effective tool for ensuring we get the coverage model we want. The form of the code will help, but it is through licensing that we will drive the level of coverage we want. Will the Minister confirm that the Government will leave nothing off the table in that? One option might be taking back spectrum where appropriate—for example, in rural areas that cannot be covered, as has happened in the US.

Matt Hancock: Of course, the management of spectrum needs to be as efficient as possible. The new dynamic spectrum management in clause 8, which we just agreed to, will help to deal with white space—spectrum that is not used but could be. New technology allows that to be used far more efficiently. I am delighted that we got unanimous support for clause 8. On clause 9 and setting out a set of strategic priorities, I am sure that the hon. Gentleman's comments will be taken on board.

Question put and agreed to.

Clause 9 accordingly ordered to stand part of the Bill.

Clause 10

Penalties for contravention of wireless telegraphy licences

Matt Hancock: I beg to move amendment 7, in clause 10, page 16, line 7, at end insert—

'( ) In Schedule 8 to that Act (decisions not subject to appeal), at the end of paragraph 44 insert "for a relevant multiplex contravention".

This allows an appeal to the Competition Appeal Tribunal against a penalty imposed by OFCOM under section 42 of the Wireless Telegraphy Act 2006 for a breach of a wireless telegraphy licence, except where the breach relates only to broadcast content (in which case, as at present, an appeal to the Tribunal will not be possible).

Matt Hancock: Amendment 7 provides Ofcom with powers to impose a financial penalty for contravention of a wireless telegraphy licence condition. It will allow an appeal to be made to the Competition Appeal Tribunal against a decision by Ofcom to impose a penalty under section 42 of the Wireless Telegraphy Act 2006 except, as is currently the case, where the penalty is imposed for contravention of a condition relating to broadcast content.

Amendment 7 agreed to.

Clause 10, as amended, ordered to stand part of the Bill.

Clauses 11 to 13 ordered to stand part of the Bill.

Clause 14

TIME LIMITS FOR PROSECUTIONS UNDER WIRELESS TELEGRAPHY ACT 2006

Matt Hancock: I beg to move amendment 8, in clause 14, page 17, line 10, leave out "and (8)".

This is consequential on amendment 11.

The Chair: With this it will be convenient to discuss Government amendments 9 to 11.

Matt Hancock: The amendments will amend the Wireless Telegraphy Act 2006 to extend the time limit for bringing prosecutions for some summary offences—for example, those relating to unauthorised use of wireless telegraphy equipment. Amendment 10 makes provision about when proceedings in Scotland are deemed to have commenced for the purposes of the extended time limits. Amendments 8, 9 and 11 make minor changes to clarify the drafting.

Calum Kerr: Some of the amendments specifically relate to the law in a way that goes back to my earlier point. Will the Minister confirm whether the Scottish Administration have been consulted on this issue, given that it is clearly a devolved matter?

Matt Hancock: Yes—although I have had no discussions with them at a ministerial level about the amendments, I understand that discussions have taken place between officials. The effect of the amendments will be to make the law work better, so I hope they will have cross-party support.

Amendment 8 agreed to.

Amendments made: Government amendment 9, in clause 14, page 17, line 18, leave out "Subsections (3A) and (3B)" and insert

"Section 41(7) and subsection (3B) above".

Subsection (3C), inserted in section 107 of the Wireless Telegraphy Act 2006 by the clause, lists enactments displaced by the time limits mentioned in subsections (3A) and (3B). Subsection (3A) merely refers to section 41(7), and the amendment substitutes a direct reference to that provision for the reference to subsection (3A).

Government amendment 10, in clause 14, page 17, line 26, at end insert—

"(3D) In relation to proceedings in Scotland, subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995 (date when proceedings deemed to be commenced for the purposes of that section) applies also for the purposes of section 41(7) and subsection (3B) above.".

The amendment adds provision about when proceedings in Scotland are deemed to be commenced for the purposes of the time limits in section 41(7) and new subsection (3B) of section 107 of the Wireless Telegraphy Act 2006.

Government amendment 11, in clause 14, page 17, line 31, at end insert—

"() for subsection (8) substitute—

"(8) For further provision about prosecutions see section 107."".—*(Matt Hancock.)*

Existing section 41(8) of the Wireless Telegraphy Act 2006 applies to section 41(7) and is superseded by section 107(3C) inserted by the clause (see amendment 9). Amendment 10 also inserts provision applying to section 41(7) into section 107. Amendment 11 therefore substitutes a subsection referring the reader to section 107.

Clause 14, as amended, ordered to stand part of the Bill.

Clause 15

INTERNET PORNOGRAPHY: REQUIREMENT TO PREVENT ACCESS BY PERSONS UNDER THE AGE OF 18

Claire Perry: I beg to move amendment 65, in clause 15, page 18, line 15, at end insert—

"(d) how persons can make a report to the age-verification regulator about pornographic material available on the internet on a commercial basis that is not complying with subsection (1).".

This amendment places a requirement on the age-verification regulator to provide guidance as to how persons can report non-compliant pornography websites to the age-verification regulator.

I am extremely glad to have tabled a series of amendments to the vital provisions in part 3 of the Bill. As I said on Second Reading, we have come such a long way, and the enormous cross-party consensus to make the internet safer for young people has been crucial to that. We have seen some very effective sponsorship and responses from the previous Minister and his Department under the leadership of the last Prime Minister. Without his championship of this issue, we would not be where we are today.

My intention in tabling the amendments was to make provisions that are already good somewhat better, in the spirit of trying to encourage the Government to think hard about the line-by-line drafting. It has been made clear to me in meetings with organisations such as the British Board of Film Classification that there are ways to enhance the role of a regulator. I am delighted that the BBFC has been given the role, because it is truly a trusted brand; it is innovative and it does brilliant work to define age-rating boundaries. I have listened carefully to it.

What I am looking for is a clearer understanding of how the Government envisage the process of regulating websites and apps that provide access to material defined as pornographic in the UK. In his evidence session last week, David Austin referred to

"stages 1 to 3 of the regulation."—[*Official Report, Digital Economy Public Bill Committee,* 11 October 2016; c. 39, Q84.]

I would be interested to hear the Minister's explanation of how those different stages might work and to understand better how the enforcement element will work in practice—perhaps we will touch on that today but return to it in a later sitting.

I was struck by evidence given by those who do not support the changes; they feel that the issue is important but they argue that we should not be bringing in the new rules because we will not be able to make them stick. I must also mention my gratitude to the many organisations that have provided information and support on part 3 of the Bill. In particular, I note the contributions of Christian Action Research and Education, the Digital Policy Alliance, the National Society for the Prevention of Cruelty to Children and the Centre for Gender Equal Media.

My first amendment is to clause 15, which sets out the extremely welcome requirement that age verification should be introduced by websites and apps that are making commercial pornography available in the UK. Amendment 65 would add a new paragraph to clause 15(3) to strengthen enforcement by allowing the public and industry to provide intelligence to the regulator about the sites that do not have age verification.

I have always been struck by what we do not know about the internet. We all know that there is a massive proliferation of sites. I do accept what is said about much of the pornographic traffic concentrating around particular sites, but it grows like a Hydra every day. One of the BBFC's most effective acts has been to allow effectively self-regulation and allow people to report and comment on a particular posting, which is, if you like, a sort of self-rating scheme. That would be extremely valuable. Clearly, the regulator cannot be expected to scrutinise the entire world of sites. Allowing members of the public and industry to notify the regulator that information is there that should be regulated would be helpful.

I note that the Digital Policy Alliance recommended in one of its parliamentary briefings back in April that this power should be available. It would be an excellent way to ensure that the public can feel involved in protecting their children. One of the messages I have heard over the past few years is how much families feel disempowered in the process of keeping their children safe. Of course, people accept the notion of parental responsibility and of course schools have become involved in this process, but we have made it uniquely difficult for families effectively to keep their children safe on a digital platform.

We have other rules and regulations around broadcast and written media that make it much easier for families wanting to be involved in that process. The amendment, allowing the BBFC to provide notice that these referrals can be made, would be very helpful. I note that David Austin of the BBFC said last week that he does intend to take referrals from the public.

Will the Minister please confirm that it is also the Government's intention to promote the involvement of the whole community in championing online targeted child protection, and how this referral mechanism can be guaranteed? I hope he will consider this small change to the Bill.

Matt Hancock: Our intention is to establish a new regulatory framework and new regulatory powers tackling the viewing of adult content by minors. I pay tribute to the work of my hon. Friend over many years in getting us to this point. It has already ensured that there is voluntary activity, and that there are now legislative proposals is in many ways largely thanks to her campaigning. I am delighted that we have reached this point.

I am also delighted that, as we heard last week, the British Board of Film Classification will be designated as the age verification regulator. That is undoubtedly the best body in the land to do that job. It has the capability, as we heard at the evidence session. It will be responsible for identifying and notifying infringing sites. That will enable payment providers and other ancillary services to withdraw services from those providers that do not comply as soon as possible. Proceeding in that way will allow us to work quickly and effectively with all parts of the industry to ensure that they are fully engaged—indeed, that engagement has already started. We need to ensure the system is robust but fair and the providers of pornographic material are encouraged to be compliant by the processes in place.

I have every confidence, as I think we all should, in the BBFC's ability to deliver on this. We heard from David Austin, the chief executive, in evidence that he is already working on this. He said that the BBFC would create something, and that it has done so with mobile operators. I think that its commitment to enable members of the public and organisations such as the NSPCC to report a particular website is the best way forward. That is a sensible approach for the regulator to take.

We should take a proportionate approach to the regulator's role and allow the BBFC to do the job at which it is expert. We have required the regulator to issue guidance in circumstances where it allows the subjects of regulation to understand how the regime applies to them, but I think that going further and requiring this level of specification is not necessary, given the BBFC's commitment and the uncontroversial nature of the need. That will give us flexibility as well as a clear commitment to make this happen. I hope that given that explanation, my hon. Friend will withdraw her amendment.

12.45 pm

Claire Perry: I am pleased to hear that the Minister shares the view that the BBFC should be given a permissive regime to do some of the things it does well, rather than the Government specifying too much. With that assurance, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Louise Haigh: I beg to move amendment 85, in clause 15, page 18, line 20, leave out subsection (5)(a).

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

Amendment 87, in clause 15, page 18, line 25, leave out subsection 6.

New clause 7—*On-demand programme services: requirement to prevent persons under the age of 18 accessing pornographic material with an 18 classification certificate*—

"On-demand programme services: requirement to prevent persons under the age of 18 accessing pornographic material with an 18 classification certificate

Section 368E of the Communication Act 2003 (harmful material) is amended as follows—

(a) in subsection (5)—

(i) after subsection (a) insert—

"(aa) a video work in respect of which the video works authority has issued an 18 classification certificate, and that it is reasonable to assume from its nature was produced solely or principally for the purposes of sexual arousal,";

(ii) after subsection (b) insert—

"(ba) material that was included in a video work to which paragraph (aa) applies, if it is reasonable to assume from the nature of the material—

(i) that it was produced solely or principally for the purposes of sexual arousal, and

(ii) that its inclusion was among the reasons why the certificate was an 18 certificate,

"(bb) any other material if it is reasonable to assume from its nature—

(i) that it was produced solely or principally for the purposes of sexual arousal, and

(ii) that any classification certificate issued for a video work including it would be an 18 certificate."

(b) in subsection (7) after "section" insert—

""18 certificate" means a classification certificate which—

(a) contains, pursuant to section 7(2)(b) of the Video Recordings Act 1984, a statement that the video work is suitable for viewing only by persons who have attained the age of 18 and that no video recording containing that work is to be supplied to any person who has not attained that age, and

(b) does not contain the statement mentioned in section 7(2)(c) of that Act that no video recording containing the video work is to be supplied other than in a licensed sex shop;””

This new clause requires the extension of measures for UK-based video on-demand programming to protect children from 18 material as well as R18 material.

Louise Haigh: The amendments all explicitly include on-demand programme services in the age verification measures proposed by the Government. Given the rise in the use of mobile devices and tablets in the past decade, the case for appropriate online pornography enforcement has increased. We commend the Government’s intention in the proposals. I also put on the record our thanks and congratulations to the hon. Member for Devizes, who has campaigned on this issue for many years along with many other hon. Members, not least my hon. Friend the Member for Bristol West.

The ultimate goal is to seek parity of protection for children between the online and offline worlds, but how that is done in practice is fraught with issues. I hope that we can improve the proposals before us. Teens have an emerging right to independent communication with friends and family, and we recognise and respect that. We must not fall back on outdated means of protection such as blanket parental permissions. We need to empower and protect young people in ways that make sense to them and that they can and will use.

As the Committee knows, the effects of online pornography on unhealthy attitudes to sex and relationships are only just starting to be explored, but the research indicates a troubling trend. The NSPCC study of more than 1,000 young people aged 11 to 18 found that over half the sample had been exposed to online pornography, and nearly all of that group—94%—had seen it by age 14. Just over half the boys believed that the pornography that they had seen was realistic, and a number of girls said that they worried about how it would make boys see girls and the possible impact on attitudes to sex and relationships. One respondent said:

“Because you don’t get taught how to go on the internet and keep yourself safe, there are loads of tricks to get you to give away or to go on a bad website.”

Crucially, in research by Barnardo’s, four fifths of teenagers agreed that it was too easy for young people to see pornography online by accident.

Adult products and spaces, including gambling shops, sex shops and nightclubs, are restricted in the offline sphere. Contents such as film and television, advertising and pornography are all also limited, with penalties ranging from fines to custodial sentences available to discharged proprietors who do not comply. It is a transparent, accountable process overseen by regulators and licence operators such as Ofcom, the BBFC and the Gambling Commission to ensure that children are protected from age-inappropriate content and experiences.

Labour is happy to support the Government’s efforts to introduce age verification, but we must ensure that enforcement is strong enough. Our amendment speaks to that broad aim of the Opposition, which I know is supported by Government Back Benchers, given the other amendments tabled today. However, the measure cannot be seen as a silver bullet, which is why tacking this manifesto commitment on to a Digital Economy Bill is inadequate. First, slotting it into a Bill on the digital economy gives the impression, however unintentional, that the measure is designed to deal only with commercial providers of pornography, those who exploit data or benefit from advertising or subscription services—those who are, in short, part of the digital economy, rather than all providers of pornography online.

Although we are aware that most pornography providers operate on a commercial basis, many do not. Peer-to-peer networks and Usenet groups, however difficult to police, would presumably not be in the scope of the Bill. That is on top of pornography available through apps that are commercial enterprises, such as Twitter and Tumblr, or free webpages, such as WordPress, where the provision of pornography is incidental or provides no income to the overall business, or is not used for commercial purposes at all. Under clause 15 as it stands, it is by no means clear that all pornography available on the internet will be subject to age verification requirements.

Allow me to remind the Minister what the Conservative party manifesto said on the matter in 2015. It stated that

“we will stop children’s exposure to harmful sexualised content online, by requiring age verification for access to all sites containing pornographic material”.

There is no prevarication or equivocation there, and I commend the wording in the manifesto. Unfortunately, between that time and the legislation being drawing up, a rogue adjective has been added to the commitment, which seemed perfectly clear in the manifesto. One could easily argue that if a site such as Tumblr does not make pornography available on a commercial basis, then it is exempt, which would leave that manifesto commitment in some difficulty. Can we therefore have a commitment from the Minister that the regulator will be able to go after all sites containing pornographic material and not just those operating on a commercial basis, however broadly we may want to define “commercial”? The word seems at best unnecessary, and at worst a breach of the manifesto commitment.

Slotting age verification into the Bill gives Members nothing like the scope needed to tackle the effect of under-age viewing of pornography, which is surely the intention behind its implementation, because the measure is not enough to protect children. For a start, the regulator should also be responsible for ensuring that services undertake self-audits and collect mandatory reports in relation to child abuse images, online grooming and malicious communication involving children. To ensure that services are working to consistent principles and to best support the collection and utilisation of data, the regulator should also be responsible for developing a definition of child abuse.

We need to improve reporting online. Children and young people are ill served by the currently inadequate and unreliable reporting systems when they experience online abuse. Reporting groups need to be standardised, visible, responsive and act rapidly to address issues. Every reporting group must be designed in ways children say they can and will use. The NSPCC found that 26% of children and young people who used the report

button saw no action whatever taken in response to their complaint; and of those who did get a response, 16% were dissatisfied with it. The Government should include independent mediation and monitoring of responses to complaints.

Clearly, we need compulsory sex education in our schools. Compulsory age-appropriate lessons about healthy relationships and sex are vital to keeping children safe on and offline. We know that children are exposed to pornography, sometimes in an extreme or violent form. Alongside regulation to limit access to these materials, building resilience and instilling an early understanding of healthy relationships can help to mitigate the impact of that exposure.

On that point, we are incredibly keen to ensure that legislation is as clear as possible and that any potential loopholes are closed. One such loophole is clause 15(5)(a), which for reasons that are unclear excludes on-demand programme services. Explicitly excluding any on-demand programme service available on the internet in the Bill—although we are aware that they are regulated by Ofcom—risks on-demand programme services being subject to a much looser age verification requirement than the Bill would enforce on other pornography providers. We do not believe that the legislation intends to create two standards of age verification requirements for online content, regardless of whether it is separately regulated. The amendment is intended to close that loophole.

Claire Perry: I will speak to amendments 85 and 87. I raised a question with David Austin last week about the regulation of video on demand. He confirmed that the intention of the Bill as it stands is to maintain the regulation of UK video on demand with Ofcom under the Communications Act 2003. That seems totally reasonable to me because Ofcom has done a good job. I think the issue is that the framework only requires age verification for R18 material.

I am not trying to give everyone a lesson—by the way, this is why we are so grateful to the BBFC; it gives very clear definitions of the material—but R18 is effectively hardcore porn. It contains restricted scenes that we would all consider to be pornography. Since 2010, the 18-certificate guidelines permit the depiction of explicit sex in exceptional justifying circumstances, so it is perfectly feasible for children to view 18-rated content that we would all consider to be pornographic. I fully agree with the sentiment behind amendments 85 and 87 to provide a level playing field for all online media, but we must ensure that all R18 and 18 content accessed through video-on-demand services is included in the provisions. However, removing clauses 15(5)(a) and 16(6) would cause a fair amount of confusion, as video-on-demand services would be regulated by Ofcom for the majority of the time but for age verification matters would be regulated by the BBFC and Ofcom, which raises the question of who has precedence and how enforcement would work.

I have therefore tabled new clause 7, which would meet the same objective in a slightly different way by amending the current regulatory framework for video on demand to ensure that children are protected from 18-rated as well as R18-rated on-demand material. The relevant section of the Communications Act 2003, section 368E, was amended by the Audiovisual Media Services Regulations 2014 to specify that R18 material should be subject to age verification to protect children. It is not a big step to require 18-rated pornographic material, which is the subject of much of this part of the Bill, to be included within the scope of that section. That would effectively create a legal level playing field. It would remove the issue of parity and precedence and would give us parity on the fundamental issue of the protection of children.

I agree with much of what the hon. Member for Sheffield, Heeley said. Ofcom's latest figures on children and the media show that 51% of 12 to 15-year-olds watched on-demand services in 2015. The viewing of paid for on-demand content has gone up and accounts for 20% of viewing time for young people aged 16 to 24. They can view content rated 18 or R18 that would be prohibited for some of them if they were to purchase it in the offline world. With new clause 7, I recommend that the Government should try to ensure parity between the online and offline worlds. This Bill is a brilliant way to ensure that there is parity in the way that pornographic content is accessed.

Kevin Brennan: On the point that my hon. Friend the Member for Sheffield, Heeley made about the wording of the clause and how it talks about material that is made available "on a commercial basis", does the hon. Member for Devizes have any concerns that that might be a definitional problem that could create a loophole?

Claire Perry: The hon. Gentleman raises a challenge. The explanatory notes make it clear that the Government intend to capture both commercial and freely provided material, which gets to the root of his concern. If someone is benefiting from the viewing of such material, the Government intend to capture that within the definition. I commend both the Minister and his Department for asking the BBFC to take on the role of regulator, because I have a high level of faith in its ability to do just that.

Kevin Brennan: I take the hon. Lady's point that the Government have said that they would like to capture such material, but my hon. Friend the Member for Sheffield, Heeley said that they might not capture everything. We tabled a probing amendment to take out the words "on a commercial basis" to test that, but it was ruled out of scope because the Bill is about the digital economy. So it has to be material that is made available on a commercial basis only, otherwise it is out of the scope of the Bill.

Claire Perry: The hon. Gentleman is splitting hairs. The Government have issued clear guidance that the definition of "commercial" includes free content. There are very few altruistic providers of this material. Free content tends to be provided as a taster for commercial sites.

Kevin Brennan: There are lots!

Claire Perry: Well, I accept that is true of streaming and on-demand, which is why this provision is important. It would capture material that is rated 18, not just restricted-18, and put it on a level playing field with restricted-18 material. The on-demand video content that the hon. Member for Sheffield, Heeley mentioned

[Claire Perry]

would be covered by the changes. I am interested to hear the Minister's response to my proposed new clause 7, which would support parity of both content and regulator.

Ordered, That the debate be now adjourned.—*(Graham Stuart.)*

1 pm

Adjourned till this day at Two o'clock.

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

DIGITAL ECONOMY BILL

Sixth Sitting

Thursday 20 October 2016

(Afternoon)

CONTENTS

Clauses 15 to 25 agreed to.
Adjourned till Tuesday 25 October at twenty-five past Nine o'clock.
Written evidence reported to the House.

PBC (Bill 045) 2016 - 2017

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Monday 24 October 2016

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The Committee consisted of the following Members:

Chairs: MR GARY STREETER, † GRAHAM STRINGER

† Adams, Nigel *(Selby and Ainsty)* (Con)
† Brennan, Kevin *(Cardiff West)* (Lab)
† Davies, Mims *(Eastleigh)* (Con)
† Debbonaire, Thangam *(Bristol West)* (Lab)
† Foxcroft, Vicky *(Lewisham, Deptford)* (Lab)
† Haigh, Louise *(Sheffield, Heeley)* (Lab)
† Hancock, Matt *(Minister for Digital and Culture)*
† Hendry, Drew *(Inverness, Nairn, Badenoch and Strathspey)* (SNP)
† Huddleston, Nigel *(Mid Worcestershire)* (Con)
Jones, Graham *(Hyndburn)* (Lab)
† Kerr, Calum *(Berwickshire, Roxburgh and Selkirk)* (SNP)
† Mann, Scott *(North Cornwall)* (Con)
† Matheson, Christian *(City of Chester)* (Lab)
† Menzies, Mark *(Fylde)* (Con)
† Perry, Claire *(Devizes)* (Con)
† Skidmore, Chris *(Parliamentary Secretary, Cabinet Office)*
† Stuart, Graham *(Beverley and Holderness)* (Con)
† Sunak, Rishi *(Richmond (Yorks))* (Con)

Marek Kubala, *Committee Clerk*

† attended the Committee

Public Bill Committee

Thursday 20 October 2016

(Afternoon)

[GRAHAM STRINGER *in the Chair*]

Digital Economy Bill

Clause 15

INTERNET PORNOGRAPHY: REQUIREMENT TO PREVENT ACCESS BY PERSONS UNDER THE AGE OF 18

Amendment proposed (this day): 85, in clause 15, page 18, line 20, leave out subsection (5)(a).—*(Louise Haigh.)*

2 pm

Question again proposed, That the amendment be made.

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

Amendment 87, in clause 15, page 18, line 25, leave out subsection 6.

New clause 7—*On-demand programme services: requirement to prevent persons under the age of 18 accessing pornographic material with an 18 classification certificate*—

"Section 368E of the Communication Act 2003 (harmful material) is amended as follows—

(a) in subsection (5)—

(i) after subsection (a) insert—

"(aa) a video work in respect of which the video works authority has issued an 18 classification certificate, and that it is reasonable to assume from its nature was produced solely or principally for the purposes of sexual arousal,";

(ii) after subsection (b) insert—

"(ba) material that was included in a video work to which paragraph (aa) applies, if it is reasonable to assume from the nature of the material—

(i) that it was produced solely or principally for the purposes of sexual arousal, and

(ii) that its inclusion was among the reasons why the certificate was an 18 certificate,

"(bb) any other material if it is reasonable to assume from its nature—

(i) that it was produced solely or principally for the purposes of sexual arousal, and

(ii) that any classification certificate issued for a video work including it would be an 18 certificate."

(b) in subsection (7) after "section" insert—

""18 certificate" means a classification certificate which—

(a) contains, pursuant to section 7(2)(b) of the Video Recordings Act 1984, a statement that the video work is suitable for viewing only by persons who have attained the age of 18 and that no video recording containing that work is to be supplied to any person who has not attained that age, and

(b) does not contain the statement mentioned in section 7(2)(c) of that Act that no video recording containing the video work is to be supplied other than in a licensed sex shop;""

This new clause requires the extension of measures for UK-based video on-demand programming to protect children from 18 material as well as R18 material.

Thangam Debbonaire (Bristol West) (Lab): First, I thank my hon. Friend the Member for Sheffield, Heeley for making such a clear and cogent argument for why the Bill needs further amendment. As I think she said—I am sure that she will correct me if I am wrong—we want to ensure that the Government stick to their manifesto commitment to protect children from all forms of online pornography. That will take consistency and a depth of modesty about the extent of our various levels of knowledge about how the internet works.

The hon. Member for Devizes made a good speech, and I am grateful to her for making the argument about on-demand films, as my hon. Friend the Member for Sheffield, Heeley also did, but the hon. Lady said—please correct me if I am wrong—that there were not many providers of free online pornography. I must respectfully disagree. Given the existence of peer-to-peer sharing and other forms of availability—my hon. Friend mentioned Tumblr and other social media websites—I am afraid that it is incredibly easy, as my nephews and nieces have confirmed, sadly, for a young person to access free online pornographic content in ways that most of us here might not even understand.

Claire Perry (Devizes) (Con): I am happy to clarify. My focus was on the Government's intention to capture free and commercial pornography. The hon. Lady is absolutely right that there is a plethora of free stuff out there, and she is right to focus on the harm that it causes.

Thangam Debbonaire: I thank the hon. Lady for that clarification. I understand from an intervention made by my hon. Friend the Member for Cardiff West that the reason why we were not allowed to remove the words "on a commercial basis" was that they were deemed out of scope. As I understand it, the word "economy", if we stick to the letter of it, includes transactions for which there is no financial payment. There are transactions involved, and the word "digital" is in the title of the Bill, so I think it unfortunate that the amendment was not agreed to. Taking out the words "on a commercial basis" would have done a great deal to make consistent across all platforms and all forms of pornographic content available online the restrictions that we are placing on commercial ones.

I support the amendments proposed by my hon. Friend to the wording of clause 15(5)(a) and (6), for reasons that have already been given, and I want to add to the arguments. Hon. Friends and Members may have read the evidence from Girlguiding. As a former Guide, I pay tribute to the movement for the excellent work that it has done. It has contributed a profound and well-evidenced understanding of what young women are saying about online pornography. I will pick out a couple of statistics, because they make arguments to which I will refer in interventions on later clauses. That will make my speeches less long.

In the 2016 girls' attitudes survey, half of the girls said that sexism is worse online than offline. In the 2014 survey, 66%, or two thirds, of young women said that they often or sometimes see or experience sexism online. It is a place where young women routinely experience sexism, and part of that sexism is the ubiquity of pornography. In 2015, the survey found that 60% of girls aged 11 to 21 see boys their age—admittedly, some

of those are over the age of 18, but they are still the girls' peers—viewing pornography on mobile devices or tablets. In contrast, only 27% of girls say that they see girls their age viewing pornography. The majority of those young women say from their experience that children can access too much content online and that it should be for adults only. In the survey, we see a certain degree of concord among young women in the Girlguiding movement, Opposition Members and the Government manifesto, which pledged, as my hon. Friend said, to exclude children from all forms of online pornography.

The 2015 Girlguiding survey also found that those young women felt that pornography was encouraging sexist stereotyping and harmful views, and that the proliferation of pornography is having a negative effect on women in society more generally. Those young women are the next generation of adults.

I have worked with young men who have already abused their partners. In my former job working with domestic violence perpetrators, I worked with young men of all ages; for the men my age, their pornography had come from the top shelf of a newsagent, but the younger men knew about forms of pornography that those of us of a certain age had no understanding of whatever. They were using pornography in ways that directly contribute to the abuse of women and girls, including pornography that is filmed abuse. I shall come back to that point later, but we need to recognise that young men are getting their messages about what sex and intimacy are from online pornography. If we do not protect them from online pornography under the age of 18, we are basically saying that there are no holds barred.

The hon. Member for Devizes and my hon. Friend the Member for Sheffield, Heeley mentioned loopholes. When we leave loopholes, it creates a colander or sieve for regulation. Yes, the internet is evolving and, yes, we in this Committee Room probably do not know every single way in which it already provides pornography, and certainly not how it will in future, but that is a good reason to provide a strong regulatory framework when we have the chance. We have that chance now, and we should take it. If it remains the case that removing the words "on a commercial basis" is deemed outside our scope, which I find very sad—I think it is a missed opportunity, and I hope the House can return to it at some point and regulate the free content—we must definitely ensure that we are putting everything else that we possibly can on a level playing field. That means that the regulation of video on demand has to be consistent and that we have to close any other loophole we can spot over the next few days.

I hope Opposition amendments will make the Government think about the manifesto commitment they rightly made—I am happy to put on the record that I support it—and take the opportunity to stick to it. Young women want that; young men need it, because my experience of working with young men who have abused their partners and ex-partners is that they felt that they were getting those messages from pornography; and we as a society cannot afford to ignore this problem any longer. We have a chance to do something about it, so let us take that opportunity.

The Minister for Digital and Culture (Matt Hancock): It is great to hear that outbreak of support for the Conservative party manifesto.

Thangam Debbonaire: I must have it clearly on the record that I supported that commitment only: not the whole Conservative manifesto, just the bit that says "We want to protect all children from all online pornography."

Matt Hancock: I am sure our powers of persuasion will extend that support in the future. The outbreak of support for our manifesto is welcome; this is an incredibly important area, and I am proud to lead the Front-Bench effort to deal with underage people's access to adult material by introducing age verification. I want to respond in detail to the points made, because it is important we get this right.

Before I come to the specific amendments, I will deal with commercial providers. The measures in the Bill will apply equally to all commercial providers, whether their material is paid for directly or appears on free sites that operate on a different business model. "Commercial" has quite a broad meaning, as my hon. Friend the Member for Devizes said. If a provider makes money from a site in any way, whether or not it makes a profit, it can be caught by the legislation. That is the right distinction, because it targets those who make money and are indifferent to the harm their activities may cause to children.

Louise Haigh (Sheffield, Heeley) (Lab): Will the Minister give way?

Matt Hancock: If the hon. Lady will hold on, I want to explain this in full, rather than in part, before I give way. The age verification regulator must publish guidance on the circumstances in which it will regard a site or app as commercial. It will be for the regulator to judge whether a site is commercial, and there is no definition that states which website platforms are covered. Crucially, the regulator will also be able to take a view if specific social media and other types of sites are ancillary service providers—a person who appears to be facilitating or enabling the making available of pornographic material by non-compliant persons. I think that the capturing of others as ancillary service providers is an important part of making sure that we fully deliver our manifesto commitment, as I believe this Bill does.

Louise Haigh: We are aware that "commercial" is not limited to sites that require payment. It includes online advertising and other business models, as the Minister has said. However, it is unclear how the regulator will be able to enforce these measures given that the only enforcement available to them is notifying other payment service providers and ancillary services.

Matt Hancock: No doubt we will come on to enforcement. A number of clauses and amendments are on enforcement. The point is that other social media sites can be classified by the regulator as ancillary service providers for facilitating or enabling the making of available pornographic material. Our view is that enforcement through disrupting business models is more powerful because you are undermining the business model of the provider. However, I do not want to get too distracted, in an out of order way, into enforcement which is rightly dealt with in later clauses.

Louise Haigh: If the Bill is clearly designed to enable the regulator to focus on social media sites and other ancillary service providers, why was that term "on a commercial basis" included in these sections?

Matt Hancock: The principle is that there is a distinction between those who are making money by targeting and are indifferent to potential harm and those whose services facilitate the provision of porn to those who are under age. I think it is a reasonable distinction. We are trying to deal with the mass of the problem. By its nature, it is very difficult to get to 100%. I think that leaving the Bill in this way, with flexibility for the regulator to act, has a big advantage over being overly prescriptive in primary legislation and too specific about the way in which the regulator acts, not least because disrupting the business model is the goal of trying to provide enforcement.

Claire Perry: I support the Minister's point about over-prescription, but perhaps he could help me by talking about a particular case. Let us take Tumblr hosting a stream of content which is 18. Who would the regulator target if it issued an enforcement notice? Would it be the content provider, or would it be the social media platform that is hosting that content?

Matt Hancock: In that case, the platform—I do not want to get into individual platforms, but I am happy to take my hon. Friend's example—would likely be an ancillary service provider and therefore captured. This is a very important distinction. There is a difference between somebody who is actively putting up adult material and choosing not to have age verification, and a platform where others put up adult material, where it is not necessarily impossible but much harder to have a control over the material. There is an important distinction here. If we try to pretend that everybody putting material onto a platform, for example, the one that my hon. Friend mentions, should be treated the same way as a porn-providing website, we will be led into very dangerous territory and it makes it harder to police this rather than easier. That is my argument.

On the specific amendments, I understand entirely where the argument on demand is coming from. I want to give an assurance which I hope will mean that these clauses will not be pushed to the vote. On-demand audio-visual media services under UK jurisdiction are excluded from part 3 of the Bill because they are regulated by Ofcom under part 4A of the Communications Act 2003. As my hon. Friend the Member for Devizes said, other on-demand services that are not currently regulated in the UK will be caught by the Bill regime.

2.15 pm

The amendments and new clause 7 would apply the Bill's age verification requirements to on-demand audio-visual media services under UK jurisdiction, meaning that we would end up with a double regulation. They would also amend the existing age verification requirement that applies to providers of those services to cover material that the British Board of Film Classification would describe as "18 sex works", as well as R18 and equivalent. I want to be crystal clear about the aim: it is to have complementary regimes as between on-demand material regulated by Ofcom and material to be regulated by the BBFC, so that although the regulator may be different, the result is the same.

Thangam Debbonaire: Forgive me, but the Minister just gave a lot of information, and I want to clarify something. Whichever regulator is doing it, will the effect of the legislation as he would like to see it put R18 films and 18-rated films on on-demand services at the same level of age verification? I am not clear on that point.

Matt Hancock: The aim is that even though the regulator may be different in those two cases, the result would be the same. I can give the hon. Lady that assurance. The Bill will do that without having double regulation. As we discussed earlier with regard to a different part of the Bill, having double regulation in the same area can lead to confusion and worse outcomes, rather than clarity and better outcomes.

A service that falls within part 4A of the Communications Act 2003—that is to say, one that is outwith the proposals —must not contain any specially restricted material, unless that material is made available in a manner that secures that persons under the age of 18 will not normally see or hear it. Specially restricted material includes R18 material and other material that might seriously impair the physical, mental or moral development of persons under the age of 18. Our intention is that such other material should include material that the BBFC would describe as 18 sex works. I think that answers precisely the point that the hon. Lady was making.

Kevin Brennan (Cardiff West) (Lab): This is a genuine inquiry: did the Minister consider not having double regulation but awarding regulatory oversight of all this to a single regime, possibly the BBFC, thereby taking it away from Ofcom? If he considered that idea, why did he reject it?

Matt Hancock: Partly because the regulation of areas currently covered by Ofcom is considered to be working well, so I did not want to throw that regime up in the air. I did want to deal with the additions and make provisions additional to the existing regime.

Kevin Brennan: The Minister's response prompts the question: if that is the case, why did he not give the responsibility to Ofcom?

Matt Hancock: Because I think the BBFC is best at making the very nuanced distinctions between different types of material and their regulation that are required. The way it has landed, with the two regulators sitting side by side, but with the aim that the result of the regulation is the same, is the better way of doing it.

Christian Matheson (City of Chester) (Lab): May I seek clarification from the Minister? Is there scope for a mechanism whereby the two regulatory authorities can pass items between each other if one is better suited to judge an item that has been referred to the other?

Matt Hancock: There is clarity in the Bill about what is under the jurisdiction of one regulator and what is under the jurisdiction of the other. I will, though, take that away and seek to give an assurance that the two regulators will work together to ensure that that boundary is dealt with adequately. There is flexibility in the Bill to ensure that that can happen. I cannot speak for Ofcom or the BBFC, but it would seem to me to be perfectly reasonable and obvious that the boundary has to work properly. I would not like to over-specify that in the Bill

because of the nature of changes in technology. The distinction between broadcast and on-demand services is changing as technology develops, and it is better to leave it structured as it is. I am sure that both regulators will have heard the hon. Gentleman's important point that the boundary between the two needs to be dealt with appropriately and that they need to talk to each other.

Nigel Huddleston (Mid Worcestershire) (Con): Is the Minister reassured, as I am, by the fact that in the evidence sessions there was enthusiastic support from the BBFC for embracing the role, as well as very clear guidance that it had the competence to do so? We have not necessarily heard that from anybody else. The support and enthusiasm for taking on that role is very telling.

Matt Hancock: My hon. Friend has just given the final paragraph of my speech. With those assurances and the broad support from the BBFC and its enthusiasm to tackle the need for age verification in that way, I hope that the hon. Member for Sheffield, Heeley will withdraw the amendment.

Louise Haigh: Quite a lot of clarification is needed, and I hope it will come during the Bill's passage. I do not think that the distinction between Ofcom and the BBFC is clear in this part of the Bill or in later clauses on enforcement. However, given that it states elsewhere in the Bill that the proposal is subject to further parliamentary scrutiny, and as the BBFC has not yet officially been given the regulator role—as far as I am aware—I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Claire Perry: I beg to move amendment 66, in clause 15, page 18, line 24, at end insert

"or an internet service provider.".

This amendment and amendment 67 ensure that the requirement to implement age verification does not fall on ISPs but commercial sites or applications offering pornographic material; and defines internet service providers.

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

Amendment 90, in clause 22, page 23, line 29, leave out

"or ancillary service provider"

and insert

", ancillary service provider, or internet service provider.".

Amendment 77, in clause 22, page 24, line 23, at end insert "or

(c) an internet service provider.".

This amendment and amendment 78 ensure that the definition of an ancillary service provider would include ISPs; and defines internet service providers.

Amendment 91, in clause 22, page 24, line 23, at end insert—

"(6A) In this section an "ancillary service provider" includes, but is not limited to, domain name registrars, social media platforms, internet service providers, and search engines.".

Amendment 67, in clause 25, page 26, line 2, at end insert—

""internet service provider" has the same meaning as in section 124N of the Communications Act 2003 (interpretation);".

See the explanatory statement for amendment 66.

New clause 8—*Duty to provide a service that excludes adult-only content*—

"(1) This section applies to internet service providers who supply an internet access service to subscribers.

(2) For the purposes of subsection (1), "subscribers" includes—

(a) domestic subscribers;

(b) schools; and

(c) organisations that allow a person to use an internet access service in a public place.

For the purposes of the conditions in subsections (3) and (4), if the subscriber is a school or organisation a responsible person within the school or organisation shall be regarded as the subscriber.

(3) A provider to whom subsection (1) applies must provide to subscribers an internet access service which excludes adult-only content unless all of the conditions listed in subsection (4) have been fulfilled.

(4) The conditions are—

(a) the subscriber "opts in" to subscribe to a service that includes online adult-only content;

(b) the subscriber is aged 18 or over; and

(c) the provider of the service has an age verification scheme which meets the standards set out by OFCOM in subsection (4) and which has been used to confirm that the subscriber is aged 18 or over before a user is able to access adult-only content.

(5) It shall be the duty of OFCOM, to set, and from time to time to review and revise, standards for the—

(a) filtering of adult content in line with the standards set out in Section 319 of the Communications Act 2003;

(b) age verification policies to be used under subsection (4) before an user is able to access adult content; and

(c) filtering of content by age or subject category by providers of internet access services.

(6) The standards set out by OFCOM under subsection (5) must be contained in one of more codes.

(7) Before setting standards under subsection (5), OFCOM must publish, in such a manner as they think fit, a draft of the proposed code containing those standards.

(8) After publishing the draft code and before setting the standards, OFCOM must consult relevant persons and organisations.

(9) It shall be the duty of OFCOM to establish procedures for the handling and resolution of complaints in a timely manner about the observance of standards set under subsection (5), including complaints about incorrect filtering of content.

(10) OFCOM may designate any body corporate to carry out its duties under this section in whole or in part.

(11) OFCOM may not designate a body under subsection (10) unless, as respects that designation, they are satisfied that the body—

(a) is a fit and proper body to be designated;

(b) has consented to being designated;

(c) has access to financial resources that are adequate to ensure the effective performance of its functions under this section; and

(d) is sufficiently independent of providers of internet access services.

(12) It shall be a defence to any claims, whether civil or criminal, for a provider to whom subsection (1) applies to prove that at the relevant time they were—

(a) following the standards and code set out in subsection (5),; and

(b) acting in good faith.

(13) Nothing in this section prevents any providers to whom subsection (1) applies from providing additional levels of filtering of content.

(14) In this section—

"adult-only content" means material that contains offensive and harmful material from which persons under the age of 18 are protected;

"age verification scheme" is a scheme to establish the age of the subscriber;

"internet access service" and "internet service provider" have the same meaning as in section 124N of the Communications Act 2003 (interpretation);

"material from which persons under the age of 18 are protected" means material specified in the OFCOM standards under section 2;

"OFCOM" has the same meaning as in Part 1 of the Communications Act 2003;

"offensive and harmful material" has the same meaning as in section 3 of the Communications Act 2003 (general duties of OFCOM); and

"subscriber" means a person who receives the service under an agreement between the person and the provider of the service.".

This new clause places a statutory requirement on internet service providers to limit access to adult content by persons under 18. It would give Ofcom a role in determining the age verification scheme and how material should be filtered. It would ensure that ISPs were able to continue providing family friendly filtering once the net neutrality rules come into force in December 2016.

New clause 11—*Power to make regulations about blocking injunctions preventing access to locations on the internet*—

"(1) The Secretary of State may by regulations make provision about the granting by a court of a blocking injunction in respect of a location on the internet which the court is satisfied has been, is being or is likely to be used for or in connection with an activity that is contravening, or has contravened, section 15(1) of this Act.

(2) "Blocking injunction" means an injunction that requires an internet service provider to prevent its service being used to gain access to a location on the internet.

(3) Regulations introduced under subsection (1) above may, in particular—

(a) make provision about the type of locations against which a blocking injunction should be granted;

(b) make provision about the circumstances in which an application can be made for a blocking injunction;

(c) outline the type of circumstances in which the court will grant a blocking injunction;

(d) specify the type of evidence, and other factors, which the court must take into account in determining whether or not to grant a blocking injunction;

(e) make provision about the notice, and type of notice, including the form and means, by which a person must receive notice of an application for a blocking injunction made against them; and

(f) make provision about any other such matters as the Secretary of State considers are necessary in relation to the granting of a blocking injunction by the court.

(4) Regulations under this subsection must be made by statutory instrument.

(5) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(6) In this Part— "Internet service provider" has the same meaning as in section 16 of the Digital Economy Act 2010. In the application of this Part to Scotland "injunction" means interdict.".

This new Clause empowers the Secretary of State to introduce regulations in relation to the granting of a backstop blocking injunction by a court. The injunction would require an internet service provider to prevent access to a site or sites which do not comply with the age-verification requirements. This would only be used where the other enforcement powers (principally fines) had not been effective in ensuring that sites put in place effective age-verification.

Claire Perry: I welcome the Minister's previous comments, which gave me some real assurances on the parity of content and regulator. I also reassure him of how popular he will be when the Bill finally passes—the Centre for Gender Equal Media said that, in its most recent survey, 86% of people support a legal requirement on companies to prevent children's access to pornography. We are moving in the right direction.

Amendment 66 seeks to pick through slightly more carefully who is responsible and is captured by the Bill's language. There are four internet service providers in the UK through which the majority of broadband internet traffic travels, and they have come a long way. Five years ago, they accepted none of our proposals, be it single click protection for all devices in the home or the implementation of a filtering system that required selection—we could not select whether or not the filters were on. They have gone from that to the position now whereby, in some cases, we have ISPs that provide their services with the filters already on as default—something that we were told was absolutely unimaginable. With that regime, the level of complaints is very low and the level of satisfaction is very high.

Amendment 67 is consequential on amendment 66 and both seek to clarify the scope of who exactly would be covered under the wording of clause 15(1), which states:

"A person must not make pornographic material available on the internet on a commercial basis to persons in the United Kingdom except in a way that secures that, at any given time, the material is not normally accessible by persons under the age of 18."

The Government have made it quite clear in the consultation, and the Minister clarified in his previous remarks, that the proposals apply to companies running websites aimed specifically at providing pornographic content for commercial gain, and that they want those who profit from such material being made available online to act in a legal, socially responsible way. It could be argued that ISPs both profit from the material being made available online and also make pornographic material available online, even though they are not the original source of the material. We also heard from the Minister that he is minded to consider social media platforms in that same category. In my view, the regulator must also publish guidance under clause 15(3) about

"circumstances in which the regulator will treat an internet site or other means of accessing the internet as operated or provided on a commercial basis".

It is my concern that that could also be read as applying to ISPs. The amendments are intended to clarify that. In fact, I can quote from an article from July, which said:

"Internet access providers are likely to feel left in an uncertain position at the moment as, while the Bill does not reference them in this context, the definition of 'makes pornographic material available' could be argued as incorporating companies which provide connectivity to servers used for the making available of pornographic material",

and piping that material into the home.

Paragraph 22 of the explanatory notes makes reference to "commercial providers of pornography", and that obviously appears to place the onus of this suite of

measures firmly on the content providers, but an optimal approach would be to improve the drafting to make the legislative attempt clear. I know we will have further discussions about the role of ISPs, but ISPs have done what we have asked them to do in introducing family friendly filters.

Kevin Brennan: I am trying to understand why the hon. Lady believes that ISPs should not have this responsibility.

Claire Perry: Because various other aspects of the Bill capture ISPs. My concern is that the Bill focuses on the commercial content providers where they are. The amendment is intended to probe the Government about how they are thinking about ISPs vis-à-vis commercial content providers in the drafting of the clause.

Louise Haigh: Our amendments are designed to enable the regulator to ask the internet service provider to block offending sites. This goes back to the point we made earlier on the differences between sites operated "on a commercial basis" and social media sites and ancillary sites. The proposals as they stand do not give the regulator sufficient powers to enforce the mechanisms proposed in the Bill.

Broadening the definition of "ancillary service provider" specifically to include internet service providers would require the regulator to notify them of non-compliant sites. That will put ISPs in the same bracket as payment service providers, which will be required to withdraw their services if other measures have been exhausted. In the case of ISPs, they would be required to block offending sites.

The amendments would create a simple backstop power where enforcement through the Government's proposals had not achieved its intended objective and commercial providers had not withdrawn their services, either because the fine does not act as a deterrent or because, due to their international status, they do not need to comply. If pornography providers continued to provide content without age verification restrictions, the regulator would then have the power to require ISPs to take down the content.

We believe that, without amendment, the proposals will not achieve the Bill's aim, as non-compliant pornographers would not be absolutely assured of payment services being blocked. First, the proposals do not send anywhere near a strong enough signal to the porn industry that the Government are serious about the proposals and their enforcement. Giving the regulator the power but not the stick suggests that we are not all that bothered about whether sites comply. Secondly, we can have no reassurance that sites will be shut down within any kind of timeframe if there is non-compliance. As drafted in the explanatory notes, "on an ongoing basis" could mean yearly, biannually or monthly, but it makes a mockery of the proposals if sites could be non-compliant for two years or more before payment services may or may not act. That does not provide much of an incentive to the industry to act.

Throughout the evidence sessions we heard that there are significant difficulties with the workability of this entire part of the Bill. For instance, many sites will hide their contact details, and a substantial number will simply not respond to financial penalties. Indeed, an ability already exists in law for ISPs to be compelled to block images that portray, for example, child sex abuse. There is also an ability to block in the case of copyright infringement. It therefore seems eminently reasonable that in the event of non-compliance, the regulator has a clear backstop power. We believe that even just legislating for such a power will help speed up enforcement. If providers know that they cannot simply circumvent the law by refusing to comply with notices, they will comply more efficiently. That will surely help the age verifier to pass the real-world test, which is integral to the Bill's objectives.

2.30 pm

Similarly, new clause 11 provides for an all-important speed of enforcement. As it currently stands, the Bill provides fairly feeble powers to an enforcer to give notice to a payment service or ancillary service provider that a site has contravened clause 15(1). Indeed, giving evidence to the Committee, David Austin of the BBFC said of his power to notify sites of their contravention of clause 15 that

"some will and some, probably, will not"—[*Official Report, Digital Economy Public Bill Committee,* 11 October 2016; c. 41, Q91.]

comply.

He welcomed as a second backstop power the ability to notify the ancillary or payment service provider. If providers still fail to act after that second backstop power is invoked, the regulator's final power is to issue a fine. That is clearly insufficient, and the process itself would take a great deal of time, during which children under 18 would still be able to access pornography, even though the age verification regulator was well aware that there was a breach of clause 15(1).

The amendment would provide the Secretary of State with the power, through regulations, to issue a blocking injunction preventing access to locations on the internet if a court is satisfied that they are being used to contravene clause 15. The Opposition are clear that the power would be necessary only when the other enforcement powers had proved ineffective. Indeed, in evidence the BBFC was clear that fines by themselves would not be enough. David Austin said:

"For UK-based websites and apps, that is fine, but it would be extremely challenging for any UK regulator to pursue foreign-based websites or apps through a foreign jurisdiction to uphold a UK law. So we suggested, in our submission of evidence to the consultation back in the spring, that ISP blocking ought to be part of the regulator's arsenal. We think that that would be effective."—[*Official Report, Digital Economy Public Bill Committee,* 11 October 2016; c. 41, Q91.]

The Government's own age verification regulator recommends that the amendments be made to the Bill. We very much hope that the Government will consider accepting them.

Thangam Debbonaire: I am a little puzzled as to what the hon. Member for Devizes has against requiring ISPs to block porn sites. As my hon. Friend the Member for Sheffield, Heeley said, they are already required to block other sites. If we require ISPs to block sites that offend copyright laws, I really do not understand the problem with requiring them to block sites that provide pornography to children.

Claire Perry: On a point of order, Mr Stringer. Perhaps this shows my ignorance of doing Committees from the Back Benches, but I intended to go on in my speech to discuss new clause 8, which I have tabled and which defines more clearly what I expect internet service providers to do. Would it be in order for me to deliver those remarks, or have I lost my opportunity?

The Chair: Let me be clear: we are considering amendment 66 to clause 15, amendments 90, 77, 91 and 67, and new clauses 8 and 11. Members can speak more than once in Committee if they wish to. The hon. Lady has the right to discuss her new clause.

Claire Perry: May I please rise again, then? Apologies to the Committee—*[Interruption.]* I am so sorry; the hon. Member for Bristol West was speaking.

The Chair: The hon. Lady may catch my eye later.

Thangam Debbonaire: I defer to the hon. Lady. She mentioned something she is going to say in due course; I look forward to hearing it. Nevertheless, I stand by my comments. We need to be clear about whether we are going to fail to require ISPs to do something that we already require them to do for copyright infringement and other forms of pornography involving children. I fail to see what the problem is. Having a blocking injunction available to the regulator would give them another tool to achieve the aim that we have all agreed we subscribe to, which is being able to block pornography from being seen by children and young people.

Claire Perry: Mr Stringer, I assume that, like me, you sometimes have the feeling that you have sat down before you have finished what you are saying. I apologise to the Committee. I am rarely short of words, but in this case I was.

I want to respond to the point made by the hon. Member for Bristol West and clarify exactly what we have asked and should be asking internet service providers to do. In doing so, I shall refer to the new EU net neutrality regulations, which, despite the Brexit vote, are due to come into force in December. They cause many of us concerns about the regime that our British internet service providers have put in place, which I believe leads the world—or, at least, the democratic free world; other countries are more draconian—in helping families to make these choices. We do not want all that good work to be unravelled.

Our current regime falls foul of the regime that the European Union is promoting, and unless the Government make a decision or at least give us some indication relatively quickly that they will not listen to that, we may have an issue in that all the progress that we have made may run out by December 2016. I would be grateful if the Minister told us what the Government are doing to get the new legislation on the statute book in line with the schedule set out by his colleague Baroness Shields last December.

We have an effective voluntarily filtering arrangement. I believe—I think that this point is in the scope of ancillary service providers—that we intend to capture internet service providers as part of the general suite of those responsible for implementing over-18 verification, but I want the Government to make crystal clear that they are aware of the responsibilities of internet service providers and intend for the regulator to include them in the basket of those that they will investigate and regulate.

The big missing link in all this has been getting content providers that provide material deemed to be pornographic to do anything with that material. The difference is that content providers of, say, gambling sites have always been required to have age-verification machinery sitting on their sites.

The hon. Member for Bristol West is quite right that we want ISPs to be captured under this regulatory regime, but I am keen to hear from the Minister that all the work that we have done with ISPs that have voluntarily done the socially and morally responsible thing and brought forward family-friendly filters will not be undone by December 2016, when the EU net neutrality regulations are intended to come into place.

Matt Hancock: Quite a lot of points have been raised, and I seek to address them all. Clause 22 is an important provision containing the powers at the heart of the new regime to enable the age-verification regulator to notify payment service providers and ancillary service providers that a person using their services is providing pornographic material in contravention of clause 15 or making prohibited material available on the internet to persons in the UK.

Amendments 66, 67, 77, 78, 90 and 91 would provide that the requirement to implement age verification does not fall on ISPs and further clarify that ISPs are to be considered ancillary service providers. Amendment 91 would clarify that as well as ISPs, domain name registrars, social media platforms and search engines are all to be considered ancillary service providers for the purposes of clause 22, which makes provision for the meaning of "ancillary service provider".

This is a fast-moving area, and the BBFC, in its role as regulator, will be able to publish guidelines for the circumstances in which it will treat services provided in the course of business as either enabling or facilitating, as we discussed earlier. Although it will be for the regulator to consider on a case-by-case basis who is an ancillary service provider, it would be surprising if ISPs were not designated as ancillary service providers.

New clause 8 would impose a duty on internet service providers to provide a service that excludes adult-only content unless certain conditions are met. As I understand it, that measure is intended to protect the position of parental filters under net neutrality. However, it is our clear position that parental filters, where they can be turned off by the end user—that is, where they are a matter of user choice—are allowed under the EU regulation. We believe that the current arrangements are working well. They are based on a self-regulatory partnership and they are allowed under the forthcoming EU open internet access regulations.

Claire Perry: I think I understand the Minister to be saying that in cases where companies have introduced filters that are on by default, the fact that the users can choose to turn those filters off in the home means that they would not be captured by the net neutrality rules. Is that correct?

Matt Hancock: That is exactly what I am saying. On that basis, with the Government's position having been put clearly on the record, I hope that my hon. Friend will not press new clause 8 to a vote.

New clause 11 would empower the Secretary of State to introduce regulations in relation to backstop blocking injunctions. We have looked carefully at the option of blocking by ISPs and have talked to a lot of stakeholders about it. We take the problem seriously, and we think our measures will make a real difference. We are yet to be persuaded that blocking infringing sites would be proportionate, because it would not be consistent with how other harmful or illegal content is dealt with. There is also a question of practicality: porn companies would be able to circumvent blocking relatively quickly by changing URLs, and there is an additional risk that a significant number of sites that contain legal content would be blocked. We would need to be convinced that the benefits of ISP blocking would not be outweighed by the risks.

Louise Haigh: I am a little confused about how the Minister envisages the provisions being enforced against the free sites we discussed in the previous group of amendments without that additional power, which indeed has been requested by the regulator that the Government have designated.

Matt Hancock: As the regulator said, the proposals here mark a huge step forward in tackling the problem. We have to make a balanced judgment: there is a balance to be struck between the extra powers to block and the need to ensure that they are proportionate. The powers are not a silver bullet; sites that were actively trying to avoid the Bill's other enforcement measures would also be able to actively avoid these measures. It is questionable how much additional enforcement power they would bring, given those downsides.

Thangam Debbonaire: I must press the Minister to consider that children's charities have told us that this is one of the most important amendments to the Bill. The Minister says that porn sites could simply move their URLs, but that is not a reason not to take a stand by giving the regulator the power that it has asked for and that children's charities have particularly asked for.

Matt Hancock: Children's charities and the regulator have asked for action to solve the problem of needing age verification. That is what the Bill delivers. The question of how to enforce that is incredibly important; there are different considerations to be made, and I think the Bill has ended up with the correct balance.

Louise Haigh: The BBFC witness explicitly said last week that

"we suggested, in our submission of evidence to the consultation back in the spring, that ISP blocking ought to be part of the regulator's arsenal."—[*Official Report, Digital Economy Public Bill Committee,* 11 October 2016; c. 41, Q91.]

The BBFC says that notification of payment providers or ancillary services providers and fines may not be sufficient. I appreciate that porn sites might well use different URLs to evade it, but why has the Minister explicitly removed ISP blocking as a further backstop power? We are not talking about blocking too many sites; we have been very clear that it is intended as a backstop power when other measures fail.

Matt Hancock: David Austin of the BBFC said:

"We see this Bill as a significant step forward in terms of child protection."—[*Official Report, Digital Economy Public Bill Committee,* 11 October 2016; c. 42, Q94.]

We think, on balance, that the regulator will have enough powers—for example, through the provisions on ancillary service providers—to take effective action against non-compliant sites. For that reason, I think this is the appropriate balance and I ask my hon. Friend the Member for Devizes to withdraw her amendment.

Claire Perry: I think that we are running through two definitions of ISPs: one relating to ancillary service providers and the other to enforcement and blocking. If we include ISPs in the definition of ancillary service providers, we want to make sure that they are captured, either explicitly or as a service provider. Is the Minister saying that he is comfortable with the enforcement regime without blocking? Would it require further legislation for blocking to be carried out if the regulator felt it was an appropriate measure? Are we ruling that out in this legislation?

The Chair: Order. The hon. Lady is making a speech. If the Minister wants to intervene, he may.

Claire Perry: I apologise. I would like to conclude my speech by inviting the Minister to respond.

Matt Hancock: I thank my hon. Friend for giving way. I would like to provide a point of clarity on the speech she has made. Treatment of an ASP will not lead to blocking. I think that is the answer to her question.

2.45 pm

Claire Perry: I thank the Minister for that intervention. We will return to this subject in a series of amendments around clause 20. I want to thank the Minister for clarifying some of the murkiness around definitions in the Bill. I want to ask him and his team, though, to consider what his colleague had said, which goes back to the net neutrality point.

I accept what the Minister says about the spirit being absolutely clear, that our current filtering regime will not be captured, but Baroness Shields did say that we needed to legislate to make our filters regime legal. I did not hear from the Minister that that legislation is something that the Department is preparing or planning to introduce.

Louise Haigh: We very much share the hon. Lady's concerns that the legislation has explicitly excluded the ability of internet service providers to block. We simply cannot understand why the Government have ruled out that final backstop power. We appreciate it is not perfect but it would give the regulator that final power. We will return to new clause 11 at the end of the Bill and be pushing it to a vote when we come to it.

Claire Perry: I thank the hon. Lady for making her intentions clear. I am prepared to withdraw or not push my new clause to a vote on the basis of what the

Minister said, but I would love to get his assurances—perhaps he will write to me—to be crystal clear on the fact that he believes the Government do not have to legislate in order to push back on the net neutrality regime.

Kevin Brennan: Before the hon. Lady sits down, she did mention the view of Baroness Shields that there should be new legislation. Notwithstanding our remarks about the number of Government amendments, does the hon. Lady believe this Bill could be a useful vehicle to achieve that?

Claire Perry: Given the Brexit vote, I would be inclined to accept a letter from the Minister suggesting that we will absolutely resist any attempt to make EU net neutrality apply to what is a very fine, though not perfect, voluntary regime. On that basis, I accept the Minister's assurances that that is what he intends to do. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 15 ordered to stand part of the Bill.

Clause 16 ordered to stand part of the Bill.

Clause 17

The age-verification regulator: designation and funding

Question proposed, That the clause stand part of the Bill.

Louise Haigh: In this and related clauses, we seek to strengthen the proposals that the Government have put forward. We have said that the regulation needs to be beefed up to require internet service providers to be notified about non-compliance. We would like to see an injunction power to take down any content which a court is satisfied is in breach of the age-verification legislation, as soon as possible, at the start of the four-tier regulation process the Government have identified in their amendments and letters published to the Committee last week.

That would require a regulator with sufficient enforcement expertise and the ability to apply that injunction and push enforcement at an early stage. As we are aware, however, the BBFC heads of agreement with the Government do not cover enforcement. Indeed, they made perfectly clear that they would not be prepared to enforce the legislation in clauses 20 and 21 as they stand, which is part 4 of that enforcement process, giving the power to issue fines. The BBFC is going to conduct phases 1, 2 and 3 of the notification requirements, presumably before handing over to a regulator with sufficient enforcement expertise, but that has not been made clear so far.

While we welcome the role of the BBFC and the expertise it clearly brings on classification, we question whether it is unnecessarily convoluted to require a separate regulator to take any enforcement action, which will effectively have been begun by the BBFC and which so far has not been mentioned in the legislation. This goes back to the point my hon. Friend the Member for Cardiff West made earlier about the two separate regimes for on-demand programme services.

As I understand it, although it is not clear, the BBFC will be taking on stage 3 of the regulation, meaning it will be involved in the first stage of enforcement—in notification. That is fine, but it will then have to hand over the second stage of enforcement to another regulator—presumably Ofcom. The enforcement process is already incredibly weak and this two-tiered approach involving two separate regulators risks further delays in enforcement against non-compliant providers who are to protect or take down material that is in breach of the law. In evidence to the Committee, the BBFC said:

> "Our role is focused much more on notification. We think we can use the notification process and get some quite significant results."—[*Official Report, Digital Economy Public Bill Committee,* 11 October 2016; c. 41, Q83.]

We do not doubt it, but confusion will arise when the BFFC identifies a clearly non-compliant site that is brazenly flouting the law, and it does not have power to enforce quickly but will have to hand it over.

We would also like to hear when the Government are planning to announce the regulator for the second stage and how they intend to work with the BBFC. As far as I can see, this will require further amendments to the Bill. If it is Ofcom, it would have been helpful to have heard its views on what further enforcement powers it would like to see in the Bill, rather than being asked to fill in after the Bill has passed through Parliament. There is a clear danger that the enforcement regulator could be asked to take over enforcement of age verification, which it thinks requires more teeth to be effective.

We therefore have very serious concerns about the process by which clause 17 will be have effect. Although we will not vote against the clause, we want to make it very clear that we would have preferred to have seen an official announcement about who will carry out the enforcement provisions in the Bill before being asked to vote on it.

Matt Hancock: The debate on clause stand part is about the set-up of the regulatory structure and making sure that we get designation and funding right. It is our intention that the new regulatory powers and the new regulator or co-regulators will deliver on this. As the hon. Lady says, the BBFC has signed up to be designated as the age verification regulator responding for identifying and notifying. This will enable the payment providers and other ancillary services to start to withdraw services to sites that do not comply as soon as possible.

Louise Haigh: In what kind of timeframe does the Minister envisage the payment service providers acting from notification from the BBFC?

Matt Hancock: We intend formally to designate the BBFC as regulator in autumn 2017 and expect to be in a position to commence the provisions requiring age verification within 12 months of Royal Assent.

Louise Haigh: That was not quite my question. How long does the Minister anticipate that ancillary service providers or payment service providers will take to act on receiving notification from the BBFC that a site is non-compliant?

Matt Hancock: I would expect that to happen immediately. The question of the designation of the backstop enforcement regulator does not stop or preclude

the BBFC from getting going on this. As we have heard, it is already working to put in place its own internal systems. As I have just said to the Committee, we have a new commitment that we expect to commence the provisions in terms of getting the system up and running within 12 months of Royal Assent; after that, if the BBFC has designated that there is a problem, I would expect action to be immediate, because I expect the BBFC to ensure through good relations that systems are in place.

I see enforcement very much as a back-up to good behaviour. As we have seen with the taking down of child pornography and material related to terrorism, many providers and platforms respond rapidly when such material is identified. It will be far better if the system works without having to resort to enforcement. We will set out in due course who is best placed to be the regulator for enforcement, but the system is new, and the approach provides the level of flexibility that we need to get it right. I have every confidence in the BBFC's ability and enthusiasm to deliver on these aims, so I commend the clause to the Committee.

Question put and agreed to.

Clause 17 accordingly ordered to stand part of the Bill.

Clauses 18 and 19 ordered to stand part of the Bill.

Clause 20

Enforcement of sections 15 and 19

Claire Perry: I beg to move amendment 68, in clause 20, page 21, line 5, at beginning insert

"If the person in contravention of section 15(1) is resident in the United Kingdom,".

This amendment and amendments 69, 70, 71, 72, 73 and 74 place a requirement on the age-verification regulator to impose fines where a UK person has contravened clause 15(1) unless the contravention has ceased; or to issue an enforcement notice to person outside of the UK who has contravened clause 15(1).

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

Amendment 69, in clause 20, page 21, line 5, leave out "may" and insert "must".

See the explanatory statement for amendment 68.

Amendment 70, in clause 20, page 21, line 7, after "15(1)", insert ", unless subsection (5) applies".

See the explanatory statement for amendment 68.

Amendment 71, in clause 20, page 21, line 10, at beginning insert

"If the person in contravention of section 15(1) is not resident in the United Kingdom,".

See the explanatory statement for amendment 68.

Amendment 72, in clause 20, page 21, line 10, leave out "may" and insert "must".

See the explanatory statement for amendment 68.

Amendment 73, in clause 20, page 21, line 16, leave out subsection (4).

See the explanatory statement for amendment 68.

Amendment 74, in clause 20, page 21, line 42, leave out "may" and insert "must".

See the explanatory statement for amendment 68.

Claire Perry: This is a series of consequential and investigatory amendments intended to probe the Minister's thinking about what the regulator can actually do. At the moment, enforcement operates through a series of financial penalties, which we can discuss further when we debate clause 21, or of enforcement notices. We heard clearly last week from David Austin that the challenge is that almost none of the content-producing sites that we are discussing are based in the UK; in fact, I think he said that all the top 50 sites that the regulator will rightly target are based overseas.

The challenge is how the Government intend to carry out enforcement. I know that the BBFC's current enforcement role is not carried out through its own designated powers; it is carried out through various other agencies, and the Bill makes further provision for financial penalties. I tabled the amendments to press the Minister on the point that it would be clearer to specify that where a site, or the company that owns a site, is based in the UK, a financial penalty can and will be applied.

For overseas sites, enforcing a financial penalty, if one can even get to grips with what the financial accounts look like, may be difficult, hence the enforcement notice and then a series of other potential backstop actions; I know that the Minister is aware that I do not feel that we have exhausted the debate on blocking. I am trying to probe the Government on whether there is a way to use the Bill to reflect the reality that content providers are unlikely to be based primarily in the UK, and that perhaps a different approach is needed for those based offshore.

Louise Haigh: We completely support the hon. Lady's amendments, which propose a sensible toughening up of the requirements of the age verification regulator. We particularly welcome the measures to require the regulator to issue enforcement notices to people outside the UK if they do not comply. That is an attempt to close a large hole in the current proposals. How will the BBFC tackle providers outside the UK?

At the evidence session last week, David Austin said that

"you are quite right that there will still be gaps in the regime, I imagine, after we have been through the notification process, no matter how much we can achieve that way, so the power to fine is essentially the only real power the regulator will have, whoever the regulator is for stage 4";

we are not yet certain.

He continued:

"For UK-based websites and apps, that is fine, but it would be extremely challenging for"

the BBFC, Ofcom or whoever the regulator is for stage 4

"to pursue foreign-based websites or apps through a foreign jurisdiction to uphold a UK law. So we suggested, in our submission of evidence to the consultation back in the spring, that ISP blocking ought to be part of the regulator's arsenal."—[*Official Report, Digital Economy Public Bill Committee,* 11 October 2016; c. 41, Q91.]

That is precisely why we will return to the amendment on ISP blocking, because if we are to pursue foreign-based providers, the ability to block will be integral to that strategy.

3 pm

I want to state on the record again that we are disappointed that there is no indication in part 4 about the identity of the regulator. The legislation refers to a

regulator as though there will be one across all stages of the notification and enforcement process; it has come as quite a surprise to learn that there will two regulators and that the Government cannot offer the Committee any indication about who they will be.

Thangam Debbonaire: My hon. Friend is making a series of excellent points which I hope the Minister can answer. We keep discovering that there are gaps, inconsistencies and potential confusion in the Bill. She has referred to the witnesses who gave evidence last week. Does she agree that it is really important that we focus carefully on the gaps that children's charities such as the NSPCC have identified?

Louise Haigh: Obviously, I completely agree with my hon. Friend. We appreciate that the Government have consulted extensively with partners and representatives of all the relevant stakeholders, but it is not clear to us why they have not allowed ISPs that ultimate backstop power to block. For that reason, and to meet the objective of tackling providers outside the UK, we support amendments tabled by the hon. Lady the Member for Devizes.

Calum Kerr (Berwickshire, Roxburgh and Selkirk) (SNP): I rise to support the amendments. It will not surprise the Committee to learn that I seek clarity about the impact on Scots law. It comes back to the same point: a lot of the issues that are being wrestled with in this place apply in a different legal jurisdiction. Perhaps the Minister could address that.

Christian Matheson: I should like to add to the comments made by hon. Friends. My concern is that if there are too many gaps and loopholes in the legislation, that may, perversely, put greater pressures on the enforcement authorities, because they will have to seek out so many different mouse-holes down which some of the content providers may run and disappear. I am slightly concerned and ask the Minister to consider the danger of an unintended consequence, because if it is not possible to stamp out content immediately, vital resources and focus will be diverted.

Louise Haigh: Does my hon. Friend also agree that with too many loopholes in the legislation, the more responsible providers of content will include age verification measures but users who want to avoid those tools will be pushed on to perhaps more extreme or violent pornography and perhaps even in to the deep web?

Christian Matheson: Yes. I raised this with the gentleman from the British Board of Film Classification, I believe, and I questioned his assertion about the top 50 websites. He said that the process would not stop there but proceed to the next 50, but if those 50 content providers are constantly moving all over the place, it will be rather like a game of whack-a-mole. Unless we have a sufficiently large mallet to give the mole a whack early on—*[Interruption.]* This is a serious business, and if I am sounding a bit jocular, that is not meant to take away from the serious issue. If we do not have the tools to address those who are deliberately not complying, and those who do not wish to comply with the regulations that we are putting in place to protect our children, I fear that we will be chasing after them too much.

My hon. Friend the Member for Sheffield, Heeley is right that there will also be the danger that investigative authorities use too many of their resources to go after this, when there are other things they need to go after as well. We need to put the tools at the disposal of the investigative and enforcement authorities, to give them the opportunity to make as clean an attack as possible on the providers that are not complying with the desire of this House.

Thangam Debbonaire: I will return to the evidence on this point to make clear why I support what the hon. Member for Devizes is trying to do. In his evidence last week, the NSPCC's Alan Wardle—I think I have got that right—said quite clearly:

> "I think that is why the enforcement part is so important…so that people know that if they do not put these mechanisms in place there will be fines and enforcement notices, the flow of money will be stopped and, crucially, there is that backstop power to block if they do not operate as we think they should in this country. The enforcement mechanisms are really important to ensure that the BBFC can do their job properly and people are not just slipping from one place to the next."—[*Official Report, Digital Economy Public Bill Committee,* 11 October 2016; c. 47, Q108.]

So what my hon. Friend the Member for Sheffield, Heeley has just said is summed up very well by the NSPCC in its official evidence, and I hope that the Minister will have an answer for the NSPCC as well as for this Committee.

Matt Hancock: I am thankful for the opportunity to respond. I will actually respond to the points made about these amendments, which were tabled by my hon. Friend the Member for Devizes, rather than the reiteration of the blocking debate, which we have had and will no doubt have again on further clauses.

First, clause 17 clearly makes provision for the Secretary of State to designate more than one person as a regulator. Secondly—a crucial point—the complexity in regulation is deciding who is satisfying the rules and who is not, and that is for the BBFC to determine, whereas issuing fines is essentially a matter of execution and could be fulfilled by a variety of bodies. We will come forward with more detail on that in due course.

I think the whack-a-mole analogy inadvertently made the point, which is that when we are trying to deal with a problem on the internet, where people can move about, we can deal with the mainstream of the problem, which comes from reliable providers of adult material, who are already engaged and want to ensure they comply with the law. In future, once this measure becomes law, refusing to put age verification on adult material will be illegal, so we will be dealing with illegal activity. That will mean that the vast majority of people will comply with the law, and we heard that very clearly in the evidence session. The question then is how to deal with non-compliance and on the internet we know that that is very difficult. The proposals are to deal with non-compliance by disrupting business models and by imposing financial penalties.

I understand what my hon. Friend is trying to do. She is trying to strengthen the imposition of financial controls. Inadvertently, however, her amendments would reduce the regulator's discretion by obliging the it to apply sanctions when they are available, and they would remove the power to apply financial penalties to non-UK residents.

We want to be able to fine non-UK residents—difficult as that is—and there are international mechanisms for doing so. They do not necessarily reach every country in the world, but they reach a large number of countries. For instance, Visa and other payment providers are already engaged in making sure that we will be able to follow this illegal activity across borders.

Therefore, while I entirely understand where my hon. Friend is coming from, the amendments would inadvertently have the effect of removing the ability to apply an enforcement notice to a UK resident, although I am certain that that is not what she intended. So I resist the amendment but I give her the commitment that we have drafted the clause in such a way as to make it as easy as possible for the enforcement regulator to be able to take the financial route to enforcement.

On the point made by the hon. Member for Berwickshire, Roxburgh and Selkirk, the provisions do extend to Scotland, with necessary modifications to Scottish law. I am sure that he, like me, will have seen clause 17(5) and clause 20(11)(b), which refer to modifications needed to be consistent with Scottish law. On the basis of that information, I hope that my hon. Friend will withdraw the amendment.

Claire Perry: I thank the Minister for that clarification and for the mention of support. The intention was to help to provide a practical solution rather than cut off aims. He has persuaded me that I do not need to press the amendment to a vote. Although I take the point about shared regulation, I would ask him to consider in setting up the BBFC as the primary regulator that it is working reasonably well in the video-on-demand world, but this may be having them stray into a new sphere of expertise in terms of finding, identifying and sending out enforcement notices or penalties, particularly for foreign-based companies. I think the whack-a-mole analogy is entirely consistent—they will shut their doors and reopen in another jurisdiction almost overnight. Given the anonymity principles, it is sometimes almost impossible to know where they actually are. If the Minister is assuring us that everyone is aware of the problem, he believes the powers allow the regulator to be flexible, and it is something that his Department will consider, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Louise Haigh: I beg to move amendment 86, in clause 20, page 21, line 40, leave out paragraph (b) and insert—

> "(b) "during the initial determination period fix the date for ending the contravention of section 15(1) as the initial enforcement date.".

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

Amendment 88, in clause 20, page 21, line 40, at end insert—

> "(c) after the initial determination period fix a period of one week for ending the contravention of section 15(1)".

Amendment 89, in clause 20, page 22, line 13, at end insert—

> '(14) In this section, "initial determination period" means a period of 12 months from the date of the passing of this Act to the initial enforcement date.".

Louise Haigh: This group of amendments goes even further—they have the straightforward intention of continuing the process of strengthening the powers and, crucially, of speeding up the enforcement period, to help the Government achieve their manifesto commitment. The Bill would give the regulator the power to set a lengthy, if not indefinite, period for ending the contravention of section 15. The amendment would speed up the enforcement, requiring the regulator to issue an enforcement period of one week. Given that we do not anticipate that the BBFC will be the official regulator or have these powers for another 12 months on Royal Assent, we do not anticipate that a one-week enforcement period would be too onerous on content providers.

The group should be seen in tandem with our other amendments providing a backstop power requiring ISPs to block a site, and would send a clear message to content providers that the Government would treat any contravention of section 15 with the utmost seriousness and that continuing to provide content without age verification for a prolonged period of time would not be tolerated. We believe that, if the enforcement powers under clauses 20 and 21 are toughened up, the message will spread throughout the industry and it will make it clear that age verification is not an optional extra, but a central requirement in the effort to tackle what under-18s can see.

Matt Hancock: I am sympathetic to the purpose of this group of amendments. We think that decisions on when and how to enforce should be left to the regulator, but I see the point of trying to put a week into the Bill. However, it is overly prescriptive to do so in primary legislation. Our aim is for a proportionate regime, where the regulator can prioritise and deal with problems in a way that is aligned with its goals of protection, rather than having to fulfil legal requirements that might lead to unintended consequences.

Louise Haigh: Can the Minister give us any example where a one-week enforcement period would not be doable?

Matt Hancock: No, but I cannot—and she cannot—foresee all the circumstances that the regulator will have to deal with. It is far better to have a regulator with flexibility to respond and clear aims and intentions, rather than it having to fulfil an arbitrary timescale because that is in primary legislation.

3.15 pm

Louise Haigh: Can the Minister confirm whether the legislation enables the regulator to set a time limit for enforcement?

Matt Hancock: Yes, it will allow the regulator that flexibility. I would rather have that flexibility at the level of the regulator than in primary legislation. I think that is a reasonable approach. The regulator will then be able to act in the way that it is clear from this debate is intended. I hope that on that basis, the amendment may be withdrawn.

Louise Haigh: It is useful to have on the record the Minister's agreement that one week is a suitable enforcement period. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Calum Kerr: I beg to move amendment 62, in clause 20, page 22, line 13, at end insert—

"(14) Within 12 months of this Act coming into force, the Secretary of State shall commission a review of the effectiveness of the enforcement of sections 15 and 19 and shall lay the report of the review before each House of Parliament."

The Chair: With this it will be convenient to discuss amendment 81, in clause 82, page 80, line 18, at end insert—

"(4A) Part 3 will come into force at the end of the period of one year beginning on the day on which the Act is passed."

This amendment ensures that Part 3 will be implemented by ensuring the Part comes into effect a year to the day the Act is passed, rather than on the day the Secretary of State determines through regulations.

Calum Kerr: It took me a while to get out of my seat: I was astonished that we actually got some agreement there. Perhaps we have a new spirit of progress as we near the end of the day.

Kevin Brennan: I doubt it.

Calum Kerr: I doubt it too, but never mind. It is better to be an optimist, especially on the Opposition Benches.

Christian Matheson: You've got me behind you.

Calum Kerr: No comment. Had we made more progress, amendment 62 might not have been necessary, but as I feared, we have not. I am confident that we all agree on the merit of the intent of this part of the Bill. We all want to protect young children from accessing inappropriate pornographic material. I do not want any of my children doing so, and I know how much they use electronic devices. My youngest, Robert, is only seven, and he is phenomenally tech savvy. It would not be that difficult in this world to stray, even with some of the blocking systems that are in place.

A lot of the problems that we have here are to do with international sites. I am dismayed at the Government's unwillingness to move and not even so much as listen to Opposition Members, the regulator or charities, who all insist that ISP blocking is the kind of extra measure that we should put in place. Given that broader context and the Minister's conviction, which I believe is sincere, that he has a package of measures that will work, in light of our concerns and those of many others, a review should be put in place. I know that in the past the answer to anything involving a review has been, "That's what the Select Committee process is for; they will have a review," but we should not leave something as important as protecting young children to a Select Committee. The Government should take responsibility rather than abdicate it to a Select Committee. The Government should put ISP blocking in the Bill, show that they treat the issue seriously and have a review to ensure that we get the outcome that we all want: a safer environment for our children on the internet.

Louise Haigh: Given that the Government have been so intransigent on the sensible suggestions for how their proposals could be strengthened, certainly on the issue of internet service provider blocking, I completely agree with the hon. Gentleman. The Minister keeps saying that he does not want to be too prescriptive, but we argue that the phrase "on a commercial basis" is too prescriptive and limits the powers of the age-verification regulator. Given the broad support for additional powers, we want the age-verification regulator and any other regulator involved in enforcement to come back to the House and tell us what additional powers they need to make this work. There are significant loopholes in the Bill and it could have serious unintended consequences for our young people. We completely support the SNP amendment.

Matt Hancock: I entirely understand the enthusiasm for commencement, and I have given the commitment that we would expect it within 12 months of Royal Assent. I hope that that deals with the demand for a timing of commencement to be put on the face of the Bill. Unfortunately, that renders the SNP amendment slightly impractical, because it would require a review within 12 months of Royal Assent, but if the Act commences only 12 months after Royal Assent, a review at that point might not show as much progress as we would hope.

Calum Kerr: I like the way the Minister is engaging. Is he telling me that he likes the idea, but it is just that we have worded it slightly wrongly? If that is the case, I would happily move the review 12 months on, if that is what he is suggesting.

Matt Hancock: Unfortunately, the hon. Gentleman has lost his opportunity for that because the deadline for tabling amendments has passed. We should have an enduring assessment of the effectiveness of the Bill and an ongoing review of how effective the policy is. Select Committees have an important role to play in doing that. I resist the amendment on the grounds that it is impractical, because of the timings I have discussed, and because it is far better that such matters are reviewed constantly, rather than just on a one-off.

Thangam Debbonaire: In my experience, ongoing reviews tend to mean never. If you do not have a deadline or target, that gives you the scope just to say, "We are doing it and will carry on doing it for some time," without there ever being a point at which you say, "Here's a review." An annual review is such an easy thing to which to commit; why not do it?

The Chair: Order. I remind the hon. Lady that I am not going to do anything with regard to the Bill. She should return to using normal parliamentary speech.

Thangam Debbonaire: I apologise.

Matt Hancock: We thought you might be the regulator for part 4, Mr Stringer.

I suppose this is the difference between the two sides of the House: for the Opposition, an ongoing review means never; for the Government, an ongoing review means always.

Calum Kerr: My background is in telecoms, latterly as a global consultant coaching front-line leaders. People always said to me, "Oh yeah, we always have reviews,"

but unless there is a cadence on it and it is put down in black and white, it is not done properly. They would not do it in the business world, and Opposition Members would not do it; perhaps Government Members are a bit more blasé than we are.

Matt Hancock: That tells us all we need to know about consultants. There we are. I commit that we will keep the effectiveness of the legislation under review. I know that that will happen anyway because I know that my hon. Friend the Member for Devizes is not going to let this one go.

Christian Matheson: How might the Minister review the ongoing review to ensure that progress is being made?

Matt Hancock: We will have a continuous review of the ongoing review. With that, I urge the hon. Gentleman to withdraw the amendment.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 10.

Division No. 4]

AYES

Brennan, Kevin
Debbonaire, Thangam
Foxcroft, Vicky
Haigh, Louise
Hendry, Drew
Kerr, Calum
Matheson, Christian

NOES

Adams, Nigel
Davies, Mims
Hancock, rh Matt
Huddleston, Nigel
Mann, Scott
Menzies, Mark
Perry, Claire
Skidmore, Chris
Stuart, Graham
Sunak, Rishi

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

Louise Haigh: I will not test the Committee's patience further by going over arguments that we have already had, but there is one further area of clause 20 that we wish to touch on—the lack of an appeals process in the legislation. The Minister may expect the regulator to build that appeals process in: it would be helpful to have some clarity from him on that.

As I understand it, the BBFC will use analytics to identify sites that should have age verification. Analytics are not foolproof, so obviously an appeals mechanism will be needed for websites incorrectly prevented from operating. Previous such systems have wrongly filtered out websites such as breast cancer charities or forums for gay and transgender people. That is incredibly important: let us put ourselves in the shoes of a young gay man or woman, growing up in a religious household perhaps, who does not know where to turn to ask the questions that would plague any teenager coming to terms with their sexuality and who seeks refuge and solace in internet forums with other people going through the same issues. As risky as the internet can be, it can also be an incredibly empowering, transformative space that can literally save lives in such situations. Such lifelines must absolutely not be filtered out by ASPs or made subject to age verification; the Bill should include a mechanism that allows for correction when they have been mistakenly identified.

We also need clarification on who will develop the analytics, the data they will be based on and whether it will be done in consultation with the tech industry. We can only assume that this is an oversight that will be corrected when working out how the regulator is to proceed.

Claire Perry: The hon. Lady raises an important point about access to information about sex education, sexuality, abortion and all sorts of things that are incredibly valuable. She is right to draw attention to safe forums. I reassure her that many of the same issues came up with respect to the question of voluntary filtering and, despite what some of those giving evidence said, the incidence of false blocking of such valuable sites is incredibly low. The BBFC as regulator is really good: it is not in the business of defining based on imagery, and it has fairly detailed algorithms. I share her concern, but I want to offer some comfort.

Louise Haigh: I am grateful. I heard the BBFC or the Open Rights Group say that the incidence was very low, but it would do no harm to build an appeals process into the legislation to ensure that where sites that should not be blocked or require age verification have fallen through the cracks, that can be resolved at the behest of the regulator.

Matt Hancock: The hon. Lady is absolutely correct that there needs to be an appeals process. That process is provided for in clause 17(4):

> "The Secretary of State must not make a designation under this section unless satisfied that arrangements will be maintained by the age-verification regulator for appeals".

I agree with everything else she said. It is worth remarking on the recent announcement that gay and bisexual men will now be pardoned over abolished sexual offences—that is not in the Bill, so that remark was completely out of order, but I still think it was worth making. Appeals are important; I hope she is satisfied that they are provided for.

Question put and agreed to.

Clause 20 accordingly ordered to stand part of the Bill.

Clause 21 ordered to stand part of the Bill.

Clause 22

Age-verification regulator's power to give notice of contravention to payment service providers and ancillary service providers

Claire Perry: I beg to move amendment 75, in clause 22, page 23, line 28, at end insert; "and

> (c) the person has been the subject of a enforcement notice under section 20(2) and the contravention has not ceased."

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

Amendment 76, in clause 22, page 23, line 29, leave out "may" and insert "must"

This amendment places a requirement on the age-verification regulator to give notice to payment or ancillary service providers that a person has contravened clause 15(1) or is making prohibited material available on the internet to persons in the United Kingdom.

Amendment 79, in clause 22, page 24, line 24, leave out "may" and insert "must"

This amendment places a requirement on the age-verification regulator to issue guidance about the services that it determines are enabling or facilitating the making available of pornographic or prohibited content.

New clause 6—

"Requirement to cease services to non-complying persons

'(1) Where the age-verification regulator has given notice to a payment-services provider or ancillary service provider under section 22(1), the payment-services provider or ancillary service provider must cease the service provided to the person making pornographic material available in the United Kingdom.

(2) A payment-services provider or ancillary service provider who fails to comply with a requirement imposed by subsection (1) commits an offence, subject to subsection (3).

(3) No offence is committed under subsection (2) if the payment-services provider or ancillary service provider took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

(4) A payment-services provider or ancillary service provider guilty of an offence under subsection (2) is liable, on summary conviction, to a fine.

(5) In this section "payment-services provider" and "ancillary service provider" have the same meaning as in section 22."

This new clause requires payment and ancillary services to block payments or cease services made to pornography websites that do not offer age-verification if they have received a notice of non-compliance under section 22(1). This provision would only apply to websites outside of the UK. This would enhance the enforcement mechanisms that are available under the Bill.

New clause 18—*Approval of Age-verification providers*—

'(1) Age-verification providers must be approved by the age-verification regulator.

(2) In this section an "age-verification provider" means a person who appears to the age-verification regulator to provide, in the course of a business, a service used by a person to ensure that pornographic material is not normally accessible by persons under the age of 18.

(3) The age-verification regulator must publish a code of practice to be approved by the Secretary of State and laid before Parliament.

(4) The code will include provisions to ensure that age-verification providers—

(a) perform a Data Protection Impact Assessment and make this publicly available,

(b) take full and appropriate measures to ensure the accuracy, security and confidentiality of the data of their users,

(c) minimise the processing of personal information to that which is necessary for the purposes of age-verification,

(d) do not disclose the identity of individuals verifying their age to persons making pornography available on the internet,

(e) take full and appropriate measures to ensure that their services do not enable persons making pornography available on the internet to identify users of their sites or services across differing sites or services,

(f) do not create security risks for third parties or adversely impact security systems or cyber security,

(g) comply with a set standard of accuracy in verifying the age of users.

(5) Age-verification Providers must comply with the code of practice.

(6) To the extent that a term of a contract purports to prevent or restrict the doing of any act required to comply with the Code, that term is unenforceable."

3.30 pm

Claire Perry: We promised to return to the topic of enforcement and blocking, and we have reached it today. That is very good; it suggests that our progress on the Bill is excellent.

The purpose of these amendments and new clause 6 is to clarify and strengthen the enforcement process. We have already discussed fruitfully how clause 20 will be used, particularly for sites based overseas, and I was reassured by what the Minister said, but I want to turn to the "what ifs". What happens if the regulator acts, has clarity about whether they are imposing a fine or an enforcement notice, and nothing actually happens—none of the sanctions in the current regime leads to a website imposing age verifications? I welcome what the Bill says about involving a direct relationship between not just the regulator and the platform or the website, but the payment providers. As the Minister said, cutting off the business model—the cash flow—is a very effective way of making enforcement happen.

I have a series of questions relating to the process. First, it is not clear when the regulator will inform providers that such a contravention is happening. Some questions were asked about how long it will be and what the time period will be, but when does the regulator actually issue a notice? Amendment 75 states that the regulator has a power to issue a notice under clause 22 when an enforcement notice has been issued and the contravention has not yet ceased. I think websites ought to be given the opportunity to respond to the regulator's intervention before the payment providers and ancillary services are involved. That process should be very clear. It is the same if we have an issue with service provision at home: we know what our rights are, what period of time we have to complain and what happens when that period expires.

Secondly, as I read the Bill—I am in no way setting myself up as somebody who understands every aspect of the legal jargon—there appears to be no requirement for the regulator to inform the payment providers and ancillary services of a contravention. It may just be implicit, but amendment 66 would make it mandatory for the regulator to inform the payment providers and ancillary services if there were a contravention. I would be interested to hear the Minister's views on that.

Thangam Debbonaire: I am pleased that we have returned to enforcement and compliance, and I hope we are going to spend more time on blocking. The hon. Lady's amendment uses the term "ancillary service provider", to which she referred earlier. I would be very grateful if she spent some time spelling out in a bit more detail what an ancillary service provider is. Does it include ISPs? I think she alluded to that earlier, but I am not sure. Can she help clear up the confusion with some detail, please?

Claire Perry: I apologise if I have caused any confusion. I will let the Minister specify exactly what he thinks. In tabling these amendments, I wanted to ensure that as

wide a group of people and companies as possible is involved in doing something we all think is very valuable—implementing these age verification mechanisms. As I read the Bill as drafted, it does not contain a clear distinction between ISPs and ancillary service providers; they are included in the same bucket. I want to clarify that I think that both ISPs and ancillary service providers—in my mind, ancillary service providers are the platforms that we discussed by name earlier—have a duty and a legal responsibility to ensure that the age-verification mechanisms are in place.

Thangam Debbonaire: The hon. Lady will have to forgive me. We are going to hear from the Minister shortly, but I would like to know if, in her amendment, ancillary service providers definitely include internet service providers. I know it is a difference of just one word, but I would be grateful for her clarification.

Claire Perry: Yes.

Christian Matheson: I share some of the hon. Lady's uncertainty—I was going to say confusion, but it is not—about the terminology. Would the definition include, for example, telecoms providers over whose networks the services are provided?

Claire Perry: I am perhaps going to let the Minister spell that out exactly. The hon. Gentleman raises a very important point: we all know now that access to internet services is often done entirely over a mobile network. I can again give some comfort on this issue. The BBFC, which is an excellent choice, has worked for many years with the mobile service providers—a witness gave evidence to this effect—so they already offer a blocking service based on the BBFC's definition of 18-plus and 18-minus material. It is essentially an opt-in service. Someone has to say that they are under 18 and checks are carried out. The providers already offer the service, and it seems to work reasonably effectively.

I apologise for inadvertently misleading the Committee—perhaps it reflects some of the confusion in the wording—and I want to be very clear about who we are trying to capture with the amendments. We would all support the idea of spreading the net as widely as possible in ensuring the right behaviour, but it is important to make clear that ISPs are to be expected and legally mandated to carry out the same checks.

Another point I wanted to make with amendment 79 was to ask the regulator to issue guidance on the sort of businesses that will be considered to be ancillary services. The reason for putting that in the Bill is that, as we debated extensively in earlier sittings, the world changes. We had very good debates about why 10 megabits per second might not be appropriate in a couple of years' time and why the USO as originally construed was laughably small. We all try to do the right thing, but of course the world changes. The reference by the hon. Member for City of Chester to Whac-A-Mole was interesting. What will the consequences be of implementing the Bill? We are a very substantial revenue stream for many websites, and new service models might arise. Someone might be scrutinising the letter of the law and thinking, "We are not captured by this, so we are not captured by these regulations." Asking for the regulator to issue guidance on the types of businesses that will be considered to be ancillary services could future-proof some of the Bill.

Thangam Debbonaire: I am grateful for the hon. Lady again allowing me to intervene. I apologise for interrupting her sentence; that was not my intention. I am pleased to see her amendments. This discussion is helping me and perhaps all of us to come to some form of understanding. I have a little metaphor in mind. If a cinema was allowing children to see pornography, we would hold the ticket seller responsible, as well as the organisation running the cinema, but not the bus driver who drove the bus the child took to get to the cinema. Does that metaphor help?

Claire Perry: It depends whether the bus driver was paid for by the cinema. That is the point. Businesses pop up. There might be a bespoke Odeon cinema. My point is that we need to ensure that the regulator has as much flexibility as possible to respond to changing definitions. The current definition of an ancillary service provider is quite clear, although I would like the Minister to clarify it, but my amendment would try to future-proof the definition.

Thangam Debbonaire: In raising the issue of whether the bus driver was paid for by the cinema, the hon. Lady has helped me to hit on something else. Are we not considering the role of search engines in this matter and whether they are driving things or complicit? I do not know the answer to that question. She has raised a helpful analogy in response to my analogy.

Claire Perry: How long has the Committee got to hear about search engines? The hon. Lady raises a fascinating point. It was through a very strong cross-party effort and with the leadership of the former Prime Minister that we got the search engines to do some compelling things. Let me give her an example. It was clear that search engines in Europe were happy to allow terms to be typed in that could only lead to sexual images of child abuse being returned. I had the important but unenviable job, as the Prime Minister's special adviser on the issue, of sitting down with the parents of April Jones, the little girl murdered in Wales, and trying to explain to them why, when their daughter's killer typed in "naked little girls in glasses", they received an image. It took many levels of conversation, including a personal conversation between me and the head of Google Europe, saying, "How do you as a parent feel about this? I don't care about you saying 'We serve up everything at all times'; I don't care that the search terms themselves are not illegal. What I care about is your duty. You have a duty to do no evil, and in my view, you are breaching that."

This is why I am so proud of what the Government have done. With all that effort and by recruiting Baroness Shields, who has been a worthy addition, we got the internet service providers not only to not return illegal imagery but, with the help of experts, not to return anything at all to a whole series of search terms that were found to be used by paedophiles in particular. I am sure that the hon. Lady will have seen that the Government then went further. It all comes down to what is legal. Your porn is my Saturday night viewing. *[Laughter.]* Theoretically.

Thangam Debbonaire: I urge the hon. Lady to consider re-wording what she just said, for my sake and for hers.

Claire Perry: I may have come up with a *Daily Mirror* headline. My point is that the whole debate about pornographic material has always ended in the cul-de-sac of freedom of speech. That is why we worked with internet service providers, saying, "Let parents choose. Let's use the BBFC guidelines. They have years of experience defining this stuff based on algorithms." It is not for the hon. Lady or me to decide what people should not be viewing; we quite properly have an independent agency that says, "This is appropriate; this is not."

However, the hon. Lady has eloquently raised the point that for too long, we have treated the internet as a separate form of media. We accept in cinemas, whether or not the bus driver is working for them, that if a film is R18, we are pretty negligent if we take our kids to see it, but we are helped to see that. We do not let our kids wander into the cinema and watch the R18 stuff with nobody stopping them along the way, but for too long, that has been the situation with the internet. The hon. Lady has raised a good point about search engines. I can assure her that the world has changed significantly, certainly in the UK, although other jurisdictions may not have been so influenced.

Nigel Huddleston: I should probably declare that prior to becoming an MP, I worked at Google. Does my hon. Friend agree that this is where it becomes complex? A search engine, to use another analogy, is a bit like a library. The books are still on the shelves, but the search engine is like the library index: it can be removed and changed, but the content is still there. That is why we need to do much more than just removing things from the search engine: the content is still there, and people can find alternative ways to get to it. We must do much more.

Claire Perry: I defer to my hon. Friend's knowledge. Of course we all agree that certain instances of countries taking things down are utterly abhorrent; I am thinking of information about human rights in China, or about female driving movements in Saudi Arabia. We do not want to be in the business of over-specifying what search engines can deliver. We have not even touched on Tor, the dark web or the US State Department-sponsored attempts to circumvent the public internet and set up some rather difficult places to access, which have increasingly been used for trafficking illegal material.

Thangam Debbonaire: We need to keep hold of the search engine issue for a moment, because search engines are part of the process. To restate the bus driver analogy, a search engine is also like a sign saying to adults, and children, "You can go here to see pornography".

Claire Perry: I think we will let the Minister talk about that. Again, think about the practical series of keystrokes. Let us take gambling for a moment. It is quite a good analogy, because we mandated in the Gambling Act 2005 that there should be age verification. The search engine host provides access to a site, and users must go through an age verification mechanism. Age verification is incumbent on the site, and the service provider is legally responsible. I shall let the Minister discuss search engines in his speech.

3.45 pm

Finally, from my reading of the Bill, there does not appear to be a power to require the providers or services to take any action. The Government said that because the law is clear about non-compliance,

"we do not think it would be appropriate or necessary to place a specific legal requirement on these payments companies to remove services."

That is, payment providers are part of the solution but they are not legally mandated to stop payments. I suppose the Government are relying on companies acting on the fact that their terms and conditions require merchants to be operating legally in the country, so if they breach the legislation they are in breach of the laws in the country. Nevertheless, it would be helpful to hear some assurance. Perhaps it is based on responses to the consultation saying that the payment service providers stand by, ready and willing to stop the financial flows, which will be very important in disrupting this business model.

New clause 7 would require payment service providers to act and remove their services from contravening websites, and suggests that if they fail to act they will be committing an offence. With regard to new clause 7, the first line of defence is financial transaction blocking and mandatory blocking—

The Chair: Order. We are discussing new clauses 6 and 18.

Claire Perry: I am so sorry, Mr Stringer. I have jumped ahead.

The Chair: Has the hon. Lady finished her speech, or does she want to continue?

Claire Perry: I will finish at that point.

Louise Haigh: I rise to speak to new clause 18, which stands in my name and that of my hon. Friend the Member for Cardiff West. I also support the amendments tabled by the hon. Member for Devizes. The Government's proposals really do rely on an awful amount of good will among all the stakeholders involved in the legislation. It makes sense to create a backstop power for the regulator to require payment services to act should they not do so in the first instance.

New clause 18 comes from a slightly different perspective. It would oblige the age-verification regulator to ensure that all age verification providers—the companies that put the tools on websites to ensure compliance—are approved by the regulator; to perform a data protection impact assessment that they make publicly available; and to perform an array of other duties as well.

The new clause is designed to address some of the concerns about the practicality of age-verification checks, ensuring that only minimal data are required, and kept secure; that individuals' privacies and liberties are protected; and that there is absolutely no possibility of data being commercialised by pornographer. We raise the latter as a potential risk because the proposals were drafted with the input of the pornography industry. That is understandable, but the industry would have a significant amount to gain from obtaining personal data from customers that might not currently be collected.

As we said earlier, we have full confidence in the BBFC as regulator, but, as with the proposals in part 5 of the Bill, it is vital that some basic principles—although certainly not the minutiae—are put on the face of the Bill. We are certainly not asking anything that is unreasonable of the regulator or the age-verification providers. The principles of privacy, anonymity and proportionality should all underpin the age-verification tool, but as far as I am aware they have not featured in any draft guidance, codes of practice, or documents accompanying the Bill.

The Information Commissioner agrees. The Information Commissioner's Office's response to the Department for Culture, Media and Sport's consultation on age verification for pornography raised the concern

"that any solution implemented must be compliant with the requirements of the DPA and PECR"—

the Data Protection Act 1998, and the Privacy and Electronic Communications (EC Directive) Regulations 2003 that sit alongside it. It continues:

"The concept of 'privacy by design' would seem particularly relevant in the context of age verification—that is, designing a system that appropriately respects individuals' privacy whilst achieving the stated aim… In practical terms, this would mean only collecting and recording the minimum data required in the circumstances, having assessed what that minimum was. It would also mean ensuring that the purposes for which any data is used are carefully and restrictively defined, and that any activities keep to those restricted purposes…In the context of preventing children from accessing online commercial pornography, there is a clear attribute which needs to be proven in each case—that is, whether an individual's age is above the required threshold. Any solution considered needs to be focussed on proving the existence or absence of that attribute, to the exclusion of other more detailed information (such as actual date of birth)."

The Commissioner made it clear that she would have

"significant concerns about any method of age verification that requires the collection and retention of documents such as a copy of passports, driving licences or other documents (of those above the age threshold) which are vulnerable to misuse and/or attractive to disreputable third parties. The collection and retention of such information multiplies the information risk for those individuals, whether the data is stored in one central database or in a number of smaller databases operated by different organisations in the sector."

I understand that the Adult Provider Network exhibited some of the potential tools that could be used to fulfil that requirement. From the summary I read of that event, none of them seem particularly satisfactory. My favourite was put forward by a provider called Yoti, and the summary I read describes the process for using it as follows:

"install the Yoti App…use the app to take a selfie to determine that you are a human being…use the app to take a picture of Government ID documents"—

passport or driving licence, I imagine—

"the app sends both documents to Yoti…Yoti (the third party) now send both pictures to a fourth party; it was unclear whether personal data (e.g. passport details) is stripped before sending to the fourth party…Fourth party tells Yoti if the images (selfie, govt ID) match…Yoti caches various personal data about user"

to confirm that they are over 18. The user can then visit the porn site—whatever porn site they would like to visit at that time—and then the

"porn site posts a QR-like code on screen…user loads Yoti app…user has to take selfie (again) to prove that it is (still) them…not a kid using the phone…user scans the on-screen QR-code, is told: 'this site wants to know if you are >18yo, do you approve?'…User accepts…Yoti app backchannel informs porn site…that user >18yo"

and then the user can see the pornography.

I do not know whether any Committee members watch online pornography; I gather that the figure is more than 50% of the general population, and I am not convinced that hon. Members are more abstinent than that. I ask Members to consider whether they would like to go through a process as absurd as the one suggested.

Claire Perry: In the name of research, people look at many things.

Louise Haigh: The hon. Lady has got ahead of the potential *Daily Mail* headline when the freedom of information request comes in for her Google search history.

I am not convinced that anybody would want to go through a process as the one I have just described, or even one significantly less convoluted. I suggest that instead they would seek entertainment on a site that did not impose such hurdles. The BBFC in its evidence made the telling point that the majority of the viewing population get their content from the top 50 sites, so it is very easy to target those—we see that entrenched in clause 23. The problem with that, as my hon. Friend the Member for City of Chester pointed out, is that targeting those sites may push viewers to the next 50 sites, and so on. We therefore need to ensure that the process is as straightforward and as minimal as possible.

Christian Matheson: My concern about users being pushed to the next 50 sites is that those sites are much less regulated, and I hazard a guess that they are much more likely to be at the extreme end of the spectrum.

Louise Haigh: That is exactly my concern. I imagine that the top 50 providers are not as hardcore, are less extreme and may not include such violent images; as we move on to the next 50 or the 50, there is a danger of images becoming more extreme.

The solution must not result in the wholesale tracking or monitoring of individuals' lawful online activities or the collection of data with a view to unlawful profiling of individuals. I am not convinced that the BBFC is properly resourced to undertake the significant additional workload, nor am I convinced that the practicalities of the software that have so far been exhibited, or their implications, have been properly worked out.

Christian Matheson: My hon. Friend is generous in giving way. She is absolutely right about resourcing. I am no technical expert, but does she agree that such a database may be a prime target for hackers unless it is properly resourced and defended?

Louise Haigh: That is absolutely right, and I will come to that point. We heard evidence from the BFFC that it intended potentially to use age-verified mobile telephony to ensure that sites are properly age verified, but I am afraid that that approach is also flawed. First, there is the obvious issue that there is nothing to stop an underage child using the information attached to that phone—be it the phone number or the owner's name—to

log on and falsely verify. Equally, there are enormous privacy issues with the use of mobile-verified software to log on.

The BBFC said clearly that it was interested not in identity but merely in the age of the individual attempting to access online pornography, but as we all know, our smartphones contain a wealth of information that can essentially be used to create a virtual clone. They are loaded with our internet conversations, financial data, health records, and in many cases the location of our children. There is a record of calls made and received, text messages, photos, contact lists, calendar entries and internet browsing history—the hon. Member for Devizes may want to take note of that—and they allow access to email accounts, banking institutions and websites such as Amazon, Facebook, Twitter and Netflix. Many people instruct their phones to remember passwords for those apps so they can quickly be opened, which means that they are available to anyone who gets into the phone.

All that information is incredibly valuable—it has been said that data are the new oil—and I imagine that most people would not want it to be obtained, stored, sold or commercialised by online pornography sites. The risks of creating databases that potentially contain people's names, locations, credit card details—you name it—alongside their pornographic preferences should be quite clear to anyone in the room and at the forefront of people's minds given the recent Ashley Madison hack. I am not condoning anyone using that website to look for extramarital affairs, nor am I privileging the preferences or privacy of people who wish to view online pornography over the clearly vastly more important issue of child protection. However, one consequence of that hack was the suicide of at least three individuals, and we should proceed with extreme caution before creating any process that would result in the storing of data that could be leaked, hacked or commercialised and would otherwise be completely private and legitimate.

That is the reasoning behind our reasonable and straightforward amendment, which would place a series of duties on the age-verification regulator to ensure that adequate privacy safeguards were provided, any data obtained or stored were not for commercial use, and security was given due consideration. The unintended consequences of the Government's proposals will not end merely at the blocking of preferences, privacy or security issues, but will include pushing users on to illegal or at the very least non-compliant sites. We are walking a thin tightrope between making age verification so light-touch as to be too easily bypassed by increasingly tech-savvy under-18s and making it far too complicated and intrusive and therefore pushing viewers on to either sites that do not use age verification but still offer legitimate content or completely illegal sites that stray into much more damaging realms. These provisions clearly require a lot more consultation with the industry, and I am confident that the BBFC will do just that, but the Opposition would feel a lot more confident and assured if the regulator was required to adhere to these basic principles, which we should all hold dear: privacy, proportionality and safety.

Claire Perry: The hon. Lady rightly gets to the great concern that somehow, in doing something good, an awful lot of concern can be created, and I am sympathetic to her points. I remind her that it is not as if these sites do not know who is visiting them anyway. One of the great conundrums on the internet is that every single keystroke we take is tracked and registered. Indeed, that is why shopping follows us around the internet after we have clicked on a particular site. Unless people are very clever with their private browsing history, the same is the case for commercial providers.

4 pm

Although the hon. Lady is right to be concerned about the conflation of identity and data, there is absolutely no sense that this information is not already out there. It could be used for malicious purposes, should somebody so intend. I remind her that 86% of the public think that putting in place age verification measures is a good thing. I have always wanted to unleash this country's technological brilliance in coming up with a system. When we were looking at how to ensure filters are correctly turned off and on by adults, because kids are often more tech-savvy than their parents—we heard about the tech-savvy seven-year-old of the hon. Member for Berwickshire, Roxburgh and Selkirk—and to ensure filter management is done by an adult, we came up with a neat solution. A person has to be over 18 to enter into a contract to have the internet service; therefore, ensuring that emails are sent to the account holder is a way of restoring that loop. Of course, passwords can be shared among families, but really good attempts were made to try to work out who is over 18 in the household.

I am sure the hon. Lady agrees that we do not want the perfect to be the enemy of the good. These are all very important points to make. The BBFC is very experienced, and it ought to be able to design an age verification system that meets her concerns.

Louise Haigh: I absolutely support the Government's intention here. We just want to ensure it is done in the right way and balances both sides of the argument. I think it is absolutely right that internet service providers are offering this filter, but does the hon. Lady share my concern that very few families take it up and very many families turn it off?

Claire Perry: There are Ofcom data. One of the requirements we asked for was for Ofcom to monitor. Take-up improved, and, as I said, some internet service providers now have an automatic "on" system, whereby a person has to intervene to take the filters off. I am told that only about 30% of families choose to do so. Here is the savvy thing: we all know that people live in households with multiple ages and multiple requirements on the internet, so many ISPs now offer a service that enables people to disable the filters for a period and automatically reinstate them the following day. They do not have to do anything if they want the filters to be in place, but they might want to access over-18 content as an adult.

I want to discuss some of the other issues that have come up in this conversation, in the process of finally speaking about these amendments. Is it in order to do so, Mr Stringer?

The Chair: It is if it is covered by the amendments and new clauses 6 and 18, but I cannot tell until you start speaking.

Claire Perry: Then I will carry on, because it definitely is. I think I misspoke at the beginning when I talked about new clause 7. I was actually referring to new clause 6; it was just my note-taking.

I was trying ensure that we put in place series of protections, including enforcement notices that are acted upon, financial penalties that make a difference and the ability to stop income streams moving from the payment providers to the various content providers. I want to press the Minister on the question of blocking, because it comes back to the issue of why anyone would care. If somebody does not respond to an enforcement notice—if, for example, the fine is not sufficient to make them stop —how can it be that we are not considering blocking? Of course, we do that for other sites. I know it is not applicable to every form of illegal content, but I am very struck by copyright infringement, which generates take-down notices very swiftly, and upon which the entire provision of internet service providers and ancillary services act. I would be really interested to hear from the Minister why blocking has been rejected so far. Could it be put in place as a backstop power? I worry that, without it, all of this amazing progress will not have teeth.

Matt Hancock: It is sometimes said that Parliament skates over matters and does not get under the skin of things, but in the discussion we have just had Committee members displayed a great deal of analysis, experience and wisdom, and our debate on the Bill has been enriched by it. I am very grateful to hon. Members on both sides of the Committee who made very good contributions to help us get this right.

Exactly as the hon. Lady the Member for Sheffield, Heeley said, getting this right involves walking a tightrope between making sure that there is adequate enforcement and appropriate access for those for whom it is legally perfectly reasonable to access adult content. We must get that balance right. With that mind, we have drafted the clauses, particularly clause 22, to allow the regulator to operate with some freedom, because we also need to make sure that, over time, this remains a good system and is not overly prescriptive. It was ironic that in a speech about privacy, the hon. Lady started to speculate about which MPs enjoyed watching porn. I am definitely not going to do that.

The truth is that age verification technology is developing all the time. Online personal identity techniques are developing all the time, and indeed, the British Government are one of the leading lights in developing identity-verification software that also minimises the data needs for that verification and does not rely on especially large state databases to do that, and therefore does it in a relatively libertarian way, if I can put it that way. Providing for verification of identity or of age, because age without named identity is what is really being sought here, but is difficult to achieve, is an incredibly important issue. A huge amount of resource is going into that globally to get it right, and it ties closely to cyber security and the data protection requirements of any data.

The UK Data Protection Act has a broad consensus behind it and follows the simple principle that within an institution data can be shared, but data must not be shared between institutions. The institution that holds the data is responsible for their safekeeping and significant fines may be imposed for their inadvertent loss. The forthcoming General Data Protection Regulation increases those fines. Rather than reinventing data protection law for the purposes of age verification in this one case, it is better to rest on the long-established case law of data protection on which the Information Commissioner is the lead.

We had a very informed debate on the role of search engines. The regulator will be able to consider whether a search engine is an ancillary service provider. Although we do not specify it, I would expect ISPs to be regarded as ancillary service providers, but that will be for the regulator.

On the name of payment providers who are already engaged, rather than enforced engagement, we already have engagement from Visa, MasterCard, UK Cards Association and the Electronic Money Association, and clearly there a lot more organisations that can and should be engaged.

Kevin Brennan: It is interesting that the Minister feels able to say that he would expect ISPs to be regarded as an ancillary service provider, but he did not use the same terminology when talking about search engines. To press him on that, would he expect search engines in some cases, or may be in all cases, to be considered as ancillary service providers?

Matt Hancock: I do not draw any distinction between the two, but the decision is for the regulator. The legislation provides that they could be, and it depends on the circumstances whether they would be. Of course, obviously, they play different roles.

Kevin Brennan: Just to clarify, I think the right hon. Gentleman is saying that in making no distinction, he would be able to apply the word "expect" to search engines as well as to ISPs. That is what I was probing him to find out.

Matt Hancock: I am choosing not to use that word because I want to leave it to the regulator, rather than leaving an implication that it should move one way or the other. The regulator should define what is an ASP according to the legislation.

Kevin Brennan: The Minister is therefore making a distinction between the two. In one case he clearly has an expectation that it will happen, and in the other case he does not. The Committee will be interested to know why he is making that distinction, which he denies he is making, because it is important to our understanding the reluctance in the Bill to involve search engines in some of these regulations.

Matt Hancock: They should be treated the same in that the same provisions in the Bill should be applied to each, but each performs a different role and ISPs are inevitably more closely connected to the provision of content because the content goes through an ISP, whereas a search engine may or may not be the route through which content is found. For implementation, it is clear that that is for the regulator to decide within the provisions set out in the Bill.

Thangam Debbonaire: I refer the Minister to the point made by the hon. Member for Devizes, who mentioned the murder of April Jones and the fact that her killer was able to type certain words into a search engine that I cannot bear to repeat. Search engines have the power to change their algorithm—we know they do.

Matt Hancock: The point that my hon. Friend the Member for Devizes was making is that, owing to her work, the search engines made precisely those sorts of changes on a voluntary basis. At the request of the Government and others, they now undertake millions of changes to their algorithms and millions of take-downs for both child porn and terrorist-related purposes. That system is working well, and it does not need to be underpinned by regulation.

There is then a wider question. I am straying to the limits of order to discuss this, but my hon. Friend very effectively argued that the principle that the internet should provide the freedom that it provides within the framework of a regulated structure. We agree with that, and we are providing for some of that regulated structure in this Bill. There is a first amendment-type argument, if we are thinking about it in an American way, that the internet is free and laissez-faire and that we should not regulate it. There are people who say, for instance, that we should not recreate national jurisdictional boundaries on the internet and that we should not regulate it, that it should be completely free. We reject that argument, which is why we are prepared to introduce legal requirements on age verification for the provision of information over the internet in the UK jurisdiction. We reject the argument because, at a principled level, the freedoms that we enjoy are freedoms that do not harm others, which applies offline just as much as it applies online. Because the internet is relatively new, we are still in the early days of applying such a principle to the internet. That is a much bigger debate than in clause 22, and therefore I should not go into further detail.

Thangam Debbonaire: I believe that the Minister has just answered the question of my hon. Friend the Member for Cardiff West on whether a search engine is an ancillary service provider. The Minister acknowledges that search engines, as well as ISPs, should be considered as such.

Matt Hancock: All I did was set out the principles behind the Government's response to the amendments to clause 22. The Committee must know those principles in order to understand the direction that we are taking on regulation.

I will move on to some of the other points that were made. I will respond to new clause 18 and amendment 79.

4.15 pm

New clause 18 calls for an age verification regulator to approve age verification providers, and would require the regulator to publish a code of practice. Amendment 79 would require the regulator to publish guidance under clause 22(6), rather than having discretion to publish it. I do not think these measures are necessary, not least because the regulator has the power to publish guidance about the circumstances in which it will treat services as enabling or facilitating, and going further is not necessary given the BBFC's commitment to creating proportionate and robust regulatory regimes.

Also, decisions on age verification method or tools, which are an important part of the debate, are a very significant part of what we are putting forward. The regulator is required under clause 15 to publish guidance setting out the types of arrangements that it will treat as compliance. Therefore, I do not think that it is necessary to insert such arrangements into clause 22 as well.

Having given that response to the points that were made, I hope that these amendments will be withdrawn, but I thank the members of the Committee for the contributions that they have made in our consideration of these matters.

Claire Perry: I thank the Minister for that response. I would have liked to hear him say a little bit more about how the payment service providers are involved in the game and whether we are relying on them to do the right thing because they are large corporate companies, or whether, as new clause 6 proposed, there was an opportunity to strengthen the wording of the Bill.

Matt Hancock: I apologise; there were so many interesting points made that I did not get to that one.

The provision of pornography without an age verification in the UK will become illegal under this Bill. There is a vast panoply of financial regulation requiring that financial organisations do not engage with organisations that commit illegal activities, and it is through that well-embedded, international set of regulations that we intend to ensure that payment service providers do not engage with those who do not follow what is set out in the Bill. Rather than inventing a whole new system, we are essentially piggybacking on a very well-established financial control system.

Claire Perry: That is a very reassuring reply and I thank the Minister for it. We have had a very good debate. I know that his officials will be listening and thinking hard about what has been said, and I do not think it would serve the Committee any purpose to press my amendments or my new clause to a vote.

I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Louise Haigh: It was interesting to hear the Minister refer to financial regulations. I was not present on Second Reading because I was not then in the position that I occupy now, but having read that debate I do not believe that there was any such reference. So we would like some clarity on who will be the regulator of the payment service providers and what work has already been done with the Financial Conduct Authority—I assume it will be with the FCA in this circumstance—to ensure that it will be regulating those providers, to make sure that they act with speed and due diligence on receiving notification from the age verification regulator under clause 15.

It is disappointing that the Government do not consider new clause 18 necessary to amend the Bill. I appreciate that the BBFC has been given powers to establish a code of practice, but given the very serious consequences that could result from that not being done correctly, some basic principles need to be embedded into the process, based on the issues that I raised earlier in our discussion.

I will just add that we will return to this issue on Report.

Matt Hancock: We have been engaging directly with payment service providers, although—no doubt as and when necessary—engagement with financial authorities will be made. Payment service providers can withdraw

services from illegal activity under their existing terms and conditions, so the provision is already there for the measures to take effect.

Question put and agreed to.

Clause 22 accordingly ordered to stand part of the Bill.

Clause 23

Exercise of functions by the age-verification regulator

Claire Perry: I beg to move amendment 80, in clause 23, page 25, line 1, at end insert—

'(3) The age-verification regulator must consult with any persons it considers appropriate, about the option to restrict the use of its powers to large pornography websites only.'

This amendment requires the age-verification regulator to consult on whether, in the exercising of its function, it should restrict its powers to large pornography websites only.

The Chair: With this it will be convenient to discuss new clause 12—*Code of practice by age verification regulator*—

'(1) The age verification regulator must issue a code of practice giving practical guidance as to the requirements of any provision under this Part of the Act.

(2) The following persons must, in exercising their functions under this Part and in the design and delivery of their products and services, adhere to the code of practice, and ensure that the safety and wellbeing of children is paramount—

(a) relevant persons;

(b) internet service providers;

(c) ancillary service providers;

(d) payment-service providers; and

(e) any such other persons to whom the code of practice applies.

(3) Any code of practice issued by the age verification regulator under subsection (1) above must include standards in relation to the following—

(a) how content is managed on a service, including the control of access to online content that is inappropriate for children, and the support provided by the service for child safety protection tools and solutions;

(b) the assistance available for parents to limit their child's exposure to potentially inappropriate content and contact;

(c) how the persons specified in subsection (2) above shall deal with abuse and misuse, including the provision of clear and simple processes for the reporting and moderation of content or conduct which may be illegal, harmful, offensive or inappropriate, and for the review of such reports;

(d) the action which must be taken in response to child sexual abuse content or illegal contact, including but not limited to, the co-operation with the appropriate law enforcement authorities;

(e) the action to be taken by the persons specified in subsection (2) above to comply with existing data protection and advertising rules and privacy rights that address the specific needs and requirements of children; and

(f) the provision of appropriate information, and the undertaking of relevant activities, to raise awareness of the safer use of connected devices and online services in order to safeguard children, and to promote their health and wellbeing.

(4) The age verification regulator may from time to time revise and re-issue the code of practice.

(5) Before issuing or reissuing the code of practice the age verification regulator must consult—

(a) the Relevant Minister;

(b) the Information Commissioner;

(c) the Scottish Ministers;

(d) the Welsh Ministers;

(e) the Northern Ireland Executive Committee;

(f) the persons specified in subsection (2) above;

(g) children;

(h) organisations and agencies working for and on behalf of children; and

(i) such other persons as the age verification regulator considers appropriate.

(6) As soon as is reasonably practicable after issuing or reissuing the code of practice the age verification regulator must lay a copy of it before—

(a) Parliament,

(b) the Scottish Parliament,

(c) the National Assembly for Wales, and

(d) the Northern Ireland Assembly.

(7) The age verification regulator must—

(a) publish any code of practice issued under subsection (1) above; and

(b) when it revises such a code, publish—

(i) a notice to that effect, and

(ii) a copy of the revised code; and

(c) when it withdraws such a code, publish a notice to that effect.

(8) The Secretary of State may by regulations make consequential provision in connection with the effective enforcement of the minimum standards in subsection (3).

(9) Regulations under subsection (8)—

(a) must be made by statutory instrument;

(b) may amend, repeal, revoke or otherwise modify the application of this Act;

(c) may make different provision for different purposes;

(d) may include incidental, supplementary, consequential, transitional, transitory or saving provision.

(10) A statutory instrument containing regulations under subsection (8) (whether alone or with other provisions) 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.

(11) In this Part—

"ancillary service provider" has the meaning given by section 22(6);

"child" means an individual who is less than 18 years old.

"Information Commissioner" has the meaning given by section 18 of the Freedom of Information Act 2000

"Internet service provider" has the same meaning as in section 16 of the Digital Economy Act 2010.

"Northern Ireland Executive Committee" has the meaning given by section 20 of the Northern Ireland Act 1998

"payment-service providers" has the meaning given by section 22(5) "relevant Minister" has the meaning given by section 47(1)

"relevant persons" has the meaning given by section 19(3)

"Scottish Ministers" has the meaning given by section 44(2) of the Scotland Act 1998

"Welsh Ministers" has the meaning given by section 45 of the Government of Wales Act 2006.'

This new Clause gives the power to the age verification regulator to introduce a code of practice for internet content providers. The code of practice would be based on existing industry and regulatory minimum standards (such as the BBFC classification system) and require providers to ensure that the safety and wellbeing of children is paramount in the design and delivery of their products and services.

Claire Perry: I promise this will be the last time I speak today. I am afraid I have had a slight change of heart. I tabled this amendment around many points that have been raised today on the difficulty of focusing the BBFC's efforts on the fact that much of this traffic is not simply going to the larger websites. As we have heard, many other free sites are providing information. However, in reading my amendment, I have decided that it is almost a vote of no confidence in the BBFC's ability to be flexible and I would therefore like to withdraw it.

Louise Haigh: New clause 12 would give the power to the age verification regulator to introduce another code of practice—the Opposition are very fond of them—for internet content providers. *[Interruption.]* And reviews, we are very fond of reviews.

We have made it clear throughout that we want enforcement to be as tough as possible and for all loopholes to be closed, but we also want to ensure that children are as safe in the online world as they are offline. There absolutely needs to be that parity of protection. That is one reason why we are disappointed, as I mentioned, that these measures came forward in a Digital Economy Bill, where it was incredibly difficult to look at the issues of child protection online in a thoroughly comprehensive way.

The new clause proposes that the regulator should work with industry to create a statutory code of practice, based on BBFC guidelines for rating films and the principles of the ICT Coalition for Children Online. The code would establish a set of minimum standards that would apply consistently to social networks, internet service providers, mobile telecommunication companies and other communication providers that provide the space and content where children interact online.

This is not intended to be an aggressive, regulatory process. We envisage that it will be the beginning of a much broader debate and conversation between regulators and content providers about just how we keep our children safe on the web. This debate will encompass not only ideas such as panic buttons, but education about the online world, which must run in parallel for any process to be effective.

A statutory code would work with providers to lay out how content is managed on a service and ensure that clear and transparent processes are in place to make it easy both for children and parents to report problematic content. It would also set out what providers should do to develop effective safeguarding policies—a process that the National Society for the Prevention of Cruelty to Children has supported.

As I said, this will clearly be a staged process. We envisage that in order to be effective, the development of a code of practice must involve industry, child protection organisations such as the NSPCC and, crucially, the children and families who use online services. But this code of practice would be based on existing industry and regulatory minimum standards and would require providers to ensure that the safety and wellbeing of children is paramount in the design and delivery of their products and services. The new clause would also empower the Secretary of State to make regulations to ensure effective enforcement of the minimum standards in the code of practice.

The online world can be an enormously positive force for good for our children and young people. It makes available a scale of information unimaginable before the internet existed and there is compelling evidence that that constant processing of information will lead to the most informed generation of children the world has known, but it needs to be made safe to realise that potential. The new clause would give assurance to Opposition Members that we will enable that to happen.

Matt Hancock: I am grateful to my hon. Friend the Member for Devizes for saying that she will not press her amendment and for what she said about the BBFC. Anybody reading the transcript of this debate will see the universal support for the BBFC and its work.

On the point about statutory guidance, through the UK Council for Child Internet Safety we have made guidance available to providers of social media and interactive services to encourage businesses to think about safety by design and help make platforms safer for children and young people under the age of 18. The amendment would make something similar into statutory guidance. I see where the hon. Lady is coming from, but the scale and scope of the internet makes this an unprecedented challenge. Some of the biggest sites have over 2 billion visits per year and UK audiences make up a very large proportion of those. It would be very difficult to have statutory guidance that would be policeable in any complete way. Rather than statutory guidance that could not be dealt with properly, it is better to have non-statutory guidance that we encourage people to follow.

Louise Haigh: On that point, does the Minister share my concern about the levels of discontent among those children who are trying to report online through social media? Some 26% received absolutely no response at all and of those that did receive a response, only 16% were satisfied. What more can we do to strengthen that?

Matt Hancock: I do recognise that. My point is that making non-statutory guidance statutory will not help in that space, but there is clearly much more to do. I hope that, with that assurance, my hon. Friend the Member for Devizes will withdraw the amendment.

Claire Perry: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Louise Haigh: This is a very curious clause, which renders much of the well-informed—as the Minister said—and useful discussion that we have had today about enforcement, targeting smaller providers and restricting access across the web, completely and utterly redundant. If the clause as I read it goes forward unamended, it will provide the regulator with the ability to target only the largest providers of online pornography, perhaps even limiting its ability to target only them.

As we have discussed at length, this is an incredibly difficult area to police, which I appreciate. It is obviously going to be far easier to tackle the 50 largest providers, not least because I assume many of them are already providing some level of age verification and are probably more at the responsible end of online pornography content providers. I would remind the Committee of the Conservative party's manifesto, which said:

"we will stop children's exposure to harmful sexualised content online, by requiring age verification for access to all sites containing pornographic material".

That does not make any reference to commercial providers or whether the provider has a large or small turnover, is on WordPress, Tumblr, Twitter, Facebook or Snapchat. Today's debate has very much suggested that the role of the regulator will be to focus on those sites that are operated on a commercial basis. Given the Minister's reluctance to implement internet service provider blocking, I do not believe that the manifesto commitment will be achieved.

Kevin Brennan: My hon. Friend is making a very interesting point. The clause refers to

"a large number of persons"

and

"a large amount of turnover".

"A large number of persons" might be 1,000; it might be 1 million. Has there been any indication from the Government of what they mean by that?

Louise Haigh: As far as I am aware, we have had no indication from the Government at all. It would be very interesting to hear the Minister's comments on that and on why the clause exists at all.

The Minister has been saying at length that he does not want to be too prescriptive to the regulator, but he is putting into primary legislation that the BBFC will be able to target, first and foremost, the larger providers and those that are more easy to target. I would imagine that a regulator in any regulatory system would go after the bigger and less problematic providers before those that are more difficult to tackle—no reasonable person would expect anything different. I find this confusing: why should the provision be in primary legislation, given the Minister's overtures about not being too prescriptive and giving sufficient flexibility?

4.30 pm

The operative word from that manifesto commitment last year is that children will be protected from "all" harmful sexualised content. I and Members on the Opposition Benches—I can see them shaking their heads—simply do not understand how the clause fulfils that commitment. That is quite apart from understanding what exactly constitutes

"a large number of persons"

among the millions of users, as my hon. Friend the Member for Cardiff West asked. Given that 37% of all net traffic is online pornography of some description, we would be very keen to hear how that number translates into

"a large number of persons".

Also, what constitutes

"a large amount of turnover"

among the many millions of pornography sites available on the internet is anyone's guess.

We are very concerned by the intent behind the clause. Is it inserted as a semi-admission by the Government that they will simply be unable to enforce clause 15 on "all" sites, as their manifesto promised, and so gives them an excuse to wriggle out of their commitment?

Matt Hancock: I hope I can provide some assurances to the perfectly reasonable questions from the hon. Lady. The clause is not an attempt to wriggle out of our manifesto commitment. We will deliver our manifesto commitment in full, and the Bill does that.

The clause provides discretion for the regulator to exercise its functions in a targeted way. It is needed so that the regulator does not break its statutory duties if it goes after the big providers first. As it set out in evidence, the regulator wants to go for the big providers first, and then move on to the smaller and then move on to the next. I want to allow for that to happen, so we need a clause such as this.

Thangam Debbonaire: If I am not mistaken, the Minister just said "in a targeted way". I fail to understand how phrases such as "a large number" or "a large amount" are in any way targeted.

Matt Hancock: The clause gives discretion to the regulator. If the regulator went after the big porn sites first, it would not have the vires to distinguish and go after those who do the most harm earliest. It is important that it has the ability to make the legislation work in practice.

Kevin Brennan: That sounds pretty thin. It is almost like saying that the police would be acting in an ultra vires manner if they did not go after murderers ahead of shoplifters in terms of devoting their resources to their duties. Is that really the reason why this provision is in the Bill? If it is, it is a novel innovation by the Minister that is not often seen in legislation setting up a service.

Matt Hancock: As I have just mentioned in the discussion on the previous clause, some of the biggest sites on the internet have more than 2 billion visits a year. As the hon. Member for Sheffield, Heeley said, many sites are involved. Allowing discretion for a targeted approach is important. The clause also allows the regulator to

"carry out, commission or support…research…for the purposes of exercising, or considering whether to exercise"

the powers. That is important, too, because we want the regulator to have the power to conduct research to inform its views. Both those things are important parts of the execution of age verification.

Louise Haigh: The Minister said just now that the clause will stop the BBFC—we are to assume that it will become the age verification regulator—from being in breach of its statutory duties if it goes after the largest pornography providers first. Putting aside the analogy that my hon. Friend the Member for Cardiff West made, which was absolutely right, is it not the case that the age verification regulator does not have many statutory duties? That was the whole purpose behind the amendments of the hon. Member for Devizes. The regulator is required only to—well, it is not required to; it may—give notice to any payment services or ancillary service provider. I fail to see how targeting any content provider first, last or in any other way would put the regulator in breach of any requirement under the Bill.

Matt Hancock: I want to make it clear that it can target in order to work as effectively and as soon as it can. I am slightly surprised to find Opposition Members against that principle.

Claire Perry: Part of my reason for withdrawing my amendment was that I was encouraged by the word "principally" on line 35 of this page. It is not a restriction; the regulator certainly has the power under the clause to go after it. My issue is that there is a worry, although not with this regulator, that success will be defined by the number of websites or the number of enforcement notices issued. It is not about the number of websites; it is about the number of eyeballs going to them, so it is absolutely right that the regulator focuses on larger sites first. The wording of the Bill allows the regulator discretion to go after any site.

Matt Hancock: On the basis that I agree with that explanation also, I commend the clause to the Committee.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 10, Noes 7.

Division No. 5]

AYES

Adams, Nigel
Davies, Mims
Hancock, rh Matt
Huddleston, Nigel
Mann, Scott
Menzies, Mark
Perry, Claire
Skidmore, Chris
Stuart, Graham
Sunak, Rishi

NOES

Brennan, Kevin
Debbonaire, Thangam
Foxcroft, Vicky
Haigh, Louise
Hendry, Drew
Kerr, Calum
Matheson, Christian

Question accordingly agreed to.

Clause 23 ordered to stand part of the Bill.

Clause 24

Requirements for notices given by regulator under this Part

Question proposed, That the clause stand part of the Bill.

Matt Hancock: I will speak to the clause, just in case we have an unexpected hiccup. Clause 24 sets out requirements to apply where the regulator wishes to seek information or send a notice of infringement to an infringing website, payment services provider or ancillary service provider. The designation is to do so by post or email. We will work with the BBFC in its new role to ensure that the system is effective. Due to the nature of the sector, of course there will be times when notices are not seen or purposefully ignored. In the case of unco-operative non-compliant sites, the clause will allow us to disrupt their business regardless through the withdrawal of supporting services by payment and ancillary providers. I commend the clause to the Committee.

Clause 24 accordingly ordered to stand part of the Bill.

Clause 25 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned.—*(Graham Stuart.)*

4.39 pm

Adjourned till Tuesday 25 October at twenty-five past Nine o'clock.

Written evidence reported to the House

DEB 51 BT Group

DEB 52 British Property Federation

DEB 53 techUK

DEB 54 Virgin Media

DEB 55 DCMS (further amendments)

DEB 56 Adult Providers Network

DEB 57 Administrative Data Research Centre

DEB 58 Information Commissioner (follow-up)

DEB 59 Economic and Social Research Council with input from the Medical Research Council

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

DIGITAL ECONOMY BILL

Seventh Sitting

Tuesday 25 October 2016

(Morning)

CONTENTS

Clauses 26 and 27 agreed to.
Clause 28 under consideration when the Committee adjourned till this day at Two o'clock.

PBC (Bill 045) 2016 - 2017

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 29 October 2016

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The Committee consisted of the following Members:

Chairs: † Mr Gary Streeter, Graham Stringer

† Adams, Nigel *(Selby and Ainsty)* (Con)
† Brennan, Kevin *(Cardiff West)* (Lab)
† Davies, Mims *(Eastleigh)* (Con)
† Debbonaire, Thangam *(Bristol West)* (Lab)
† Foxcroft, Vicky *(Lewisham, Deptford)* (Lab)
† Haigh, Louise *(Sheffield, Heeley)* (Lab)
† Hancock, Matt *(Minister for Digital and Culture)*
Hendry, Drew *(Inverness, Nairn, Badenoch and Strathspey)* (SNP)
† Huddleston, Nigel *(Mid Worcestershire)* (Con)
Jones, Graham *(Hyndburn)* (Lab)
† Kerr, Calum *(Berwickshire, Roxburgh and Selkirk)* (SNP)
† Mann, Scott *(North Cornwall)* (Con)
† Matheson, Christian *(City of Chester)* (Lab)
† Menzies, Mark *(Fylde)* (Con)
† Perry, Claire *(Devizes)* (Con)
† Skidmore, Chris *(Parliamentary Secretary, Cabinet Office)*
† Stuart, Graham *(Beverley and Holderness)* (Con)
† Sunak, Rishi *(Richmond (Yorks))* (Con)

Marek Kubala, *Committee Clerk*

† attended the Committee

Public Bill Committee

Tuesday 25 October 2016

(Morning)

[MR GARY STREETER *in the Chair*]

Digital Economy Bill

Clause 26

OFFENCES: INFRINGING COPYRIGHT AND MAKING AVAILABLE RIGHT

9.25 am

Kevin Brennan (Cardiff West) (Lab): I beg to move amendment 92, in clause 26, page 26, line 18, leave out

"", or will expose the owner of the copyright to the risk of loss."

This amendment and amendment 93 is a probing amendment to explore the impact of Clause 26 on account holders.

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

Amendment 93, in clause 26, page 26, line 35, leave out

"", or expose the owner of the rights to the risk of loss."

See amendment 92.

New clause 3—*Power to provide for a code of practice related to copyright infringement*—

"(1) The Secretary of State may by regulations make provision for a search engine to be required to adopt a code of practice concerning copyright infringement that complies with criteria specified in the regulations.

(2) The regulations may provide that if a search engine fails to adopt such a code of practice, any code of practice that is approved for the purposes of that search engine by the Secretary of State, or by a person designated by the Secretary of State, has effect as a code of practice adopted by the search engine.

(3) The Secretary of State may by regulations make provision—

(a) for the investigation and determination of disputes about a search engine's compliance with its code of practice,

(b) for the appointment of a regulator to review and report to the Secretary of State on—

(i) the codes of practice adopted by search engines, and

(ii) compliance with the codes of practice;

(c) for the consequences of a failure by a specified search engine to adopt or comply with a code of practice including financial penalties or other sanctions.

(4) Regulations made under this section—

(a) may make provision that applies only in respect of search engines of a particular description, or only in respect of activities of a particular description;

(b) may make incidental, supplementary or consequential provision;

(c) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament."

This would amend the Bill to present an opportunity for the Government to fulfil its manifesto commitment to reduce copyright infringement and ensure search engines do not link to the worst-offending sites. There is an absence of a specific provision in the Bill to achieve this.

New clause 33—*Pre-loaded IPTV boxes*—

"(1) The Copyright, Designs and Patents Act 1988 is amended as follows.

(2) In section 107(1)(d)(ii) after "offers" insert ", advertises".

(3) After section 107(1)(d)(iv) insert—

(v) installs, maintains or replaces, or

(ii) otherwise promotes by means of commercial communications, or"

(4) In section 107(1)(e) after "article" insert ", device, product or component".

(5) In section 107(1)(e) after "work" insert "or which is, and which he knows or has reason to believe is, primarily designed, produced, adapted or otherwise used in a manner described in this section whether alone or in conjunction with another article, device, product, component, or service supplied by or with the knowledge of the same person for the purpose of enabling or facilitating the infringement of copyright"."

This new clause allows the Government to fulfil its commitment in the IPO's Enforcement Strategy to ensure that UK business and rights holders have the necessary legal means to protect their IP. It brings in language to cover the supply of IPTV boxes clearly being marketed or sold for the purpose of enabling or facilitating copyright infringement, recognising that many devices may not, themselves, infringe copyright, but are supplied in conjunction with information which enables users to infringe copyright.

Kevin Brennan: Good morning, Mr Streeter. We now move to part 4 of the Bill. May I say first that it is a pleasure to serve under your chairmanship? I thank you and Mr Stringer for all the work that you have done so far in helping us to get through and scrutinise the Bill.

New clause 33 stands in my name and that of my hon. Friend the Member for Sheffield, Heeley. Although she is not in her place at the moment, I am sure that the rest of the Committee would want to join me in congratulating her on her efforts so far as a first-time Front Bencher. I only hope that I can come close to matching her assiduous scrutiny of—[HON. MEMBERS: "Here she is!"] Right on cue, she makes an entrance so that I can complete my compliments for her efforts so far on our behalf and on behalf of the whole Committee in scrutinising the Bill.

New clause 3 is in the name of the hon. Member for Selby and Ainsty, but we have added our names to it because we think it a very good one. I hope that we can have a substantial debate about it this morning, because there are some real issues that we need to discuss.

This is quite a chunky clause. Amendments 92 and 93 are probing amendments. We just want to explore with the Minister the meaning of clause 26 and to clarify its implications. I should say at the outset that Opposition Members support the principle that there should not be any distinction between physical and digital copyright infringement, and therefore support the proposal in the clause to equalise the penalties for that kind of infringement.

For the benefit of the Committee, I point out that the penalty for digital copyright infringement will be increased, to equalise it with that for the physical world, from a maximum of two years' imprisonment to a maximum of 10 years. That makes sense if we are to support the principle of there being no distinction between the two, although in supporting that principle we want to ensure that the penalty is used appropriately. Obviously, we want to hear about that from the Minister in his response.

It could be said that elsewhere in the Bill, because of its unevenness, is the implication that there is some kind of binary between the digital and the non-digital world.

That, of course, is not true when we get into the real world. My hon. Friend the Member for Sheffield, Heeley, in her excellent scrutiny of the Bill from the Front Bench, has argued that we should have had a properly thought through digital future Bill, given all the issues in play, and that that would have done away with the false division that tends to exist between the digital economy and the general economy.

Instead, we have a bit of a Christmas tree Bill, on which the Government are hanging various vaguely related issues. That is what is in front of us, so that is what we must scrutinise, but the levelling of the law on copyright infringement is, I think, a partial acknowledgement of the point about the false division between the digital and the non-digital worlds. However, in increasing the penalty as the clause proposes, we must be sure that we do not leave a window cracked open for unscrupulous operators to be able to intimidate and take advantage of consumers, whom I do not believe the Government intend to target in the clause. I do not think that the Minister intends to target consumers, but he will tell us that in his response.

The issue is largely a matter of wording. Whenever we scrutinise legislation, however, we have to make sure that no aspect of the law is left unclear by muddled phrasing, so it would be helpful to the Committee—this is the purpose of our probing amendments—if the Minister explained the distinction made in clause 26 between

"the owner of the copyright",

in line 18 and

"the owner of the right"

in line 35. What do the Government intend by the distinction?

9.30 am

Likewise, stakeholders have expressed concerns to all members of the Committee about the potential interpretation of the phrase in clause 26: "the risk of loss". The Open Rights Group has expressed concern about the Government's insistence that there needs to be "reason to believe" that infringement will cause loss or "the risk of loss". Its fear is that that phrase, "the risk of loss", could capture quite a wide range of behaviour, perhaps beyond the scope of what the Government say they intend. In particular, its concern is the extent to which that phrase will capture file sharing.

By its very nature, file sharing means that shared music, films or books can be further shared. The Open Rights Group's fear is that the phrase "the risk of loss" could be said to occur by definition from the activity of file sharing. It fears that, unless there is further clarification on that point, the Bill could be used to pursue individual file sharers. The Minister will know that that is not what the creative industries, which obviously have a concern about any infringement of copyright, say that they want. Rather than pursuing low-activity individuals, the creative industries have opted for a more joined-up, voluntary approach in co-operation with ISPs.

The Minister will be very aware of the "Get it Right from a Genuine Site" initiative, which seems to have been quite successful in beginning to change people's minds and behaviour as individual consumers by taking an educational approach. That has generally been the preferred approach; the legal approach has generally been reserved for the prosecution of criminal networks and businesses seeking to make a profit out of the infringement of copyright. We know from the "Get it Right from a Genuine Site" campaign that the industry prefers that kind of approach. I think that that is what the Government want—again, the Minister can confirm that—but we want to make sure that that is what clause 26 actually achieves.

If the clause's intended focus on networks is left unarticulated, there is a fear that so-called copyright trolls could use that fact to intimidate vulnerable consumers. That is why we are exploring the meaning of the clause in these amendments. Copyright trolls specialise in detecting the sharing of online content and sending legal threats to the potential infringers. These speculative and threatening letters are sent in bulk to thousands of account holders after detecting alleged copyright infringement.

Copyright trolls get their profits when a certain number of people are scared enough to respond to those notifications and pay up. Frequently these accusations are incorrect, misleading and sent to account holders who did not sanction any such further file sharing. However, as I understand it, sending that kind of speculative threat to consumers is, unfortunately, perfectly legal. Some are concerned that if the Bill retains the concept of risk of loss, it could aid the trolls by enabling them to argue with more credibility that account holders may face criminal charges and a 10-year prison sentence.

In the Chamber on 8 September, in a debate opened by the hon. Member for Solihull (Julian Knight), we heard all about scamming and vulnerable individuals. All parties agreed that the elderly and the vulnerable are a high risk group and that scams threaten

"their financial, emotional and psychological well-being".—[*Official Report,* 8 September 2016; Vol. 614, c. 507.]

Last month, in the House of Lords, a special Intellectual Property (Unjustified Threats) Bill Committee was appointed and it has started to hear evidence. When that Bill was being considered, Lord Lucas, a Conservative, said:

> "I applaud the Government for helping our businesses avoid unjustified threats but I would like to know what they intend to do to help the granny in the Clapham nursing home who is being threatened by their smaller, nastier cousins with allegations that she has been downloading pornography illegally."—[*Official Report, House of Lords,* 15 June 2016; Vol. 773, c. 16.]

I do not know how real his example was, but this is obviously a topical issue about the danger of copyright trolls being able to exploit the provisions in the clause. Clearly, there is cross-party agreement that trolls and scammers target and exploit vulnerable individuals and that that deserves robust condemnation.

I hope the Minister will also clarify what is meant by "the risk of loss" in the clause and put on the record that the law is written to prosecute networks and businesses rather than individual file sharers and that the Government will continue to pursue profiteering copyright infringers while doing something to deprive trolls of their leverage over the vulnerable. In short, will the Minister clarify what is meant by "risk of loss"? Why does line 18 say

"the owner of the copyright"

and line 35 say

"the owner of the rights"?

Is the intention of clause 26 to prosecute individual file sharers or not? If the Minister can make that clear for the Committee, that will save further debate on the issue.

I turn to new clause 3, also part of the group; it stands in the name of the hon. Member for Selby and Ainsty, in my name and in the name of my hon. Friend the Member for Sheffield, Heeley. It is appropriate that we should have added our names to the hon. Gentleman's excellent new clause because the issue is of great importance to the music industry in particular—as the hon. Member for Selby and Ainsty will know: he is chairman of the all-party music group. It is entirely appropriate that we should be singing in harmony, from the same song sheet.

I apologise if I go on to say some of the things that the hon. Gentleman is likely to say later in his speech; I am sure he will speak much more eloquently than I. Nevertheless, it is important that the Opposition put on the record our support for the new clause. There is an adage in the music publishing business that he will know: "add a word, take a third" in terms of copyright. In this case, we have added our names to his new clause and stolen the lead vocal. I apologise to him on that score.

The new clause offers a way for the Government to enforce a code of conduct for search engines in relation to sites that infringe copyright. Of course, the issue was in the Conservative party manifesto, which has been much quoted during this Committee; it has become a seminal document for the Digital Economy Bill. We are very grateful that the Government wrote this down, even if they are not carrying it out in the Bill for some reason or other. It is right that we should explore why that is the case. They said:

"We will protect intellectual property by continuing to require internet service providers to block sites that carry large amounts of illegal content, including their proxies…We will work to ensure that search engines do not link to the worst-offending sites."

Provision of that kind has not been included in the Bill. Everything else has been hung on it, yet that important statement from the Conservative party manifesto does not seem to feature very prominently within the Bill. I suspect that is why the hon. Member for Selby and Ainsty tabled the new clause in the first place. We will probably return later to blocking in relation to the issues we discussed regarding age verification earlier on in the Bill.

We have an incredibly successful creative industry sector in the UK; it is one of the most successful in the world. It is growing at almost twice the rate of the wider UK economy, and in a post-Brexit Britain—if that is, in my view, the unfortunate direction that we are taking as a country—the creative industries are obviously going to be even more vital and will make a huge contribution towards our being a strong exporting nation. They will also play a huge part in projecting our presence as the United Kingdom to the rest of the world. They are hugely important.

The new clause laid by the hon. Gentleman would help reinforce the creative industries' prominent international position and encourage more inward investment by providing a means of combating piracy more robustly. In other words, if the Minister opposed it, he would be unpatriotic. That is absolutely clear, because the issue is very important to our export industries. I do not think he will oppose it, but it will be interesting to hear what he has to say.

A variety of stakeholders are concerned about this issue, representing many different types of content, but, as I said at the outset, the issue concerns the music industry in particular. I should probably declare an interest at this point: I earned £10.60 last year from PRS for Music for my song writing, on which I have paid the 40% income tax—so whatever net figure we come up with as a result of that.

Christian Matheson (City of Chester) (Lab): Now we're listening, Mr Streeter. Does my hon. Friend know what that represents in terms of sales?

Kevin Brennan: I shall stick strictly to the amendment, but I think it is mainly in relation to live performances, rather than through physical or online sales.

The impact of copyright infringement is very difficult to quantify precisely because not every copy of a music track that is illegally shared necessarily represents a lost sale. Nonetheless, the scale of illegal downloading and streaming of music remains significant and it continues to undermine the economic health of the UK's music industry. The Ofcom Media Tracker survey, average retail prices and academic evidence taken together all suggest that the losses from piracy to the UK recorded music industry are between £150 million and £300 million a year. That is a significant loss of value to the UK economy and legitimate music-related businesses.

9.45 am

In recent years there have been a lot of industry initiatives tying to solve the problem, which have got the Government interested and involved. Baroness Neville-Rolfe, the Minister for Intellectual Property, has chaired a series of roundtable discussions and meetings between representatives of the creative industries, including the British Phonographic Industry—the record companies' trade body—the Alliance for Intellectual Property and the publishers, as well as representatives of leading UK search engines Google, Bing and Yahoo. The meetings were convened to discuss practical steps to be taken on a voluntary basis to reduce the risk of consumers being led to copyright-infringing material by means of search results.

The rights holders proposed a voluntary code of practice, acknowledging that search engines play a valuable role in guiding consumers to sources of legitimate content online and are well placed to work with content owners to reduce the prominence in search results of known infringing websites by methods such as demoting them in search results and delisting. Those tactics are already widely used by search engines in connection with a range of other illegal material.

The guiding principles for the voluntary code of conduct would have been that in the top three results, fewer than 1% link to illegal sites; in the top 10, fewer than 5%; and in the top 20, fewer than 10%. Achieving these objectives would improve the quality of search results and resolve disadvantages that limit the visibility of legitimate sites on which consumers can buy or stream copyrighted works.

Rights holders would play a role too. Stakeholders such as the BPI are very conscious of the need to educate the public, in which they have a role to play, as well as the need to turn people away from pirate enterprises and reduce the effectiveness of criminal online behaviour. Their aim is to remove the consumer base so that as criminal behaviour is reduced, so is the burden of the legal process. They may be able to influence search listings through a range of different channels, including through the reporting of content-infringing URLs through DMCA notices. If the code of practice were agreed, consumers would benefit from higher quality search results—*[Interruption]* I see the Minister is searching for illegal content now on his handheld device—as well as clear signposting to legal content and reduced exposure to malware, viruses and types of deceptive advertising which studies have shown to be more prevalent on infringing sites.

In essence, rights holders want search engines to do what ISPs already do—work co-operatively to take action against sites that have been identified by the High Court as pirate sites—but despite numerous efforts, search engines will not co-operate or agree to the code of practice. They continue to take little responsibility for the fact that listings can overwhelmingly consist of illegal content—the equivalent of the "Yellow Pages" refusing to take responsibility for publishing the details of crooked traders and fraudsters.

Google changed its algorithm in 2014, claiming that the change would take greater account of notices sent about particular sites in its listings, and that if the site had received a large volume of notices from rights holders to remove content it would be deprioritised in their search listings. I remember talking to them about this at the time. Despite an initial dip after the algorithm was changed, the problem eventually came back and has since worsened. Research by the International Federation of the Phonographic Industry shows that in 2015, 94% of take-down requests were for repeat notices related to links to the same content on the same sites; the URLs had been tweaked slightly and Google gave them a clean slate every time.

Given the difficulties in negotiations, the new clause would provide a legal backstop to prevent search engines from refusing point blank to co-operate in discussions. The Bill's professed ambition to expand superfast broadband needs to be matched by an ambition for a legal marketplace. While the code of practice remains a voluntary dream, search engines can refuse to collaborate, as they have for many years.

Christian Matheson: Do not many of the search engines make their money by prioritising businesses and organisations that have chosen to advertise with them? It is therefore easily within their power to change their algorithms at will to meet the requirements that my hon. Friend suggests.

Kevin Brennan: My hon. Friend is absolutely right: it is within search engines' ability to change the algorithms. I had always thought that the problem might eventually solve itself, because when advertising is placed next to the results of an online search, the companies whose products and services are being advertised appear next to websites that are run in the shadows, often by criminal networks. Surely reputable businesses with statements of corporate social responsibility would not want their advertisements to appear next to a search that turned up an illegal website run by some gangsters somewhere in Russia. However, it turns out that search engines do not solely or even principally make their money from advertising; it is data that are valuable to them. As one of my hon. Friends said earlier, data are the new oil. It is the data acquired on individuals through search engine practices that are so valuable and that enable companies to put product placement in their advertising and search engines to tailor searches to individual consumers online. Embarrassingly, that fact once resulted in a Conservative Member criticising a quote of mine on the Labour party website because the advertising content that appeared next to it was to do with dating a certain type of person. The Member in question subsequently found out that the advert had been placed there not because the Labour party was short of money but because that advert was tailored to his personal search activities. Members should beware when making such criticisms.

My hon. Friend the Member for City of Chester is absolutely right that it is perfectly within search engines' power to solve this problem. Some efforts have been made by Google, and they worked for a short time, but a search engine search for widely available music by some of the most popular artists in the UK will still return a lot of illegal results. The hon. Member for Selby and Ainsty may wish to cover that point in his remarks, so I will not go into further detail, but BPI research certainly indicates that.

The voluntary approach is not working. We have seen this movie before; we have downloaded it many times, and it always has the same inconclusive ending. New clause 3 would provide it with an ending to match one of the best last lines in the movies, which is "Shut up and deal." Any offers from Government Members? It is from Billy Wilder's great film "The Apartment"; Shirley MacLaine says it. The new clause would enable the Government to say to the search engines, "Shut up and deal," because there is no incentive for search engines to do so at the moment. We are being helpful to the Minister, as is his colleague. We are trying to put a bit of lead in his pencil, and he should welcome this cross-party effort to ensure that progress is made.

One further point: I have a sneaky feeling that the Minister actually agrees with the new clause, although he will not agree with it today, and will want to make this change to the Bill but to do so in the House of Lords. If my prediction is wrong, I will take it back in due course. The only thing that I would say is that it does not do this House's reputation any good when Governments behave that way. I accept completely that all Governments do it: they know that they want to make a concession on a Bill, but they decide to do it in the House of Lords rather than the Commons. Ultimately, although we hear all the talk about the House of Lords being such a wonderful revising Chamber, the Government should accept once or twice that hon. Members, including those of their own party, come up with amendments that are perfectly sensible and should be incorporated into a Bill. It would help the reputation of this House if the Government were prepared to behave in that manner.

One fundamental aim of the e-commerce directive was to identify clearly which practices fall within and outside safe harbour defences. Part of the legislation—

[Kevin Brennan]

article 16, to be specific—encourages member states and the Commission to draw up a code of conduct at community or national level. However, no such code of conduct has ever been drawn up due to resistance by the search engines. They should not be allowed to avoid parts of legislation at the expense of UK creative industries just because they find it inconvenient. The new clause would end the wasting of Ministers' time in chairing meetings that go nowhere, the repetitive process of rights holders producing proposals and the practice of search engines consistently refusing to comply to combat piracy, thus ensuring that the digital economy continues to benefit both the UK creative industries and the British public.

New clause 33 is the last amendment in the group. Last month, the Government released their annual intellectual property crime report. Some of the trends are quite startling: they reported 33% more illegal TV programming downloads in March to May 2015 than in the same period in 2013—a rise from 12 million to 16 million. The report highlights as a major concern the proliferation of internet protocol TV, or IPTV as it is known, which offers viewers increasingly easy access to pirated digital content. Technological changes have led to exponential growth in this new form of piracy. Android-based IPTV boxes are being loaded with software linking thousands of streams of infringing entertainment, movie and sport content. The boxes are sold on mainstream marketplaces such as Amazon and eBay, and through Facebook.

The Copyright, Designs and Patents Act 1988 has yet to be updated to reflect the new technology. It offers no effective remedies to copyright owners, who at present can rely only on laws that are not particularly tailored to copyright infringement. The new clause would help prosecute those who pre-load and distribute such devices and make it easier to work with online marketplaces to remove listings by wholesalers of such products.

10 am

A central pillar of the Government's intellectual property enforcement strategy, which was launched earlier this year, states:

"We will comprehensively review all existing methods of legal recourse for IP infringement to ensure they are effective, consistent and proportionate across all IP rights. We also want to ensure that UK business and rights holders continue to have the necessary legal means to protect their IP, as well as ensuring that effective action can be taken against criminality."

The Government also said that they would consider

"what legislation would be effective in addressing the growing problem of illegal streaming via set top boxes"

and that they would investigate

"the scope for legislation to take action against search engines, ISPs and platforms that facilitate or otherwise support those involved in infringement and counterfeiting."

That was followed by the IP Minister, Baroness Neville-Rolfe, launching the enforcement strategy in May this year. She set out how the Government were

"looking at new areas where we might need to create new legal tools to tackle new modes of infringement…we will look at the legislation around set-top boxes, and whether we have enough effective remedies to tackle their misuse."

She stated that the issue of IPTV and set-top boxes accessing infringing broadcasts was well understood by the Government, as was the scale of manufacture and distribution, and she went on to describe how

"these set-top boxes have entered the mainstream consumer market"

and how they are used on a massive scale. She also explained that

"as technology has developed and broadband speeds have increased, it is now entirely possible to receive programmes in high quality over the internet avoiding the use of decoders entirely. Quite simply the original broadcast is captured at illegal data centres that can be located anywhere and is then re-transmitted as streamed signals over the internet. Set-top boxes…are then supplied pre-loaded with apps that can either be used to subscribe to an illegal site or get content for free whilst the site operator generates income from advertising."

So the IP Minister herself said that something needs to be done about the issue that the new clause addresses. Her conclusion was that

"it is clear that we need some new thinking in this area. The satellite and cable industries and broadcasters continue to invest in better security and enforcement, but it is also clear that the criminals are serious and this sort of organised crime generates huge profits."

She is absolutely right.

The Copyright, Designs and Patents Act 1988 is an unfit vehicle for the prosecution of offences that involve the supply of IPTV devices designed to pirate content. Supply of devices carrying third-party content can be prosecuted but only via much more complicated routes: normally only the police can investigate and prosecute it, under legislation such as the Fraud Act 2006, the Proceeds of Crime Act 2002 and the Serious Crime Act 2015. As the Committee knows, police resources, especially IP specialist resources, are extremely limited. The law should be developed to give other bodies, such as trading standards offices, clearer abilities and obligations to prosecute such offences.

New clause 33 would amend section 107(1) of the Copyright, Designs and Patents Act 1988 to create the new offence of supply of devices primarily used to infringe copyright. It is entirely logical to amend that section, which is concerned with

"criminal liability for…dealing with infringing articles",

but which currently focuses only on physical copies of work and on communication to the public. The new clause would bring trading standards offices into the picture, empowering them to make investigations and to enforce the rules on such devices under section 107(1) of the 1988 Act. To minimise the risk of new and uncertain legal tests, concepts or unintended consequences, the drafting adopts for the most part language used elsewhere in that Act.

Our proposal has a long list of supporters in the industry. We are interested to know whether the Minister thinks it is a good idea, and whether he will consider adopting it. If he is unable to do so, perhaps he will give a much clearer picture of the Government's intentions and why they believe that the Bill is not the right place to introduce these proper restrictions on the use of new IPTV devices.

Nigel Adams (Selby and Ainsty) (Con): I rise to speak to new clause 3. It is a pleasure to follow the hon. Gentleman, who knows an immense deal about this area, having been a huge recipient of earnings from

rights over the past few years. I am not entirely sure whether all that income was derived from him buying presents for his family, but it is great to see that we genuinely do have talented musicians in this place.

The new clause would create a power that allowed the Secretary of State to consider introducing a code of practice between search engines and rights holders on copyright infringement, which we have heard about. This power could be used only in the absence of a voluntary code between the two parties; it would not automatically create new legislation. Instead, as has been said, it acts as a backstop power if all other attempts to get an agreement between the producers of creative content and those who facilitate access to infringing material fail.

According to the latest estimates from the Department for Culture, Media and Sport, the UK creative industries amount to £87.4 billion in gross value added, and have an export value of £19.8 billion. These are incredibly large sums. Industries such as the music sector contribute immensely to those figures. Last year, five of the top 10 biggest selling artists in the world were British. One in six albums sold globally is from a UK artist. Those are staggering figures, and they demonstrate the appetite for UK music content here and abroad. According to "Measuring Music", a report developed by UK Music, the industry body, the sector grew by 17% over the past four years and is worth £4.1 billion to the UK economy; it generates exports of £2.2 billion.

Although the UK creative industries are much in demand, copyright infringement remains a significant challenge. It not only has negative economic consequences for our businesses and industries by driving consumers to illegal markets, but seriously undermines the respect for, and value placed on, the creativity and effort that go into producing content—music and films in particular. According to the latest Kantar Media copyright infringement tracker, commissioned by the Intellectual Property Office, 78 million music tracks were accessed illegally between March and May 2016. The same research indicated that 20% of internet users participated in some form of illegal music activity online during that short period. These are very worrying figures, and they remind us that despite the growth in access to legal streaming sites, such as Spotify for music and Netflix for films, piracy remains a significant problem that needs to be tackled.

If we are to ensure a prospering commercial market for UK music that benefits rights holders and creators, it is essential that the main method of discovering music and artists directs consumers to legitimate sources. Search engines are one of the key means by which consumers discover music and artists. However, the prevalence of search results linking to infringing content, particularly on the first few pages of a generated search result, as we heard from the hon. Member for Cardiff West, indicates that more needs to be done. Furthermore, search engines incorporate auto-complete functions that can provide access to terms associated with the discovery of illegal content even before an internet user has finished typing their search terms.

For example, I am sure that you, Mr Streeter, are aware of the artist James Arthur, who was at No. 1 with "Say You Won't Let Go" until he was knocked off the top spot, as I am sure you are aware, by Little Mix, which caused great excitement in the Adams household. When searching on Google, all I need to do is type in "James Arthur say y", and I am given an option of clicking "James Arthur 'Say You Won't Let Go' download". This takes me to a series of search results, and the only legitimate link allowing me to access that track legally is at the bottom of the page. It is not acceptable that search engines allow such ease of access to infringing content.

Some searches involve wading through several pages of results before getting to the first legal site. That is clearly wrong. The effectiveness of Google making changes to its algorithms—an infringement solution that that particular search engine advocates—remains to be seen. In reply to a written parliamentary question that I tabled on 2 September, the Government admitted on 26 September that it is "not possible to say exactly how" an algorithm change "equates to changes in infringement". In response to a separate question, they said that it was "not…possible to analyse the…effectiveness" of measures to decrease auto-complete suggestions that provide access to stream ripping and other illegal converter technologies via search results.

In the 12 months up to September 2015, the British Phonographic Industry—the representative body for the recorded music industry, which does much vital work in the pursuit of anti-piracy measures—submitted almost 66.5 million infringing URLs to search engines for removal from search results. The ability of search engines to link to legitimate websites should be straightforward. For example, pro-music.org identifies legal online services. The site identifies that the UK has over 50 legitimate music websites—28 download, 19 subscription and 14 supported through ad services.

Creating a legitimate marketplace increases industry's capacity for growth and supports overall economic wellbeing. Consumers also stand to benefit from higher-quality search results, clear signposting to legal content, and reduced exposure to malware, viruses, and other types of deceptive advertising. Studies demonstrate that these risks to internet security are sadly prevalent on infringing sites.

Dealing with copyright infringement requires co-operation; the problem can be addressed through positive initiatives. We have seen success in website blocking and, as we have heard from the hon. Member for Cardiff West, from the "Get it Right from a Genuine Site" campaign. UK Music developed an app, aimed at young people, called Music Inc. in partnership with Aardman Animation and the IPO. It raises awareness by simulating the mechanics of the music industry and showing the impact of copyright infringement on business decision making. The app has attracted over 600,000 users since its launch. We have also seen positive results from activities by advertisers and payment providers, and from the work of the police intellectual property crime unit to take advertising and payment services away from illegal sites.

Recognising the challenges, the Government have facilitated a round-table process so that rights holders, industry bodies such as the BPI, and representatives from search engines can discuss the problems of copyright infringement. This process has yet to result in agreement on how infringing content should be tackled. Rights holders are trying to negotiate a voluntary code of practice. We must take this opportunity to ensure that that happens. A code of practice for search engines

[Nigel Adams]

would result in the reduced prominence of known infringing websites in search results, through demotion and delisting. Search engines already use such practices with regard to a range of illegal activities. The demotion of illegitimate websites would be attractive, in that verified artist websites would benefit in the same way that licensed retail stores do. This is because they will be promoted in the rankings at the expense of infringing sites.

Nigel Huddleston (Mid Worcestershire) (Con): Is my hon. Friend aware that rankings are vital? For some search terms, up to 90% of clicks can come from the top three results. Certainly more than 90% of people do not look past page 1, so being at the top is vital to clicks and activity.

10.15 am

Nigel Adams: My hon. Friend speaks with great knowledge on the subject. That is absolutely vital. Consumers searching are not necessarily aware of which sites are legal and which sites are not, so being in the top few search results is crucial. Much more needs to be done to ensure that genuine sites are recognised when people use search engines.

A code of practice should recognise that its scope includes legitimate artists' websites where appropriate. The Bill presents an opportunity for the Government to fulfil their manifesto commitment to reduce copyright infringement and ensure that search engines do not link to the worst offending sites. At this stage, there is no specific provision in the Bill to achieve that. Although it is not my intention to push the new clause to a vote, I am keen to hear the Minister's response, and his ideas about how to ensure that its intentions are delivered.

The Chair: It may help the Committee to know that we will not reach votes on new clauses today; that will come at the end of our proceedings, in case anyone is getting terribly excited.

Calum Kerr (Berwickshire, Roxburgh and Selkirk) (SNP): I am sure that the Minister will be glad to hear that I will not be quite as thorough, because everything has been covered already. He was looking somewhat exasperated. I do not know what he was googling; "How to make this Bill go quicker", perhaps.

Christian Matheson: Does the hon. Gentleman not agree that one way to make the Bill go quicker would have been for the Minister not to have tabled so many Government amendments?

Calum Kerr: That is an excellent point. I think that the ambition is to make the amendment paper longer than the Bill. If the Bill is a Christmas tree, the baubles must be hollow, with a little note inside saying "IOU a lot more detail, or an apology." It has made my first Bill Committee an interesting experience.

Of course we support clause 26 and the spirit behind it. It is important that copyright be protected. Our creative industries in these isles are a huge success story, and they should be fully supported. The hon. Member for Cardiff West gave a thorough and excellent overview of the issues; I know that my hon. Friend the Member for Perth and North Perthshire (Pete Wishart) was delighted to hear that he was on the Bill Committee, as the subject is close to his heart. I would hazard a guess that he has made more than £10.60 from his past efforts. Before I come to the substance of what the hon. Member for Selby and Ainsty said, I put on record my appreciation and admiration for his contribution last Friday. That day showed the worst and best of democracy in this place, and he was part of the best.

On the new clauses, I have been sitting here messaging my staff asking, "Why didn't we add my name to these?". We need to learn how things operate a bit better. We fully support the amendments. New clause 3 is an essential addition. As the hon. Member for Cardiff West said, I am sure that the Government will add something at some point, because that is a logical step to take. As has been outlined in some detail, there are millions of sites flagged to the search engines by the relevant bodies. It is not as though they have to go and find them themselves; it is the process by which the search engines do or do not take the sites down that needs to be brought into sharp focus. Clearly, there are efforts at a voluntary approach, but this is the perfect opportunity to put into legislation something that might drive the right outcome and behaviour without the need for follow-through. Past experience supports that idea. We must see some movement in that area.

We support new clause 33 on IPTV boxes. It is necessary to move with the times. This Christmas tree of a Bill has a lot of aspects to do with the broader digital economy, but people will continue to innovate and find new ways of delivering content, and IPTV is one example. Someone in this place recommended an IPTV box to me for my London flat because it is quite a cheap way of accessing content, but I did not follow that advice because I would not want to access any illegal content. These boxes come pre-loaded, and there should be no pretence about it: they are designed to give people a way of avoiding paying for content that they know they should pay for. There is no excuse for that. New clauses 33 and 3 are essential additions to the Bill, and we are delighted to support them both.

Rishi Sunak (Richmond (Yorks)) (Con): New clause 3 is about protecting content owners from copyright infringement. Most of the discussion we have heard today has centred on online platforms and their particular abuse of music content. However, has the Minister considered the connected issue of the newspaper industry? Historically, newspapers used revenue from advertising to help support their news-gathering operation, and to provide a vital service, especially in regional and local communities—I am sure that Members on both sides of the Committee will have experienced that service in their constituencies. Today, there is a concern that some online platforms are benefiting from such news-gathering, but are not always paying for it in the most appropriate way. That raises questions about the sustainability of the newspaper industry and the vital service it provides. Has the Minister considered the connected issue of newspapers? Will he share any thoughts with the Committee?

Thangam Debbonaire (Bristol West) (Lab): I rise to speak in support of these amendments and new clauses, and to add a bit of colour and flavour to some of the arguments that have already been made. We often talk

about rights holders, but we need to be aware that behind those rights holders are individual artists, musicians and technical people. It is not just about my hon. Friend the Member for Cardiff West; it is about the technical people involved in any recording, film or e-book. Many people are involved in those processes, and every time we deny their right to be paid, we are denying them the right to continue working in the way that we would want them to work.

Which of us here has not skipped gaily around the Palace of Westminster, at least in our imagination, with a song in our heart or a tune in our head? Maybe that is just me. Most of us have a favourite film, and we have music at special family occasions. A poem will be read at a funeral and a song will be danced to at a wedding, and all the people involved in producing them need to be paid properly for their work.

There should not be this wild west of a shopping mall where people can access whatever they want for free, without proper provision for reimbursing those involved. Unfortunately, search engines in particular, but also other providers, are allowing that illegal shopping mall to exist, and so artists, writers and others involved in the creative industries are not getting their proper deserts. That is important.

The hon. Member for Selby and Ainsty and my hon. Friend the Member for Cardiff West both mentioned economic value. I emphasise that according to the Government's own website, the creative industries are contributing £9.6 million an hour to the UK economy. Since we sat down to work, the creative industries have contributed £9.6 million. UK music alone contributes £4.1 billion each year, which is something to think about. The creative industries are growing at twice the rate of the UK economy, at 8.9%, and we want them to continue to grow. We do not want to deny them part of their income—admittedly the minority, but it is still significant.

We tabled these amendments because we need to harmonise copyright and ensure that licensing laws work across the online and offline world. We want to help Conservative Members to fulfil their commitment in the Tory party manifesto, and new clause 3 would help

"the Government to fulfil its manifesto commitment to reduce copyright infringement and ensure search engines do not link to the worst-offending sites."

We seem to have a degree of cross-party unity on the value of that measure. I look forward to hearing what the Minister has to say, because there is otherwise an absence of a specific provision in the Bill to achieve this.

I want us to make sure that the good examples, such as Get it Right from a Genuine Site, are taken up and followed, to avoid the unfortunate misdemeanours of others, such as search engines that can remain nameless—we can all guess who they are and others may have already mentioned them. It is not okay for search engines to drive—wittingly or unwittingly, but they should reasonably have known—towards illegal sites.

Consumers do not want musicians, film makers and others to be robbed of their just deserts. Mostly, we want to be able to be sure that when musicians have made a piece of music we love, they get properly paid for it. It is incumbent on search engines and others to make sure that that happens, and to use the power we know they have to create their algorithms to work properly in this respect. We would not tolerate a shopping mall in which signs and property space were given to illegal shops selling illegal goods. This is the equivalent.

I am absolutely convinced that the Minister would want to honour the commitment in the Tory party manifesto to rectify that. On Second Reading, the former Secretary of State, the right hon. Member for Maldon (Mr Whittingdale) said,

"there may well be a case for including a legal provision encouraging providers to establish a voluntary code."

He also said:

"we cannot allow Google and other search providers to go on allowing people access to illegal sites."—[*Official Report*, 13 September 2007; Vol. 614, c. 785.]

I am convinced that the Minister will want to take up the mantle he has been thrown by the former Secretary of State and I urge him to do so.

The Minister for Digital and Culture (Matt Hancock): What a pleasure it is finally to stand to respond to the long interventions and speeches from Labour Members. It is a joy to hear that at least some of them understand and believe in property rights. Conservative Members certainly do.

The discussion has turned into a debate not only on amendments 92 and 93 and new clauses 3 and 33 but essentially on clause stand part. I therefore hope that Committee members will understand if I explain the whole clause in my response.

Kevin Brennan: The Minister is seeking to chair the Committee now as well as being the Minister.

The Chair: And he is doing it extremely well but it will be my decision.

Matt Hancock: It is a team effort.

The amendments are to clause 26, which increases the maximum sentence for online copyright infringement from two to 10 years, which is equal to the sentence for physical copyright infringement. The case for this has been made powerfully by Government and Opposition Members and it is an important change. Whether online or offline or a combination of the two, copyright infringement is IP theft and it is right that the maximum sentence is the same.

This sends a clear message that copyright infringement of either kind will not be tolerated and affirms that creators who produce the content that we all enjoy are valued. Furthermore, enforcement agencies will now have proportionate sanctions to tackle this serious criminality, whether offline or online.

We recognise that the maximum sentence of 10 years, even if only for the most serious cases, must be carefully targeted. Consequently, clause 26 also makes changes to the existing offence of online copyright infringement to make it clearer when that offence is committed and who should be considered liable. The amendments speak to some of those points.

The concept of prejudicial effect in the existing legislation will be replaced with a requirement that the infringer intends to make a monetary gain for themselves or knows or has reason to believe their actions will expose

[Matt Hancock]

the rights holder to a loss or risk of loss in money. I will come to the debate around definition of that in more detail.

The point of this clarification is to act as a safeguard to ensure that the increased maximum penalty is applied only to serious criminals who deserve it and will not apply to those who share material accidently or without knowledge of the consequences.

Turning to the points made by the hon. Member for Cardiff West, or at least the ones that were pertinent—

Kevin Brennan: On a point of order, Mr Streeter. Am I right in saying that as the Chair of the Committee, had I made any points that were not pertinent, you would have ruled me out of order?

The Chair: I can certainly confirm that you were in order all the way through your comprehensive speech.

Matt Hancock: Undoubtedly in order and sometimes very broad ranging. A person who accidentally shares a single file without the appropriate licence, particularly when the copyright owner cannot demonstrate any loss or risk of loss, is not expected to be caught by this offence. I hope that gives the hon. Gentleman assurance on that point. However, of course, criminal infringement will be dealt with on a case-by-case basis and a court must be satisfied beyond reasonable doubt that all elements of the offence have been made out.

10.30 am

Kevin Brennan: We are getting to the crux of the matter: the words the Minister uses are very important. All joking and jibing aside, which he enjoys, there is a serious reason for laying these matters firmly on the record in Committee—that is our serious purpose here and our constitutional role. He said, "is not expected to be caught by this offence". I fear that that is not really strong enough in response to my points. We need to understand whether it is possible for individual consumers to be captured by it. If so, the Minister should tell the Committee.

Matt Hancock: As I said, it is for the courts to decide about criminal infringement on a case-by-case basis, but I am making clear that that is unlikely and not the expected outcome in the case of a person who accidentally shares a single file without the appropriate licence. The reason I do not go further and make it absolute is to ensure that the court can make a fair judgment on this, rather than be bound. I want to go further, because there is another important point here about the impact of this on activities that are currently lawful. We do not expect things that are currently lawful to be caught by this change. This is a change in the scope of the sentence rather than in the definition of the offence. I want to make that very clear.

On the second point that the hon. Member for Cardiff West made about the legal distinction between "owners of copyright" and "owners of the rights", "owners of copyright" relates to the offence of communicating to the public, whereas "owners of the rights" relates to the performer's right of making available. This is a legal distinction: they are two separate offences but there is no substantive difference in the meaning of the two. The reason has to do with the legal drafting of the offence rather than the lay understanding of the meaning of the two.

The hon. Gentleman also raised the issue of trolls. I want to be clear that while we understand that some people may receive threatening letters from so-called trolls, we are not aware of any successful court case by these so-called trolls in this area. We do not endorse such aggressive tactics and we understand that this tactic is not widespread, but we will keep it under review.

Going more broadly into the debate that we have just enjoyed, since 2002, when the maximum custodial sentence for copyright infringement was changed, this has clearly been wrong. I am glad that there is all-party agreement on the change to 10 years, but in addition to increasing the maximum sentence, we have recast the relevant offences to include an additional element to the offences, which must be proved before an offence is made out, namely that the infringer intends to make a monetary gain for themselves or another person, or knows or has reason to believe that their actions will cause loss to the rights holder or a risk of loss in money. Amendments 92 and 93 would remove this additional element, but there are several reasons why it should be retained. We should remember that serious incidents of online copyright infringement or infringement of a performer's making available right already fall within the scope of criminal law, as I mentioned.

It is right that the courts should be able to apply serious sanctions where they are warranted and apply the equivalent sanction to that available for physical copyright infringement, but it is our view that it is important to include the words, "risk of loss" to capture cases where the loss has not yet materialised. We believe that these same scenarios would fall within the current drafting of the offences, which relies on the prejudicial effect, but we have tightened the notion of prejudicial effect following consultation, to be more precise and targeted in the wording being examined today. I hope that satisfies the understandable request by the hon. Member for Cardiff West for clarity to be put on the record as to the intent of clause 26.

I now wish to turn to new clause 3 on search engines. We had a serious debate on the impact of search engines. We come from a position of being strong believers in the protection of property rights, and we want to ensure that the UK retains one of the best IP regimes in the world. Without content, there is no IP to protect, so I pay tribute to the BPI's work: to support take-downs and to make the eloquent case for stronger IP protection. I also pay tribute to Get it Right from a Genuine Site, which does important work in making sure that culturally it is unreasonable—and seen as unreasonable—to take IP without paying for it.

I turn to my hon. Friend the Member for Richmond (Yorks) who made an important point on newspaper articles that appear in search engines. We support fair remuneration and we encourage content providers and online platforms to work together on this. This is an issue that has been raised with me directly, and it is pertinent to the debate. We want to encourage investment in new content, and we support returns for investigative journalism and other kinds of journalism, and I hope

we come to a resolution on fair remuneration between content providers and online platforms, in the first instance. However, my hon. Friend's intervention is noted.

In relation to clause 3, as the Committee knows from the discussion, the Minister for Intellectual Property, Baroness Neville-Rolfe, has been working closely with search engines and representatives of the creative industries. We are fulfilling our manifesto commitment to ensure that there is a fair return, and the group is currently considering a voluntary code of practice. I agree with the thrust of the arguments made by my hon. Friend the Member for Selby and Ainsty, who put the case strongly. Our intention is for the voluntary negotiations and the voluntary code of practice to come to a successful fruition, and the people involved in those negotiations will doubtless have heard the argument and understood the strength of feeling on this Committee. Given this ongoing work and the existing remedies for removing or blocking infringement content, I hope that hon. Members will agree that now is not the right time for a broad reserve power.

Kevin Brennan: Surely now, when we have a legislative vehicle in front of us that could not have been better designed for this very purpose, is exactly the right time. Committee members would have a right to be annoyed if, in making this broad assertion that now is not the right time, the Minister were subsequently to concede on this point at a later stage in the Bill's progress, in another place and in an unelected House. Will he tell us truthfully what the Government's intentions are on this point?

Matt Hancock: I care about the substance of getting this Bill through right. There are, of course, important parts of parliamentary process both here and in the other place. Given that the round-table discussions are ongoing, including a meeting next week, now is not the right time for the broad reserve power.

New clause 33 seeks to expand the criminal liability to include the supply of IPTV boxes for criminal infringement. As hon. Members will understand from the tone of my remarks, as a strong believer in property right protection, I understand the concern. The hon. Member for Cardiff West referred to the Copyright, Designs and Patents Act 1988 and the fact that the Minister for Intellectual Property had committed to making sure that we looked at this, and we have done so. This activity is already covered by criminal law under the Fraud Act 2006 and the Serious Crime Act 2015. The City of London police force is investigating cases. It seized over 500 set-top boxes earlier this year and arrested a man for fraud and IP offences.

There is a danger in the digital world of legislating for a specific technology as opposed to legislating for the offence in a technology-neutral way. I strongly prefer the latter. As the law is already in existence in the two Acts that I mentioned, the best thing to do is to prosecute under the existing Acts, rather than try to chase a particular technology, which may well be out of date. Our strategy for tackling IP crime includes a specific commitment to developing an understanding of the challenges posed by IPTV. We now need an approach that tackles the problem, rather than just current IPTV set top-box technology, which will no doubt be superseded in due course by future technologies. The existing criminal offences provide a legislative framework that is broad enough to protect our creative industries. However, I will of course keep this area under review.

I hope Members have been reassured of the work we are doing to make sure we apply the existing criminal law and make sure that intellectual property is protected. I concur with all the remarks made by Committee members about the importance of the creative industries, the importance of supporting content providers and the importance of intellectual property. I hope that with these explanations, the hon. Member for Cardiff West will feel able to withdraw the amendment.

The Chair: Before I call Mr Brennan, it may help the Committee to know that it is not my intention to allow a wider debate on clause 26. We have had a good old canter around the course.

Kevin Brennan: Thank you, Mr Streeter, for letting us know your decision—not influenced at all, I am sure, by the efforts of the Minister to chair the Committee as well as leading for the Government. I will take into account in my response that you are including clause stand part in this part of our debate.

I made it clear at the outset that amendments 92 and 93 were probing amendments and I am very grateful for Minister's explanation of the meaning and intention of the wording. As I have made clear, it is not our intention to push the amendments to a Division, but I think we need to cogitate a little further before Report and the latter stages of the Bill and perform a more careful exegesis of what the Minister said when he used the phrase "not expected".

Matt Hancock: I can go yet further on that. The reason this is rightly done on a case-by-case basis is that we are talking about an existing offence. It is important to remember that. We are not making something illegitimate which is currently legitimate; we are adding to what is required to make out an offence. We are not making something that is currently legitimate now illegitimate. That is why it is reasonable to proceed on that basis, with the language that I used.

Kevin Brennan: I am grateful for the further clarification and for the Minister engaging in the discussion. We will think further about what he has said. I think it has been a very helpful exploration of the issue. I am not sure that he is right when he receives advice that the trolling issue is not widespread, which was the phrase he used. Obviously we can dig into that a bit further as we progress with scrutinising the Bill, but I welcome the fact that he said he would keep that under review. This is a very real issue and the fact that there may not be many prosecutions around it is often related to the fact that such activity is not necessarily illegal—the point I made in my contribution. Nevertheless, it can bring great distress to vulnerable individuals. We all know that the issue of vulnerable individuals being targeted by unscrupulous individuals, organisations and networks online is growing.

Matt Hancock: The challenge, though, is to ensure that reasonable protection of intellectual property is not ruled out by stopping any such speculative activity.

[Matt Hancock]

There is a genuine policy challenge in how to support the protection of intellectual property. We are not aware of any successful legal cases by the trolls. People should therefore be reassured.

10.45 am

Kevin Brennan: Quite the opposite, actually. The fact that there have not been any successful legal cases indicates that people are being very successfully scammed out of money because they are too afraid to resist the trolls who come to them saying, "You have infringed copyright." The fact that there have not been legal cases should be a cause for concern, not complacency. The Minister might like to give that further consideration.

As we have made clear, our intention with the amendments is absolutely to support the protection of those whose intellectual property has been infringed. That is our aim, but as ever there is a balance to be struck. We want to ensure that the most vulnerable in society are not easily targeted by unscrupulous people using the fact that members of serious criminal networks engaged in copyright infringement can go to prison for 10 years under clause 26 to frighten them. Those vulnerable people may not always completely understand the law around intellectual property when they are online, and they could get a notice that could scare them into parting with some of their money. Such cases are a real problem across society in general, and this is just one area of these activities. We should be aware of the problem and be concerned about it. We should not be complacent.

As I have outlined, it is extremely unlikely that any such cases will come to court, because the people claiming that copyright infringement may have taken place are not interested in taking anyone to court. They are only interested in sending out enough notices to get a small number of people to respond and hand over their cash.

It is the same as when scammers send out millions of text messages and phone calls saying that a relative is stranded in some other country and asking for money to be sent immediately. They may say, "We have a wonderful investment that you should participate in," or, "You as an elderly person should put your money into something, because then you can provide for your children and grandchildren. It's a sure thing." All those sorts of activities have become much more prevalent because of the internet, and this issue around copyright infringement is just one area of that. That is the point we are making.

I urge the Minister to go away with his officials, to think a bit more about this issue and to consider how we might be able to reduce the possibility of it becoming an even bigger problem in the future, with the 10-year sentence being used to frighten people even more than they are already being frightened by these scammers and so-called trolls.

Obviously we will not be voting on new clause 3 at this point, because that always happens at the end of Committee proceedings, as you rightly reminded us, Mr Streeter. The hon. Member for Selby and Ainsty made it clear that it is not his intention to divide the Committee on his new clause when we reach that stage, but I say to the Minister that saying simply that it is not the right time for such a measure is not good enough as a response to the range of serious issues raised by Members of all parties.

Thangam Debbonaire: I wish to ask the Minister whether he will give us some idea of the criteria by which he will assess when the right time is. I have no way of knowing for sure when that will be without an understanding of his reasoning and the reasons there might be for changing his mind in future.

Kevin Brennan: Obviously I cannot speak for the Minister, but he is free to say something after I have sat down. He is free to intervene now if he wants to clarify that point for my hon. Friend. It would be helpful if he did so, because I think this is exactly the right time for the measure. That is the purpose of new clause 3 and the thinking behind it. The talks have been going nowhere. As I have said, we have seen the movie several times before, and we know how it ends.

Christian Matheson: My hon. Friend makes a good point: talks are going nowhere. Would an indication from the Minister that there is an intention to bring the proposals forward into legislation perhaps aid those talks in going somewhere?

Kevin Brennan: In a nutshell, that is the reason for new clause 3, and I am sure that was exactly the thinking of the hon. Member for Selby and Ainsty when he tabled it.

It might help if the Minister indicated when he expects the talks to conclude. He says he hopes there will be a positive outcome to them and that this is not the right time for new clause 3. He likes to talk softly; if new clause 3 were incorporated into the Bill, he could carry a big stick while talking softly about this matter. If he is not prepared to amend the Bill, perhaps he could tell the Committee when he believes the talks should conclude, as that would help to focus minds a bit. Perhaps he could put it on record that he is not happy to allow the talks to drift on and on inconclusively, as they have for many years.

We are not satisfied with the Minister's response on new clause 3, and I repeat that it is my belief that at some point during the progress of the Bill the Government will concede on that point. It would be a terrible shame if they did not concede to the hon. Member for Selby and Ainsty—one of their own elected Members here in the Commons, who has tabled a sensible amendment—but did so in another place, giving the credit, yet again, to the unelected House for being a wonderful House in revising legislation. There is plenty of expertise right here in the Committee and in this House, among elected Members who know about the subject and know that this is the right thing to do. I urge the Minister to change his mind about new clause 3, if not now, perhaps on Report, when we will no doubt return to the issue.

Finally, I hope it is helpful to you, Mr Streeter, to be aware that it is not my intention to divide the Committee on new clause 33. As for the Minister's response, I think I referred to the shortcomings of the current offence. I did not say we did not think that people could currently be prosecuted, under the Fraud Act 2006 or the Serious Crime Act 2015; in fact, I specifically mentioned those

Acts—it might have been while the Minister was searching for something online. I also mentioned why the Acts were inadequate, and the Minister did not respond. First, they require a great deal of expertise in the area on the part of the police, which is not necessarily a resource that is sufficient to meet the growing size of the problem. Secondly, by amending the Copyright, Designs and Patents Act 1988, my new clause would have not just allowed but compelled trading standards to get involved and would have allowed the body to take action.

It would be useful to hear from the Minister why he does not think it a good idea that trading standards should be brought into play in that way, rather than simply relying on a police force that is under pressure and has many things to investigate—an ever-growing problem. Is it the Government's position that is it wrong that trading standards would be the right body to involve? It would be extremely useful if the Minister felt able to clarify that. He said that he would keep the matter under review. I welcome that, and I hope he will be able to tell us more about the issue at a later stage, but if he told us at this stage why trading standards is not the right body to involve, that would be helpful.

We have had a fairly comprehensive debate. I do not think I need to add much on clause stand part, apart from that the latest data, published by the IPO, demonstrate the need for Government action. The research found that 15% of internet users—6.7 million people—still access copyright-infringing content, so it is absolutely right that the Government should act. I hope that the Minister feels able to add a bit more, in light of what I have said.

Matt Hancock: Very briefly, I mentioned that one of the meetings in the negotiations with search engines is next week. We expect the meetings to conclude over the next few weeks, and that is why the timing is appropriate.

Kevin Brennan: Perhaps I am speaking against what I said earlier, but if the Government do not give way on that point and the talks conclude unsatisfactorily before Christmas, while the Bill is still before Parliament, will they consider amending the Bill at a later stage?

Matt Hancock: I do not want to get into answering conditionals that are dependent on some future action. I have made the case for why now is not the right time and I have given the hon. Gentleman the timeframe over which discussions are taking place.

The hon. Gentleman made the case against new clause 33 very well. These are criminal activities, and it is the police's role to police them. There are increased resources for the police in this area and I look forward to their taking it on. Our principle is not to legislate for specific offences based on an individual technology when offences already exist that can be used to prosecute the illegal activity.

For instance, many IP TV boxes are sold without any software on them; some have it inbuilt and some do not, and the ones that do not can be used for legitimate and illegitimate purposes. It is far better to have an in principle criminal measure on the statute book and to prosecute with that. Everybody can see the united strength of purpose to ensure that such IP theft does not go unpunished.

Calum Kerr: I thank the Minister for his explanation. I know that he and the Government are not fans of amendments that would oblige them to do a report to see how they are doing in the area. However, is there a way of looking at it on an ongoing basis, so that progress can be monitored and we can see how many prosecutions are actually occurring under the current legislation?

Matt Hancock: That would be an excellent idea, if the Culture, Media and Sport Committee chose to take it up. That is what Select Committees are for; I know the hon. Gentleman does not like them, but I think they are excellent at scrutinising the Government and everything that is going on. With that response, I ask the hon. Member for Cardiff West to withdraw his amendment.

Kevin Brennan: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 26 ordered to stand part of the Bill.

Clause 27

Registered designs: infringement: marking product with internet link

Question proposed, That the clause stand part of the Bill.

Kevin Brennan: I hope that we can dispose of clause 27 more briefly than clause 26; I am sure we will, because it does not contain such controversial matters. By including an internet link in the ways in which a designer can indicate to consumers that their design is registered, clause 27 will remove the excuse that a potential or actual infringer did not know that a design had been registered. Like clause 26, it will do away with the false binary in law between online and offline by offering a digital means of checking design right protection. As I understand it, in addition to or instead of including the design registration number on the product itself or on the product packaging, the designer may include details of or a specific link to a website, with the important caveat that that website must be available at no cost to the visitor and must clearly associate the product with the number of the design. That ought to make it easier for designers to update and communicate design registration and other information about the rights associated with products without constantly having to change their packaging or their products. That will, in turn, make registering design cheaper for the designer.

11 am

Clause 27 could also act as a deterrent to the copying of designs by demonstrating and reminding people that design right protection exists. At face value, it seems like a welcome clause to include in the Bill. We certainly hope that it will lead to significant reductions in the cost of design registration, making it easier for designers to protect and enforce the registration of their work.

Can the Minister confirm in his response whether that assessment of the clause's purpose is reasonably accurate? Has any assessment been made of the impact on the costs of design registration? Can he give us any

practical examples of how the current law is causing problems—in other words, the problems that the clause seeks to rectify? Practically, how could the clause have prevented such problems, and how will it prevent them in future if approved by the Committee?

Matt Hancock: First, that was an extremely good and unusually succinct description of the clause. The hon. Gentleman asked about costs; we think that it will reduce costs to business. In terms of the current problems, physically changing the required registration details on products imposes a cost. For instance, some businesses produce labels that must be applied to every single product. Such costs are unnecessary if a single label or web address can be built into the design and the update can then be done digitally rather than physically. It is, after all, illegal to claim that a product is registered when it is not. Therefore, the changes are required by law, and it is far cheaper for everybody if they are made on a website that is referenced on the physical product, rather than on labels, or sometimes labels stuck over labels. I am glad that there is cross-party understanding of and agreement on the clause, and I commend it to the Committee.

Question put and agreed to.

Clause 27 accordingly ordered to stand part of the Bill.

Clause 28

Copyright etc where broadcast retransmitted by cable

Nigel Adams: I beg to move amendment 63, in clause 28, page 27, line 31, leave out subsections (3) to (5).

This amendment, together with Amendment 64, are probing amendments to identify a timeframe for the repeal of section 73 of the Copyright, Design and Patents Act 1988 as it is not clear when the repeal will come into force. The amendments would mean that repeal of section 73 of the CPDA would come into force as soon as the Bill receives Royal Assent.

The Chair: With this it will be convenient to discuss the following: amendment 189, in clause 28, page 27, line 36, at end insert—

‘(6) The Secretary of State shall—

(a) produce a report on the implication of the repeal of section 73 of the Copyright, Designs and Patent Act 1988, and

(b) undertake a comprehensive consultation on the future of television content distribution and public service broadcasters.”

Amendment 64, in clause 82, page 80, line 2, at end insert—

“(a) section 28;”

This amendment, together with Amendment 63, are probing amendments to identify a timeframe for the repeal of section 73 of the Copyright, Design and Patents Act 1988 as it is not clear when the repeal will come into force. The amendments would mean that repeal of section 73 of the CPDA would come into force as soon as the Bill receives Royal Assent.

Amendment 94, in clause 82, page 80, line 14, at end insert—

“(h) section 28.”

This amendment would mean that repeal of section 73 of the Copyright Designs and Patents Act of 1988 would come into force two months after the Royal Assent of the Bill.

Nigel Adams: These are probing amendments to clauses 82 and 28 in order to establish a timeframe for enacting the provisions in clause 28, which repeals section 73 of the Copyright, Designs and Patents Act 1988. I warmly welcome those provisions, but from the clause as it stands, it is not quite clear when we can expect this important measure to come into force. The amendments would mean, instead, that repeal of section 73 of the 1988 Act would come into force as soon as Royal Assent is granted. That would involve consequential amendments to clause 28 to delete subsections (3) to (5), as Royal Assent would remove the need for them. Otherwise, in the Bill as drafted and as stipulated in clause 82, clause 28 would come into force on whatever day the Secretary of State appoints in regulations made by statutory instrument, which could mean further delay.

As I pointed out on Second Reading, online service providers such as TVCatchup use section 73 to make money from public service broadcaster channels by re-transmitting their content while selling their own advertising around it. That undermines the public service broadcasters’ own online streaming services and on-demand catch-up services, affecting the audience, advertising and sponsorship revenue of commercial PSBs. Furthermore, none of that money is being paid to the public service broadcasters, the underlying talents and the rights holders, and none is flowing back into original UK content production.

I have an important film studio in my constituency, so I take this issue very seriously. We want to see more great productions, such as “Victoria”, which was filmed largely at Church Fenton in my patch. The UK television sector is at the heart of the UK creative industries. It is a vibrant and dynamic sector, providing outstanding world-class content that is the envy of the world. Such programmes are also hugely popular internationally, and the UK is the second-largest exporter of TV in the world as a result. It is therefore vital that we do all we can to help protect investment in the programmes that viewers around the world love. For those reasons, it is important that the provisions in clause 28 to repeal section 73 of the 1988 Act are enacted as soon as possible.

The PSBs first wrote to the Intellectual Property Office asking for a repeal of section 73 eight years ago; since then they have spent a lot of time and money in litigation. Meanwhile, TVCatchup has made millions on the back of the PSB content. The only reliable way to stop that exploitation and ensure that people who make and own the programmes that viewers love gain a return on their investment is to repeal section 73. The public service broadcasters have been in litigation with TVCatchup for many years, and until section 73 is repealed those parasitic websites will be able to profit from the PSB content without any of the payment going back to the public service broadcasters.

Section 73 also allows cable platforms to profit from PSBs that invest in content, which means that the PSBs are effectively subsidising global cable giants. It prevents the commercial PSBs from negotiating with cable platforms for their PSB channels. In a normal situation, they would be able to negotiate freely, as they do for their digital channels such as ITV2 and E4, but section 73 currently prevents that.

Cable platforms make money out of PSB content while still benefiting from a regulatory regime designed for a different era, under which no payments go back to the PSB or any other holders of rights to the content.

Christian Matheson: The hon. Gentleman talks about a different era. Does he think that it was right to introduce section 73 at the time, because it allowed cable platforms to develop, but that things have moved on quite a bit since then?

Nigel Adams: The hon. Gentleman is yet again spot on. It clearly is of its time. The idea was to try to help a nascent cable industry, and the legislation has done that; we have a healthy TV industry across all broadcast platforms, including cable and satellite. That legislation has done its job.

On pay TV platforms, such as Virgin and Sky, up to 50% of some of our most valuable content, such as drama, is viewed via subscription personal video recorder, from which the pay TV platforms derive substantial benefit. That undermines the commercial PSBs' ability to secure a return from advertising, because much of their advertising is skipped, and materially reduces as critical opportunities to generate secondary revenue—for instance, from on-demand services or box sets—because libraries of valuable drama content can be built up for free on the PVR. I therefore urge the Government to ensure that repeal of section 73 is delivered at the earliest opportunity. That would mean that those who wish to re-transmit or otherwise use PSB services in the future will have to negotiate to do so, which seems only fair. They should be able to negotiate within the must-offer regime in the Communications Act 2003. That would enable those who create the content to make a return on their investment and continue to make the programmes that viewers love, which are the envy of the world.

There has been extensive consultation on the issue so there is no need for further delay. I will therefore be very grateful if my right hon. Friend the Minister can provide more detail on the timeframe for the repeal of section 73 of the 1988 Act, as included in clause 28.

Kevin Brennan: I rise to speak to our amendments 189 and 94. I note the well-informed and cogent points made by the hon. Member for Selby and Ainsty, and I understand why the Government want to repeal section 73 of the Copyright, Designs and Patents Act 1988, as he laid out. Clearly apps such as TVCatchup cannot be allowed to profit from public service broadcasting content without making any sort of contribution to its creation, either by paying for it or in some other way; without agreeing some kind of licence for its use; and without abiding by public service broadcasting standards for its distribution. It is entirely logical to repeal the section and we support the intention to prevent TVCatchup from doing what it does, but the Government need to explain the knock-on effects on the market.

Calum Kerr: The SNP also supports and welcomes the repeal of the section 73 of the 1988 Act. I agree with supporting original drama, but I wonder about how Virgin in particular is affected, because Virgin is also rolling out broadband and helping the Government in their other targets. Perhaps the Minister can assure us that that has been considered and that pricing will not prohibit meeting other Government objectives.

Kevin Brennan: I am sure the Minister has heard what the hon. Gentleman said and will want to address it in his response. The hon. Gentleman is quite right to point out that Virgin in particular will be affected.

The Government's reform is well meaning, but they need to explain how it will not put further pressure on the public service broadcasting compact. They need to answer questions about their long-term plans for television distribution and how this part of the Bill affects that. Public service broadcasters exist for a reason, as an intervention in the market and as part of public policy. We need to ensure that they do not accidentally drift out of existence or into insignificance, and we need to know the Government's intentions.

In their response to the consultation on the repeal of section 73, the Government said that they do not expect or want to see charges from public service broadcasters to cable operators for their main channel content. If that is so, I ask the Minister in a genuine spirit of inquiry whether there is an argument for the Government to make it clear in legislation that they do not want to see such charges, because at least some of the public service broadcasters do not share that view. None of us believes that a dispute between a major public service broadcaster such as ITV and a major TV platform such as Virgin is in the viewer's interest.

The amendments are intended to explore whether the Government are sure that they are not risking those viewers ultimately having to pay more than they should for what should be a free public service broadcast. What is the Government's view on the risk that those viewers could lose that service, at least for a period of time, if a major dispute of that kind arose as a result of the repeal?

11.15 am

Even if the Government can establish that the cashless trade of carriage for content between cable operators and public service broadcasters will continue, other questions still need to be answered. Following the tabling of the amendment, we noticed that the Government have taken our advice on board and launched a 24-page technical consultation, which came out yesterday, on possible transitional arrangements for the repeal of section 73. That consultation acknowledges the possible effects of the repeal on performers' rights and the potential need for a rights mechanism, which reinforces the point made earlier by my hon. Friend the Member for Sheffield, Heeley in her extremely able contributions: that the Bill was simply not ready for discussion when it was introduced. This sort of thing really should have been done before the Bill came to Committee.

When all that is taken together with all the other reports that my hon. Friend listed in her contributions and the Government amendments that have been published alongside the Bill, one gets the clear impression that the Minister is making it up as he goes along. It is a bit like that Wallace and Gromit film, "The Wrong Trousers", when Wallace and Gromit are on the rail track and Gromit has to lay the track as they are proceeding, rather than the track already being laid before embarking on the journey. That is the problem with the Bill: the track has not been properly laid and the Bill has been introduced far too quickly, no doubt for some obscure business management reasons buried within the Whips Office. It is unfair of me to mention that because the

hon. Member for Beverley and Holderness cannot respond, but there is undoubtedly some reason of that kind behind why the Bill has been introduced when it is not oven ready.

Given that the Government seem to be taking inspiration directly from our amendments by publishing the technical report, and knowing how closely they follow our advice, I will take this opportunity to give them a few more pointers on topics to consider through the consultation process that we called for in our amendments. There are currently four different distribution mechanisms for television: there is digital terrestrial television, which is used by Freeview, TalkTalk and BT, via YouView; there is cable, which has already been mentioned, in particular around Virgin Media; there is satellite, which is used by Sky and Freesat; and, as we discussed earlier, there is now IPTV, which can be, and is, used legitimately by BT for its own channels.

Each of those four distribution mechanisms operates under a different legislative and regulatory regime with a different basis of carriage of must-carry public service broadcast channels. At the moment, public service broadcast is paid for digital terrestrial television distribution on one basis, and satellite distribution on another, but not for cable or IPTV distribution. Looking back, it is easy to see how that distinction arose. Earlier Governments sought to try to support a variety of platform levels to enable technological innovation—multi-channel TV was only possible in the 1980s via satellite; it had not been previously possible—or to create competition, or both.

Not so long ago, when I was growing up—this will be within the memory of many of us on the Committee—people would ask, "What's on the other side?" when watching television. My wife is from the United States of America, and when I first said that to her, she said, "What do you mean, 'What's on the other side?' Do you mean on the other side of the television?" She had no understanding of the concept because they had multi-channel platforms much earlier in the United States than we did in this country.

The world has changed radically but those different regulatory regimes exist, which is why our amendment asks the Government to investigate, produce a report on the implications of the repeal and undertake a comprehensive consultation on the future of television content distribution and public service broadcasters. Does the Minister think that there is any danger that in doing this, although it is something to be supported, the Government are just tinkering around the edges, as they have done recently with the technical platform services or TPS regime, which applies only to Sky?

Although the previous Government recognised the problem, rather than having a formal review and update of the regulation, they merely applied some pressure, which, short of legislation, did result in a slightly better deal for public service broadcasters, but the problem is that the terms of that type of deal remain opaque, so it is impossible for us to judge whether it is truly fairer for public service broadcasters. Does the Minister believe that this approach is equitable compared with distribution arrangements on the other platforms? Should that be subject to the report that we are asking the Government to consider producing?

The Secretary of State has had in this area not just powers, but duties. Since the Communications Act 2003, she has been required

"from time to time to review…the terms on which"

must-carry PSB services

"must be broadcast or otherwise transmitted."

Those duties do not appear to have been exercised properly recently. The TPS regime has not been reviewed by either Ofcom or the Government in a decade. Why not, especially as it was obvious a few years ago that that regime was no longer fit for purpose? When considering section 73 of the 1988 Act, why have the Government ignored the question of PSB distribution arrangements over all distribution platforms? The Bill was a good opportunity to consider all these issues in the round, rather than trying to treat section 73 as an isolated issue, so I hope that the Minister will be able to explain his thinking on that to the Committee.

All this is occurring in the context of viewers changing their habits. They are watching more online and more on catch-up. Those are growing trends, so distribution over the internet—both live, via multicast IPTV, and on catch-up, via unicast—is growing. In its 2015 review, Ofcom framed that as a "threat" to public service broadcasters. It is certainly a change and certainly a challenge to the Government and to regulators to consider how they can best support and enable that shift, to be a success both for public service broadcasters and for platforms.

These days, watching television is like the old Martini advert that many of us remember: "Any time, any place, anywhere, there's a wonderful dream you can share". That is exactly the way people are now consuming television: any time, any place, anywhere. That is the present, not the future. How do we ensure that viewers can watch the public service broadcast content that they want to, when they want to and how they want to? How can we ensure that public service broadcasters continue to have reach and prominence, which enables them to fulfil their obligations and appropriately reflect their funding? What opportunities are there to draw more people online, perhaps for the first time, to find the high-quality television content available via public service broadcasters?

Online viewing is not a problem; it is how viewers are choosing to watch, and that will continue to be the case. What is a problem is if there is no strategic thought by the Government on these issues at this time of enormous technological and behavioural change. The particular issues in relation to distribution raised by the repeal of section 73 connect to wider and now pressing questions about the public service broadcast compact. Thirty years ago, the terms underpinning the public service broadcasters were clear: they were reserved access to valuable spectrum and prominence on that spectrum. That created valuable and well-funded monopolies, either from advertising revenue or from the licence fee. However, the Committee knows that we have to consider that every aspect of that regime is undergoing rapid change, and the repeal of section 73 allows us to think about that and to consider the possibility that the Government need to do the strategic—

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

DIGITAL ECONOMY BILL

Eighth Sitting

Tuesday 25 October 2016

(Afternoon)

CONTENTS

Clauses 28 to 37 agreed to, some with amendments.
Clause 38 under consideration when the Committee adjourned till Thursday 27 October at half-past Eleven o'clock.
Written evidence reported to the House.

PBC (Bill 045) 2016 - 2017

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 29 October 2016

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The Committee consisted of the following Members:

Chairs: † Mr Gary Streeter, Graham Stringer

† Adams, Nigel *(Selby and Ainsty)* (Con)
† Brennan, Kevin *(Cardiff West)* (Lab)
† Davies, Mims *(Eastleigh)* (Con)
† Debbonaire, Thangam *(Bristol West)* (Lab)
† Foxcroft, Vicky *(Lewisham, Deptford)* (Lab)
† Haigh, Louise *(Sheffield, Heeley)* (Lab)
† Hancock, Matt *(Minister for Digital and Culture)*
† Hendry, Drew *(Inverness, Nairn, Badenoch and Strathspey)* (SNP)
† Huddleston, Nigel *(Mid Worcestershire)* (Con)
† Jones, Graham *(Hyndburn)* (Lab)
† Kerr, Calum *(Berwickshire, Roxburgh and Selkirk)* (SNP)
† Mann, Scott *(North Cornwall)* (Con)
† Matheson, Christian *(City of Chester)* (Lab)
† Menzies, Mark *(Fylde)* (Con)
† Perry, Claire *(Devizes)* (Con)
† Skidmore, Chris *(Parliamentary Secretary, Cabinet Office)*
† Stuart, Graham *(Beverley and Holderness)* (Con)
† Sunak, Rishi *(Richmond (Yorks))* (Con)

Marek Kubala, *Committee Clerk*

† attended the Committee

Public Bill Committee

Tuesday 25 October 2016

(Afternoon)

[Mr Gary Streeter *in the Chair*]

Digital Economy Bill

Clause 28

Copyright etc where broadcast retransmitted by cable

Amendment proposed (this day): 63, in clause 28, page 27, line 31, leave out subsections (3) to (5).—*(Nigel Adams.)*

This amendment, together with Amendment 64, are probing amendments to identify a timeframe for the repeal of section 73 of the Copyright, Design and Patents Act 1988 as it is not clear when the repeal will come into force. The amendments would mean that repeal of section 73 of the CPDA would come into force as soon as the Bill receives Royal Assent.

2 pm

Question again proposed, That the amendment be made.

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

Amendment 189, in clause 28, page 27, line 36, at end insert—

'(6) The Secretary of State shall—

(a) produce a report on the implication of the repeal of section 73 of the Copyright, Designs and Patent Act 1988, and

(b) undertake a comprehensive consultation on the future of television content distribution and public service broadcasters."

Amendment 64, in clause 82, page 80, line 2, at end insert—

"(a) section 28;"

This amendment, together with Amendment 63, are probing amendments to identify a timeframe for the repeal of section 73 of the Copyright, Design and Patents Act 1988 as it is not clear when the repeal will come into force. The amendments would mean that repeal of section 73 of the CPDA would come into force as soon as the Bill receives Royal Assent.

Amendment 94, in clause 82, page 80, line 14, at end insert—

"(h) section 28."

This amendment would mean that repeal of section 73 of the Copyright Designs and Patents Act of 1988 would come into force two months after the Royal Assent of the Bill.

The Chair: I call the shadow Minister to continue—*[Interruption.]*

Kevin Brennan (Cardiff West) (Lab): I thank the Minister for his warm acclamation of support for my continuing. As he will be aware, any huffing and puffing may influence how long I speak, but perhaps not in the way he hopes. It is a great pleasure to see you back chairing our proceedings this afternoon, Mr Streeter, having done so ably this morning without needing to heed any of the unsolicited advice from the Minister on how to chair a Committee. You did an absolutely superb job, and everyone on the Committee thanks you for that.

When stumps were pulled this morning, we were discussing amendment 189. To remind the Committee, that amendment calls on the Secretary of State to

"produce a report on the implication of the repeal of section 73 of the Copyright, Designs and Patent Act 1988, and…undertake a comprehensive consultation on the future of television content distribution and public service broadcasters."

We feel that the repeal of section 73 has big potential implications, and we need to know what the Government's strategic thinking amounts to on those issues. I was talking about how things were 30 years ago with public service broadcasters. They were reserved access to valuable spectrum and given prominence on that spectrum. That created a valuable and well-funded monopoly, whether that was advertising revenue for ITV or money from the licence fee for the BBC. We were going to discuss how every aspect of that original deal is undergoing rapid change, and that is why our amendment is important.

Spectrum is more valuable than ever. In 2015, Ofcom acknowledged that if the spectrum that public service broadcasters use was priced commercially, it would be out of reach for PSBs. Then again, other distribution methods are evolving rapidly. It is perfectly possible to imagine a day when spectrum is not used for direct TV broadcast at all, and that day might not be as far in the future as we might think.

We know that the prominence of public service broadcasters is coming under enormous pressure. Recent moves by Sky have made it very hard to find live TV or public service broadcast content at all, and that is potentially a serious assault on the public service broadcasting compact. Prominence enables scale, and scale has been the commercial and policy basis of our public service broadcasters from the start. It makes them economic and makes the notion of public service broadcasters tangible, so that they are not just widely available, but widely watched. We will return to that topic in our consideration of the next group of amendments, but it is relevant to any report that might be produced through the amendment.

Public service broadcasters are no longer the cash cow monopolies that they arguably once were. We have been in a multi-channel world for a long time, but on-demand viewing is accelerating that change even further. Public service broadcasters are not just competing for viewers with commercial channels, but with different offers from such organisations as Netflix, Amazon and YouTube and from other options, such as gaming. Netflix now outspends the BBC on original content development. It is a significant player in the original content market.

To be clear, I am not necessarily echoing what the Prime Minister said in her speech to the Conservative party conference. She seemed to be trying to channel Sam Cooke by saying, "Change is coming", many times during her speech, but plenty already has changed, and the pace of that change is accelerating. The Government need to face up to this, and that is why we are suggesting that they should hold a proper review of the interconnected issues of distribution, carriage, content creation, prominence and funding before developing and pursuing a clear

and fair strategy for television distribution in general, and public service broadcasting distribution specifically. That is what this amendment seeks to achieve. Without that proper vision for how our public sector service broadcasters will operate in a fast-changing, multi-distribution, multi-channel, globalising world, we worry that not only will they not thrive as public service broadcasters, but that ultimately they may not survive. As I said earlier, we should not allow that to happen, and we certainly should not allow it to happen by accident.

The Minister must make it clear that he wants public service broadcasters to survive. I believe that he does, but he also has to make the Government's strategy clear in the light of this rapidly changing, complex world. It is to be hoped that he can partly do that in response to the amendments, as well as laying out his views on our suggestion of producing a comprehensive report on the subject.

We are also discussing amendment 94, which is a probing amendment that is intended to tease out a timeline for the repeal of section 73. It relates a little to the amendment that the hon. Member for Selby and Ainsty moved earlier in that it has a similar purpose. We just want to find out what the Government's thinking is. Our amendment differs from his in that it states that the repeal should come into effect two months after Royal Assent, whereas his amendment states that it should come in immediately after Royal Assent. We will not press amendment 94 to a vote, but we want to hear the Minister's thoughts and plans in relation to it.

Nigel Adams (Selby and Ainsty) (Con): The hon. Gentleman may well cover this in his further remarks, but I would be delighted to hear his view on why there should be a two-month delay after Royal Assent.

Kevin Brennan: The hon. Gentleman is right to probe me on that. The truth of the matter is that there is a convenient clause to which we could add our amendments, which starts things two months after Royal Assent. As I said, amendment 94 is a probing amendment and I am sure the Minister will tell us all the reasons why it is technically defective. I will not push it to a vote so I am prepared to hear that, but we want to use it as a method of finding out the Government's position.

Section 73 was originally introduced to encourage the roll-out of cable and to help a fledgling platform compete against terrestrial television by ensuring that cable platforms had access to public service broadcasting content. The Government have agreed that this policy objective was met some time ago, and in July reported that they were

"satisfied that the objective of ensuring that PSB services (as well as other TV services) are available throughout the UK has been met, and therefore section 73 is no longer required to achieve that objective."

Subsection (3) states:

"The Secretary of State may by regulations make transitional, transitory or saving provision in connection with the coming into force of this section."

Inasmuch as this generally means that the state will repeal section 73 when it sees fit, there are concerns among some public service broadcasters about understanding more clearly the Government's intentions in relation to the timetable for that repeal. It would not be such a pressing issue were section 73 merely a harmless hangover and simply moribund. However, as we have heard, it is more than a legal anachronism. It is a loophole through which taxpayers' money is effectively funnelled into private businesses.

As we have heard, section 73 allows companies, such as TVCatchup and FilmOn, to live stream the content of public service broadcasters and other channels online without permission. In other words, the money the public pay through their licence fee pays for content that is then, in effect, given away for free to companies other than public service broadcasters. Those companies then monetise that public service broadcasting content by placing their own advertising around it.

Public service broadcasters are granted public funding and the other advantages we have talked about on the understanding that, in exchange, they are obliged to air content that works for the public's benefit, rather than solely for the benefit of commercial interests. Section 73, in effect, allows TVCatchup and FilmOn to benefit from that same public funding, but those companies are clearly not held to the same standards. That amounts not only to the taxpayer unwittingly subsidising those businesses, it effectively directs funds away from PSBs and impacts on their ability to generate legitimate commercial revenues and to reinvest in the wider creative economy. Those live-streaming sites increase public service broadcaster reliance on public money and can fuel a vicious cycle of under-funding.

There is cross-party agreement that that is wrong and has to be put right, which is what the Government are seeking to do, but why do we have to rely on the Secretary of State to

"make transitional, transitory or saving provisions"

for repealing section 73? Is it not the case that broadcasters and the public deserve a more explicit timeframe, for the reasons I have laid out, so that this does not persist for any more time than is absolutely necessary? Not only is that fair, but it would provide more certainty for public service broadcasters and ensure that their investment in UK content is protected. Amendments 63 and 64, which the hon. Member for Selby and Ainsty tabled, would mean the repeal of section 73 immediately after Royal Assent, which offers one way forward. Our probing amendments offer another alternative if the Government need more time.

Public service broadcasters first wrote to the Intellectual Property Office to ask for the repeal of section 73 in 2008. In the meantime, TVCatchup has obviously made millions on the back of PSB content and the European Commission has launched infraction proceedings against the UK Government, on the basis that section 73 denies public service broadcasters their intellectual property rights for their content, which is guaranteed under the 2001 copyright directive. It would also be helpful to know from the Minister how he believes that infraction proceeding plays into our discussion on the amendment, the repeal of section 73, and what role it has to play if the Bill indeed repeals section 73. In short, will the Minister explain why he is not offering a clear timetable for repeal in the Bill?

Calum Kerr (Berwickshire, Roxburgh and Selkirk) (SNP): I feel that I should thank you for your chairmanship, Mr Streeter; I feel a bit left out, given that the Opposition spokesperson did it. Thank you so much for your chairmanship. It is nice to see a smile at the top table.

[Calum Kerr]

I will add a couple of brief points. I am surprised the hon. Member for Cardiff West earned only £10.60. I thought he displayed some creativity. I have never heard so many song lyrics or titles; I do not know if he is on commission for that. Hopefully, journalists across the country are googling—that is appropriate, given what we are discussing today—for what content he has earned £10.60, so that number may go up.

The Minister for Digital and Culture (Matt Hancock): Other search engines are available.

2.15 pm

Calum Kerr: Indeed—I thank the Minister. There is an interesting point here about the importance of parity across channels. The Scottish National party is clear in supporting the repeal of section 73. The hon. Member for Cardiff West made a point about the many different ways in which people can access content, which he articulated well, and the importance of being consciously competent across all areas when making legislative change. I am interested in hearing the Minister's remarks on that.

We noted earlier the concerns specifically in relation to Virgin as a large cable company, but I want to put on the record very clearly that we absolutely support the Government in repealing section 73. As these models change and people access content in different ways, the ability for them to earn revenue from the content they produce becomes all the more important, because they cannot necessarily rely on its being consumed in a way that ensures that advertising revenues naturally flow. I emphasise that we support this, we welcome the Government's bringing it forward but we would like a bit more clarity from the Minister around the broader picture.

Matt Hancock: I am delighted to respond to these points. I take this opportunity to commend the Opposition Front Benchers and, in particular, the hon. Member for Sheffield, Heeley, for how she proved, earlier in Committee, how it is possible to put points with great clarity and precision, such that on Thursday we rose early—somehow that seems unlikely today.

Kevin Brennan: Will the Minister give way?

Matt Hancock: No. The Government are committed to repealing section 73 of the Copyright, Designs and Patents Act 1988, following public consultation which ended this year and concluded that section 73 is no longer relevant. Amendments 63, 64 and 94 seek to ensure that the repeal will be brought into force rapidly following Royal Assent and amendment 189 would provide for the Government to produce a report on the implications and a consultation on the future of television content distribution and public service broadcasters. I should say that after today's Committee session I think that my hon. Friend the Member for Selby and Ainsty will be known as "the IP king". He has been the most ardent defender of intellectual property and its protection and he made very strong arguments.

On the case for a report and a consultation, Opposition Front Benchers asked the Government to face up to the challenges of new technology and its impact on public sector broadcasting and more broadly, and it is absolutely true that there is a huge impact of technology, both in distribution methods and in software, in terms of how we are watching content. Indeed, I understand that in China more films are watched on a hand-held than on a fixed device, and the trend is in the same direction here. This is clearly a very big issue and I am glad that all members of the Committee are alive to it.

I would say, though, that in response to amendment 189, we did just hold a public consultation precisely on the balance of payments between television platforms and the public sector broadcasters which considered the regulatory framework. It considered these questions and came forward with the proposal to repeal section 73. So I gently say to Opposition Front Benchers that, although I can see the point of the amendment, the report that they seek and the consultation that they are asking for by way of what I accept is a probing amendment is what we delivered through that consultation earlier in the year. The changes that we are seeking to make in legislation are a conclusion of exactly the sort of consultation that they have been looking for. The consultation was published on 5 July. I am glad that its conclusions have cross-party support.

We strongly support public service broadcasting in the UK. We believe that it has a long, vital and sustainable future and we will ensure that it does. I cannot give a clearer commitment to public service broadcasting. Even through these changes in technology, the evidence on viewer habits shows that public service broadcasting remains valued and valuable, and we support it.

I turn to some of the detailed questions. I was asked about the TPS regulatory regime. That was also considered as part of the consultation. We decided that different regulatory regimes are still appropriate, given the differing technical requirements of different TV platforms. There is a big change: an amalgamation of different delivery platforms for broadcasting from the old cable, terrestrial and satellite, and increasingly things are moving to broadband and fibre.

Following our discussion last week, I note that today TalkTalk has announced a full roll-out of full fibre to the whole of York, so there is progress in the full fibre drive that we are looking for in this country. However, there remain different technologies, so we think that it is still appropriate to have different regulatory regimes for them, although clearly the interoperability between them is important. I hope that that explanation addresses the point.

Kevin Brennan: Does the Minister have any concerns, or did the review reveal any concerns, about the point that I made about the opaqueness of the kind of deal now done under the TPS regime? That makes it impossible to judge whether it is truly fairer to public service broadcasters.

Matt Hancock: I will come to that and answer it alongside the question about the impact of removing section 73 where there are must-offer obligations. In truth, there are a huge number of commercial deals between the public service broadcasters and those that carry the PSB content to a wider distribution network. Whether it is through the TPS regime or the regime that we are discussing, many PSB broadcasters have contractual arrangements for their non-PSB content. That happens perfectly reasonably, whether it is through that regulatory regime or through a non-PSB deal delivered using non-satellite transmission.

We do not expect PSB content to be withdrawn because of the existence of contractual arrangements for PSB content replacing section 73. Indeed, there are contractual arrangements for lots of non-PSB content, so I do not see why those contracts cannot be entered into, but the issue does lead to the question whether there should be a transitional regime to ensure that there is no interregnum.

In the event of a PSB and a platform failing to agree terms for the carriage of a service, it is for Ofcom to consider whether the proposal of the PSB was compliant with the must-offer obligations in its licence. Were Ofcom to conclude that it was not, it would expect the PSB to submit a revised offer to the platform. Until now, Ofcom has not had to intervene, because no disputes have arisen presenting any real risk of refusal to supply by PSBs or to carry by platform operators.

The timing question was raised by my hon. Friend the Member for Selby and Ainsty and by the Opposition. The consultation report included an assessment of the implications of repealing section 73, and there was recognition of the potential impacts on the underlying rights market, meaning that the Government have decided that a further technical consultation should be run by the Intellectual Property Office.

I assure the Committee that the Government have every intention of bringing into force the repeal of section 73 rapidly; we plan to do it before the start of summer recess 2017. Repealing section 73 immediately could impact rights that have previously been exempt from remuneration in relation to the underlying copyright content in cable retransmissions, such as those held by scriptwriters or musicians whose intellectual property forms part of the relevant broadcast content. Our approach is to ensure an orderly transition.

Some respondents to the original consultation said that there could be disputes between the cable platform and the underlying rights holders when trying to agree terms and that a transitional period may be helpful. The Intellectual Property Office is currently running a brief technical consultation, as has been mentioned, to examine the extent of those issues and to assess whether any transitional measures are required.

I do not want to prejudice the outcome of the consultation, but in terms of whether a transitional period would be required, the IPO's consultation seeks views on options ranging from no transitional period to a transitional period of up to two years following Royal Assent. Even if the full transitional period is decided on as a result of that consultation, and assuming that the Bill receives Royal Assent in spring 2017, we expect the repeal of section 73 to come fully into force by spring 2019 at the latest.

Kevin Brennan: The Minister talked about bringing the repeal into force rapidly before the summer recess in 2017, and then issued further caveats and talked about 2019. Will he clarify that for the Committee?

Matt Hancock: Yes. We will bring the repeal into force before the start of the summer recess in 2017. There may then be a transitional period, depending on the current IPO consultation, but the maximum transitional period, should there be one, will be two years. I added two years on to the summer recess of 2017 to get to what the Government call spring 2019—it will probably be the warmer end of spring.

Nigel Adams: Will the Minister give some indication of the potential timescale of the IPO's technical consultation?

Matt Hancock: It is a four-week consultation and it started yesterday, so it has three weeks and six days to run, if my maths are right.

Kevin Brennan: I am grateful to the Minister for clarifying that timetable as he envisages it. In addition to that, during the course of my remarks I talked about the possibility of a dispute arising between a public service broadcaster and a platform following the repeal of section 73. What is the Minister's view on how that sort of dispute could be resolved without consumers being affected?

Matt Hancock: That could easily be resolved by a contractual agreement, as the two parties in such cases have in many other examples. For example, Channel 4 has a PSB element and non-PSB channels. The non-PSB channels are not covered by section 73, so the PSB element of Channel 4's broadcasting will be in a similar position to its non-PSB element in future. Since those contractual arrangements exist between the parties covered by section 73, I see no reason why they cannot pretty quickly put in place similar contractual arrangements, not least because the decision to repeal section 73 was taken some months ago and the companies have had some time to prepare.

The final point raised was about the impact of the repeal on Virgin Media's broadband roll-out. I see absolutely no link between the two. I am delighted that Virgin Media is looking at a broader, full-fibre roll-out, in the same way that TalkTalk has announced further progress today. Nobody at Virgin Media has raised this link with me, and given that Virgin Media is owned by one of the most well-capitalised companies in the world, I cannot see any crossover between the two—and I think it is disingenuous to suggest there is. With that, I hope hon. Members will withdraw the amendments so we can proceed.

Kevin Brennan: As I made clear, it is not our intention to put our amendments to a vote at this stage. The debate was extremely interesting, important and useful, despite the Minister's seeming resentment of having debates that go into the detail of the Bill and despite his remarks about rising early. He should be careful about making such remarks, given that he was late for the first sitting of the Committee.

There is an important issue at stake here: in our proceedings, the Government get their way because they have a majority, but the Opposition have their say. That is the constitutional principle on which we are all here and it is the role that we play. The Minister's continual grumpiness about that is not helping his cause. I thought it was a useful debate that has revealed and drawn out more clearly some of the Government's thinking on the timetabling of the repeal of section 73. We are not going to put our amendments to a vote at this stage, but these are matters we might revisit later.

Nigel Adams: I very much enjoyed all the contributions, which were incredibly complete, informed and eloquent.

I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

2.30 pm

Question proposed, That the clause stand part of the Bill.

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

New clause 14—*Digital broadcasting and protection of listed sporting events—*

'Within 12 months of this Act coming into force, the Secretary of State shall commission an evaluation of the impact of developments in digital broadcasting on the protection of listed sporting events for public service broadcasters, and shall lay the report of the evaluation before each House of Parliament.'

New clause 17—*PSB prominence—*

'(1) The Communications Act 2003 is amended as follows.

(2) At the end of section 310(1) add "that satisfy the qualification criteria to be set by OFCOM in the code."

(3) In section 310(2) leave out "OFCOM consider appropriate" and insert "required by OFCOM".

(4) In section 310(4)(a) after "programmes" insert ", including on-demand programme services,".

(5) In section 310(5)(a) after "service" insert ", including on-demand programme service,".

(6) In section 310(8)(a) after "services" insert ", including on-demand programme services,".

(7) In section 310(8)(b) after "services" insert ", including on-demand programme services.'

This new clause would modernise the PSB prominence regime – as recommended by Ofcom in its 2015 PSB Review. Provisions in the Communications Act 2003 currently only apply to traditional public service TV channels on traditional TV channel menus ('EPGs'). This proposal would extend the law to on-demand services such as catch-up TV and to the connected TV on-demand menus where such services are found.

Kevin Brennan: We are dealing with this group in a slightly novel way. I will discuss new clauses 14 and 17 and then move on to my clause stand part remarks.

New clause 14 calls on the Government to produce a report exploring the options available for future-proofing the at-risk listed events regime, which helps ensure that sporting events such as the Olympic games remain universally and freely available. The listed events regime has been enormously successful and is popular with the public, but it is undoubtedly currently at risk and could become obsolete unless the Government take action to make sure that that does not occur.

I ask the Minister to consider revising the qualifying criteria to deliver a listed events regime fit for the digital era, which we are discussing in this Bill. Since the 1980s, successive Governments have sought to ensure that TV coverage of certain major sports events remains available to everybody, irrespective of their ability to pay. The UK has an A list, which is designed to preserve live coverage of certain major events on free-to-air television—for example, the Olympic games, the football World Cup, the Grand National and the rugby World Cup final. There is also a B list that does the same for TV highlights—for example, the Six Nations rugby tournament and the Commonwealth games.

The listed events regime helps ensure that events such as the Olympics, the recent European football championships—in which Wales reached the semi-final—and Wimbledon all reach the widest possible audience, delivering enjoyment to millions, inspiring the next generation to get active, creating role models and helping make sport aspirational. In total, 45 million people in the UK watched Rio 2016 and the Euros this summer and more than 10 million people watched Laura Trott and Jason Kenny on BBC television both secure gold medals on the same day at Rio 2016.

The listed events regime strikes a balance between ensuring the public can gain free access to major events and the understandable desire of pay TV operators and sports federations to try and maximise their commercial revenues. Importantly, the regime does not prevent pay TV from acquiring TV rights to listed events; it simply ensures that qualifying services can acquire the free-to-air rights on fair and reasonable terms.

Under the current rules, the benefits of the listed events regime are restricted by statute to channels that are first, free, and secondly, received by at least 95% of the UK population. Those criteria are becoming increasingly outdated as the number of homes giving up their TVs for other media devices begins to rise; the 95% criterion will probably not be met by any TV channel at some stage in the course of this Parliament. It would be interesting to know whether the Minister recognises that that is the case and whether Ministers are thinking about it.

As a result, regulators would have no clear legal basis for discriminating between channels, which would likely lead to listed events being ultimately far less widely available and watched. That shows quite clearly that the qualifying criteria need updating, and there are options for doing that. We are trying to explore those options with our new clause in Committee this afternoon—performing our proper constitutional role, much to the resentment of the Minister.

The BBC prefers the option in which the 95% reception criterion could be updated and replaced with a measure testing whether the channel is widely watched. That would require a qualifying service to have reached at least 90% of the public in the last calendar year. That would ensure that the public continued to have access to these sporting events on channels that are easy for audiences to find and that we know they actually watch in large numbers; that is obviously the intention of the current regime. That measure would be a proxy for factors including free-to-air continuous availability, popularity and audience awareness. The proposed test would be consistent with the spirit of the regime and aligned with wider public benefits such as offering moments of national celebration and inspiring physical activity, as well as being simple to implement and more stable than the current reception test.

Furthermore, such a test would be open to any service that was free at the point of use, committed to maximising access and not tied to any one distribution platform, so it would be more able to incorporate broadband streaming, for example, as counting towards the reach of a service as and when the infrastructure allowed. That would prevent the regime from being manipulated by organisations whose purpose was to maximise the attractiveness and availability of pay TV services by providing nominally free coverage on channels that may meet an availability threshold but of which there is very low awareness.

There are alternatives. It has been suggested that the qualifying criteria might be interpreted differently—I am talking about adding broadband availability towards the 95%. However, some feel that that may involve major risks. The combined coverage of the UK's commercial digital terrestrial TV multiplex and broadband may

well allow services distributed via those means to qualify, yet their geographic coverage would exclude large rural areas. That would particularly be an issue—I say this as a Member representing a constituency in Wales; I am sure that the hon. Member for Berwickshire, Roxburgh and Selkirk, who speaks on behalf of the Scottish National party, will be aware of this—in the nations, where there is often greater difficulty with coverage in large rural areas, but it also applies to parts of rural England and, indeed, Northern Ireland.

Furthermore, broadband will not be able consistently to deliver a guaranteed quality of live streaming to mass audiences for some time to come. The BBC, in particular, feels that including broadband in the criteria implementation would be hard to measure and to implement.

The report proposed in our new clause would be an opportunity to fully explore concerns and the different options available for modernising the listed events regime. As I said, those events are very much valued by, and seem very much to be of benefit to, the public. Four in five people say that listed events are important to society. One in four said that the BBC's 2012 Olympic coverage inspired them to take part in sport. Wide exposure of free-to-air sport can inspire, create role models and make sport aspirational. Indeed, it can bring the country, and the nations within the UK, together. Public service broadcasters likewise understand the importance of listed events and are committed to making sport freely available to all. Even though public service broadcasters are responsible for only 5% of sports output in the UK, they are responsible for 60% of sports viewing. That is something we would not wish to lose as a country, almost by accident, because of the technological changes that we have been discussing.

The UK has a mixed ecology that balances the public's free access to major events with the potential for pay TV operators and sports federations to generate commercial revenues. The threat to listed events may radically tilt that balance. Rather than risk the abolition of listed events by the back door, Parliament and the Government should urgently consider revising the qualifying criteria to deliver a regime fit for the digital era. With this amendment, the Digital Economy Bill could be the vehicle to ensure that this happens. I shall be extremely interested in what the Minister has to say about this, and in the Government's view of this important and much cherished feature of our sports broadcasting ecology. The Minister can feel free to dilate at length when he responds.

New clause 17 stands in my name and that of my hon. Friend the Member for Sheffield, Heeley. It proposes modernising the public service broadcasting prominence regime, as recommended by Ofcom, by extending the law to on-demand services and the menus, where they are found. Since PSB prominence was legislated for in the Communications Act 2003, many gaps have emerged. The Act was designed in a markedly different TV landscape, even 13 years ago. It was four years before the introduction of the BBC iPlayer, for example. It was eight years before the digital TV switchover took place, and seven years before the introduction of the iPad. It created public service broadcasting prominence principles for broadcast TV sets, but not for connected TV sets, public service broadcaster channels, or PSB catch-up services, such as BBC iPlayer.

The regime has not kept up well, even with the multichannel world. For example, as I am sure hon. Members with young children will be aware, CBeebies and CBBC are behind 12 US cartoon network channels in the channel listings of the UK's leading pay platform, Sky. As someone who was brought up on public service children's television broadcasting—God knows what I would have been like if I had not been—and as a parent, I think that that is a shame, and that the Government should have a view on it.

Graham Jones (Hyndburn) (Lab): "Play Away"!

Kevin Brennan: I am not going to respond; I shall focus on my remarks. My hon. Friend may wish to regale us later with his favourite children's TV programmes or public service broadcasters.

PSBs now face a far bigger transition to online delivery of TV programmes, and the regulatory regime lags far behind, so we should not miss any opportunity presented by the Bill to do something about this ever-changing situation. A growing number of existing and future services are being left out of scope, from BBC iPlayer to the now online-only youth service BBC 3, and from the new BBC iPlayer Kids, offering access to the best BBC kids' content, to the upcoming iPlay, which will be a front door to the best British children's content from any provider. Equally out of scope in the current regime are growing numbers of major gateways to accessing public service broadcaster content. The number of connected television sets in the UK is expected to nearly triple over the course of this Parliament, from 11 million to 29 million.

2.45 pm

While public service broadcasters are doing all they can to negotiate commercially the prominence that their audiences expect, that is becoming harder all the time. Services that pay for prominence can increasingly be prioritised over public service broadcasting services such as BBC iPlayer, or on connected TV. In other words, PSBs can increasingly be gazumped. This problem is faced by public sector broadcasters in general, and it is particularly challenging for the services intended for broadcasting to the nations, especially in the Welsh language—and, in Scotland, the Gaelic language. I am thinking of services such as Sianel Pedwar Cymru, or S4C, and BBC Alba, which carries excellent coverage of the Guinness Pro 12 rugby, and I often watch it for that reason.

The Communications Act 2003 gives Ofcom a duty to ensure that "appropriate prominence" on TV platforms is given to S4C, or "S Pedwar C", as it is often known in Wales, along with BBC Alba as a BBC service. This has generally resulted in a reasonable degree of prominence. However, on Virgin Media, for example, S4C is channel 166, I believe, and BBC Alba might be channel 167. It is certainly in that range; it is not among the top picks on the prominence list, where you would find channels such as BBC 1 and BBC 2.

The extent varies according to the platform and the geography, but connected TVs such as Sky Q are increasingly relegating the TV guide, and thus access to the nation's TV channels, to a far less prominent position than their own top picks, box sets or movies. In Wales, it takes 11 clicks to get from the Sky Q home page to S4C. That is hardly prominence. TV catch-up players are also

out of the scope of the regime, despite being an ever more popular means of accessing programmes. BBC iPlayer—the largest platform for services such as S4C and BBC Alba on-demand content—has less prominence than the Sky top picks, box sets or movies.

New clause 17 attempts to combat this by adapting public service broadcaster legislation to the existing technological landscape by adding on-demand services such as BBC iPlayer to the list of services to be given prominence. That follows the precedent of TV licensing laws, which were updated from September 2016 to cover BBC on-demand services, which provide a platform for S4C and BBC Alba, as well as TV channels. Such a measure would be in the spirit of the Bill. The Bill is supposed to recognise that the law needs to be updated to take into account the digital present and future. The new clause takes a similar approach to what the Government have already done in increasing the maximum imprisonment for online copyright infringement, which we discussed earlier today. It would, in the same way, correct inadvertent loopholes that have developed in legislation.

Furthermore, modernising the regime would increase the prominence of the nation's services. Some hon. Members may be aware of the intense political battles that were fought in the early 1980s to secure these services. To the credit of the Conservative Government of the time, they did, albeit after an intense political battle, meet their commitment to setting up a Welsh language television service in the form of S4C. There is an obligation on us in this House, and on Parliament in general, to safeguard the prominence of such services, because great sacrifices were made to establish them.

The new clause would also enable the Secretary of State to add, by order, on-demand programming services of commercial public sector broadcasters to the services that she may identify. That affords the Secretary of State greater flexibility than having to identify services—and any necessary public service conditions, such as free availability—in primary legislation. Ofcom would set qualifying criteria to determine which connected TV menus were in scope, and to ensure that the updated regulation would be proportionate and targeted. The qualifying criteria would be based on a relatively high significance threshold; for example, they could capture only those TV platforms that are used by a significant number of people to access TV and on-demand services, such as Sky, Virgin, YouView, BT, TalkTalk, Freeview and Freesat. Ofcom's authority to require such public service broadcasting prominence would be clarified by the replacement of the opaque phrase "Ofcom consider appropriate" with "required by Ofcom".

In summary, new clause 17 shares the principle of levelling the online world with the offline seen elsewhere in the Bill. Updating the Communications Act 2003 would ensure that recent technological developments were not used to undermine the desired outcome of previous legislation on PSB prominence. It would achieve that by extending prominence to on-demand services and the TV on-demand menus where such services are found. It would not only future-proof PSB prominence but safeguard our nations' hard-won services.

As we are also dealing with clause stand part, I will refer briefly to the issues that need to be highlighted in that debate. As we said earlier, section 73 of the Copyright Designs and Patents Act 1988 was first introduced to encourage cable networks to expand and compete against terrestrial television, but since then, there have been developments such as TV catch-up, as was mentioned by the hon. Member for Selby and Ainsty and others. Given that the clause will repeal section 73—something with which we agree in principle—we will support it. During this debate, we have sought clarity on timetabling, and we are glad that the Minister has given us more information about that; we may need to press further on that.

As public broadcasting has evolved to digital transmission, section 73 continues to support the universal availability of PSB broadcasting to the 250,000 premises where cable is available but a digital terrestrial television signal is not. Some stakeholders feel that the clause as it stands does not take into account the continuing importance of cable, or the repeal's potential effects on that service. Section 73's aim of helping cable to compete may have been met, but it still serves a function in reaching the target relating to broadcasting to those 250,000 beyond a DTT signal.

Virgin Media feels that if the only reason to repeal section 73 is its abusers, such as TVCatchup, there is no reason not to underpin the clause with a guarantee for those who have not and do not abuse PSB content. Other stakeholders feel that the clause merely plugs a hole and does not sufficiently streamline the current system, which consists of four different types of broadcasting. Consultation or no consultation, the fact remains that the clause was hastily written, and it is not clear that all its implications have been understood. We may wish to return to some of the issues in this clause later in the Bill.

The Chair: I call Calum Kerr.

Matt Hancock: Hear, hear!

Calum Kerr: Oh, the curse of a word of praise from the Minister! I thank him none the less.

I support these two excellent new clauses tabled by Labour Members. I was delighted to hear the Minister say in response to the debate on the last clause, "We strongly support public service broadcasting." Hot on the heels of that, the Opposition have provided him with an opportunity to put his money where his mouth is and show that he truly does. I think—at least, I hope—that we all support public service broadcasting, but there has been a lot of chat in this place about the PSB funding settlement and about it not encroaching on competition. Let us push beyond that to consider how to support public service broadcasters. Let us find a way to ensure that they maintain their place in an adapting world.

I will touch briefly on both clauses. New clause 14, on the review of listed events, is close to my heart. I note that the football World cup is one of them; I do not know whether we can table an amendment to ensure that Scotland has a chance of getting there—

Kevin Brennan: You're going too far.

Calum Kerr: I thought so. At least when we eventually get there, we will not expect to win it, unlike others.

Christian Matheson (City of Chester) (Lab): Like in 1978?

Calum Kerr: "We're on the march with Ally's Army. We're going to win the World cup."

The Chair: Order.

Calum Kerr: I will keep to the subject with a bit of brevity and levity.

I support the Labour move to review this whole area to ensure that we have a set of listed events that is fit for purpose and, more importantly, to ensure that the protection will continue. Likewise, we fully support new clause 17 on prominence. The Committee has spent a lot of time talking about the changing digital landscape. There is no doubt that if we do not introduce measures to protect listings, the public service broadcasters will disappear, slide down the pecking order and be harder to find. We will then be on the slow road to an argument that says that public service broadcasting is not as popular as it once was, but the reality will be that it is just difficult to find.

I conclude by thanking the Labour party for beating me to it with both amendments, to which I should have added my name and which I fully endorse.

Graham Jones: It is a pleasure to serve under your chairmanship for the first time, Mr Streeter. My hon. Friend the Member for Cardiff West encouraged me to talk about children's programmes—I was thinking about "Play Away"—and I apologise for not being here earlier. I was observing a NATO training exercise as part of the armed forces parliamentary scheme.

I rise to talk about retransmission charges, and I will do so briefly because I am conscious of the time. We obviously have a listening Minister who is deeply concerned about these matters, and I hope he will go away and give due consideration to some of the points that have been raised, perhaps coming back with some thoughts of his own and some changes that could improve the Bill. On retransmission charges, repealing section 73 of the Copyright, Designs and Patents Act 1988—the intellectual property rights element—is important and welcome. It will put Virgin on an equal footing with the public service broadcasters in the marketplace of buying and selling channels.

I will return to that second issue and the financial impact in a moment, but I will first highlight an anomaly. Unless there has been a change in the last few days, the Bill does not include satellite channels, which fall under the Communications Act 2003. The Sky platform is exempt from the Bill and will not be liable for retransmission charges, which seems to be a market anomaly—I stand to be corrected by the Minister. We should have a level playing field for everyone. Sky benefits significantly not only from the five public service broadcast channels but from some of the other channels—my hon. Friend the Member for Cardiff West has just mentioned S4C and Alba, among others—and the radio stations. Sky has a huge commercial advantage in not paying for receiving something that is very complementary to its platform. We are applying a principle to Virgin, and the Bill should treat Sky equally.

We demand a lot from public service broadcasters, particularly the BBC, for which we pay a licence fee, and it is only right that the BBC should be able to recover some of that money for the licence fee payer in the commercial marketplace, rather than the service being literally given away to some platform providers. There is obviously a commercial benefit to the Sky platform or, for that matter, any satellite platform that automatically has to deliver PSBs under the 2003 Act. There ought to be something that provides clarity and a level playing field, because without it, Sky has another advantage among the many it already has.

3 pm

My hon. Friend the Member for Cardiff West touched on sports. There is a commercial structure around sports, where we have to look at redistributing some of Sky's content into public service broadcasting, and around protected sports events. I certainly agree with my hon. Friend, who made a powerful point.

Returning to the retransmission charges, it is important we have a level playing field. Virgin will be charged and I believe Sky will not be—there is nothing in the Bill to suggest that Sky will be forced to pay retransmission charges, but perhaps the Minister has something—

Matt Hancock: I will come to that later.

Graham Jones: Okay. If the Minister has any proposals, can he provide some clarity? There does not appear to be any and there are many people out there raising questions about this.

The guidance seems to suggest there will be no material change to the relationship between Virgin and public sector broadcasters, despite the repeal of section 73 of the 1988 Act, so I look to the Minister for some advice on where we are with that. The Government expect the relationship to be neutral, with no cost transfer. Will the Minister clarify that and confirm that he is not giving with one hand and taking away with another, but is in fact allowing public service broadcasters, such as the BBC licence fee payer, to receive payments for programmes produced by the BBC and the other public service broadcasters?

I want to pick up on the comments made by my hon. Friend the Member for Cardiff West about new clause 17 and perhaps add my own thoughts. The Government have taken their eye off the electronic programme guide. I would ask them to cast their eye back over it, as my hon. Friend suggested. Eleven clicks to S4C is just ridiculous, but we all see now—when people are reminded and it is pointed out to them, they say, "Oh yes, that is true." Sky has put the electronic programme guide on the second tier, where there is Sky Box Office, Sky products and Sky everything else. We are seeing a diminution of the electronic programme guide and Ofcom unable to act in the public interest.

This is important because we are talking about a huge commercial space and, very quietly, Sky has clearly adapted that space for the benefit of the Sky platform. Other people are going to come along and we will see that contested. Companies such as Netflix in particular, which wants to enter the market in an assertive manner, want a big presence and are willing to spend a lot of money. Only in the last week, we have seen the amount of money that it has been suggested that Amazon is spending on Jeremy Clarkson's latest foray into high-speed petrol-head motoring. Is it £160 million? There is a considerable amount of money in the marketplace from these other organisations and broadcast providers, and we are going to start to see the electronic programme guide being contested. In fact, it is already being contested, as Sky has already snatched the front page of the EPG on its platform.

[Graham Jones]

I raise the following points with the Minister: Ofcom currently seems to be behind the curve on this issue and the guidance needs to be updated. We do not want to see public service broadcasters relegated in any way, shape or form. We do not want to see the design or architecture of the EPG manipulated so that maybe the BBC is number one but somehow Netflix catches people's eye more prominently, with small letters for the first five and big graphics for some of the more commercial providers, such as Amazon. It is not just about having slots one to five; Ofcom should be mindful of the actual graphic presentation.

We do not want to see adverts creeping into the EPG either, so Ofcom needs to be absolutely clear in the regulations and guidelines about the type of space that the EPG is. The Government should be mindful not only of platform providers such as Sky, but of TV manufacturers, which will come over the hill and see the space. Someone will turn on their television and, after "LG—Life's Good", the first thing they will see is Netflix in the top corner, before they even click on an EPG. Technology is moving fast and the presentation of available services must have some framework and clearer guidance from Ofcom, because it is important that we do not end up in a world where public service broadcasters are relegated several clicks away from primacy—ITV needs the commercial return and Channel 4 also has a commercial element and needs the returns on advertising. That scenario should not be allowed, as it would affect the broadcasters as a business, along with their funding model and audience figures and therefore their advertisers and advertising revenue. We absolutely must be clear about what the graphical interface and its parameters should be—no adverts—and also about which broader platforms might seek to enter the market, such as TV manufacturers.

I welcome new clause 17. The Government have a lot of work to do on EPG guidance, because this legislation will go down for the next 10 years and in that time we will see incredible technological advancements, with companies wanting to capture that prime retail space. It is incumbent on the Government to step in, not just to make the situation better and more consistent for the viewer but to protect the public service broadcasters, as not only the licence fee payer but the advertiser on the commercial channels is affected. We have a national interest, therefore, in protecting that space. It is important that the Government revisit the EPG guidelines.

I am interested in hearing the Minister's comments on my questions, particularly his clarification regarding Sky and the 2003 Act—I cannot find anything on that in the documentation—and also some reassurance on the EPG.

Matt Hancock: Terrific! I am delighted to respond. As we know, clause 28 will repeal section 73 of the Copyright, Designs and Patent Act 1988, which currently provides that copyright in a broadcast of public service broadcasting services, and any work in the broadcast, that is retransmitted by cable is not infringed when the broadcast is receivable in the area of the retransmission. In effect, that means that cable TV platforms are not required to provide copyright fees in relation to core public service broadcasting channels. The provision was brought in at the onset of the cable industry in the UK to provide for the industry to compete with terrestrial by providing PSB content. However, that was a long time ago and technology, as everyone has noticed, has moved on a long way.

Last year we consulted on the repeal of section 73, and I am glad that there is cross-party agreement on it. The conclusion that the Government reached, and which has been agreed to by the Committee, is that the section is no longer relevant. There are a wide variety of platforms that ensure that virtually everyone in the UK is able to receive public service broadcasts and, following the completion of the digital switchover in 2012, digital TV services are now available to more than 99% of customers, whether through terrestrial, satellite, cable or fibre platforms. The cable market has moved from a large number of local providers in the 1980s, when section 73 was introduced, to one big one, and it has also gone up massively in scale, from hundreds of thousands to more than 4 million subscribers.

We are satisfied that the objective of ensuring that PSB services are available throughout the UK has been met. Therefore, section 73 is no longer required. Moreover, as my hon. Friend the Member for Selby and Ainsty pointed out earlier, this also closes a loophole, because live streaming services based on the internet are broadcasting TV programmes and relying on section 73 to exploit PSB content by retransmitting channels and selling advertising around the service without any of the benefit flowing to the PSBs. I think we all agree that is wrong, so I am glad there is cross-party support for the change.

Let me respond to some of the questions that were put, looking first at new clause 14. I am a strong believer in the listed events system. Major events such as the Olympic games and the FA cup final draw huge audiences. The listed events regime has worked well. The status of these events, as listed events, boosts them and their broadcast to the nation brings us together. I am delighted that the SNP supports the listed events regime as well. I fear I am going to have to resist the SNP's suggestion that we should use the listed events regime to ensure that Scotland is always in the World cup finals, in the same way that we cannot legislate for the tide never to come in or the sun never to set, but it is very important and it is close to people's hearts.

The right to broadcast listed events must be offered to qualifying channels, defined as those that are received without payment by at least 95% of the UK population. Ofcom is responsible for publishing the list of channels that satisfy those criteria. We have no evidence to suggest that recent developments, with more online viewing, will put the BBC or other PSBs at immediate risk of failing to meet these qualifying criteria. I know that concern has been raised, but I have discussed it with the BBC and Ofcom, I have gone into the details, and I am not convinced there is a risk in the near term at all.

Kevin Brennan: I did say that, because of the criteria's increasingly outdated nature, the 95% threshold will probably not be met by any TV channel at some stage during this Parliament. Is the Minister telling the Committee that that is categorically wrong?

Matt Hancock: Yes; I disagree with that analysis. Were that to become the problem, then we would need to act, because we support the listed events regime. However, we do not agree with the analysis that the

hon. Gentleman has put forward, not only because of the measurement on the existing, most restrictive definition of the 95%, but because the definition of qualifying channels are those that are received without payment. There are many ways to receive a channel without payment, including online, so viewers moving from terrestrial TV to online does not necessarily—and in my view does not—remove them from that 95%.

Kevin Brennan: The Minister has made the point, and I thank him for making it categorically: he believes that that will not happen during this Parliament. However, he also said that if it were to happen, the Government would have to act. Is that not the very reason why he should support the new clause? It would give legislative backing to the Government to produce a report to examine what ought to be done in those circumstances.

Matt Hancock: No, because I do not think that is going to happen. The hon. Gentleman also raised the question of what we should do if the legislative underpinning of the regime were to collapse. He came up with a specific proposal. I think that the proposal is itself flawed because it was to switch the measure from channels received without payment to those that are viewed, and that changes its nature significantly: from channels that are received, so can be viewed by somebody, to those channels that are viewed, which would be far more restrictive in terms of the channels that could then provide listed events. It is not a surprise to me that it is incumbents who want to make that argument because they are the ones that are watched, as opposed to those that can be watched.

Kevin Brennan: The Minister alluded at the end to the fact that we are not making that proposal in our new clause. We were rehearsing that argument during discussion of the new clause. Obviously he does not agree with it, but it is important to put on the record that that particular proposal is not in the new clause. It asks for a report.

3.15 pm

Matt Hancock: I am grateful for that clarification. We will obviously keep the matter under review. It is important that the listed events scheme continues to operate. I could not be clearer in our assessment of the definition of qualifying channels based on the existing statute. A specific review within 12 months of the legislation's coming into force is in my view not necessary, but we will keep the situation under close review.

New clause 17 would amend the public service broadcaster prominence review. The hon. Member for Hyndburn made a powerful and eloquent speech with some incredibly good points in it. The new clause would extend the prominence provisions to on-demand services such as catch-up TV and connected TV on-demand menus. The matter was considered in the balance of payments consultation. We have very strong support for S4C and some of the other channels mentioned in the debate, but our conclusion was that we have not seen compelling evidence of harm to PSBs to date, so we decided not to extend the EPG prominence regime at this stage.

In a way, the debate has brought out the challenges in this area. The hon. Gentleman started talking about the description of the graphical representation on an EPG, and the discussion can easily get into acute micromanagement of an EPG when the increasing integration of TV and internet services makes that more rather than less redundant. I therefore caution against an attempt at extreme micromanagement of the interface.

Graham Jones: The Minister flags up a cautionary point, but I again ask him a question I asked earlier: if he had a graphical interface with tiny letters that fulfilled its obligations, but at the bottom it said, "Amazon" and "Netflix"—it effectively had some commercial advertising —would he be happy to see that? Would that satisfy his current position? Alternatively, would he reflect and think, "That is not quite right"?

Matt Hancock: The hon. Gentleman is a great man who is worried about my happiness, but this is not about my happiness; it is about what is best for public service broadcasting and the PSB compact. My response is that it is for Ofcom to issue guidance on ensuring that the EPG works. It is better done that way, so that it can be proportionate, flexible as technology changes over time and not micromanaging things. The guidelines do that and pull that off. That is why when we considered the proposal as part of the consultation, we decided not to go there.

Graham Jones: I welcome the opportunity to engage in the issue, but when the Minister looks at Sky taking over the splash screen and relegating the EPG to the second tier—obviously Ofcom cannot act in that case, or it would have done already—is he happy?

Matt Hancock: Again, my happiness is secondary really, but my problem with the proposition being put forward is that trying to define sub-menus and user interfaces in regulation, especially statutory regulation, is incredibly hard. The technological landscape is shifting quickly. It is best left to the Ofcom guidance to answer such questions. We looked into the matter in some detail in the consultation, so I hope that the hon. Gentleman will withdraw his support for the new clause.

Kevin Brennan: The Minister is saying that it is up to Ofcom to decide, but is not the point that what we are trying to do here is exactly what Ofcom is proposing?

Matt Hancock: No, because it is for Ofcom to issue guidance on linear EPGs. Ofcom is required as a duty to make the system work. Rather than going further down this route, having considered it, we do not want to be over-prescriptive, given the technological changes that are happening. With that, I hope that hon. Members will withdraw their amendment and then vote that clause 28 stand part of the Bill.

The Chair: We will, of course, be voting on any new clauses not today but later in our proceedings. Does Mr Brennan have any remarks to make?

Kevin Brennan: Yes, briefly. As you say, Mr Streeter, we will come to the new clauses later in the Bill. I do not think that it will necessarily be our intention at this point—we will cogitate further—to push them to a vote, but there are issues here to which we might want to refer on Report. One of my colleagues has pointed out

[Kevin Brennan]

that the Minister did not answer a question about Sky. Rather than making another speech, does he want to intervene during my brief remarks?

Matt Hancock: As I said in the discussion of the previous set of amendments, Sky is subject to a different regulatory regime. There are conditional access charges for satellite within that regime, which must be fair, reasonable and non-discriminatory for all channels. We considered that as part of the balance of payments consultation and came to the conclusion that it did not need to be changed, because of the requirement set out in the DPS code.

Kevin Brennan: I am grateful to the Minister for saving us time with that helpful intervention.

Graham Jones: This is an opportunity to ask my hon. Friend a question. There seems to be some doubt about the relationship between Sky's retransmission charges and public service broadcasters. Does he know whether Sky pays for public service broadcasters? I understand that Sky pays for ITV commercial channels, but as I understand it, it does not pay anything for public service broadcasting.

Kevin Brennan: We discussed this issue, and the nature of that regime, earlier today. My observation was that the situation was extremely opaque, which is why we proposed earlier amendments to the Bill to suggest that the whole area should be reviewed—for that very reason. My hon. Friend makes an extremely pertinent point. It will be worth reading his remarks, and those made earlier today by Government and Opposition Committee members, on that point.

When we discussed new clause 14, which deals with listed sporting events, I worried that there is a degree of complacency in the Government. People will have heard what the Minister said about the issue, and we will be interested to hear what others have to say about his response. We should lay down a marker to say that we do not think that the Government are really listening or hearing what we are saying about this subject, and they are not sufficiently attuned to the dangers to listed sporting events. I know that the Minister is a keen and successful sportsman in his jockeying activities, on which I congratulate him. I am sure that he would want to see—

Matt Hancock: Not the Grand National, though.

Kevin Brennan: National hunt or flat? I cannot remember.

Matt Hancock: Flat.

Kevin Brennan: He is a flat racing jockey—and, from what I have seen, a very good one—but he should be concerned about the possible future of events such as the Grand National, which, as he rightly said, bring the country together and are meaningful and important cultural events as well as sporting ones.

On new clause 17 and PSB prominence, again, the Minister says that he has not seen compelling evidence of harm, but I think that we supplied him with plenty of compelling evidence of the potential for harm, which is what the Bill is about. It should be about the digital future, as we have said. I take his point about extreme micromanagement—that is valid—but we are not talking about that; we are talking about setting clear parameters to ensure that public service broadcasting prominence remains across all platforms. Although we are unlikely to press the new clause to a vote later, we reserve the right to return to these issues.

Question put and agreed to.

Clause 28 accordingly ordered to stand part of the Bill.

The Chair: We are catapulted into part 5 of the Bill.

Clause 29

Disclosure of information to improve public service delivery

Louise Haigh (Sheffield, Heeley) (Lab): I beg to move amendment 98, in clause 29, page 28, line 25, leave out "had regard to" and insert "complied with".

This amendment provides stronger compliance with the code of practice on the disclosure of information.

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

Amendment 100, in clause 30, page 29, line 33, leave out "had regard to" and insert "complied with".

This amendment provides stronger compliance with the code of practice on the disclosure of information.

Amendment 99, in clause 32, page 30, line 13, at end insert—

'(1A) In determining whether to make regulations under section 29, 30 or 31 the appropriate national authority must ensure that—

(a) the sharing of information authorised by the regulations is minimised to what is strictly necessary,

(b) the conduct authorised by the regulations to achieve the "specified objective" is proportionate to what is sought to be achieved by that conduct,

(c) a Privacy Impact Assessment compliant with the relevant code of practice of the Information Commissioner's Office has taken place and been made publicly available,

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

(1B) As soon as is reasonably practicable after the end of three years beginning with the day on which the regulations come into force, the relevant Minister must review its operation for the purposes of deciding whether these should be amended or repealed.

(1C) Before carrying out the review the relevant Minister must publish the criteria by reference to which that determination will be made.

(1D) In carrying out the review the relevant Minister must consult—

(a) the Information Commissioner, and

(b) open the review to public consultation for a minimum of 12 weeks, and demonstrate that responses have been given conscientious consideration."

This amendment seeks to reduce the risk of successful legal challenges. Challenges are often made on grounds of privacy and this would amend that to increase privacy safeguards.

Amendment 96, in clause 32, page 30, line 33, at end insert—

'(3A) A particular person identified in personal information disclosed under sections 29, 30 or 31 is able to request to a specified person under subsection 29(1) that the personal information is modified and corrected if necessary."

Amendment 95, in clause 32, page 30, line 34, leave out

"(including a body corporate)"

and insert

", a group of persons, a private company or a publicly traded company irrespective of their size and revenue, but".

Amendment 105, in clause 35, page 32, line 31, leave out "have regard to" and insert "comply with".

Louise Haigh: I am very grateful to my hon. Friend the Member for Cardiff West for giving me some much-needed time off. I do not wish to disappoint the Minister by not being as brief as we were earlier, but I am not sorry, because part 5 really does require some further scrutiny. I think the Government know that it was not ready for Committee, not least because they have tabled several dozen amendments to it, but also because the codes of practice were not in good enough shape last week, according to the Information Commissioner, but were published just a few days later—some civil servants were clearly working overtime in the intervening period.

Clause 29 allows specified persons to share data for a specified objective. All national authorities will be enabled to lay regulations through secondary legislation for exactly what those data-sharing arrangements will be and what they will be for. In doing so, this clause lays out that they will be required to ensure the secure handling of information and to have regard to the codes of practice. Our amendments seek to strengthen this and to ensure that anyone involved in the sharing of data under these new powers is in full compliance with the codes of practice that were published last week.

I want to be very clear here: the Opposition do not oppose the Government's sharing data among themselves to improve policy making and public services, but we must get this absolutely right and we are still a long way away from that, given the state of the current proposals. This is a key point: the public support the sharing of data to better enable the Government to provide services and to better enable the public to make use of those services, but public trust is fragile and has been rocked in recent years by varying degrees of incompetence in managing those data. Before Government Members point out that previous Labour Administrations were just as guilty, I should say that I fully accept that. This is not a political but rather an administrative point, which is why such proposals need to proceed with the utmost caution.

The Information Commissioner produced a very instructive report on this very point, which is extremely important to this part of the Bill, because it demonstrates the circumstances in which the public are happy for their data to be shared. The commonly recurring themes of what the public want regarding data could not be clearer: they want control over their data; they want to know what organisations are doing with those data; and they want to understand the different purposes and benefits of sharing their data. In that context, 63% of people agreed that they had lost control over the way in which their data are being used. This demonstrates that if there is to be sharing of data, which we support, there must be very clearly defined safeguards based on consent and transparency.

This part of the Bill gives considerable powers to Government to share data, but there are essentially no safeguards built in to ensure privacy, data protection, proportionality and a whole host of other principles that should sit alongside data sharing. It is vital that these reforms go ahead and we are completely in favour of effective data sharing across Government to achieve public sector efficiencies, value for money, improved public sector services, take-up of benefits for the most vulnerable, such as the warm home discount or free school meals, and, most importantly, an improved experience for those who use public services.

The Minister for Digital and Culture claimed in an evidence session that the safeguards are in the Bill, but that is simply not the case. I would be grateful if the Parliamentary Secretary, Cabinet Office outlined what safeguards he thinks there are. As I, a relatively amateur observer, as well as those who are much more expert in the matter read it, the safeguards are to be added at a later date, written up by the Government and consulted on with people whom the Government deem fit to consult. Furthermore, there is absolutely nothing the public sector does that is not covered by the clause. I would be grateful, therefore, if the Minister gave give us a single example that that—I quote from the clause—for the purposes of

"the improvement of the well-being of individuals or households",

or of improving

"the contribution made by them to society",

would not deliver.

3.30 pm

The codes that were published last week gave examples of objectives that would fall foul of those criteria, including those that are punitive. It is useful to see the examples, but it is of concern that the Bill does not explicitly exclude a punitive objective. The codes also include examples of objectives that are too general rather than too specific, and it would help if the Minister said exactly where the line about what is too specific is drawn. Improving levels of safety in a neighbourhood is given as an example of an objective that is too general, but would reducing the number of burglaries in a neighbourhood, for example, be specific enough?

The Government have stated that the proposed powers are to support:

"The delivery of better targeted and more efficient public services to citizens; The detection and prevention of fraud against the public sector and citizens to manage debt more effectively; and better research and official statistics to inform better decision-making."

Of course, no one could disagree with any of that and the majority of respondents and, in fact, all the witnesses we saw two weeks ago, agreed with the purpose of the proposals. However, as the Government's summary of responses to their consultation, "Better use of Data in Government" stated:

"The majority of responses were supportive of the proposals and the need to ensure appropriate safeguards, accountability and transparency are in place to build trust with citizens on the usage of their data."

Crucially for the purposes of the debate, several respondents favoured such measures being in primary legislation as opposed to codes of practice.

Not only are the objectives not limited in the Bill, but the bodies that can share or receive data are not particularly limited. Subsection (3) states:

"A person specified in regulations under subsection (2) must be—

(a) a public authority, or

(b) a person providing services to a public authority."

The Government's consultation set out that they intend to proceed with proposals to enable non-public sector organisations that fulfil a public function on behalf of a public authority to be in scope of the powers. They said, in response to their consultation:

"We will strictly define the circumstances and purposes under which data sharing will be allowed, together with controls to protect the data within the Code of Practice. We will set out in the Code of Practice the need to identify any conflicts of interest that a non-public authority may have and factor that information in the decision-making".

It seems pretty comforting that the Government will strictly define the circumstances and clearly identify conflicts of interest. It is right that they do that, given that the majority of the respondents supported the proposals,

"as long as appropriate strict controls are in place to safeguard citizen data against misuse."

Again, I quote from the Government's consultation.

Calum Kerr: It is good to see the shadow Minister back in her place. She is making an excellent start to this section of the debate, pulling out many of the key issues. I am afraid that the ministerial team might not like the scrutiny that the process is supposed to provide—and essentially does. The point about transparency is critical and there is a confidential submission that points out that transparency does not prevent people from doing anything; it simply requires them to be accountable for what they do. We have recently seen the case of HMRC outsourcing to Concentrix the ability to collect tax credits. Data from another source were used, and we all know the damage that can be done when that is not done well.

Louise Haigh: I am grateful for that intervention. I am very aware of the Concentrix case and will come on to it shortly.

On the inclusion of non-public sector authorities and the Government's intention to strictly define the circumstances and purposes under which data sharing with such organisations will be allowed, their statement of intent was clear. However, only one paragraph in the 101-page draft code mentions non-public sector organisations. That paragraph says that an assessment should be made of any conflicts of interest that the non-public authority may have but it does not give any examples of what those conflicts of interest might look like, so perhaps the Minister will elaborate on that when he responds. It states that a data-sharing agreement should identify whether any unintended risks are involved in disclosing data to the organisation—the risk regarding Concentrix was just highlighted—but the code of practice does not list any examples or set out how specified persons might go about ascertaining those. It also states that non-public authorities can only participate in a data-sharing agreement once their sponsoring public authority has assessed their systems and procedures to be appropriate for the secure handling of data, but it does not give any sense of what conditions they will be measured against or how officials should assess them.

That is not the kind of reassurance that was provided in the Government's consultation response. Given that these are draft codes, I hope the Minister will take what I have said away and improve them, not least because of the recent scandal relating to the US multinational company, Concentrix, which was contracted by HMRC to investigate tax credit error and fraud. Concentrix sent letters to individuals—mostly working single mothers across the country receiving tax credits—in what was essentially a large-scale phishing exercise. Not only did it get things catastrophically wrong by cancelling benefits that it should not have cancelled and leaving working mothers destitute over many weeks and months in some cases, but it performed serious data breaches in sending multiple letters to the wrong individuals and disclosing personal information.

We have made it very clear that the Bill could have done with considerably more work before it was brought before the House. I understand that the civil servant who wrote part 5 has now left, or is in the verge of leaving, the employ of the civil service, so there is even more reason for us to work cross party and with expert organisations on improving the proposals.

As I have said, public trust in Government handling of data is not strong. Unfortunately, the public have not been given any reason to put their concerns to rest. The recent National Audit Office report, "Protecting information across government", revealed the prevalence of weak controls on the protection and management of personal information in Government. Any continuation of the existing poor information management identified by the NAO, or the further weakening of cyber-security and data protection implied by part 5, is likely to have negative economic and social impacts.

As the Information Commissioner's Office commented:

"It is important that any provisions that may increase data sharing inspire confidence in those who will be affected. Our research shows that the public are concerned about who their data is shared with and reflects concerns that they have lost control over how their information is used. Even apparently well-meaning sharing of data such as GP patient records for research purposes can arouse strong opinions."

This is an important time to strengthen cyber-security and the minimisation and protection of data, which is why it is so important to get this part of the Bill right. A huge prize is on offer, but this has the potential of going the way of the care.data scandal. Frankly, it is astonishing that neither Ministers nor civil servants have learnt their lessons from that very regrettable episode, because there was absolutely nothing wrong with the principle of care.data either; it attempted to achieve exactly the kind of aims as the Bill's reforms.

The idea was to create a database of medical records showing how individuals have been cared for across the GP and hospital sectors. Researchers believed that the information would be vital in helping them to develop new treatments as well as assessing the performance of NHS services. The records would be pseudo-anonymised, meaning that the identifiable data would be taken out. Indeed, they would just contain the patient's age range, gender and the area they lived in. However, researchers could apply for the safeguards to be lifted in exceptional circumstances, such as during an epidemic. That would have needed the Health Secretary's permission.

The concept had the backing of almost the entire medical community, many charities and some of the most influential patient groups. The UK's leading doctors told us how access to so many NHS records would help them to understand the causes of disease, quickly spot the side effects of new drugs and detect outbreaks of infectious diseases.

The problem with care.data was that the advantages and the principles upon which the data would be shared were simply not communicated by the Government or

by NHS England, and so it attracted the criticism of bodies as disparate as the British Medical Association, the privacy campaign group Big Brother Watch and the Association of Medical Research Charities. Such was the botched handling of the publicity surrounding care.data that, by April 2014, the launch was aborted. However, it emerged the following June that nearly 1 million people who had opted out of the database were still having their confidential medical data shared with third parties, because the Health and Social Care Information Centre had not processed their requests.

A review by the National Data Guardian, Dame Fiona Caldicott, found that care.data had caused the NHS to lose the trust of patients, and recommended a rethink. That prompted the then Life Sciences Minister, the hon. Member for Mid Norfolk (George Freeman), to announce that the scheme was being scrapped altogether, even though £7.5 million had already been spent on constructing a database, printing leaflets, setting up a patient information helpline and researching public attitudes to data sharing.

The Caldicott review established a set of Caldicott principles, with the primary one being that the public as well as the professionals should be involved in data-sharing arrangements. Dame Fiona Caldicott proposed a simple model that gives people the option to opt out of any of their information being used for purposes beyond care. She said:

"We made it slightly more complicated by saying it was worth putting to the public the choice of having two separate groups of information to opt out of – [those being] research and information used for running the health service. If you put all of the possible uses of data currently in the system together and asked people to opt in or out of that, it's actually asking them to make a choice about a very big collection of information. [People] may want to have the possibility of saying, 'Yes, I'd like my data to be used for the possibility of research, but I don't want it to be used for running the health service'."

She also made it very clear that the benefits of data sharing and what it means need to be communicated clearly to the public, as there is a lot of confusion around how the data are shared.

Absolutely nothing has changed since that disaster and the subsequent review, so it is concerning not to see those basic principles included in the Bill. I am interested to hear the Minister's response to those principles laid out by the National Data Guardian. The public need to be able to trust organisations that handle their data and they need to retain control over those data. Both those things are essential to build confidence and encourage participation in the digital economy. The principles have been debated over the past several years at the European level, and we should be told here and now—today—whether the Government intend to implement the EU's General Data Protection Regulation. If they are, why is the Bill not compliant with it?

The new EU GDPR and the law enforcement directive were adopted in May and will take effect from May 2018. The GDPR includes stronger provisions on: processing only the minimum data needed; consent; requirements on clear privacy notices; explicit requirements for data protection by design and by default; and on carrying out data protection impact assessments.

Although the Government's arrangements for exiting the European Union have yet to be decided, it seems likely that the GDPR will take effect before the UK leaves, so the Government will have to introduce national level derogations prior to its implementation. If that is the case, there will have to be a thorough consideration of the impact of the new legal framework on all aspects of the Bill affecting data sharing, including implementation arrangements. Indeed, as the Information Commissioner said when giving evidence to the Committee two weeks ago:

"There may be some challenges between the provisions and the GDPR… There would ?be a need to carefully review the provisions of this Bill against the GDPR to ensure that individuals could have the right to be forgotten, for example, so that they could ask for the deletion of certain types of data, as long as that was not integral to a service."—[*Official Report, Digital Economy Public Bill Committee,* 13 October 2016; c. 112-13, Q256.]

The GDPR states that data are lawfully processed only if consent has been given by the individual, which is completely lacking in this section of the Bill. It also gives data subjects that right to withdraw consent at any time:

"It shall be as easy to withdraw as to give consent."

Controllers must inform data subjects of the right to withdraw before consent is given. Once consent is withdrawn, data subjects have the right to have their personal data erased or no longer used for processing.

3.45 pm

Part 5 makes little mention of security or privacy, or how such data sharing will comply with obligations around informed consent and the ability to revoke consent. It is not explained, for example, how it will be possible for a citizen to revoke consent if data have been copied and passed on to third parties, particularly if it was done without their knowledge. Once digital data are held by third parties and no longer under the control of their original owner, it will be difficult to know who has a copy and equally difficult for a citizen to revoke consent to the access and use of such data.

In fact, the Bill makes no mention of consent at all, and the codes are clearly not designed to support a consent-based model. If that is not the case, we would be grateful if the Minister confirmed on exactly what principles the codes were designed and what principles should always be adhered to, in his opinion, when sharing data. In the consultation, the Government said that the following principles should apply:

"no building of new, large, and permanent databases, or collecting more data on citizens; no indiscriminate sharing of data within Government; no amending or weakening of the Data Protection Act; and safeguards that apply to a public authority's data (such as HMRC) apply to the data once it is disclosed to another public authority (i.e. restrictions on further disclosure and sanctions for unlawful disclosure)."

If the Government hold those principles so dear, why were they not included in the Bill? Where are the principles for transparency, security, necessity, data minimisation and proportionality?

Further issues with the lack of safeguards in primary legislation include the fact that privacy must only be considered; it is not a right. There is no reference anywhere to the role of data protection officers, who are critical for public bodies; that is surely an oversight given the requirements on data protection officers in the general data protection regulation. There is also no mention at all of transparency, which is particularly conspicuous by its absence. The Bill completely lacks any requirement for transparency about what data flows

already exist and what new ones will be established. Care.data was only an exception insofar as it hit the public domain first.

We will table a new clause later in the Bill that will make transparency mandatory in a public register of data sharing agreements. Full transparency helps build trust in the process, so the details do not matter. If there is no transparency, there can be no trust in the process. Transparency must be absolutely central to the process, alongside privacy and security. We would argue that it is the most important principle on which the proposals should be built.

The Government seemed to agree during the public consultation and design of their proposals, but I am afraid that we simply do not trust the Government's current data practices, if the concerns raised by ex-Government employees tasked with improving those practices are anything to go by. Last summer, the Government Digital Service experienced a mass walkout over the Cabinet Office's failure to get to grips with Government digitisation. We heard from the former head of that service during an evidence session about his deep concerns about the proposals. Those concerns were expressed by an individual whose job it was to promote data sharing around Government to improve public service delivery.

We want the Government to produce a register on data sharing arrangements. We are pleased to see audits mentioned in the codes of practice, but I do not believe that they would actually be possible, based on the current practices that abound across Government. A named day question was asked of the Cabinet Office last week about whether it had an audit of the data sharing arrangements across Government. Although the deadline for the answer to that question was yesterday, we have yet to hear whether the Government even know who is sharing what across Government, how they are doing it, why they are doing it and how the data are being secured and protected—never mind what ISDN lines run to each Department, enabling other agencies, other organisations and perhaps even other Governments to look up data held by Government.

We will come back to those points during later debates, but I hope that the Minister can assure us, in relation to clause 29, that he is getting a grip on the issue, particularly given the significant new powers that the clause imparts to the Government. The Government consultation said:

"Transparency was a key recurring theme raised by citizens and representatives from across the range of sectors. The view expressed was that trust could be built by ensuring that citizens could understand what data was being accessed, how it was being used and for what purposes."

However, the public have not yet even seen the draft codes of practice, as they have not been made available on the parliamentary or Government websites. It puts the more than two-year consultation process to shame that we cannot even invite debate from the public on this vital part of the Bill. Ministers claim that the legislation resulted from the open policy-making process, but we heard from several witnesses that that was not actually the case. Many were surprised, to say the least, by the proposals published in the Bill, as they bore no relation to the discussions or proposals put before them as part of that process. One organisation's written evidence is incredibly damning. It states:

"The Cabinet Office misled everyone involved, wasted a vast amount of time and goodwill, and went ahead with doing what they were going to do anyway. At the very last minute, they vastly expanded the scope of the work, with the only material provided in non-aural form being the presentation title and the department of the civil servant presenting. The process ignored the hard problems, and did whatever the Cabinet Office wished to do in the first place."

The Chair: Order. May I gently assist the hon. Lady by saying that I am not sure she has referred to her amendments much yet? She is making an excellent clause stand part speech. This will certainly now be the clause stand part debate, but it might help the Committee if she came on to her amendments as soon as possible.

Louise Haigh: Of course. Thank you very much, Mr Streeter.

Our amendments would ensure that the codes of practice, which have been vastly improved over the past week, are statutory. It is important that the principles and safeguards outlined so far are included and are statutory. That is what I have been alluding to so far in my speech. It seems pointless for civil servants to have put all this work into the codes for them merely to be regarded, rather than statutorily complied with. The codes must be improved further, and we hope that Ministers and officials will work with the industry and organisations to do just that, but we want to see them referenced properly in the legislation and properly complied with. Anything less means that the powers enabled in the clause dwarf any safeguards or checks included in the codes.

Amendment 99, in my name and that of my hon. Friend the Member for Cardiff West, would help to build trust in the Government's data-sharing provisions—trust that has been rocked over a number of years. That trust is absolutely essential if this extension of the Government's data-sharing powers is to be effective. It is worth noting again that the draft regulations allow a significant extension of data-sharing powers with a significant number of Departments. That extension is rightly set within defined and strict criteria, but some of the definitions contained within those criteria are at best vague.

Subsection (8) of clause 29 allows for the sharing of data if it is of defined "benefit" to the individual or households. Subsection (9) allows for the sharing of data if it

"has as its purpose the improvement of the well-being of individuals or households."

While the extension is ostensibly for tightly defined reasons, those reasons are in fact so broad that they could refer to anything at all.

We again come back to the point about public trust. The public want to know why their data are being shared and that it is strictly necessary. Amendment 99 would help build that trust by ensuring that, under clauses 29, 30 and 31,

"the sharing of information authorised by the regulations is minimised to what is strictly necessary…the conduct authorised by the regulations to achieve the "specified objective" is proportionate…"

and that

"a Privacy Impact Assessment…has taken place".

The amendment would require the Minister to establish a review that consults the Information Commissioner and the public on the effectiveness of the measures. The amendment would require the Minister, after a three-year period, to review the operation of these provisions to decide whether they should be amended or repealed.

A similar measure is included in the Bill in the provisions relating to data sharing for the purposes of the collection of public debt, so it is puzzling that it is not included in this part, too, as these provisions are so much broader and just as risky, if not riskier. Individuals are right to be anxious about their sensitive data being shared. The amendment would allow for the public to be reassured that their data are being handled within the strictest confines.

Amendment 96 would give individuals a right to access and correct their own data. Empowering citizens to have access to and control over their own personal data and how they are used would clearly help improve data quality. Citizens could see, correct and maintain their own records. Data need to work for people and society. Citizens need to be actively engaged in how their data are secured, accessed and used. Again, that needs to be put on the face of the Bill.

Part 5 does not make clear how proposals to data share comply with the Government policy of citizens' data being under their own control, as set out in paragraph 3 of the UK Government's technology code of practice. Indeed, the proposals appear to weaken citizens' control over their personal data in order for public bodies and other organisations to share their data. Weakening controls on the protection of their data is likely to undermine trust in the Government and make citizens less willing to share their data, challenging the move towards digital government and eroding the data insights needed to better inform policy making and related statistical analysis. That type of organisation-centred, rather than citizen-centred, approach characterised the failure of the top-down imposition of care.data in the NHS. That is why we tabled these amendments.

The Parliamentary Secretary, Cabinet Office (Chris Skidmore): It is an honour to serve under your chairmanship, Mr Streeter, and to be standing here making my Committee debut. The hon. Member for Sheffield, Heeley is obviously new to the business as well, and I hope to follow her example. She has been gracious and proportionate in holding the Government to account. I hope we can have a full and frank exchange—hopefully, a rapid one—as we move through part 5.

The Government share information every day. Like every organisation, we rely on information to deliver the support and services that everybody relies on. These proposals will not do anything radical. They are simple measures designed to provide legal clarity in uncontroversial areas. The hon. Lady said that the Bill's objectives are too broad, but I am afraid I disagree. We have made available draft regulations that set out three clear objectives, which are constrained and meet the criteria. I believe it is possible to strike a balance between the regulations and the evidence to set out specific objectives on identifying individuals and households that have multiple disadvantages, improving fuel poverty schemes and helping citizens retune their televisions when the broadcasting frequency is changed in a couple of years' time.

The hon. Lady mentioned some specific examples. I want to turn to the fuel poverty schemes. When we look at those several years down the line, I genuinely believe that we will be proud to have sat here and legislated in a Committee that introduced data-sharing measures that enable, for instance, a significant number of vulnerable people to benefit from the warm home discount scheme. At the moment, about 15% of warm home discount scheme recipients are classed as fuel poor, according to the Government's definition. By utilising Government-held data on property characteristics to benefit the recipients, we estimate that that figure could be at least tripled. That could mean that an additional 750,000 fuel poor households receive a £140 rebate off their electricity bill each year.

We know that some vulnerable households miss out on the warm home discount because they need to apply and they either do not know the scheme exists or, for one reason or another, are unable to complete an application. Our proposed changes could result in the majority of the 2.1 million recipients receiving the rebate automatically. It will come straight off their energy bills without the need to apply. That is simply an extension of the data-sharing measures that already exist in the Pensions Act 2014 for pension credit. It is evolution, not revolution.

That example clearly sets out how we will require data to be shared among Government organisations and for there to be a flag to suppliers of eligible customers. In that instance, we will require the suppliers to use data only to support customers. Each objective will require a business case setting out the purpose and participants, which will be approved by Ministers and subject to parliamentary scrutiny.

I note that we are debating clause 29 stand part as well as the amendments, so after talking generally about part 5, let me move on to the clause. I believe that these powers do not erode citizens' privacy rights. They will operate within the existing data protection framework. The new powers explicitly provide that information cannot be disclosed if it contravenes the Data Protection Act 1998 or part 1 of the Regulation of Investigatory Powers Act 2000. Further, they are carefully constrained to allow information to be shared only for specified purposes and in accordance with the 1998 Act's privacy principles.

The new codes of practice, which the hon. Lady mentioned—I have been assured that they are on the parliamentary website—have been developed to provide guidance to officials in sharing information under the new powers in respect to public service delivery, fraud and debt, civil registration, research and statistics. The codes are consistent with the Information Commissioner's data sharing code of practice. Transparency and fairness are at the heart of the guidance. Privacy impact assessments will need to be published, and privacy notices issued, to ensure that citizens' data are held transparently. I was delighted that the Information Commissioner wrote to the Committee on 19 October saying:

> "Transparency is key to building people's trust and confidence in the government's use of their data. I am pleased to see that further safeguards such as references in some of the codes to the mandatory implementation and publication of privacy impact assessments (PIAs), and reference to my privacy notices code of practice, have been highlighted in the Bill's codes of practice."

4 pm

Louise Haigh: The Information Commissioner also said that she wanted the privacy impact notices to be included in the Bill, and the codes to be explicitly subordinate to her code on data-sharing practices. Will the Minister confirm that those codes are indeed subordinate? Will he also explain why the codes are not included in the Bill if they are so central to the process?

Chris Skidmore: I will come to the second point later. On the Information Commissioner's desire to include privacy impact assessments, it is clear to me from her letter that she is now content with the situation as it stands:

"I am content that the codes all now reference and better align with the guidance on sharing personal data set out in our statutory code and include effective safeguards to protect people's information."

Louise Haigh: The Information Commissioner was referring to the codes being improved since she gave evidence to the Committee. Later in that letter, which I think the Minister has in his hand, she goes on to say that she stands by the other evidence, both the oral evidence that she gave the Committee and her written evidence, which included her view that privacy impact notices should be in the Bill.

Chris Skidmore: The Information Commissioner also mentions that, on privacy impact assessments and with reference to her privacy notices code of practice:

"This will build in transparency at two levels:—"

in the current situation—

"greater accountability through the publication of PIAs and timely and clear information for individuals so they can understand what is going to happen to their data."

The Government remain committed to working with the Information Commissioner's Office. When it came to the evidence sessions, I was aware of the fact that we had a long process discussion around the codes of practice and when their publication dates were due. It was very important for me, as a Minister, to ensure that we had the confidence of the ICO going forward and that we could publish those draft codes. We will continue those conversations.

When looking at putting the codes or privacy impact assessments in the Bill, it comes back to the key point of being able to continue that conversation when it comes to a transformational technology that we may not even know exists at the moment and that may radically change our ability to look at how we data share. At the moment we are looking at specified portals through which we will data share for the benefit of the most vulnerable in society, but there may be a new technology that allows the Government to expand our scope. If that new technology comes into being and we write the codes and privacy impact assessments into the Bill, we will have the chilling effect of ossifying the practice; it will impact on our ability to adapt and to be able to look at new technology, to move fast and to realise the opportunities that we may have to data share for the benefit of the most vulnerable in society.

Louise Haigh: I completely agree that we should not tie ourselves down in the Bill, particularly to technology. It came through loud and clear from the evidence sessions that part 5 seems to tie us to a very outdated approach to data sharing. It does not talk about data access; we heard that an awful lot in the evidence sessions. The Bill goes against the Minister's own guidance on that. We should look not at bulk sharing, which takes us back to when we had filing cabinets or were sending across spreadsheets and databases on USB sticks, but at using application programming interfaces and canonical datasets, on which the Cabinet Office is leading the way. I would appreciate it if the Minister commented on that.

Chris Skidmore: The hon. Lady highlights the argument I am trying to make, which is that the data-sharing measures in the Bill are proportionate, constrained and there to ensure that we can bring public confidence with us, which she mentioned. That is why we have highlighted specific portals through which we will be able to share Government information across Departments. In future, there will be secondary legislation powers to review and expand that, but there will be a whole process for which we need scrutiny.

That is why the Bill is so important: by highlighting how we can help those most in need and how, when it comes to data and consent, some people are in circumstances, by virtue of being in deprived communities or particularly vulnerable, of not knowing that they can benefit from their data being shared. It is the Government's responsibility to act in this particular area to ensure that data are shared for the benefit of the most vulnerable. That is why the Bill is designed as it is. We have the secondary regulations in place, limited as they are at the moment, going through impact assessments and everything that we need to ensure that we have a proportionate response to sharing data.

I fully appreciate what the hon. Lady said but I hope that she will accept that the Government have pulled out all the stops to ensure that we can take public confidence with us. That is why, for instance, under clause 33, new criminal sanctions have been developed to protect information shared under the new powers in respect of public service delivery, fraud, debt and research, so those convicted of offences could face a maximum penalty of up to two years imprisonment for illegal data sharing, a heavy fine or both.

No statutory restrictions that currently exist on sharing of data, such as in the Adoption and Children Act 2002, will be affected by these data measures. When it comes to audits, which the hon. Lady mentioned, data-sharing agreements entered into under the power will set out a governance structure of how audits will take place. This structure will oversee the arrangement and what participating bodies are required to do under data sharing. The Information Commissioner's Office also has a general power to conduct audits, including compulsory audits of Departments and organisations to check that they are complying with the law in relation to the handling of personal information. All bodies are required to comply with the ICO's request for assistance so that it can determine whether data have been processed lawfully in data-sharing arrangements. The ICO can pursue criminal proceedings where necessary.

Louise Haigh: Will the Minister confirm that every Department that undergoes a data-sharing arrangement will complete a full audit of all data-sharing arrangements in that Department? Will that be available under the Freedom of Information Act?

Chris Skidmore: On the individual point of audit, I will have to write to the hon. Lady. I will further consider her amendments and speak about them when we discuss three-year reviews. I want to ensure that bodies sharing information under the public service delivery power, for instance, strictly observe and follow codes of practice. Although I welcome the intention of the amendments, I think they are unnecessary. The Bill sets out the key conditions for disclosing and using information, including what can be shared by whom

and for what purposes. We followed the common approach taken by the Government to set out details of how data are shared in the code of practice.

I want to return to the hon. Lady's question of whether we use "have regard to" or "comply with". The wording, "have regard to" already follows common practice in legislation, as illustrated in section 25 of the Immigration Act 2016 and section 77 of the Children and Families Act 2014. As the power covers a range of public authorities and devolved territories we want the flexibility that I mentioned about how the powers are to be operated, so that we can learn what works and adapt the code as necessary. To put it into the Bill, as I mentioned, would hamper that ability to adapt for future purposes. If bodies fail to adhere to the code, the Minister will make regulations that remove their ability to share information under that power, as is indicated, indeed, in part 11 of the code of practice, which states:

"Government departments will expect public authorities wishing to participate in a data sharing arrangement to agree to adhere to the code before data is shared. Failure to have regard to the Code may result in your public authority or organisation being removed from the relevant regulations and losing the ability to disclose, receive and use information under the powers".

Amendment 106 requires the Minister to run a public consultation for a minimum of 12 weeks before issuing or reissuing a code of practice. The code of practice is essentially a technical document that sets out procedures and best practice with guidance produced by the ICO and Her Majesty's Government. Clause 35 requires the Minister to consult the Information Commissioner and other persons, as the Minister thinks appropriate. I think that that strikes a good balance. Indeed, as I mentioned, we have been working closely with the ICO to ensure that there is confidence in the codes and the Information Commissioner states:

"I am pleased to report that significant progress has been made since my evidence session and I am content that my main concerns about the codes have now been addressed".

I think it is very important to put that on record.

Calum Kerr: I welcome the Minister to his place. He comes across, to me, as rather bullish now, despite the damning evidence we heard over a very condensed couple of days. Does he think that he has cracked it now, that these codes of practice are all fit for purpose and that we should be sufficiently reassured?

Chris Skidmore: The codes of practice remain in draft form and obviously we are in Committee having a discussion around the nature of what is in the codes of practice. We had criticisms last week of, "Where are the codes of practice?" We were still in the process of a conversation about the codes of practice with the Information Commissioner's Office to ensure that the Information Commissioner was content. If she is content with the codes of practice as they currently stand, I am not one to go against the ICO. I am not saying that that is a form of complacency, although maybe the hon. Gentleman is, but I trust the ICO's decision and am confident in its ability to deliver on the codes as they currently stand.

Calum Kerr: I thank the Minister for that mildly reassuring answer that the codes of practice are a work in progress. We welcome that, but in the spirit of helping improve them, I hope that he will consider some of the feedback from Big Brother Watch, which I thought gave the Committee excellent advice. Although Big Brother Watch recognises that the draft codes published by the UK Statistics Authority on research and statistics are detailed and comprehensive, it says that the draft codes published by the Cabinet Office and the Home Office are the polar opposite, offering very little detail or clarity.

Chris Skidmore: The codes are quite extensive in terms of being able to provide the material information that is there. They have gone through an extensive process. Although we had evidence from certain critical witnesses drawn by Opposition Members, there was also significant support for data-sharing measures and the ability to have flexibility through the codes.

As for considering how to go forward, the codes are now published—the hon. Gentleman can read them for himself—and the ICO is now content with the codes. That is a great position from which the Government intend to move forward. In terms of whether the codes are comprehensive, it is set out that the Government have a duty to consult the ICO and territorial Ministers. That is important, and we are following a process and a journey over which the Bill has been developed for a number of years. We are content that we are on track.

I welcome the intention of amendment 99 that only the minimum and necessary information is shared under the power to achieve the objective. The principles are set out in the Data Protection Act 1998. The public service delivery power will need to operate in compliance with the 1998 Act. The principle of data minimisation is also strongly embedded in the code of practice, to which specified persons who use the power must have regard.

In addition, the public service delivery power is intended to act as a more conventional gateway to allow public authorities to share information without the need for central oversight by Whitehall. It is important to reflect on that. Rather than having the dead hand of Whitehall overlooking a measure that should allow for local flexibility and local freedom, we expect a large number of local authorities to use the power to deliver their troubled families programmes. A central monitoring power could impose significant resourcing burdens, which we felt were unnecessary given the intended positive outcomes for citizens. On that basis, we feel that the amendment is unnecessary.

Amendment 95 intends to modify the definition of "personal information". The definition in the Bill is consistent with section 39 of the Statistics and Registration Service Act 2007, which relates to the confidentiality of personal information. It has been drafted with that consistency in mind. The amendment proposes a definition that includes a vague group of persons. We believe it unsuitable because of its vagueness, and it risks causing confusion.

Amendment 96 requires that data subjects be allowed to request and correct as necessary personal information relating to them that is disclosed under the public service delivery powers. The amendment is unnecessary because the data subject already has those rights under the Data Protection Act 1998. In addition, the impact of such an amendment on public authorities would be significant. An assessment would need to be made of how many requests could be made to public authorities, and of the resulting resourcing requirements in terms of staff and any supporting technical infrastructure. Work would also need to be carried out to ensure that we can verify the identity of individuals requesting access to

[Chris Skidmore]

data and assess the risk of corrections and modifications to data held being made for the purposes of committing fraud.

I understand the intention of the amendments, and I hope that the hon. Member for Sheffield, Heeley will understand that the Government believe that progress has been made, as well as provision for ensuring that the sharing of data is proportionate. The regard for individuals' privacy is central to the Bill and is set out in the code of practice, and the Government have put in place measures to work with the ICO and other civil society groups on that. I urge her to withdraw the amendment.

4.15 pm

Graham Jones: I want to make a small point about part 5, chapter 1, clause 29. There is one small glaring omission that the Government ought to look at and which has been raised by my local authorities. In Hyndburn, we have what the Minister will understand as a two-tier authority. We have a district council and a shire council as opposed to, in metropolitan areas, a unitary council. The Minister is probably wondering where this is going: when light is thrown on an example, some of the problems begin to be seen.

My shire authority wanted to increase the uptake of free school meals but a lot of the data on constituents in the borough of Rossendale and the borough of Hyndburn, which I represent, are held by the local district authority. That includes data on council tax benefit, housing benefit and numerous other small interventions carried out by the district council. A unitary council does not have that problem. It can share data and resolve such problems. It can identify people and send out public information to potential recipients—beneficiaries—of free school meals, who trigger the pupil premium.

I will give an example of how that problem is inflated. We currently have free school meals for everyone aged between four and seven, so parents see no reason to come forward and register their children for the meals, which then does not trigger the pupil premium. In a unitary authority, relevant information in other council departments would be readily available, but in my two-tier authority, the chief executive of Lancashire county council says to me, "We want to increase the uptake of free school meals, particularly for four to seven-year-olds, because we want to trigger the pupil premium, but we can't find potential recipients. We have some data on people who may use some of our services and may be entitled and some people who we could disseminate public information to, but there is a whole tranche of people we can't see—we are blind to them, they are just not on our radar. There is no scope for us to see who they are." That is because, of course, it is Hyndburn borough council and Rossendale borough council that have an interface with those people—they come into their offices regarding a plethora of issues—and those people may well benefit from free school meals. In this case, however, they will not benefit if their children are aged between four and seven so, again, they are not likely to see the connection.

My upper-tier authority, Lancashire county council, cannot access the relevant information that my local authority, Hyndburn borough council has, but a unitary authority does not face that issue. That is not fair or reasonable. It is not conducive to public policy. It is not reaching the target audiences that the Government themselves want to reach. This Government brought in the pupil premium and they want to push that policy, yet the absence of data sharing between upper and lower-tier authorities prevents Government policy from being pursued and creates an unfair situation.

So I left my chief executive's office at Lancashire county council and travelled the distance to meet the chief executive of my local district council, who fully understood the problem, and we were able, in some way, to get that public information out to the relevant people. There was no direct contact, however, and those issues are problematic when they should not be. I believe that the Government should look at the clause, and look at that inequity. It is not right. It is not good for the delivery of public policy. Clearly, it creates barriers to reaching some people while others can be reached. The Government ought to come back with something that exempts local authorities, because without a shadow of a doubt there should be parity between unitary authorities and two-tier shire and upper county council districts.

I hope the Government come back and create that level playing field—that parity of opportunity—for the Government to be able to pursue their own policies through local government mechanisms without this barrier impinging on those very same Government policies, which are probably not reaching the people they ought to reach because of this inequity and this element that is missing from the Bill.

I ask the Minister to take a deep look at this issue, to create parity and to bring forward something that will bring my two local authorities together and not create a barrier between the two, and certainly not create this iniquitous situation whereby unitary authorities are able to deliver these public services but my two chief executives cannot deliver them to the very people who ought to be receiving them.

The Chair: Does the Minister wish quickly to respond before I call Louise Haigh?

Chris Skidmore: To respond to the hon. Gentleman on his specific point, we will update the lists of bodies able to share information of the public service delivery power, and the PSD power allows for new objectives to be added by regulations if they meet the conditions specified in primary legislation. So the issue of the pupil premium, which he mentioned, may be one of the many worthy purposes for which new objectives could be created.

I would like also to draw the hon. Gentleman's attention to the disclosure of information in the draft regulations, which I hope will reassure him. Paragraphs 21 and 22 of schedule 1 to the Bill refer to the organisations that will be sharing data, or that will be permitted to do so once they have applied to do so, including the county councils of England, the district councils in England and even the council of the Isles of Scilly. We recognise that there is that local government fracture that he mentioned and we hope that when it comes to data-sharing measures we will be able to heal that.

Louise Haigh: It was disappointing not to hear the Minister mention the General Data Protection Regulation and explain why this legislation has not been written in

compliance with it, or my points about non-public sector authorities. I hope that he can return to those issues later in his remarks.

On the point about the Information Commissioner, in her evidence she supported statutory codes of practice. She also recommended that Parliament should review all aspects of data-sharing, and not just the clauses relating to fraud, after an appropriate time, which is what informed our amendment.

As our amendment says, we would also like the codes to make it clear that good cyber-security practice should not be about data sharing and that it should be about leaving the data with their original owner. I hope that the Minister will return to those issues when he comments on later stages of the Bill.

With that in mind, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 29 ordered to stand part of the Bill.

Clause 30

Disclosure of information to gas and electricity suppliers

Chris Skidmore: I beg to move Government amendment 108, in clause 30, page 29, line 21, at end insert “, or

> () the making of grants (by any person) under section 15 of the Social Security Act 1990 in accordance with regulations under that section made by the Scottish Ministers or the Welsh Ministers.”

This amendment enables information to be disclosed by a specified person to a licensed gas or electricity supplier for the purposes of a scheme in Scotland or Wales for the payments of grants to improve energy efficiency under section 15 of the Social Security Act 1990.

This clause enables the person specified in regulations to disclose information to gas and electricity suppliers. The disclosure must be for the purpose of reducing energy costs, or improving energy efficiency or the health or financial wellbeing of those living in fuel poverty, and it must be disclosed for use in connection with one of the fuel poverty support schemes listed in the clause.

The schemes referenced are the warm home discount scheme and the energy company obligation. Although the territorial extent of both these schemes is GB-wide, fuel poverty itself is a devolved matter. Officials in the devolved Administrations, including Labour-run Wales, have asked for Scottish and Welsh fuel poverty schemes to be included in the provisions of the clause. That is because there are grant schemes that fall under section 15 of the Social Security Act 1990 that address fuel poverty in Scotland and Wales. Those schemes would also benefit from the ability to share information between public authorities, and with gas and electricity suppliers, for the provision of assistance to fuel-poor households. The schemes are Nest and Arbed in Wales, and Scotland’s home energy efficiency programme. They help to reduce energy costs, or to improve energy efficiency or the health and financial wellbeing of people living in fuel poverty. The same safeguards will be in place as for all data disclosed under the clause—that is, data can only be disclosed by persons specified in regulations and for the specific purposes identified in the clause. All persons involved in a data-share must have regard to the code of practice.

The inclusion of these grant schemes will strengthen the ability to deliver better targeted, cost-effective fuel poverty schemes in Wales and Scotland.

Amendment 108 agreed to.

Question proposed, That the clause stand part of the Bill.

Louise Haigh: May I welcome the Minister to his position? It was remiss of me not to do so earlier; he is the model of a patient Minister and very polite with it, too.

As with clause 29, we very much support the objective behind the proposals in clause 30—to identify the individuals most in need of warm home funding and any other grant or benefit that will alleviate fuel poverty. As we heard from Citizens Advice, energy firms have found it difficult to establish whether people are entitled to funding, so people who should get the help do not get it. Sharing the data should smooth that process. We know that fuel poverty is a significant contributor to debt. StepChange said that about 10% of its clients would be within the old definition of fuel poverty—they spend more than 10% of their income on fuel—and it has seen the number of people in gas and electricity arrears rise sharply from where things were in 2010.

However, there are concerns about disclosing personal data to gas and electricity suppliers, again with no detail on what personal information might be disclosed or how. There is none of the legal or technical detail essential to ensure data security, the ethical use of data and the necessary trust framework essential to protect the rights, privacy and security of citizens. The same problems plague the rest of part 5, not least that the general data protection regulation explicitly bans the use of data to monitor the behaviour of people in a way that could be seen as profiling, so we would appreciate the Minister’s comments on that point.

As we have seen, the warm home discount can work well, but it must be set within strict safeguards. The initial legislation was introduced to allow data sharing to be carried out, and we know that the Department of Energy and Climate Change was extremely careful with the idea, and concerned about public perceptions about trust and private sector companies’ use of data. There was a great deal of anxiety about the public view when the proposal was put as a theoretical proposition. The public are not convinced about the sharing of data with private companies—let alone between Departments—and particularly with private providers such as energy companies who have a potential commercial stake in the data.

That is why the warm home scheme currently works through data from the DWP and energy suppliers going to a third party, which crunches the data to identify the matches. The energy suppliers are then sent onward a list of their eligible customers and the data are deleted from the third party’s computers. The data are not held on any computers; that provides an appropriate safeguard for all individuals concerned. That is critical to alleviating concerns about the sharing of personal information.

At present, therefore, companies with no public accountability learn nothing of any commercial value to their activities, which is a crucial point. The sharing of data cannot be done if there is a company with a potential conflict of interest. However, clause 30 allows for the disclosure of information to gas and electricity

[Louise Haigh]

suppliers to help people living in fuel poverty and within other tightly defined criteria. Although the clause is clear that data may be used only for the purposes intended, unease will remain about why, in this instance, the Government have allowed personal information to be shared with electricity suppliers rather than with a third-party trusted provider.

There will be a serious concern that electricity and gas suppliers are being passed information whose content could present a potential conflict of interest. Nobody is suggesting that the electricity or gas suppliers would do anything in breach of their obligations, but the risk is certainly there. That was the basis behind the creation of a third-party supplier in relation to the warm home scheme.

We therefore welcome the creation of an offence for passing on any of this information and we welcome the maximum sentence of two years. It provides a clear steer from Government on the sensitivity of the data, yet clearly we would prefer that the disclosure would not happen directly at all.

4.30 pm

Important research conducted in 2012 by the Wellcome Trust examined this difficult policy area and some of the public sensitivities surrounding it. The research found that

"The general public has an awareness of powerful external forces, namely: a Government that is seeking to reduce spending in the economic crisis; a myriad of fraudsters and cheats, swindling the State and the individual; aggressive and increasingly sophisticated individual marketing; and a fast-changing technological world that is hard for many people to keep up with, plus a general push towards everything moving online. Trust has been lost in major institutions…and the NHS is in crisis, with some fearing discrimination in provision of health services in future.

In relation to data sharing activities that have used energy consumption data…the annual tracking report on individuals attitudes and awareness of data protection, by the Information Commissioners Office…showed that the majority of respondents had concerns about the handling of their personal information: 93% of respondents concerned which is an increase of 23% since 2004".

Research from Citizens Advice and NatCen Social Research found that

"the private sector is viewed as being motivated to sell data to third parties…whereas the public sector are thought to be more motivated to deliver public benefits."

That really gets to the crux of the matter—individuals are happy for their data to be shared within strict provisions so long as it is a clear benefit to them and with clear safeguards. But in the absence of a clear definition that lack of trust will remain. In that context, it is important that the Government tread carefully and the warm home discount prototype provides a helpful model to follow.

More broadly, there is concern about the potential use of fuel poverty as a Trojan horse to establish a gateway that could then be expanded beyond the bounds of current consideration. That is thankfully addressed, however, by the legislation's intention that every proposal to share data would need to involve the Information Commissioner. We are therefore happy to accept clause 30.

Chris Skidmore: Clause 31 will enable specified public authorities to share information with gas and electricity suppliers or other persons specified in regulations. The disclosure must be for the purpose of reducing energy costs, or improving energy efficiency or the health or financial well-being of people living in fuel poverty, and it must be disclosed for use in connection with an energy supplier obligation scheme. The energy supplier obligation schemes referenced are the warm home discount scheme and the energy company obligation.

The warm home discount scheme provides a £140 energy bill rebate to certain vulnerable households during the winter months, helping those households to heat their homes. Some pensioner households already receive the rebate automatically, but that is possible only if the Government are able to inform the energy supplier, through a data match, which of their customers should receive it. It is important to recognise that that is not a new process. Rebates have been provided automatically to pensioner households in that way since 2011, and the process is considered to be working well. Not only has it helped to ensure that those entitled to support receive it, but it has significantly lower administrative costs—evidence suggests automatic payments cost under £1 per customer to deliver, compared to costs of up to £30 per customer for the non-automated method.

The hon. Member for Sheffield, Heeley mentioned the issue of trust and whether energy suppliers can be trusted with those data. She asked for an assurance from the Government on the continuity of the current scheme and whether similar security measures would be put in place. I can give her that reassurance. The sharing arrangements with third parties will remain exactly the same. Under current data-sharing arrangements for the warm home discount, suppliers are given a simple "yes", "no" or "unknown" answer as to whether their customers were in receipt of state pension credit and so eligible for the core group rebate under the scheme. We would simply look to expand those disaggregated data. If wider data-sharing arrangements are put in place for fuel poverty schemes, we would expect only Government data to be shared with suppliers under those arrangements, which would have a similar yes or no answer as to whether the customer was eligible for support. The existing warm home discount core group of pensioners already receive automatic support through data sharing. It is a popular scheme and serves as proof that this model works and is safe.

The warm home discount scheme and the energy company obligation represent around £1 billion of investment per year. Although substantial, that is still a finite resource that needs to be targeted as effectively as possible on those who need it most. The data sharing enabled by this clause will significantly strengthen the ability to deliver better targeted, cost-effective fuel poverty support to households who need it the most.

Question put and agreed to.

Clause 30 accordingly ordered to stand part of the Bill.

Clause 31 ordered to stand part of the Bill.

Clause 32

FURTHER PROVISIONS ABOUT DISCLOSURES UNDER SECTION 29, 30 OR 31

Chris Skidmore: I beg to move amendment 109, in clause 32, page 30, line 18, at end insert—

"(ba) for the prevention or detection of crime or the prevention of anti-social behaviour,"

This amendment and amendment 112 create a further exception to the bar on using information disclosed under Chapter 1 of Part 5 of the Bill for a purpose other than that for which it was disclosed. The amendments allow use for the prevention or detection of crime or the prevention of anti-social behaviour.

The Chair: With this it will be convenient to discuss Government amendments 110 to 117, 120 to 128, 131 to 139 and 154 to 158.

Chris Skidmore: These Government amendments concern sanctions for unlawful disclosure and the disclosure and use of data to prevent and detect crime or prevent antisocial behaviour. A person receiving personal information under the public service delivery, debt, fraud and research powers cannot disclose that personal information unless it is for one of the exceptional reasons listed in the Bill, such as preventing loss of life or for national security. Technical amendments will ensure that it is clear that the list of exceptional reasons includes the prevention or detection of crime, or the prevention of antisocial behaviour.

The Bill provides that any person who contravenes the prohibition on further disclosure is guilty of an offence, which carries a penalty of imprisonment, a fine, or both. The introduction of criminal sanctions shows how seriously we take our responsibility to protect personal information, and we consider that it represents a key safeguard to accompany the new powers. It is imperative that individuals handling personal information under the powers take great care in handling that information.

We do not think that mistakes when handling personal data are acceptable, but we do not want to criminalise honest mistakes. The current drafting is slightly overzealous, so amendments 117, 128, 139 and 158 ensure that criminal liability arises only where there has been intent to disclose information. In circumstances involving disclosures made in error, we consider that other sanctions would be more appropriate, such as those set out in the Data Protection Act 1998 or internal disciplinary action.

The remaining amendments are minor technical amendments to ensure that information received under the powers can be shared to assist legal proceedings or criminal investigations outside the United Kingdom where necessary, while maintaining consistency across our clauses and aligning with other similar provisions in other legislation.

Louise Haigh: These Government amendments are technical and seem absolutely fine, apart from the provision to prevent antisocial behaviour. It is not clear to me why the disclosure would be necessary for the purposes of antisocial behaviour as defined under Anti-social Behaviour, Crime and Policing Act 2014. Can the Minister provide a clearer explanation of why any data that are ostensibly there to be shared for the purposes of alleviating fuel poverty and managing public sector debts would be used to prevent antisocial behaviour? Does that point to the concern I expressed earlier about the provisions leading to a broader scope for the use of information?

Chris Skidmore: The exemption has been included to ensure that if information received under the powers points to possible antisocial behaviour, it can be shared. That is intended to avoid any risk that by failing to refer explicitly to antisocial behaviour we cause ambiguity about whether certain information on antisocial behaviour can be shared. That ambiguity would have a chilling effect on multi-agency responses to antisocial behaviour, thereby undermining one of the key purposes of the 2014 Act.

Louise Haigh: Can the Minister give an example of how data relating to fuel poverty shared between a Government agency and a gas and electricity company could possibly relate to antisocial behaviour?

Chris Skidmore: We are talking about public service delivery powers, which do not just cover the warm home discount, attractive though that is. I know that all members of the Committee will be grateful, when this legislation goes through, to go back to their constituents and talk about being on this Bill Committee and how they delivered savings for millions of pensioners, but there are other key aspects of the Bill in relation to the troubled families programme and those living in communities blighted by antisocial behaviour. Data sharing around those programmes could create data matches that point to antisocial behaviour taking place or flag that up. We have a public duty to ensure that we have that power so that we can protect those vulnerable people whose lives are blighted in communities affected by particular types of antisocial behaviour.

Amendment 109 agreed to.

Amendments made: 110, in clause 32, page 30, line 19, leave out

"(whether or not in the United Kingdom)".

This amendment removes the provision stating that a criminal investigation for the purposes of clause 32(2) may be within or outside the United Kingdom. This is for consistency and on the basis that a reference to a criminal investigation covers an investigation overseas in any event.

Amendment 111, in clause 32, page 30, line 21, leave out

"and whether or not in the United Kingdom".

This amendment removes the provision stating that legal proceedings for the purposes of clause 32(2) may be within or outside the United Kingdom. This is for consistency and on the basis that a reference to legal proceedings covers proceedings overseas in any event.

Amendment 112, in clause 32, page 30, line 28, at end insert—

"( ) In subsection (2)(ba) "anti-social behaviour" has the same meaning as in Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014 (see section 2 of that Act)."—*(Chris Skidmore.)*

See the explanatory statement for amendment 109.

Clause 32, as amended, ordered to stand part of the Bill.

Clause 33

CONFIDENTIALITY OF PERSONAL INFORMATION

Louise Haigh: I beg to move amendment 101, in clause 33, page 31, line 19, leave out "or permitted".

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

Amendment 102, in clause 33, page 31, line 25, leave out "made" and insert "necessary".

This amendment and amendments 103 and 104 seek to place a stricter requirement to reduce the risk of non-compliance with data protection.

Amendment 103, in clause 33, page 31, line 27, leave out "made" and insert "necessary".

See the explanatory statement for amendment 102.

Amendment 104, in clause 33, page 31, line 30, leave out "made" and insert "necessary".

See the explanatory statement for amendment 103.

Louise Haigh: The amendments would restrict the onward disclosure of data. As we know, the public value their data, and the amendments would place a higher test on onward disclosure.

It is important that data disclosures of information as sensitive as we have been discussing are appropriately considered; they must not simply be nodded through. Introducing a principle of necessity would mean that organisations have to make a case, rather than merely tick a box. Crucially, that would help to make the Bill more consistent with existing data protection. As the Information Commissioner's data sharing code of practice clearly states:

"You should employ 'need to know' principles, meaning that other organisations should only have access to your data if they need it, and that only relevant staff within those organisations should have access to the data. This should also address any necessary restrictions on onward sharing of data with third parties."

The ICO's data sharing code of practice could not be any clearer. It is designed to protect an individual's data and to prevent any onward disclosure to the organisations that have access to those data.

The Data Protection Act is also framed in terms of necessity. The ICO's code of practice states:

"The processing is necessary because of a legal obligation that applies to you (except an obligation imposed by a contract)…The processing is necessary to protect the individual's "vital interests". This condition only applies in cases of life or death, such as where an individual's medical history is disclosed to a hospital's A&E department treating them after a serious road accident…The processing is necessary for administering justice, or for exercising statutory, governmental, or other public functions."

The amendments, which would insert the word "necessary", ask a simple question: why are the exemptions in the Data Protection Act set aside when there is disclosure of confidential personal data for certain public interest purposes? That is already clearly well established. For example, in the context of policing, section 29(3) of the Data Protection Act states that:

"Personal data are exempt from the non-disclosure provisions in any case in which"

the disclosure is for any of the purposes of a criminal investigation, and failure to disclose

"would be likely to prejudice"

that investigation. One element of the application of that exemption from the non-disclosure provisions has the effect of excluding the lawfulness of the disclosure. It therefore protects the disclosing body from action for breach of confidence.

To disclose under the Data Protection Act, there has to be prejudice to an investigation before a disclosure of personal data can occur. Clause 33(2)(e) refers to disclosures

"made for the purposes of a criminal investigation",

with no test of prejudice. The advantage of the amendments is that they would bring in the word "necessary". That minor shift would at least ensure that the disclosure of personal data is proportionate.

Similarly, section 35(2) of the Data Protection Act permits disclosure of personal data for legal proceedings without risk of the disclosing party being subject to an action for breach of confidence if the disclosure of personal data

"is necessary… for the purpose of, or in connection with, any legal proceeding".

In contrast, clause 33(2)(f) does not include the word "necessary" and reduces the threshold of disclosure to one that could facilitate speculative disclosures that could not be made under the Data Protection Act. We would be grateful if the Minister explained why the necessity is removed and why the DPA provisions are not sufficient when personal data are disclosed, but only when it is necessary in connection with any legal proceedings. The amendments would align disclosure with the provisions of the DPA.

The changes to clause 33(2)(h)(i) to (iv) are proposed to make it clear why the DPA is insufficient. Schedule 2(4) permits disclosure of personal data if it

"is necessary in order to protect the vital interests of the data subject."

Schedule 2(5)(b) allows disclosure that is necessary

"for the exercise of any functions conferred on any person by or under any enactment".

Can the Minister describe what disclosures of personal data do not fall within those two provisions? The amendments insert the word "necessary" and simply align the disclosure with the Data Protection Act.

4.45 pm

Chris Skidmore: Amendment 101 looks at tightening the restrictions around the onward disclosure of personal information in clause 33. Its effect would be to restrict the onward disclosure by public authorities to only those purposes required by existing legislation, rather than those permitted by existing legislation. Amendments 102, 103 and 104 would restrict the ability of public authorities to onwardly disclose personal information under this power for matters of great importance to all of us. The Government believe the amendments would have the effect of restricting our ability to share information for matters such as saving lives, investigating criminal activities and safeguarding vulnerable adults and children, unless it can be determined "necessary".

Unfortunately, amendment 101 would considerably reduce the scope of public authorities to share data under that power. We are looking to provide legal clarity. Many existing legislative gateways for information sharing by public authorities tend to be permissive, rather than mandatory. Given that the purpose of the power is to provide legal clarity around data sharing to better target public services, the Government believe the amendment would, at best, introduce a degree of uncertainty as to whether a proposed data share is legal and, at worst, place a bar on existing permissive information sharing gateways for a range of important purposes.

Amendments 102, 103 and 104 could, in practice, inhibit public authorities from disclosing information, or delay them from disclosing it until they were content it was "necessary" to do so. The consequence of the amendments would therefore be to create an uncertainty where we are trying to provide legal clarity.

I welcome the intention behind the amendments—to ensure that personal information is disclosed—yet we believe they would create uncertainty. Furthermore, they are unnecessary as the powers are to be used in a way that is consistent with the DPA, and tough penalties under the new criminal offence will help ensure public officials handle the information lawfully. I invite the hon. Lady to withdraw the amendment.

Louise Haigh: I am concerned about why the Minister thinks the amendments will provide confusion; they will actually bring the clause into alignment with the Data Protection Act 1998—currently, large swathes of the Bill are not. Personal information is not defined as in the Data Protection Act, and nor are other clauses in this part. With your leave, Mr Streeter, I will test the will of the Committee.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 9.

Division No. 6]

AYES

Brennan, Kevin
Debbonaire, Thangam
Foxcroft, Vicky
Haigh, Louise
Jones, Graham
Kerr, Calum
Matheson, Christian

NOES

Adams, Nigel
Davies, Mims
Hancock, rh Matt
Huddleston, Nigel
Mann, Scott
Menzies, Mark
Skidmore, Chris
Stuart, Graham
Sunak, Rishi

Question accordingly negatived.

Amendments made: 113, in clause 33, page 31, line 24, at end insert—

"(da) for the prevention or detection of crime or the prevention of anti-social behaviour,".

This amendment and amendment 116 create a further exception to the bar on the further disclosure of information disclosed under Chapter 1 of Part 5 of the Bill, allowing disclosure for the prevention or detection of crime or the prevention of anti-social behaviour.

Amendment 114, in clause 33, page 31, line 25, leave out—

"(whether or not in the United Kingdom)".

This amendment removes the provision stating that a criminal investigation for the purposes of clause 33(2) may be within or outside the United Kingdom. This is for consistency and on the basis that a reference to a criminal investigation covers an investigation overseas in any event.

Amendment 115, in clause 33, page 31, line 28, leave out—

"and whether or not in the United Kingdom".

This amendment removes the provision stating that legal proceedings for the purposes of clause 33(2) may be within or outside the United Kingdom. This is for consistency and on the basis that a reference to legal proceedings covers proceedings overseas in any event.

Amendment 116, in clause 33, page 31, line 35, at end insert—

"( ) In subsection (2)(da) "anti-social behaviour" has the same meaning as in Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014 (see section 2 of that Act)."".

See the explanatory statement for amendment 113.

Amendment 117, in clause 33, page 31, line 36, leave out subsections (3) and (4) insert—

"( ) A person commits an offence if—

(a) the person discloses personal information in contravention of subsection (1), and

(b) at the time that the person makes the disclosure, the person knows that the disclosure contravenes that subsection or is reckless as to whether the disclosure does so."—*(Chris Skidmore.)*

This amendment applies to the disclosure of personal information in contravention of subsection (1) of clause 33. It has the effect that it is an offence to do so only if the person knows that the disclosure contravenes that subsection or is reckless as to whether it does so.

Clause 33, as amended, ordered to stand part of the Bill.

Clause 34 ordered to stand part of the Bill.

Clause 35

Code of practice

Chris Skidmore: I beg to move amendment 118, in clause 35, page 32, line 30, at end insert—

"( ) The code of practice must be consistent with the code of practice issued under section 52B (data-sharing code) of the Data Protection Act 1998 (as altered or replaced from time to time)."

This amendment requires a code of practice issued under clause 35 by the relevant Minister and relating to the disclosure of information under clause 29, 30 or 31 to be consistent with the data-sharing code of practice issued by the Information Commissioner under the Data Protection Act 1998.

The Chair: With this it will be convenient to discuss Government amendments 119, 129, 140, 161 and 188.

Chris Skidmore: These are minor and technical amendments to clauses on the code of practice and statements of principles that will be issued under part 5 of the Bill. The amendments will require that the code of practice be consistent with the data sharing code of practice issued by the Information Commissioner under the Data Protection Act 1998, ensuring greater clarity for practitioners and increased transparency for citizens about the relationship between the provisions in the Bill and the DPA. The amendments have been tabled with our conversations with the ICO in mind; we have the Information Commissioner's confidence that the codes are right. I commend the amendments to the Committee.

Amendment 118 agreed to.

Louise Haigh: I beg to move amendment 106, in clause 35, page 32, line 42, at end insert—

"(ea) the public for a minimum of 12 weeks, and the relevant Minister, must demonstrate that responses have been given conscientious consideration, and".

The amendment relates simply to the fact that the Opposition would like a full public consultation on the draft codes of practice. A much better version has been put before the Committee, and I understand that it is now on the parliamentary website, but we would like a proper consultation period, not just a consultation with whomever the Government see fit to consult.

Chris Skidmore: Amendment 106 would introduce a requirement for the Minister to publicly consult for a minimum of 12 weeks before issuing or reissuing the code of practice under clause 35.

Many details of the code of practice are drawn from the ICO data sharing code of practice. Others were drawn from two years of open policy making with civil society and other groups. We have just discussed a Government amendment intended to ensure that our codes will be consistent with the ICO's data sharing code of practice. On that basis, we see no need for a compulsory public consultation before issuing the code, and even less need to make it a requirement in respect of

[Chris Skidmore]

any reissue. Some future changes to the code may be minor. We do not see a need to run a public consultation in those instances—indeed, to do so would be disproportionate in a great number of such cases.

Clause 35 requires that the Minister consult the Information Commissioner and other persons as the Minister thinks appropriate. Those other persons will include civil society groups and experts from the data and technology areas. We will run a full public consultation when a significant revision is expected, such as before the EU data protection regulation comes into effect, which I believe will be in May 2018. The clause as drafted provides the flexibility required. On that basis, the amendment is unnecessary and I invite the hon. Lady to withdraw it.

Louise Haigh: I am pleased to hear that the Government intend to consult on major revisions, and I hope that the draft codes, although much improved, will improve further in Committee, particularly in the areas outlined earlier relating to non-public authorities. As the Government have not listened to many of the recommendations made in their own consultation earlier this year, perhaps it is a futile amendment. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Louise Haigh: I will just lay some further concerns about the draft codes. Clause 35 requires specified authorities and specified persons to have regard to the code of practice. We have conducted our own mini-consultation. One member of the Government's own open policy group described the codes of practice as "discursive and poorly constructed", another as "empty waffle". Agreement was widespread that they still require significant legal and technical improvements, and that safeguards should be included in the Bill itself.

Part 5's provisions for personal data sharing enable officials to decide unilaterally when they may access and share citizens' personal data without consent and for purposes other than that for which it was provided. It raises serious concerns about how the UK will be able to host any EU citizens' personal data post-Brexit. If UK officials are able to access and use their data without consent, it is highly unlikely that the EU will regard that as approaching anything like "adequacy" with respect to the general data protection regulation.

It is an incredibly worrying aspect of the Bill and the accompanying codes of practice that nowhere do they refer to the EU's GDPR, which will not come into effect until 2018, as the Minister said, although the Information Commissioner's Office has stated that organisations must comply with the GDPR if they wish to continue to do business across the EU or with EU citizens' data. Although we are referring to Government agencies and Departments, there is every likelihood that they will process EU citizens' data.

Where consent is to be overridden by officials, the approach is not well defined. There is no consideration of or support for alternative approaches, such as empowering citizens to be helped by letting them nominate someone other than officials to act on their behalf, rather than officials doing so. There is inadequate attention to transparency and accountability. We have many lessons to learn from the Estonian Government, as we heard in evidence sessions.

Furthermore, the personal data-sharing code perpetuates errors from the two-year consultation. For example, when the code refers to application programming interfaces, it incorrectly implies that they are a new thing. They are not, with modern web APIs generally recognised as having been in existence since around 2002—hardly state of the art. The code also displays no apparent awareness of, for example, zero knowledge proof, a method by which one party can prove to another that a given statement is true without conveying any information apart from the fact that the statement is true.

For that reason, both technical and legal safeguards must be within the Bill, not the lengthy and vaguely drafted codes of practice relating to personal data. Quite simply, none of the codes contains the safeguards alluded to earlier in the consultation and Bill process. In the interests of time, I simply say to the Minister that we will revisit concerns about the codes of practice. We have serious concerns about the lack of transparency still built into the codes of practice, let alone on the face of the Bill, and we would like some updated technological references in those codes.

Question put and agreed to.

Clause 35, as amended, accordingly ordered to stand part of the Bill.

Clauses 36 and 37 ordered to stand part of the Bill.

Clause 38

Disclosure of information by civil registration officials

Louise Haigh: I beg to move amendment 97, in clause 38, page 36, line 15, at end insert—

'(2A) An authority or civil registration official requiring the information must specify the reasons for requiring the information to be disclosed.

(2AA) Information disclosed under this section shall not be shared with any other public or private body beyond those specified in subsection (1)."

The Chair: With this it will be convenient to discuss amendment 107, in clause 38, page 36, line 12, leave out from "that" to end of subsection and insert—

"(a) the authority or civil registration official to whom it is disclosed (the "recipient") requires the information to enable the recipient to exercise one or more of the recipient's functions and,

(b) the data subjects whose information is being disclosed have given valid consent under data protection legislation."

This amendment would remove bulk sharing while allowing certificates to be shared to support electronic government services.

Louise Haigh: These provisions, more than any others in relation to civil registration officials, have surprised and confused those involved in the data-sharing proposals and the open data policy-making process, as they were never mentioned in the more than two years of discussion about data sharing in that open policy-making group. In the Government's consultation response, they said that

"a large number of individual respondents and representatives from civil society stated strong opposition to the proposed power providing the ability for the bulk sharing of data, believing that

the power would effectively create an identity database and enable personal data to be shared between public authorities even where there is no public benefit to do so."

The amendments would address exactly that.

The publicly stated policy intent of the clause is to allow a citizen interacting with the Department to allow that Department to confirm their civil registration information electronically. That could undeniably enable better informed decision making, allocation of resources and service delivery, and would support the modernisation of public services. However, as drafted, the legislation also allows the entire civil registration database to be copied over to arbitrary locations for arbitrary purposes. That is not the same thing as a citizen allowing access when using digital services.

There are further concerns about the clause's lack of compliance with the Data Protection Act 1998. Civil registration documents will be shared in bulk to improve service delivery where there is a clear and compelling need, according to the Bill. However, "clear and compelling" remains a lower test than the Data Protection Act's "necessary and proportionate", and is likely to be challenged. The use of bulk data runs counter to the Centre for the Protection of National Infrastructure guidance, which warns of the risks associated with bulk data, particularly from hostile foreign intelligence services.

The example given by Government that would require the sharing of civil registration data is around child reference numbers, which become national insurance numbers. National insurance numbers used to be attached to child benefit. It worked on the assumption that every parent would claim child benefit for their child and, when that child reached 15 and a half years of age, their national insurance number would be dispatched.

When the Government changed their policy on child benefit and effectively restricted it to parents who earned less than £50,000 per year, that created a potential problem for the assigning of national insurance numbers. The proposals will presumably address the problem by using birth-certificate data to inform who should be issued with NI numbers and when. That seems a perfectly reasonable and sensible method to correct an unintended consequence of the changes to child benefit policy, but can the Minister give us any other examples of when and why such bulk data sharing would ever be necessary or proportionate? The example I have just run through is incredibly specific and I hope that it would not be and is not repeated across Government.

5 pm

Clause 38 states:

"A civil registration official may disclose information under this section only if the official is satisfied that the authority or civil registration official to whom it is disclosed…requires the information to enable the recipient to exercise one or more of the recipient's functions."

That suggests that consent is to be moved away from citizens to officials, leaving the latter to decide when to share personal data, even if the data were not provided by the citizen for that purpose. That highlights a notable characteristic of the Bill: its apparent intent to move the control of personal data away from citizens and to officials. It proposes that the decision on what to share and with whom will be determined by regulations made by the "appropriate national authority", which means the relevant Minister. Consent to use personal data will thus be moved away from the citizen to the Minister and, in practice, to officials.

Amendment 107 would require any disclosures under the provision to have the consent of the citizen or their legal representative, and would thereby prevent disclosures or all entries in bulk under the legislation. It would also remove any bulk sharing, simply enabling the sharing of information relevant to the task at hand.

Amendment 97 would require the authority or civil registration official to specify the reason for disclosing information and ban the sharing of information beyond those individuals or bodies specified in new section 19AA(1). Given that that is made explicit in all the other chapters of part 5 of the Bill, we assume it is an oversight that it has not been included in chapter 2.

Graham Stuart (Beverley and Holderness) (Con) *rose—*

The Chair: I sense that the Government Whip is trying to catch my eye.

Ordered, That the debate be now adjourned.—*(Graham Stuart.)*

5.1 pm

Adjourned till Thursday 27 October at half-past Eleven o'clock.

Written evidence reported to the House

DEB 60 Authors' Licensing and Collecting Society

DEB 61 Pandora Blake and Myles Jackman

DEB 62 City Remembrancer's Office, City of London Corporation

DEB 63 Jim Killock, Executive Director, Open Rights Group (follow up)

DEB 64 UK Music

DEB 65 James Moore (further submission)

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

DIGITAL ECONOMY BILL

Ninth Sitting

Thursday 27 October 2016

(Morning)

CONTENTS

Clauses 38 to 55 agreed to, some with amendments.
Clause 56, as amended, under consideration when the Committee adjourned till this day at Two o'clock.

PBC (Bill 045) 2016 - 2017

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Monday 31 October 2016

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The Committee consisted of the following Members:

Chairs: MR GARY STREETER, † GRAHAM STRINGER

† Adams, Nigel *(Selby and Ainsty)* (Con)
† Brennan, Kevin *(Cardiff West)* (Lab)
† Davies, Mims *(Eastleigh)* (Con)
Debbonaire, Thangam *(Bristol West)* (Lab)
† Foxcroft, Vicky *(Lewisham, Deptford)* (Lab)
† Haigh, Louise *(Sheffield, Heeley)* (Lab)
† Hancock, Matt *(Minister for Digital and Culture)*
† Hendry, Drew *(Inverness, Nairn, Badenoch and Strathspey)* (SNP)
† Huddleston, Nigel *(Mid Worcestershire)* (Con)
† Jones, Graham *(Hyndburn)* (Lab)
† Kerr, Calum *(Berwickshire, Roxburgh and Selkirk)* (SNP)
Mann, Scott *(North Cornwall)* (Con)
† Matheson, Christian *(City of Chester)* (Lab)
† Menzies, Mark *(Fylde)* (Con)
† Perry, Claire *(Devizes)* (Con)
† Skidmore, Chris *(Parliamentary Secretary, Cabinet Office)*
† Stuart, Graham *(Beverley and Holderness)* (Con)
† Sunak, Rishi *(Richmond (Yorks))* (Con)

Marek Kubala, *Committee Clerk*

† attended the Committee

Public Bill Committee

Thursday 27 October 2016

(Morning)

[Graham Stringer *in the Chair*]

Digital Economy Bill

11.30 am

The Chair: If hon. Members wish to take off their jackets, they have the Chair's permission to do so.

Clause 38

Disclosure of information by civil registration officials

Amendment proposed (25 October): 107, in clause 38, page 36, line 12, leave out from "that" to end of subsection and insert—

"(a) the authority or civil registration official to whom it is disclosed (the "recipient") requires the information to enable the recipient to exercise one or more of the recipient's functions and,

(b) the data subjects whose information is being disclosed have given valid consent under data protection legislation.".—*(Louise Haigh.)*

This amendment would remove bulk sharing while allowing certificates to be shared to support electronic government services.

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing amendment 97, in clause 38, page 36, line 15, at end insert—

'(2A) An authority or civil registration official requiring the information must specify the reasons for requiring the information to be disclosed.

(2AA) Information disclosed under this section shall not be shared with any other public or private body beyond those specified in subsection (1)."

Graham Jones (Hyndburn) (Lab): It has been a couple of days since we last met, but my hon. Friend the Member for Sheffield, Heeley made a very important point in her speech regarding where we should look for best practice. The UK is one of the Digital 5, and she brought up Estonia as a country that, when we consider big data, we should reflect on. In dealing with the Bill, we are casting our eye around to see how we can manage big data, personal information, between public bodies. She made the valid point that a fundamental question seems to run throughout the Bill and the clause: does the individual own the information or does the state own it? Because the Government have taken the view, unlike what happens in Estonia, that the state owns the information, we have a series of such clauses. We are primarily trying to find a way to balance the rights of the individual, while the state retains ownership of the information in any form, but, particularly as we move forward, in digital form; that is what I am concerned about.

Let me explain what is done in Estonia and why the Bill in years to come will probably need to be usurped by a new Bill. Estonia has transferred the ownership of data from the state to the individual. When the individual owns the data, there is no need for these complex fudges to try to find a way in which people's privacy and the integrity of data can be respected, while ownership remains with an umbrella organisation.

The criticism that I make to the Government, and my hon. Friend's point, is that a fundamental rethink or reset will have to occur at some point because of what is missing from the Bill and the clause. It talks about public bodies, but the Government do not address in this or any other clause the fact that private corporations hold enormous amounts of personal data on people and the ownership of that lies with them, not with the individual. That is why the point that she made was so pertinent. The ownership of data should lie with the individual. As a country, as a nation, we should be looking to transfer that ownership. That is why we cannot address what happens in the private sector. Absent from the Bill are any clauses or even subsections tackling data and information in the private sector. It is solely about the public sector and trying to square off those conundrums and contradictions.

The Government have missed an opportunity to empower people and to be on the side of the individual, the ordinary person, who feels disempowered by all this. They are on the side of big government and, by absence, of big corporations, which in my view is a fundamentally flawed position. That question was asked in Estonia, and it is why it reversed the answer: ownership should lie with the individual.

I can see the Parliamentary Secretary, Cabinet Office, chatting to the Minister for Digital and Culture, and he will probably provide an answer that talks about a destination, saying that if someone gets on a bus, they only get off at the end destination. We all know that when someone gets on a bus, there are many stops before the destination on the front of the bus. They do not have to go all the way. I presume the Minister will explain why the clause is correct from the Government's point of view and why my argument is flawed. He will say, "If you are going to empower the individual with data, you would need a national identification card system, as in Estonia. The empowerment of the individual must correlate with a national ID card scheme."

The Minister will make that argument, but that is like getting on a bus and only being able to get off at the final destination, with a national ID card scheme. No one is saying that. There are many bus stops we can get off at before the end. The issue is not binary, with the place we get on the bus and the place we get off. The destination is not necessarily ID cards. The principle that these are the individuals' own data should be at the heart of the Bill, and the clause does not represent that. The absence of any mention of the private sector is alarming.

Moving on, I want to touch briefly on another aspect that is missing from the Bill and should be considered. This is the Digital Economy Bill, but it is all about the public sector. There is an absence of any reference to the private sector per se. This part of the Bill deals with the digital economy and the provision of public services. Returning to the Estonia example and empowering the individual, people in Estonia can set up a business or

company in three or four minutes online. Where is the pro-business element of the Bill? It is certainly not this clause, which relates to data and information in relation to the state and public bodies. Why can individuals here not set up businesses in four minutes? Why is it not a pro-business Bill? Why does it not talk about business? Nothing in the Bill talks about being pro-business.

The clause is simply about public bodies holding big data, and in that respect, it lives in the past, not the future. I urge the Government to think about the fundamental principles and to not make the argument that the amendments would lead to an ID card system, although Estonia does have ID cards. I would have ID cards tomorrow—it is well known across the patch that I would not be on the list of soggy, wet liberals—but that does not mean that the principle that the individual owns data would lead to ID cards. It does not. I ask the Minister, with all due respect, not to suggest that I am making that argument, because I am not.

The Bill is not pro-business and is fundamentally flawed. The clause is simply about trying to manage all the conflicts and contradictions from yesterday's age. It does not deal with the future. The Government have fallen short. I emphasise the word "economy" in the Bill's title—it is not about public services, but the economy. I put that word up in bright lights. Where does the Bill talk about the economy? We are talking about public bodies and public authorities.

The Parliamentary Secretary, Cabinet Office (Chris Skidmore): That was an impressive Second Reading speech. I am here to speak to amendment 97 and 107.

Graham Jones: And stand part.

Chris Skidmore: Not necessarily; that has not been called yet. The amendments have been tabled in the name of the hon. Member for Sheffield, Heeley. She finished her speech on Tuesday, and I put on record my thanks for her impressive scrutiny of the Bill, which she has done almost single-handedly. I note that she made a weighty speech about Concentrix yesterday, so I do not know how she finds the time to sleep. I am sure that it will be noted in the Lords that we have gone through a full process of scrutiny in Committee.

The Government will ensure that citizens can access future Government digital services effectively and securely, while removing the current reliance on paper certificates. That will provide more flexibility and modernise how services are delivered.

Amendment 97 would require registration officials and public authorities requesting information to specify reasons for requiring disclosure. In considering a request to share information under those powers, a registration official would first need to be satisfied that the recipient requires the information to enable them to exercise one or more of their functions.

In her speech on Tuesday, the hon. Lady raised some issues about the Data Protection Act 1998 and said that the Government should set out clearly that it is being honoured, particularly for registration. The hon. Member for Hyndburn talked about fundamental principles, and I can confirm that the Bill's fundamental principle is its compliance with the Data Protection Act. Data should not be disclosed if to do so would be incompatible with that Act, the Human Rights Act 1998 or part 1 of the Regulation of Investigatory Powers Act 2000.

The Data Protection Act is Magna Carta of the data world, and we want to ensure that all parts of the Bill comply with it. When disclosing information, only minimal information will be provided, in accordance with the requirements of the data recipient.

Louise Haigh (Sheffield, Heeley) (Lab): I am grateful to the Minister for his kind and polite words. If that is the case, why does the Bill contain the words "clear and compelling", rather than "necessary and proportionate", which is the term associated with the Data Protection Act?

Chris Skidmore: I have taken legal advice about that issue, which the hon. Lady raised in her previous speech, and I have been told that those words do not in any way, shape or form challenge or change the interpretation of and compliance with the Data Protection Act. We will be happy to look again at the wording and reflect on it if that gives her confidence that we are absolutely committed to ensuring that the Data Protection Act runs through the core of the Bill. Registration officials are required to be aware of the reasons for the request, so the intention behind the amendment is already achieved by the clause.

Amendment 97 seeks to prevent the onward disclosure of information by the data recipient to any other public or private body beyond the specified public authorities listed in proposed new section 19AB(1) of the Registration Service Act 1953. Disclosures under the power will be restricted to the specified public authorities listed in proposed new section 19AB(1). In addition, personal data will be shared only in accordance with the power and in adherence to the Data Protection Act, by which the recipients will also be bound. As an additional safeguard, under the code of practice, data-sharing agreements can place restrictions on onward disclosures of data, which will be adopted where appropriate.

Amendment 107 would retain the requirement for a civil registration official to be satisfied that the information was required by a recipient to fulfil one of more of their functions before disclosing data. It seeks to add a requirement that an individual must have given valid consent under data protection legislation before any disclosure of their personal data. The data protection legislation referred to is believed to be the Data Protection Act, to which these clauses are already subject. They already state that personal data must be processed fairly. In practice, it will sometimes be necessary to share information in the public interest, where it is impractical or inappropriate to seek or rely on the consent of the individual concerned, but that is already permitted under the Data Protection Act, which we are determined to ensure remains in force.

In the hon. Lady's speech on Tuesday, she talked about the uses of bulk data and asked me to give examples of where the powers will be used and where they are already used. The powers will allow registration officials to disclose birth data to other local authorities. Currently, a registrar is unable to notify another local authority if a birth takes place in their district but the child's parents reside in another. Being able to disclose data across district boundaries will assist healthcare, school and wider local authority planning. Being able to share bulk information will ensure that children are

[Chris Skidmore]

known to the local authorities in which they reside and that action can be taken to address any needs of the child or parent.

Another example relates to blue badge fraud. It is estimated that about 2.1% of blue badge fraud relates to use of a blue badge following the death of the individual to whom it belonged. The new powers will allow data to be shared with the local authorities to help reduce that fraud.

Louise Haigh: The Minister gives an important example—blue badge fraud—in which data are accessed rather than shared. The local authority will have an access point into Department for Work and Pensions data to determine whether someone is disabled, but there is absolutely no need for bulk data sharing across local authorities. That is the kind of example that we should follow in the rest of the public sector.

11.45 am

Chris Skidmore: The hon. Lady mentions legal portals through which data can be shared. The key point is that although we have specific examples of data being accessed or shared, every new data-sharing arrangement has to be established within a very specified remit. A great example of a data-sharing arrangement for registrars that is already happening is the Tell Us Once service, in which birth and death registration information is shared across local and central Government. That system has been developed by Government, is envied by the private sector and clearly demonstrates the benefit of sharing civil registration information for both citizens and Government, but the problem is that it is very limited.

We cannot move forward by having endless tiny data-sharing agreements; we need to be able to create a wider platform. For instance, to share death data, individual local authorities have to forge individual relationships. We need to ensure that that is far broader, so that local authorities and Departments can work together to help to prevent unwarranted and unwanted mail from being sent to the family of a deceased person, which can often cause a great deal of distress.

This is evolution, not revolution. We are following the Data Protection Act 1998 and the codes of practice, which the Committee will discuss, will be reviewed every year. We can now share data effectively on a bulk level but without using personal details apart from for the benefit of those it will serve: children, local authorities, planning numbers. This is absolutely the right thing to be doing.

Disclosure will take place without consent only where that is consistent with Data Protection Act rules on fair disclosure. At all times, data can be shared only with specified public authorities as defined in section 19AB of the Registration Service Act 1953. The code of practice makes it very clear that if there are any data breaches or any of those authorities do not follow the code—we will discuss the code when we consider debt measures—they can be removed from that list. With that explanation, I hope the hon. Member for Sheffield, Heeley will agree that the necessary measures are already included in the clause and will withdraw her amendment.

Louise Haigh: My hon. Friend the Member for Hyndburn made important points about the absence from the Bill of clauses dealing with the private sector. In the evidence session, we heard from the chief executive of a tech start-up in Canary Wharf who made it very clear that nothing in the Bill would help his business or others operating in the digital economy. We will certainly return to that theme. I draw my hon. Friend's attention to new clause 31, which the Committee will consider on Tuesday morning and which will require a review of data ownership across the public and private sectors.

I am grateful that the Minister has confirmed that the Government will consider a rewording of "clear and compelling", because I think it could lead to some confusion regarding the compliance of part 5 with the Data Protection Act. It is great to hear him praise the Tell Us Once scheme, which was set up by the shadow Secretary of State for Culture, Media and Sport, my hon. Friend the Member for West Bromwich East (Mr Watson)—I will pass on the Minister's congratulations to him.

The Minister referred to a platform; will he confirm whether he is referring to a central database of citizens' civil registration information? That is a key concern. I am also glad to hear that sharing information without consent will take place only in explicitly defined circumstances, but I am still not clear why chapter 2 of part 5 will not—as our amendment 97 would—require civil registration officials to disclose why they are sharing information, as all the other chapters in part 5 require data-sharing arrangements or specified persons to do. If the Minister can explain that to me in an intervention, I will happily withdraw the amendment.

Chris Skidmore: I used the word "platform" as part of a process argument about being able to look at data in the round, rather than to suggest that there would be any centralised data collection. That is certainly not the case. For public confidence, measures in the codes of practice set out clearly that when it comes to the data-sharing measures, once data have been used for the required purpose, they are then destroyed. They are not kept on any register for any historical purpose.

Turning to the hon. Lady's second point—

The Chair: Minister, this is an intervention. I call Louise Haigh—you may intervene again, Minister.

Louise Haigh: My question stands: why is there not a requirement in this chapter of this part for the reasons for disclosure, as there is in all the other chapters? I would be grateful if the Minister intervened regarding that point.

Chris Skidmore: The registration codes of practice clearly set out that the purposes will need to be defined and that a business case will need to be made. None of that can take place until we ensure that there is a specified public function defined on the face of legislation, particularly when it comes to the code of practice that registrars will have to follow and which will be reviewed yearly. I believe that measures are in place to ensure that any data-sharing is done through a due process that is incredibly tight, restrictive and respectful of the use of individuals' data.

Louise Haigh: I am afraid I am still not satisfied with why that requirement is not on the face of the Bill as it is in other chapters, so I will press amendment 97 to a vote. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment proposed: 97, in clause 38, page 36, line 15, at end insert—

'(2A) An authority or civil registration official requiring the information must specify the reasons for requiring the information to be disclosed.

(2AA) Information disclosed under this section shall not be shared with any other public or private body beyond those specified in subsection (1)."—*(Louise Haigh.)*

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 9.

Division No. 7]

AYES

Brennan, Kevin
Foxcroft, Vicky
Haigh, Louise
Hendry, Drew
Jones, Graham
Kerr, Calum
Matheson, Christian

NOES

Adams, Nigel
Davies, Mims
Hancock, rh Matt
Huddleston, Nigel
Menzies, Mark
Perry, Claire
Skidmore, Chris
Stuart, Graham
Sunak, Rishi

Question accordingly negatived.

Amendment made: 119, in clause 38, page 37, line 35, at end insert—

'( ) The code of practice must be consistent with the code of practice issued under section 52B (data-sharing code) of the Data Protection Act 1998 (as altered or replaced from time to time)."—*(Chris Skidmore.)*

This amendment requires a code of practice issued under section 19AC of the Registration Service Act 1953 by the Registrar General and relating to the disclosure of information under section 19AA of that Act to be consistent with the data-sharing code of practice issued by the Information Commissioner under the Data Protection Act 1998.

Question proposed, That the clause, as amended, stand part of the Bill.

Chris Skidmore: The clause amends the Registration Service Act 1953 to introduce new flexible data-sharing powers that allow registration officials to share data from birth, death, marriage and civil partnership records with public authorities for the purpose of fulfilling their functions. That will provide more flexibility and modernise how Government services are delivered.

Being able to share registration data will bring many benefits, for example, in combating housing tenancy fraud. The National Fraud Authority estimates that housing tenancy fraud—for example, a tenant dies and someone else continues to live in the property when they have no right to—costs local authorities around £845 million each year. Being able to provide death data to local authorities will assist in reducing that kind of fraud. The sharing of data will provide benefits for the public in a number of different ways, including the removal of barriers when accessing Government services. It will pave the way for citizens to access Government services more conveniently, efficiently and securely, for example by removing the current reliance on paper certificates to access services.

Data will continue to be protected in accordance with data protection principles, and a number of safeguards will be put in place. Registration officials will be able to share data with only specified public authorities, as defined in new section 19AB—which also includes a power for the Minister to make regulations to add, modify or remove a reference to a public body, thereby providing reassurance that the data will only be disclosed in a targeted way to the Departments listed. As set out in paragraph 58 of the code of practice, the Registrar General has a responsibility to review the code annually, which will involve the national panel for registration. As an additional safeguard, such regulations will be made under the affirmative procedure, requiring the approval of both Houses.

All data sharing will be underpinned by a statutory code of practice, as set out in section 19AC. As I have said, when revising the code the Registrar General will have an obligation to consult the Minister, the Information Commissioner and other relevant parties. The code of practice will act as a safeguard by explaining how discretionary data-sharing powers should be used. The code will require data-sharing agreements to be drawn up, which will includes safeguards on things such as how data will be used and stored and for how long they are to be retained, and forbidding data to be cross-linked in any way.

Question put and agreed to.

Clause 38, as amended, accordingly ordered to stand part of the Bill.

Clause 39

CONSEQUENTIAL PROVISION

Question proposed, That the clause stand part of the Bill.

Louise Haigh: Several questions relating to the clause remain unanswered because we were cantering through on Tuesday afternoon. Will the Minister confirm, and give examples of, what the powers in this part of the Bill will exclude? Will he give some guidance on how officials are meant to determine where the line is for what is and is not included? Will there be more guidance issued for non-public sector authorities that will come under the legislation? Will he assure us that the codes, in their next iteration, will provide further guidance on how officials should deal with conflicts of interest when sharing data, how they should identify any unintended risks from disclosing data to organisations, and how sponsoring public authorities should assess whether their systems and procedures are appropriate for the secure handling of data? I would also be grateful if the Minister confirmed what lessons have been learned from the recent National Audit Office report that found more than 9,000 data incidents in the past year alone, and how the Government are improving their data processes to address those issues.

Will the Minister assure us that nothing in the Bill will undermine patient confidentiality? I am aware that the British Medical Association has written to him but has not had a response. The BMA is unclear about whether the scope of the Bill includes the disclosure of personal health and social care information, which would significantly weaken existing protections for confidential

[Louise Haigh]

data. Will the well established rules that already protect such confidential information continue to apply, and will he assure us that these powers will not override common law in this vital area?

Finally, on a significant area that has not yet been addressed, do the Government intend to implement the EU's general data protection regulation? If they do, why is the Bill not compliant with it?

Chris Skidmore: On the European directive, which is to be introduced in May 2018, the codes will be revised and will reflect that. That is why the flexibility we have from the codes not being written into the Bill is so important—so that we can deal with instances in which there will be change in the future. They will be updated to reflect that change in May 2018.

Civil registration officers—public servants who want to share data for the benefit of the public—are not trying to do anything that would compromise those whom they serve. In the code of practice, paragraph 47 states that privacy impact assessments will be put in place to ensure that there will be compliance with data protection obligations and that they meet individual expectations of privacy. All Departments entering into data-sharing arrangements under the powers must comply with privacy impact assessments and publish the findings. We want to ensure transparency so that members of the public understand why it is necessary for those data to be shared.

An application to share data is not simply a permissive path by which new data-sharing arrangements can be established without going through due process and regard. In the fairness and transparency section of the data code of practice, there are many questions that must be addressed in order to establish the data-sharing arrangements. They are clearly laid out.

12 noon

Louise Haigh: The Minister says that civil registration officials will be required to publish their findings. What exactly will they be required to publish, under either the code or the measures in the clause?

Chris Skidmore: Paragraphs 47 and 49 of the civil registration data-sharing code of practice clearly state:

"All government departments entering into data sharing arrangements under these powers must conduct a Privacy Impact Assessment and to publish its findings. The Information Commissioner's Conducting Privacy Impact Assessments code of practice provides guidance on a range of issues in respect of these assessments, including the benefits of conducting privacy impact assessments and practical guidance on the process required to carry one out…Registration officials entering into new data sharing arrangements should refer to the following guidance issued by the Information Commissioner on Privacy Impact Assessments which includes screening questions…to determine whether a Privacy Impact Assessment is required."

On health care data, the Government are considering Dame Fiona Caldicott's recommendations. The consultation closed on 7 September, and I confirm that the Bill's powers will not be used in relation to health and care data before we have completed that process.

Louise Haigh: The Bill explicitly says that health and social care information should be excluded, but there are concerns that it is drafted so widely that it could be used for that, and I think that the Minister has just confirmed it. He is saying that it is wide enough that should the Government decide on the basis of Dame Fiona's review that they want to share health and social care information, the Bill will enable it. Is that the case?

Chris Skidmore: The Government will respond to the National Data Guardian's review. It will not have an impact on the Bill at this stage. The Department of Health recently concluded a public consultation and is considering how to implement her recommendations. As it will take time to make the changes and demonstrate that the public have confidence in them, it would be inappropriate for the Government to seek new information sharing powers in respect of health and care data at this time. I note that we will come to health and care data when we debate a later group of amendments on research, and I hope to provide more information when we do.

Question put and agreed to.

Clause 39 accordingly ordered to stand part of the Bill.

Clause 40

Disclosure of information to reduce debt owed to the public sector

Louise Haigh: I beg to move amendment 190, in clause 40, page 39, line 21, leave out "have regard, in particular, to" and insert "must comply with".

The Chair: With this it will be convenient to discuss the following: amendment 191, in clause 44, page 42, line 8, leave out "have regard to" and insert "comply with".

Amendment 192, in clause 52, page 49, line 8, leave out "have regard to" and insert "comply with".

Amendment 193, in clause 60, page 55, line 20, leave out "have regard to" and insert "comply with".

Amendment 194, in clause 67, page 66, line 15, leave out "have regard to" and insert "comply with".

Amendment 198, in clause 82, page 80, line 18, at end insert

"and only after the codes of practice required under sections 35, 44, 52 and 60 have been approved by a resolution of each House of Parliament."

New clause 35—*Public register of data disclosures*—

'(1) No disclosure by a public authority under Part 5 shall be lawful unless detailed by an entry in a public register.

(2) Any entry made in a public register under subsection (1) shall be disclosed to another person only for the purposes set out in this Part.

(3) Each entry in the register must contain, or include information on—

(a) the uniform resource locator of the entry,

(b) the purpose of the disclosure,

(c) the specific data to be disclosed,

(d) the data controllers and data processors involved in the sharing of the data,

(e) any exchange of letters between the data controllers on the disclosure,

(f) any other information deemed relevant.

(4) In this section, "uniform resource locator" means a standardised naming convention for entries made in a public register.

Louise Haigh: These are further amendments tabled by my hon. Friend the Member for Cardiff West and me to make the codes of practice, on which officials have obviously worked so hard and which were developed in consultation with the Information Commissioner, legally binding. With your permission, Mr Stringer, I will come to specific issues about the data-sharing measures and fraud during debate on clause stand part.

I appreciate what the Minister said about sanctions being enforced on those authorities that do not have regard to the code of practice, but it says on the front page of the code:

"The contents of this Code are not legally binding";

it merely

"recommends good practice to follow when exercising the powers set out in the Bill."

That is not really a strong enough message to send to officials and all those involved in data-sharing arrangements. I would be interested to hear examples from the Minister of when it would be considered reasonable not to follow the code, as I assume that that is why he does not want to build it into primary legislation. I know that he will tell me that his real reason is that he wants to future-proof the codes. That is all well and good, but the Bill is already outdated. One witness wrote to us in evidence:

"Part 5 seems to imply an approach to 'data sharing' modelled on the era of filing cabinets and photocopiers when—quite literally—the only way to make data available to others was to send them a duplicate physical copy. Modern technology has already rendered the need for such literal 'data sharing' obsolete: data can now be used without copying it to others and without compromising security and privacy."

Furthermore, data sharing is not defined, either legally or technically, in the Bill or in the codes of practice. Does data sharing mean data duplication—copying and distribution—or does it mean data access, or alternatives such as attribute exchange or claim confirmation? These are all quite different things, with their own very distinct risk profiles, and in the absence of any definition, the term "data sharing" is ambiguous at best and potentially damaging in terms of citizens' trust, cyber-security and data protection. Let me give an example: there is a significant difference between, and different security risk associated with, distributing personal information to third parties, granting them controlled and audited one-time access for the purpose of a specific transaction, or simply confirming that a person is in debt or is or is not eligible for a particular benefit, without revealing any of their detailed personal data.

What is more, there is no reference in the clause to identity and how officials, citizens, or organisations, or even devices and sensors, will be able to prove who they are and their entitlement to access specific personal data. Without this, it is impossible to share data securely, since it will not be possible to know with whom data are being shared and whether they are an appropriate person or organisation to have access to those data. Security audits, of who has accessed which data, when and why, require a trusted identity framework to ensure that details of who has been granted access to data are accurately recorded. Presumably, it will also be mandatory to implement good practice security measures, such as protecting monitoring, preventing in real time inappropriate attempts at data access, and flagging such attempts, to enable immediate mitigating action to be taken.

As I said on Tuesday, all these details are moot, as are the codes of practice and indeed the Information Commissioner Office's excellent code of practice, if the existence and detail of data sharing is not known about to be challenged; hence the need for a register, as set out in new clause 35. That is why we have tabled our amendments and we would like the Minister to give serious consideration to the inclusion of these important principles and safeguards in the Bill. We are not talking about detailed regulations, we are certainly not talking about holding back technological advances, and we are not talking about the "dead hand of Whitehall", as the Minister said on Tuesday. We are talking about vital principles that should be in primary legislation, alongside any new powers to share information. The most important of those principles is transparency, which is exactly what new clause 35 speaks to. It would require public authorities to enter in a public register all data disclosures across Government.

The Minister did not know the detail of the audits that are mentioned in the codes of practice. We really need more detail on those audits, as it may well satisfy us in our request for this register. Will all data-sharing agreements be kept in a single place in each Department, updated as data are shared and disclosed across Government, with Government agencies and with non-public sector organisations? Will these additional agencies keep similar audits and—crucially—will those audits be publicly available? Also, will the audits include the purpose of the disclosure, the specific data to be disclosed, how the data were transferred, how the data are stored and for how long, how the data are deleted at the end of that time frame, what data controllers and processors are involved in the sharing of that data, and any other restrictions on the use of further disclosure of that data?

If we have, in a single place, data-sharing amendments, as this amendment would establish, the public can see and trust how their data are being used and for what purpose. They can understand why they are getting a letter from Concentrix about Her Majesty's Revenue and Customs, or why they have been targeted for a warm home scheme, and—crucially—they can correct or add to any information on themselves that is wrongly held.

Drew Hendry (Inverness, Nairn, Badenoch and Strathspey) (SNP): Does the hon. Lady agree that, if there is an opportunity to access a proactive notification service that indicates to the member of public that their data are being used and for what purpose, that should be included in any future consideration of this matter?

Louise Haigh: I completely agree, and I believe that the gov.uk Notify service would be an excellent means by which to go about that. I hope that the Minister will consider it.

Graham Jones: My hon. Friend is making a valid point, which I referenced in my point about getting on the bus and the destination. She is suggesting that individuals have rights to own their information; there

[Graham Jones]

is a register that they could accept. This is the journey that we have to make. It is about empowering the individual. My hon. Friend is making a powerful point. I am pleased that the Opposition are making this point, because it needs to be made. The future will be about individual ownership of information. I hope that my hon. Friend prosecutes the argument as well as she can.

Louise Haigh: The point is vital and it is the point that was made earlier in our proceedings. Unless we get this right at this stage, it will become a scandal that the Government will then have to deal with and it will hold back progress on sharing data, as we saw with the care.data scandal. We do not want to see the Government embroiled in another scandal like that and we hope that they heed our warnings in order to avoid one in the future.

The objective behind the register is that it could be considered an amnesty for all existing data-sharing projects, with the disclosure assisting understanding of the problem and improving public trust. Let us not kid ourselves that the Bill covers the only data sharing that happens across Government. In a recent interview with *Computer Weekly*, the new director of the Government Digital Service, Kevin Cunnington, said:

"The real work is going on in"

places such as "Leeds and Manchester"—I would disagree with him on that point for a start, because we are not fans of Leeds in Sheffield—

"as well as London. We need to be part of that. The example I use is where DWP now runs a whole set of disability benefits. It would be incredibly helpful if DWP had selected and consensual access to some of"—

those people's—

"medical data. Right now, NHS Digital and DWP are having that conversation in Leeds and we're not in the conversation. Why wouldn't GDS be in a conversation like that? If we're going to be, we've got to be in Leeds—we can't do that from here."

We know that that conversation is happening between the DWP and the NHS—despite assurances that sharing of health and social care information is not happening across Government—only because a random official mentioned it in a random interview, so I ask this question again: does the Minister have an audit of data-sharing agreements and arrangements across Government, or is it the case, as I fear it is, that not only do the public not know which data are shared across Government, for what purpose and how they are stored, but Ministers do not know either?

Calum Kerr (Berwickshire, Roxburgh and Selkirk) (SNP): The hon. Lady is making an excellent point. What this cuts back to is the underlying theme of transparency. Rather than the Government acting in a paternal way—"We'll do what is best for the citizens"—they should be transparent and make it clear to citizens why and where data are being used.

Louise Haigh: That is exactly the kind of attitude that underpins these elements of the Bill: "Trust us. We'll sort it out. Give us your data. No problem. We're going to share them freely and fairly." The Government may well do. The problem is that the public do not have that trust in them. As I said on Tuesday, this is not a party political point. The previous Labour Government were not up to scratch in handling data either. This is not a party political attack at all. It is a genuine attempt to get these proposals in the best shape possible, to aid Government digitisation and deliver efficient public services.

Just as the Government give taxpayers a summary of how their tax money has been spent so they should give citizens information on how they have used data on them. If there is transparency through a register, there can be an informed conversation about whether a data disclosure will solve the problems that it claims to. There has been data sharing to prevent fraud for decades and a complete absence of audited and accurate results from that work. Arguing that current data sharing has not prevented fraud and so there should be more data sharing equates to doing the same thing over and again and expecting a different result.

The amendment is vital to restore and build on public trust in the Government handling of data. It is not in my nature to call on my constituents to trust this Government, but if they enacted the amendment, I absolutely would. I would be able to tell my constituents in good faith that they were right to trust their data to this or any future Government, because they and the data community could see exactly how and why their data were being used and exert some control over it. If the Government do not heed this lesson now, I am afraid that they will learn the hard way when things go the way of care.data or worse, as they inevitably will.

12.15 pm

Chris Skidmore: I thank the hon. Lady for her speech, and I appreciate the caution with which she approaches the subject. We have been determined that our definition of data sharing should be in the ICO's code of practice, and we have adopted that definition in our own draft code. We will comply with ICO's best practice, which of course means keeping careful records of all data-sharing agreements. We already keep registers of data sharing by Department, and they are FOI-able. We need to take public confidence with us. We will not allow data to be shared with a public authority that does not have appropriate systems in place.

To reassure those whom the hon. Lady seeks to assure that their data can be shared without any compromise to individual security, I will take a journey through the data sharing code of practice. When we come to establish some of the fraud elements, it will be an incremental process. Debt and fraud data-sharing pilots will be set up, and the UK Government are establishing a review group to oversee UK-wide and England-only data sharing under the fraud and debt powers. The review will be responsible for collating the evidence that will inform the Minister's review of the operations powers as required under the Bill after three years. Devolved Administrations will establish their own Government structure for the oversight of data-sharing arrangements within their respective devolved territories.

Following that, a request to initiate a pilot under the debt and fraud powers must be sent to the appropriate review groups in the territory, accompanied by a business case. The business case must detail its operational period, the nature of the fraud and debt recovery being addressed,

the purpose of the data share and how its effectiveness will be measured. Absolutely rock-solid requirements need to be put in place. For instance, the public service delivery debt and fraud powers require a number of documents to be produced as part of the case for a pilot.

Those documents will be a business case for the data-sharing arrangement, which can be collated by all the organisations involved; data-sharing agreements; and a security plan. Furthermore, as part of any formal data-sharing agreements with public authorities that grant access to information, security plans should include storage arrangements to ensure that information is stored in a robust, proportionate and rigorously tested manner and assurances that only people who have a genuine business need—

Graham Jones: The Minister is making an argument to which I would extend my previous comments. He is arguing that there will be security because we will have a data repository—it will inevitably be a single data repository—with secure firewalls around it. However, the architectural principle for which he is arguing is that all data will be kept in one place. From a security perspective, that is the most dangerous way to store data. To return to why Estonia leads the world, there is a distribution—

The Chair: Order. That is an intervention. I am quite happy if the hon. Gentleman wants to catch my eye, but interventions should be short. I have been very lenient with that one.

Chris Skidmore: To return to the security angle, we must have assurances that only people with a genuine business need to see the personal information involved in a data-sharing arrangement will have access to it; confirmation of who will notify in the event of any security breach; and procedures in place to investigate the cause of any security breach. Paragraph 104 of the code suggests:

> "You should ensure that data no longer required is destroyed promptly and rendered irrecoverable. The same will apply to data derived or produced from the original data, except where section 33 of the DPA applies (in relation to data processed for research purposes)."

At all times, we want to ensure that public confidence is taken forward with the pilots. They will be put in place only once all the boxes have been ticked. Paragraph 108 of the code states:

> "You should make it easy for citizens to access data sharing arrangements and provide information so that the general public can understand what information is being shared and for what purposes. You should communicate key findings or the benefits to citizens derived from data sharing arrangements to the general public to support a better public dialogue on the use of public data."

Security is not discretionary. Amendment 190 would not reinforce that requirement. It is not a question of compliance with systems in place. Instead, there must be adequate systems in place and Ministers must have regard to those systems to ensure they meet the essential security specifications that the Government demand.

Amendments 191 to 194 concern the codes of practice and present a similar discussion to the one we had about using "have regard to" or "compliance to". The powers cover a range of public authorities in devolved areas, and we want to ensure flexibility in how powers will be operated, so that we can learn from what works and adapt the code as necessary. If bodies fail to adhere to the code, the Minister will make regulations to remove their ability to share information under the power as set out in paragraph 11 of the code of practice.

As I mentioned, the requirement to have regard to the code of practice does not mean that officials have discretion to disregard the code at will. They will be expected to follow the code or they will lose their ability to share data. There could be exceptional reasons why it is reasonable to depart from the requirements of the code. To fix a rigid straitjacket creates a system of bureaucracy where officials must follow processes that run contrary to logic. This is standard drafting language adopted for the above reasons in the Immigration Act 2016, the Children and Families Act 2014 and the Protection of Freedoms Act 2012, to name a few recent pieces of legislation.

Louise Haigh: It is welcome to hear how detailed and extensive these audits will be. If they are subject to the Freedom of Information Act 2000, will the Minister consider proactively publishing them anyway, so that we can be assured that they are all kept in one place and that data sharing happens only in accordance with data-sharing arrangements that are in the public domain?

Chris Skidmore: When we set up new data-sharing arrangements, we must remember that the ICO and the devolved Administrations must be consulted and that the powers must go before Parliament again. We will have further scrutiny when considering the regulations under the affirmative procedure for secondary legislation.

Louise Haigh: Given that the arrangements have to go through all the obstacles that the Minister has just outlined, I do not understand why not then include them in a central register, so that they are all in one place. We could then be confident that not just those cases in the Bill but all data sharing across the Government is made public and people can have confidence in how and why their data are being used and shared.

Chris Skidmore: The hon. Lady refers to new clause 35, so I would now like to address that and take her points on board. This is about informing the public about what information is being shared by public authorities and for what reason.

The Bill's provisions already include a number of commitments to transparency and proportionality, which I have already discussed in disclosing information by public authorities. There is a consistent requirement to uphold the Data Protection Act, including its privacy principles that govern the secure, fair and transparent processing of information.

We require the publishing of privacy impact assessments and privacy notices as set out in paragraph 82 of the code of practice. The research power requires the UK Statistics Authority, as the accrediting body, to maintain and publish a register of all persons and organisations it has accredited, and they can be removed under clause 61(5), which mandates that a withdrawal of accreditation will take place if there has been a failure to have regard to the code of practice.

[Chris Skidmore]

The requirements of the new clause would inevitably create a new set of administrative burdens, which in turn would carry significant cost implications. It is not clear how the uniform resource locator referred to would be agreed upon, or what assessment has been made of the administrative changes that may be required across the public sector. The requirement might have an unintended consequence. For example, it is possible that including information on the specific data to be disclosed would raise difficult questions about whether the public register would interfere with the duty of confidentiality or breach the provisions of the Data Protection Act. Some of the new powers—in particular, the research provisions—would involve the sharing of non-identifying information, so it is not clear how citizens would understand from a register which datasets contain information relating to them or any particular group of reasons.

The key purpose of the new powers is to simplify the legal landscape to enable public authorities to do their job more effectively and deliver better outcomes for the citizen. The new clause, however well intentioned—I respect the hon. Lady's point—risks working against that purpose and I therefore invite her to withdraw it.

Louise Haigh: The Opposition drafted the amendments and I accept that they may not be perfect, but the principle behind the idea of a data register is impossible to argue with. If the Minister claims that these audits will be done thoroughly and that they will be subject to the Freedom of Information Act anyway, I see no reason why they should not be proactively published, so that the public and Opposition Members can have full confidence that everything in the codes of practice, which are not statutory, is being properly adhered to.

Christian Matheson (City of Chester) (Lab): Does my hon. Friend concur that a proactive publication might be a lot more cost-effective than chasing after hundreds or, indeed, thousands of FOI requests?

Louise Haigh: Absolutely. This is where the Government often miss a trick: the interrelationship between FOI and open data could drive significant efficiencies across the Government and provide citizens and the data community with valuable data, including data that are valuable to the digital economy. I appreciate that our amendment might not be perfectly drafted, but I hope that the Minister will give serious consideration to the proactive publication of these audits and of all data-sharing arrangements across the Government.

Drew Hendry: There are existing mechanisms across Europe whereby information can be given to the public proactively. Does the hon. Lady agree that the public should not have to go through the process of making an FOI request—they should not have to go through all that hassle—to get the information that pertains to them and their lives?

Louise Haigh: Exactly. The data belong to them; that is exactly right. They should not have to jump over legalistic hurdles to find out how and why the Government are using data that should belong to them, and the Bill completely turns the view that they should not have to do so on its head. I take the Minister's point about the amendment not being properly drafted. We will go away and redraft it and we will absolutely return to this issue on Report. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Louise Haigh: As I have already set out, the Opposition broadly support the objectives outlined in the clause, but, as we have said on several occasions, those objectives must be set within strict safeguards to enable the better management of services.

Indeed, the open data policy process, which has been referenced several times, was a practical and commendable way in which to establish key principles for data to be handled, and to seek the views of industry experts. It is just a shame that it was completely ignored.

Polls show that the public consistently approve of the better use of data across Departments to help to improve customer service; nobody could really dispute that. However, our concerns are not related to the broader principle but to the practicality of these measures.

As we heard in the evidence we received, if these new powers are used appropriately in the management of debt, they could help put a stop to aggressive, unco-ordinated approaches from Government agencies to debt. There is little doubt that debt collection for central Government Departments leaves a lot to be desired. Vulnerable citizens facing multiple hardships are being pursued in a way that is to the detriment of the overall policy of reducing debt.

Citizens Advice said in its evidence to the Committee that there has been a big growth in demand for help with debt, as policies such as the bedroom tax and complex tax credit arrangements are pushing people, through no fault of their own, into debt. The Government's haphazard approach often compounds matters and creates perverse outcomes, whereby thousands of individuals who are claiming exactly what they should be claiming are targeted in profiling exercises, which amount to nothing short of a mass Government-sponsored phishing exercise. Such an exercise has no place in necessary Government efforts to reduce error.

Shocking research by the charity StepChange has found that these aggressive debt collection methods have resulted in Government Departments having the dubious accolade of being second, behind bailiffs and ahead of mobile phone companies, in the list of those organisations that are considered most likely to treat debtors unfairly.

Again, there is little doubt that the Government's move to help Departments to better share necessary information on debt could help reduce the unco-ordinated approach that currently harms debtors. However, there are two problems. First, as we have heard, the Government's debt collection process is flawed and suffers from a lack of trust; and, secondly, the clause will furnish the Government with an extension of their power in matching data, yet this year alone the Government have demonstrated an abysmal failure to match their powers to their responsibility to the users of their services. That leaves public trust hanging by a thread.

12.30 pm

The Minister mentioned Concentrix earlier—an outsourcer I am particularly obsessed with, and an example of how data matching can go wrong and how the safeguards surrounding the match can be completely ineffective. The Government used credit reference data and data from the electoral roll to target tax credit claimants for error and fraud. Individuals were accused of cohabiting, and their benefits were withdrawn as a result. One 19-year-old girl was accused of failing to declare that she had a 74-year-old partner, even though the man was dead. One of my constituents had her tax credits stopped while she was in a coma, and another young woman went without her benefits because Concentrix assumed that living in a Joseph Rowntree Housing Trust property meant she was shacked up with a 19th-century philanthropist.

I noticed earlier this week that HMRC is up for *Civil Service World's* Analysis and Use of Evidence award. If HMRC is the best the civil service currently has to offer in the use of data, we should be seriously concerned about giving it any more powers. As well as failing the hard-working vulnerable people HMRC is supposed to serve, that contract failed on an incredible scale. Concentrix breached its performance standards on more than 120 occasions in less than a year, 90% of mandatory reconsiderations were found to be successful, thousands of people had their tax credits arbitrarily withdrawn, causing severe financial hardship, and letters containing the details of individuals' claims and why they need to prove they are entitled to tax credits were addressed to the wrong people. Those breaches of data security demonstrate the high stakes involved for the Government with these data-sharing powers.

Although HMRC has done the right thing in announcing that it will not renew that contract, we need to investigate how that happened in the first place and ensure it never happens again. The Government cannot repeatedly get this wrong when chasing error and fraud in the tax credit system and the other areas that these clauses address. There is absolutely nothing to prevent them from employing another private sector contractor, tasking it with relentlessly chasing down cash and enabling it to match data from across central Government Departments with publicly available information and build a picture of individuals and who to target.

Subsection (3)(a) seems to allow for such profiling, which could have a range of unintended and severe consequences. It gives the authority the power to take action not only to collect debt but to identify it. That important distinction extends the power of the Crown. If hon. Members think that is a hypothetical concern, they should take a look at the contract between Concentrix and HMRC, which is not a unique contract in the public sector. Under the section entitled "data analytics and matching requirements", it says,

"The authority requires that the contractor, as part of the error and fraud compliance service, provide and apply a data matching and analytics solution to enhance the Authority's own risk and profiling capability".

The Minister said that the codes will be updated if the GDPR is followed in May 2018, but the Bill will be statutorily non-compliant with the GDPR, which explicitly bans the use of data for profiling.

The contract with Concentrix clearly failed, and the firm was not fit to conduct checks of that kind, but that raises chilling questions about the further extension of data-sharing powers and what can be legally provided to private companies to pursue people legitimately claiming housing benefit, child tax credits or any other benefit. The codes of practice and the legislation are very clear that personal information should be used only for the purpose for which it was disclosed, but if that purpose is so broad a power, that gives no comfort to those of us who think that their sensitive data could be used to target them.

The draft regulations provide that the Home Office, the Lord Chancellor, the Justice Department and other Crown authorities can share information for the purpose of tackling error and fraud. It would help if the Government assured us that the data will be shared only when debt has already been identified to speed up the process. The Government should rule out the type of profiling conducted by Concentrix, which led to the targeting of individuals based on erroneous data. If the power is extended to give companies such as Concentrix access to data from not only HMRC but other Government Departments and local authorities, they could build up such a picture.

However, it is clearly not only private sector outsourcing that is of concern—the public sector has shown itself to have serious flaws in the management of personal information and in debt collection. In recent years, cuts to departmental budgets and staff numbers and increasing demands from citizens for online public services have changed the way Government collect, store and manage information. The many drivers for that change include successive IT and digital strategies since 2010. We need to ensure that the Government as a whole improve their data-sharing practices. That is why we will come back to our amendment, which would make reporting a data breach to the Information Commissioner mandatory if it has met a number of conditions. We simply cannot have personal data being breached and the Information Commissioner and the individual not being informed if it is serious.

We are broadly in favour of the power set out in the clause, but we have serious concerns about its use, even within the bounds of the purpose for which it is disclosed. We are concerned that the power will be used to identify debt, as the Bill clearly states, and we would be grateful for reassurance from the Minister.

Chris Skidmore: Good debt management is a key part of achieving the Government's fiscal policy objectives. Clause 40 provides a permissive power that will enable information to be shared for the purposes of identifying, collecting, or taking administrative or legal action as a result of debt owed to the Government. With more than £24 billion of debt owed to the Government, the problem is clearly significant.

Public authorities need to work together more intelligently to ensure that more efficient management of debt occurs. We believe that the new power will assist in achieving that. By enabling the efficient sharing of information to allow appropriate bodies to draw on a wider source of relevant data, informed decisions can be made about a customer's circumstances and their ability to pay. Sharing information across organisational boundaries will help the Government to understand the scale of the issues individuals are facing, and where vulnerable customers are identified, they can be given appropriate support and advice.

Citizens Advice stated:

[Chris Skidmore]

"This new power is an opportunity to advance the fairness and professionalisation agenda in government debt collection…Sharing data between debt collecting departments will create improved opportunities for better treatment of people in vulnerable situations, and must be matched with fairer and more effective dispute resolution processes."

The Government agree with that and have worked with non-fee paying debt advice agencies to develop fairness principles to accompany the power, which are included in annex A of the code of practice.

It is important to dwell on the principles that organisations will adhere to, which state:

"Pilots operating under the new data sharing power should aim to use relevant data to help to differentiate between: A customer who cannot pay their debt because of vulnerability or hardship…; A customer who is in a position to pay their debts but who may need additional support; and A customer who has the means to pay their debt, but chooses not to pay - so public authorities, and private bodies acting on their behalf, can assess which interventions could best be used to recover the debt",

and that:

"Pilots must be conscious of the impact debt collection practices have on vulnerable customers and customers in hardship".

The principles go on to cover:

"Using relevant sources of data and information to make informed decisions about a customer's individual circumstances and their ability to pay."

That process could include:

"An assessment of income versus expenditure to create a tailored and affordable repayment plan based on in work and out of work considerations, including the ability to take irregular income into account; and consideration of the need for breathing space to seek advice, or forbearance, in cases of vulnerability and hardship…Where a vulnerable customer is identified, they should be given appropriate support and advice, which may include signposting to non-fee paying debt advice agencies."

Louise Haigh: I would be grateful if the Minister confirmed that those pilots and the powers enabled in the Bill will apply only to individuals already identified as being in debt, and that they will not seek to profile individuals who may or may not be in debt.

Chris Skidmore: Yes, I can confirm that. Moving forward, I reassure the Committee that we will continue to work closely with Citizens Advice and StepChange to look at fairness in Government debt management processes. Only HMRC and DWP have full reciprocal debt data-sharing gateways in place, under the Welfare Reform Act 2012. This power will help level the playing field for specified public authorities by providing a straightforward power to share data for clearly outlined purposes. Current data-sharing arrangements are time-consuming and complex to set up, and significantly limit the ability of public authorities to share debt data. This power will help facilitate better cross-Government collaboration that will help drive innovation to improve debt management. The clause will provide a clear power for specified public authorities to share data for those purposes, and will remove the existing complications and ambiguities over what can and cannot be shared and by whom.

Christian Matheson: The Minister may have just clarified the point I was seeking to tease out of him. The problems that my hon. Friend the Member for Sheffield, Heeley described show that, far from helping people with debt, the agencies acting on behalf of the Government have created debt that did not exist previously by misusing Government data. The Minister may have just assured us that that will not be the case. If the Minister is really concerned about reducing Government debt, perhaps the Government should have not chopped in half the number of HMRC tax inspectors and instead gone after the people who owe the Government tax.

Question put and agreed to.

Clause 40 accordingly ordered to stand part of the Bill.

Clause 41

FURTHER PROVISIONS ABOUT POWER IN SECTION 40

Amendments made: 120, in clause 41, page 40, line 5, at end insert—

"(ba) for the prevention or detection of crime or the prevention of anti-social behaviour,"

This amendment and amendment 123 create a further exception to the bar on using information disclosed under Chapter 3 of Part 5 of the Bill for a purpose other than that for which it was disclosed. The amendments allow use for the prevention or detection of crime or the prevention of anti-social behaviour.

Amendment 121, in clause 41, page 40, line 6, leave out

"(whether or not in the United Kingdom)".

This amendment removes the provision stating that a criminal investigation for the purposes of clause 41(2) may be within or outside the United Kingdom. This is for consistency and on the basis that a reference to a criminal investigation covers an investigation overseas in any event.

Amendment 122, in clause 41, page 40, line 8, leave out

"and whether or not in the United Kingdom".

This amendment removes the provision stating that legal proceedings for the purposes of clause 41 may be within or outside the United Kingdom. This is for consistency and on the basis that a reference to legal proceedings covers proceedings overseas in any event.

Amendment 123, in clause 41, page 40, line 11, at end insert—

'( ) In subsection (2)(ba) "anti-social behaviour" has the same meaning as in Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014 (see section 2 of that Act)."—*(Chris Skidmore.)*

See the explanatory statement for amendment 120.

Clause 41, as amended, ordered to stand part of the Bill.

Clause 42

CONFIDENTIALITY OF PERSONAL INFORMATION

Amendments made: 124, in clause 42, page 41, line 4, at end insert—

"(da) for the prevention or detection of crime or the prevention of anti-social behaviour,"

This amendment and amendment 127 create a further exception to the bar on the further disclosure of information disclosed under Chapter 3 of Part 5 of the Bill, allowing disclosure for the prevention or detection of crime or the prevention of anti-social behaviour.

Amendment 125, in clause 42, page 41, line 5, leave out

"(whether or not in the United Kingdom)".

This amendment removes the provision stating that a criminal investigation for the purposes of clause 42(2) may be within or outside the United Kingdom. This is for consistency and on the basis that a reference to a criminal investigation covers an investigation overseas in any event.

Amendment 126, in clause 42, page 41, line 8, leave out

"and whether or not in the United Kingdom".

This amendment removes the provision stating that legal proceedings for the purposes of clause 42(2) may be within or outside the United Kingdom. This is for consistency and on the basis that a reference to legal proceedings covers proceedings overseas in any event.

Amendment 127, in clause 42, page 41, line 12, at end insert—

'( ) In subsection (2)(da) "anti-social behaviour" has the same meaning as in Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014 (see section 2 of that Act)."

See the explanatory statement for amendment 124.

Amendment 128, in clause 42, page 41, line 13, leave out subsections (3) and (4) insert—

'( ) A person commits an offence if—

(a) the person discloses personal information in contravention of subsection (1), and

(b) at the time that the person makes the disclosure, the person knows that the disclosure contravenes that subsection or is reckless as to whether the disclosure does so." —*(Chris Skidmore.)*

This amendment applies to the disclosure of personal information in contravention of subsection (1) of clause 42. It has the effect that it is an offence to do so only if the person knows that the disclosure contravenes that subsection or is reckless as to whether it does so.

Clause 42, as amended, ordered to stand part of the Bill.

Clause 43 ordered to stand part of the Bill.

Clause 44

Code of practice

Amendment made: 129, in clause 44, page 42, line 7, at end insert—

'( ) The code of practice must be consistent with the code of practice issued under section 52B (data-sharing code) of the Data Protection Act 1998 (as altered or replaced from time to time)."—*(Chris Skidmore.)*

This amendment requires a code of practice issued under clause 44 by the relevant Minister and relating to the disclosure of information under clause 40 to be consistent with the data-sharing code of practice issued by the Information Commissioner under the Data Protection Act 1998.

Question proposed, That the clause stand part of the Bill.

Louise Haigh: In evidence, Citizens Advice told us that an estimated £1 in every £5 of debt in this country is debt to the Government. It found that its clients can suffer detriment when public bodies have overly aggressive, unco-ordinated and inconsistent approaches to debt collection. There is also fairly substantial evidence that central Government debt collection lags behind the high standards expected of other creditors, including water companies, council tax collection departments, banks and private debt collectors.

I ask the Minister to consider extending the common standard financial statement to set affordable payments, as the energy, water, banking and commercial debt collection sectors do. That is demonstrated by research from StepChange, which found that in terms of debt collection, those facing severe financial difficulty were likely to rate the DWP and local authorities only just behind bailiffs as those most likely to treat them unfairly.

12.45 pm

We know there has been a big growth in demand for help with debts from Government. Hard-pressed households feel public sector creditors are behaving worse than private companies and even payday lenders. That is a serious indictment of the lack of binding standards that apply to Government bodies chasing outstanding debt. I am pleased to note that the chief executive of HMRC has just announced that it will not be outsourcing anything ever again in relation to tax credits, following the Concentrix debate. We very much welcome that.

I would be grateful if the Minister confirmed, when he has received advice from his colleagues, whether the Government will update the standards relating to public debt collection, so that they are in line with the private sector.

Chris Skidmore: The Government have started work to look into the common financial statement and standard financial statement alongside non-fee-paying debt advice agencies. That work is in its infancy, but the evidence will help us to decide whether the CFS/SFS could have benefits for Government. Until that work is completed, the Government cannot commit fully to adopt the CFS/SFS.

Louise Haigh: Will the Minister give a timeframe for when that work will be completed and when we will have a statement from the Government?

Chris Skidmore: It is not possible for me to give a timeframe in a Bill Committee discussing clause stand part. I suggest that I write to the hon. Lady, setting out those details in due course.

Government debt is clearly different from private sector debt. It is not contractual. The Government provide a wide range of services to citizens, such as the NHS and education system, and targeted support for those who meet the eligibility requirements to receive benefits. In return, citizens are required to pay taxes and repay any benefit in tax credit overpayments or fines that have been imposed for criminal activity. That revenue helps to fund vital services. The Government aim to ensure that customers are treated fairly. We encourage customers to engage early, so that they can agree on an affordable and sustainable repayment plan that takes individual circumstances into account. We understand that if poor debt collection practice occurs, that can cause distress.

The clause requires in particular that the code of practice must be issued by the Minister. It sets out more detail about how the power will operate and the disclosure and use of data. All specified public authorities and other bodies disclosing or using information under the power must have regard to the code of practice, which sets out in detail best practice of how the data-sharing power should be used. That includes what data should be shared, how data will be protected, issues around privacy and confidentiality and, significantly, the set of fairness principles that I talked about, which must be considered when exercising the power in clause 40. With that in mind, and the fact I have discussed extensively how the codes of practice will help protect the most vulnerable in society, I hope the clause will stand part of the Bill.

Louise Haigh: I am grateful to the Minister for the commitment to write to me. It would be welcome if he could write to all members of the Committee. That shows how committed he is to improving the detail of the clause.

Question put and agreed to.

Clause 44, as amended, accordingly ordered to stand part of the Bill.

Clause 45

DUTY TO REVIEW OPERATION OF CHAPTER

Chris Skidmore: I rise to speak to amendment 130, in clause 45, page 43, line 10, at end insert—

'( ) The relevant Minister may only make regulations under subsection (5)—

(a) in a case where the regulations include provision relating to Scotland, with the consent of the Scottish Ministers;

(b) in a case where the regulations include provision relating to Wales, with the consent of the Welsh Ministers;

(c) in a case where the regulations include provision relating to Northern Ireland, with the consent of the Department of Finance in Northern Ireland."

This amendment requires the relevant Minister to obtain the consent of the Scottish Minsters, Welsh Ministers or Department of Finance before making regulations which, following a review under clause 45, amend or repeal Chapter 3 of Part 5 and make provision relating to Scotland, Wales or Northern Ireland respectively.

The Chair: With this it will be convenient to discuss Government amendment 141.

Chris Skidmore: It is envisaged that information-sharing powers will enable sharing arrangements to be set, but they may take place solely within a devolved territory or involving data relating to devolved matters. The amendments intend to require the consent of Scottish Ministers, Welsh Ministers and the Department of Finance in Northern Ireland before making any regulations to amend or repeal the provisions that relate to those territories. Regrettably, we have found technical flaws with the amendments, so we will reconsider this issue and return to it at a later stage.

Louise Haigh: I would be grateful if the Minister confirmed what technical issues there are with the amendments.

Chris Skidmore: There are a number of technical issues in these amendments, and we are determined to consult thoroughly with the devolved Administrations and the relevant offices. We will do so in due course. We will return to that later in the Bill.

Kevin Brennan (Cardiff West) (Lab): It is unusual for the Government to introduce amendments and then find technical problems with them. That is obviously what has happened and it is very unfortunate. Given that we were expecting to debate the amendments at this point, can the Minister give us an indication of when he will bring back non-defective amendments—or whether, indeed, he intends to bring any further amendments in this area?

Chris Skidmore: When it comes to the point of process that the hon. Gentleman mentions, we intend to return to this further into the Bill. The particular issue that arose with the amendments as currently drafted is that the need for consent needs to apply correctly only to devolved matters. We found that the amendments do not reflect that, which is why we wish to withdraw them today.

Kevin Brennan: It would be helpful if that were to happen during the Commons stage of the Bill, rather than in the Lords, so that this House has an opportunity, at least on Report, to consider this aspect.

Chris Skidmore: I note the hon. Gentleman's concerns and will reflect on them. I cannot give any further information at this moment. We hope to ensure that the amendments, when later drafted, will reflect the Government's desire to listen carefully to all devolved nations and ensure that this applies across the UK.

The Chair: The amendment is not moved.

Clause 45 ordered to stand part of the Bill.

Clauses 46 to 48 ordered to stand part of the Bill.

Clause 49

FURTHER PROVISIONS ABOUT POWER IN SECTION 48

Amendments made: 131, in clause 49, page 46, line 43, at end insert—

"(ba) for the prevention or detection of crime or the prevention of anti-social behaviour,"

This amendment and amendment 134 create a further exception to the bar on using information disclosed under Chapter 4 of Part 5 of the Bill for a purpose other than that for which it was disclosed. The amendments allows use for the prevention or detection of crime or the prevention of anti-social behaviour.

Amendment 132, in clause 49, page 46, line 44, leave out "(whether or not in the United Kingdom)"

This amendment removes the provision stating that a criminal investigation for the purposes of clause 49(2) may be within or outside the United Kingdom. This is for consistency and on the basis that a reference to a criminal investigation covers an investigation overseas in any event.

Amendment 133, in clause 49, page 46, line 46, leave out "and whether or not in the United Kingdom"

This amendment removes the provision stating that legal proceedings for the purposes of clause 49(2) may be within or outside the United Kingdom. This is for consistency and on the basis that a reference to legal proceedings covers proceedings overseas in any event.

Amendment 134, in clause 49, page 47, line 6, at end insert—

'( ) In subsection (2)(ba) "anti-social behaviour" has the same meaning as in Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014 (see section 2 of that Act)."—*(Chris Skidmore.)*

See the explanatory statement for amendment 131.

Clause 49, as amended, ordered to stand part of the Bill.

Clause 50

CONFIDENTIALITY OF PERSONAL INFORMATION

Amendments made: 135, in clause 50, page 47, line 44, at end insert—

"(da) for the prevention or detection of crime or the prevention of anti-social behaviour,"

This amendment and amendment 138 create a further exception to the bar on the further disclosure of information disclosed under Chapter 4 of Part 5 of the Bill, allowing disclosure for the prevention or detection of crime or the prevention of anti-social behaviour.

Amendment 136, in clause 50, page 48, line 1, leave out "(whether or not in the United Kingdom)"

This amendment removes the provision stating that a criminal investigation for the purposes of clause 50(2) may be within or outside the United Kingdom. This is for consistency and on the basis that a reference to a criminal investigation covers an investigation overseas in any event.

Amendment 137, in clause 50, page 48, line 4, leave out "and whether or not in the United Kingdom"

This amendment removes the provision stating that legal proceedings for the purposes of clause 50(2) may be within or outside the United Kingdom. This is for consistency and on the basis that a reference to legal proceedings covers proceedings overseas in any event.

Amendment 138, in clause 50, page 48, line 11, at end insert—

'( ) In subsection (2)(da) "anti-social behaviour" has the same meaning as in Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014 (see section 2 of that Act)."

See the explanatory statement for amendment 135.

Amendment 139, in clause 50, page 48, line 12, leave out subsections (3) and (4) insert—

'( ) A person commits an offence if—

(a) the person discloses personal information in contravention of subsection (1), and

(b) at the time that the person makes the disclosure, the person knows that the disclosure contravenes that subsection or is reckless as to whether the disclosure does so."—*(Chris Skidmore.)*

This amendment applies to the disclosure of personal information in contravention of subsection (1) of clause 50. It has the effect that it is an offence to do so only if the person knows that the disclosure contravenes that subsection or is reckless as to whether it does so.—

Clause 50, as amended, ordered to stand part of the Bill.

Clause 51 ordered to stand part of the Bill.

Clause 52

INFORMATION DISCLOSED BY THE REVENUE AND CUSTOMS

Amendment made: 140, in clause 52, page 49, line 7, at end insert—

'( ) The code of practice must be consistent with the code of practice issued under section 52B (data-sharing code) of the Data Protection Act 1998 (as altered or replaced from time to time)."—*(Chris Skidmore.)*

This amendment requires a code of practice issued under clause 52 by the relevant Minister and relating to the disclosure of information under clause 48 to be consistent with the data-sharing code of practice issued by the Information Commissioner under the Data Protection Act 1998.

Clause 52, as amended, ordered to stand part of the Bill.

Clauses 53 to 55 ordered to stand part of the Bill.

Clause 56

DISCLOSURE OF INFORMATION FOR RESEARCH PURPOSES

Chris Skidmore: I beg to move amendment 142, in clause 56, page 52, line 23, at end insert—

'(3A) For the purposes of the first condition the information may be processed by—

(a) the public authority,

(b) a person other than the public authority, or

(c) both the public authority and a person other than the public authority,

(subject to the following provisions of this Part).

(3B) Personal information may be disclosed for the purpose of processing it for disclosure under subsection (1)—

(a) by a public authority to a person involved in processing the information for that purpose;

(b) by one such person to another such person."

This amendment and amendments 143, 144, 146 to 149, 151 to 153, 159, 160 and 162 to 166 relate to the processing of information for disclosure under clause 56 so as to remove identifying features. They make it clear that a person other than the public authority which is the source of the information may be involved in processing that information.

The Chair: With this it will be convenient to discuss Government amendments 143 to 153, 159, 160 and 162 to 170.

Chris Skidmore: The amendments apply to the research power. Together they provide clarity on the conditions that must be met when information provided by public authorities for research purposes is processed, as set out in clause 56. They also require public authorities to obtain accreditation to process personal information with that power, and they provide further clarity on the exclusion of health and adult social care information in clauses 56 and 63.

Personal information must not be disclosed to researchers under the power unless it is first processed in a way that protects the privacy of all data subjects. Those involved in the processing of information must be accredited as part of the conditions under this power. Processing may be carried out by the public authority that holds the data concerned, a different public authority, or specialist persons or organisations outside the public sector, including those providing secure access facilities and other functions, those commonly referred to as trusted third parties, or a combination of the two.

These amendments have been tabled to ensure that the position is reflected accurately in clause 56 and to ensure that it is clear that each accredited processor can disclose information to other accredited processors as required. In addition, they clarify that a person involved in the processing of information other than the public authority holding the information can disclose the de-identified information to researchers.

As drafted, the Bill does not require public authorities to be accredited or to process data for disclosure to researchers. On reflection, the Government recognise the importance of ensuring that all bodies involved in processing information are subject to the same level of accountability and scrutiny. The amendments will enable the UK Statistics Authority, as the accrediting body, to enforce a consistent approach to best practice for handling information.

Finally, it is important that the exclusion of health and adult social care data is defined in a way that is accurate and transparent. As drafted, the research clauses could be interpreted as excluding from the power public authorities that are primarily health and adult social care providers, but which provide some health-related services. That could mean that, contrary to the intention of the Bill, public authorities, including local authorities that provide a range of services, are at risk of being barred from sharing data relating to their functions because they provide some health and social care-related services.

The amendments will clarify that public authorities whose sole function is to provide health and/or adult social care services will be excluded from the power. They also clarify that public authorities that provide

[Chris Skidmore]

health and/or adult social care services as part of a range of services can share information, including health and adult social care data.

Louise Haigh: I very much welcome the amendments. Has the Minister considered the Information Commissioner's recommendation to have an additional offence for re-identifying anonymised personal information, as in the Australian model? I otherwise support the amendments.

Chris Skidmore: We are obviously working closely with the Information Commissioner. We will consider all her recommendations in due course, but I cannot comment on that at this moment in time.

Amendment 142 agreed to.

1.1 pm

Ordered, That further consideration be now adjourned. —*(Graham Stuart.)*

Adjourned till this day at Two o'clock.

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

DIGITAL ECONOMY BILL

Tenth Sitting

Thursday 27 October 2016

(Afternoon)

CONTENTS

CLAUSES 56 to 84 agreed to, some with amendments.
Adjourned till Tuesday 1 November at twenty-five minutes past Nine o'clock.
Written evidence reported to the House.

PBC (Bill 045) 2016 - 2017

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Monday 31 October 2016

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The Committee consisted of the following Members:

Chairs: † Mr Gary Streeter, Graham Stringer

Adams, Nigel *(Selby and Ainsty)* (Con)
† Brennan, Kevin *(Cardiff West)* (Lab)
† Davies, Mims *(Eastleigh)* (Con)
Debbonaire, Thangam *(Bristol West)* (Lab)
† Foxcroft, Vicky *(Lewisham, Deptford)* (Lab)
† Haigh, Louise *(Sheffield, Heeley)* (Lab)
† Hancock, Matt *(Minister for Digital and Culture)*
Hendry, Drew *(Inverness, Nairn, Badenoch and Strathspey)* (SNP)
† Huddleston, Nigel *(Mid Worcestershire)* (Con)
† Jones, Graham *(Hyndburn)* (Lab)
† Kerr, Calum *(Berwickshire, Roxburgh and Selkirk)* (SNP)
Mann, Scott *(North Cornwall)* (Con)
† Matheson, Christian *(City of Chester)* (Lab)
† Menzies, Mark *(Fylde)* (Con)
† Perry, Claire *(Devizes)* (Con)
† Skidmore, Chris *(Parliamentary Secretary, Cabinet Office)*
† Stuart, Graham *(Beverley and Holderness)* (Con)
† Sunak, Rishi *(Richmond (Yorks))* (Con)

Marek Kubala, *Committee Clerk*

† attended the Committee

Public Bill Committee

Thursday 27 October 2016

(Afternoon)

[Mr Gary Streeter *in the Chair*]

Digital Economy Bill

2 pm

Clause 56

Disclosure of information for research purposes

Amendments made: 143, in clause 56, page 52, line 31, after "person", insert

", other than the public authority,".

See the explanatory statement for amendment 142.

Amendment 144, in clause 56, page 52, line 32, leave out "this section" and insert "subsection (1)".

See the explanatory statement for amendment 142.

Amendment 145, in clause 56, page 52, line 35, at end insert—

"() the public authority, if the public authority is involved in processing the information for disclosure under subsection (1);".

This amendment has the effect that a public authority which processes information for disclosure under clause 56 must be accredited for that purpose under clause 61.

Amendment 146, in clause 56, page 52, line 37, leave out "this section" and insert "subsection (1)".

See the explanatory statement for amendment 142.

Amendment 147, in clause 56, page 52, line 38, leave out "this section" and insert "subsection (1)".

See the explanatory statement for amendment 142.

Amendment 148, in clause 56, page 52, line 41, leave out "this section" and insert "subsection (1)".

See the explanatory statement for amendment 142.

Amendment 149, in clause 56, page 53, line 1, leave out subsection (9).—*(Chris Skidmore.)*

See the explanatory statement for amendment 142.

Question proposed, That the clause, as amended, stand part of the Bill.

Louise Haigh (Sheffield, Heeley) (Lab): It is a pleasure to serve under your chairmanship, Mr Streeter. There is little need to dwell on this chapter of the Bill because of the safeguards that, as we have heard, are already in place and are well tried and tested. I was greatly encouraged that the Royal Statistical Society said in our evidence session that there needs to be a clear and well understood framework for the sharing of such information, as proposed in this part of the Bill. As we have said at length, we support that.

Most importantly for this debate, the Office for National Statistics operates transparently and publishes guidance on what data it uses and when, and on the public value that is derived from the data and information supplied to it for the purposes of producing official statistics and statistical research. The ONS's information charter sets out how it carries out its responsibility for handling personal information, and the ONS's respondent charters for business surveys and household and individual surveys set out the standards that respondents can expect.

The code of practice for official statistics has statutory underpinning in the Statistics and Registration Service Act 2007. Statisticians are obliged to adhere to its ethical requirements, including its principles of integrity, confidentiality and the use of administrative sources for statistical purposes. The Royal Statistical Society said that consideration could usefully be given to whether a new framework for the national statistician to access identifiable data held across the Government and beyond should require a supplementary code of conduct, to extend further public confidence. I would be grateful to the Minister if he confirmed whether he has responded to that and what steps he intends to take on that point.

Finally, the national statistician recently established the national statistician's data ethics advisory committee, which provides ethical consideration of proposals to access, share and use data. The majority of the committee are independent and lay members from outside the Government, and it operates transparently with all papers and minutes published. It provides independent scrutiny of data shares and reports to the national statistician, who then reports to the UK Statistics Authority board. That model could easily be transposed to better protect data across the Government, as described in other chapters in the Bill.

We are happy to support the measures given the excellent and long-standing safeguards that are already in place, and we hope that, in time, the codes and other requirements in other parts of the Bill follow suit.

The Parliamentary Secretary, Cabinet Office (Chris Skidmore): The clause will create a clear, permissive power for public authorities to disclose information that they hold for the purpose of research in the public interest. It will ensure that any personal information is processed before it is disclosed and that a person's identity is not specified in the information, so that a person's identity cannot be deduced from that information. It will establish a set of conditions to ensure that any processing of personal information is undertaken in a way that protects the privacy of individuals.

To maintain a truly innovative and competitive economy and to ensure that decisions taken on a range of economic and social issues are informed by the best possible evidence base, it is essential that we maximise the use of rich and varied sources of administrative information that is held across public data.

Calum Kerr (Berwickshire, Roxburgh and Selkirk) (SNP): I am not sure whether the Minister is aware, but Scottish universities share all their research on the internet for the public to read, ensuring world-class Scottish research can help the world. Do the Government agree that such rules should apply to all publications resulting from the research and statistics chapters of the Bill?

Chris Skidmore: I think that it is up to each university to have a policy on what research should be published and when. There is a particular situation in Scotland, but other universities may decide that their research

may be used for purposes that remain confidential. Publication is up to the universities and academic bodies to decide.

Calum Kerr: The Minister is absolutely right—perhaps I rushed my question. I was trying to emphasise the point that, when data are shared, will he match that transparency, so that citizens can see what public benefit has been drawn from the use of their data?

Chris Skidmore: I shall come in a moment to the UK Statistics Authority's position on the use of national statistics; it would benefit enormously from these measures. The potential benefits from increased access to information extend far beyond the research community. It is generally accepted that increased research and development leads to improved productivity and therefore increased economic growth. Information is increasingly a key raw material.

The research community has for some time been prevented from making better use of information held by the public sector, due to a complex legal landscape that has evolved over time. As a result, public authorities are often uncertain about their powers to share information, leading to delays, in some cases lasting years. In the meantime, projects become obsolete or are abandoned.

The Administrative Data Taskforce warned in its 2012 report that the UK was lagging behind other countries in its approach to this issue. It called for a generic legal power to allow public authorities to provide information for research purposes. As well as providing that power, which will remove the uncertainty that has frustrated the research community, the clause will provide a set of conditions that must be complied with if personal information is to be shared.

The conditions can be summarised as the sharing and use only of information that has been de-identified to industry standards to remove information that would identify, or is reasonably likely to identify, an individual, and the requirements that those who process information that identifies a person take reasonable steps to minimise accidental disclosure and prevent deliberate disclosure of such information, that all those who process personal information or receive or use processed personal information are subject to an accreditation process overseen by the UKSA, whether they are researchers, technicians or those who provide secure environments for linking and accessing data, that research for the purposes of which the information is disclosed is accredited and that all those involved in the exercise of the power adhere to a code of practice that is produced and maintained by the UKSA.

The UKSA is the designated accredited body with a duty to maintain and publish registers of all those accredited for any purpose under the power. That includes all those who may be involved in preparing personal information for disclosure to researchers and the research project itself. The results or outcomes of the research project must be publicly available, to demonstrate that the research is for the public good. The UKSA has a duty to maintain and publish the criteria for accreditation, and all activity under the power will be subject to a code of practice issued by the UKSA. I hope that answers the hon. Gentleman's concerns.

Turning to the willingness for this to happen, the clause represents an important step forward for research in the UK. It will allow greater opportunities to produce high-quality research, which, in the words of the Economic and Social Research Council, can place

"the UK at the forefront of the international scientific landscape."

It will allow greater opportunities to improve our understanding of our economy and society.

I would like to put on record the comments of Sir Andrew Dilnot, the chair of the UKSA:

> "The Digital Economy Bill, currently before the House of Commons Public Bill Committee, represents a unique opportunity to deliver the transformation of UK statistics. The existing legal framework governing access to data for official statistics is complex and time-consuming. The proposals in the Bill, by making use of data already held across Government and beyond, would deliver better access to administrative data and for the purposes of statistics and research, delivering significant efficiencies and savings for individuals, households and businesses. Decision-makers need accurate and timely data to make informed decisions, in particular about the allocation of public resource. This Bill will deliver better statistics and statistical research that help Britain make better decisions."

Question put and agreed to.

Clause 56, as amended, accordingly ordered to stand part of the Bill.

Clause 57

PROVISIONS SUPPLEMENTARY TO SECTION 56

Amendments made: 150, in clause 57, page 53, line 24, at end insert—

> '( ) In its application to a public authority with functions relating to the provision of health services or adult social care, section 56 does not authorise the disclosure of information held by the authority in connection with such functions."

This amendment and amendments 168 to 170 ensure that Chapter 5 of Part 5 applies to a public authority with functions relating to the provision of health services or adult social care and other functions, but that in such a case the powers to disclose in the Chapter only apply to information held in connection with the other functions.

Amendment 151, in clause 57, page 53, line 28, leave out "56" and insert "56(1)".—*(Chris Skidmore.)*

See the explanatory statement for amendment 142.

Clause 57, as amended, ordered to stand part of the Bill.

Clause 58

BAR ON FURTHER DISCLOSURE OF PERSONAL INFORMATION

Amendments made: 152, in clause 58, page 53, line 38, leave out "56(9)" and insert "56(3B)".

See the explanatory statement for amendment 142.

Amendment 153, in clause 58, page 54, line 2, at end insert "(including section56(3B))".

See the explanatory statement for amendment 142.

Amendment 154, in clause 58, page 54, line 6, at end insert—

> "(da) which is made for the prevention or detection of crime or the prevention of anti-social behaviour,".

This amendment and amendment 157 create a further exception to the bar on the further disclosure of information which is disclosed under clause 56 (so that it can be processed for disclosure under that section), allowing disclosure for the prevention or detection of crime or the prevention of anti-social behaviour.

Amendment 155, in clause 58, page 54, line 7, leave out

"(whether or not in the United Kingdom)".

This amendment removes the provision stating that a criminal investigation for the purposes of clause 58(3) may be within or outside the United Kingdom. This is for consistency and on the basis that a reference to a criminal investigation covers an investigation overseas in any event.

Amendment 156, in clause 58, page 54, line 10, leave out

"and whether or not in the United Kingdom".

This amendment removes the provision stating that legal proceedings for the purposes of clause 58(3) may be within or outside the United Kingdom. This is for consistency and on the basis that a reference to legal proceedings covers proceedings overseas in any event.

Amendment 157, in clause 58, page 54, line 11, at end insert—

'( ) In subsection (3)(da) "anti-social behaviour" has the same meaning as in Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014 (see section 2 of that Act)."

See the explanatory statement for amendment 154.

Amendment 158, in clause 58, page 54, line 21, leave out subsections (5) and (6) insert—

'( ) A person commits an offence if—

(a) the person discloses personal information in contravention of subsection (2), and

(b) at the time that the person makes the disclosure, the person knows that the disclosure contravenes that subsection or is reckless as to whether the disclosure does so.

This amendment applies to the disclosure of personal information in contravention of subsection (2) of clause 58. It has the effect that it is an offence to do so only if the person knows that the disclosure contravenes that subsection or is reckless as to whether it does so.

Amendment 159, in clause 58, page 54, line 39, leave out "56(9)" and insert "56(3B)". —*(Chris Skidmore.)*

See the explanatory statement for amendment 142.

Clause 58, as amended, ordered to stand part of the Bill.

Clause 59

Information disclosed by the Revenue and Customs

Amendment made: 160, in clause 59, page 54, line 43, leave out "56(9)" and insert "56(3B)".—*(Chris Skidmore.)*

See the explanatory statement for amendment 142.

Clause 59, as amended, ordered to stand part of the Bill.

Clause 60

Code of practice

Amendments made: 161, in clause 60, page 55, line 19, at end insert—

'( ) The code of practice must be consistent with the code of practice issued under section 52B (data-sharing code) of the Data Protection Act 1998 (as altered or replaced from time to time).".

This amendment requires a code of practice issued under clause 60 by the relevant Minister and relating to the disclosure of information under clause 56 to be consistent with the data-sharing code of practice issued by the Information Commissioner under the Data Protection Act 1998.

Amendment 162, in clause 60, page 55, line 24, leave out "56" and insert "56(1)" —*(Chris Skidmore.)*

See the explanatory statement for amendment 142.

Clause 60, as amended, ordered to stand part of the Bill.

Clause 61

Accreditation for the purposes of this Chapter

Amendments made: 163, in clause 61, page 56, line 7, leave out "56" and insert

"subsection (1) of section 56".

See the explanatory statement for amendment 142.

Amendment 164, in clause 61, page 56, line 9, leave out "section" and insert "subsection".

See the explanatory statement for amendment 142.

Amendment 165, in clause 61, page 56, line 11, leave out "section" and insert "subsection".

See the explanatory statement for amendment 142.

Amendment 166, in clause 61, page 56, line 23, leave out "56" and insert "56(1)".

See the explanatory statement for amendment 142.

Amendment 167, in clause 61, page 56, line 38, at end insert—

'(6A) The Statistics Board—

(a) may from time to time revise conditions or grounds published under this section, and

(b) if it does so, must publish the conditions or grounds as revised.

(6B) Subsection (6) applies in relation to the publication of conditions or grounds under subsection (6A) as it applies in relation to the publication of conditions or grounds under subsection (2)."—*(Chris Skidmore.)*

This amendment enables the Statistics Board to revise the conditions and grounds it establishes for the accreditation and withdrawal of accreditation of people and research for the purposes of information sharing under Chapter 5 of Part 5 of the Bill.

Clause 61, as amended, ordered to stand part of the Bill.

Clause 62 ordered to stand part of the Bill.

Clause 63

Interpretation of this Chapter

Amendments made: 168, in clause 63, page 57, line 18, leave out subsection (2) and insert—

'(2) A person is not a public authority for the purposes of this Chapter if the person—

(a) only has functions relating to the provision of health services,

(b) only has functions relating to the provision of adult social care, or

(c) only has functions within paragraph (a) and paragraph (b).

(2A) The following are to be disregarded in determining whether subsection (2) applies to a person—

(a) any power (however expressed) to do things which are incidental to the carrying out of another function of that person;

(b) any function which the person exercises or may exercise on behalf of another person.".

See the explanatory statement for amendment 150.

Amendment 169, in clause 63, page 57, line 21, leave out "subsection (2)(a)" and insert "this Chapter".

See the explanatory statement for amendment 150.

Amendment 170, in clause 63, page 57, line 30, leave out "subsection (2)(b)" and insert "this Chapter".—*(Chris Skidmore.)*

See the explanatory statement for amendment 150.

Clause 63, as amended, ordered to stand part of the Bill.

Clause 64

DISCLOSURE OF NON-IDENTIFYING INFORMATION BY HMRC

Question proposed, That the clause stand part of the Bill.

Louise Haigh: Very briefly, I would be grateful to the Minister if he confirmed why a separate, further clause is necessary on disclosure of non-identifying information by HMRC. The safeguards in the rest of the Bill are sufficient.

Chris Skidmore: As the holder of some of the most useful datasets in the public sector, HMRC has an interest in sharing data more extensively where it does not compromise taxpayer confidentiality. The clause relates to the current legal constraints for HMRC on the disclosure of non-identifying information, allowing the UK tax authority to share information for purposes in the public interest. It deals with information that does not reveal a person's identity: either general information that is never related to a taxpayer or information aggregated to such a degree that it does not reveal anything particular to a person.

2.15 pm

HMRC consulted on the proposals in 2013 and received a favourable response, subject to the appropriate safeguards being put in place. The Bill introduces a permissive power allowing HMRC to decide on a case-by-case basis whether to share information, based on assessment of the benefits and risks of disclosure and taking into account the impact of HMRC's resources and the delivery of its business objectives.

The clause will also address the current anomaly whereby HMRC could be legally obliged to provide aggregate, non-identifying information under the Freedom of Information Act, yet its statutory framework might not allow HMRC to disclose the same information to Government Departments. In response to the consultation, the Information Commissioner welcomed the assurance that HMRC disclosures will be subject to the same robust principles and processes currently applied to the Office for National Statistics. The requirement that the disclosure should be for a purpose in the public interest is the same approach that is taken in chapter 5. It includes objectives such as improving policy making across Government and delivering better public services. The clause will enable HMRC to support policy development and research analysis in important areas not linked to its function, such as social mobility and education, and will help to provide added transparency through the greater potential to contribute to open data.

Question put and agreed to.

Clause 64 accordingly ordered to stand part of the Bill.

Clauses 65 and 66 ordered to stand part of the Bill.

Clause 67

ACCESS TO INFORMATION BY STATISTICS BOARD

Chris Skidmore: I beg to move amendment 171, in clause 67, page 60, line 37, at end insert—

> "() a subsidiary undertaking of the Bank of England within the meaning of the Companies Acts (see sections 1161 and 1162 of the Companies Act 2006),"

This amendment means that the provisions in new section 45B of the Statistics and Registration Service Act 2007 about access to information by the Statistics Board will apply to subsidiaries of the Bank of England as well as to the Bank itself.

The Chair: With this it will be convenient to discuss Government amendments 172 to 176.

Chris Skidmore: These are minor and technical amendments to various definitions in proposed new sections 45B and 45C of the Statistics and Registration Service Act 2007. Sections 45B and 45C give the UK Statistics Authority a right of access to information required for its functions held by Crown bodies and public authorities respectively. Under section 45B, if a Crown body declines to provide information requested by the UK Statistics Authority, the authority may decide to lay the related correspondence before the relevant legislature, including the relevant devolved legislature for the devolved Crown bodies. Under section 45C, before issuing a notice to a devolved public authority that is not a Crown body, the UK Statistics Authority must seek consent from the relevant devolved Administrations.

Amendments 173 and 176 amend the definition of the phrase "Wales public authority" in sections 45B and 45C to refer to a new definition of "Wales public authority" being created by the Wales Bill, which is currently going through the House of Lords. They ensure that sections 45B and 45C are updated with a new definition of "Wales public authority" and will operate consistently with other definitions.

Amendments 172 and 175 amend the definition of "Scottish public authority" in sections 45B and 45C to capture public authorities with mixed functions or no reserve functions within the meaning of the Scotland Act 1998. Amendment 172, which amends section 45B, also refers expressly to a public authority that is part of the Scottish Administration, clarifying that these are Crown bodies to be dealt with under section 45B.

Section 45B states that Crown bodies include

> "the Bank of England (including…the Prudential Regulation Authority)…the Financial Conduct Authority…and…the Payment Systems Regulator".

Amendment 171 clarifies that the reference in section 45B to the Bank of England also includes any of its subsidiaries. That means that section 45B can also cover bodies such as the asset purchase facility fund, which the Bank of

[Chris Skidmore]

England set up in 2009. Amendment 171 also means that any subsidiaries that the Bank sets up in future will be treated in the same way under section 45B as the Bank itself.

Amendment 174 reflects the fact that the Prudential Regulation Authority is currently a subsidiary of the Bank of England formed under section 2A of the Financial Services and Markets Act 2000. This position will change when section 12 of the Bank of England and Financial Services Act 2016 comes into force. Section 12 changes how the PRA is formed and gives the Bank of England functions as the PRA. Amendment 174 therefore ensures section 45B applies during the transitional period before section 12 of the 2016 Act comes into force. It treats the wording in brackets in the relevant part of section 45B as not applying until section 12 comes into force. Until then, the PRA, as a subsidiary of the Bank, will be covered by amendment 171.

Amendment 171 agreed to.

Amendments made: 172, in clause 67, page 61, leave out lines 39 to 43 and insert "the public authority—

() is a part of the Scottish Administration, or

() is a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998)."

This amendment modifies the requirement for a request for information under new section 45B of the Statistics and Registration Service Act 2007 and any response to be laid before the Scottish Parliament so that it applies to a request to public authority which is a part of the Scottish Administration or a Scottish public authority with mixed or no reserved functions.

Amendment 173, in clause 67, page 61, line 45, leave out from beginning to end of line 3 on page 62 and insert

"the public authority is a Wales public authority as defined by section 157A of the Government of Wales Act 2006."

This amendment modifies the requirement for a request for information under new section 45B of the Statistics and Registration Service Act 2007 and any response to be laid before the National Assembly for Wales so that it applies to a request to a Wales public authority.

Amendment 174, in clause 67, page 62, line 13, at end insert—

'( ) Until the coming into force of section 12 of the Bank of England and Financial Services Act 2016 subsection (1)(b) has effect as if the words in brackets were omitted."

This amendment makes provision about the reference in new section 45B(1)(b) to the Bank of England in the exercise of its functions as the Prudential Regulation Authority in the period before the coming into force of section 12 of the Bank of England and Financial Services Act 2016. Until that section comes into force the Authority will remain a subsidiary of the Bank and so will be covered by the reference in amendment 171.

Amendment 175, in clause 67, page 62, line 41, leave out from "authority" to end of line 3 on page 63 and insert

"which is a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998)."

This amendment modifies the requirement to obtain the consent of the Scottish Ministers before giving a notice under new section 45C of the Statistics and Registration Service Act 2007 so that it applies to a notice given to a Scottish public authority with mixed or no reserved functions.

Amendment 176, in clause 67, page 63, line 5, leave out from "authority" to end of line 10 and insert

"which is a Wales public authority as defined by section 157A of the Government of Wales Act 2006."

This amendment modifies the requirement to obtain the consent of the Welsh Ministers before giving a notice under new section 45C of the Statistics and Registration Service Act 2007 so that it applies to a notice given to a Wales public authority.

Amendment 188, in clause 67, page 65, line 3, at end insert—

'( ) The statement must be consistent with the code of practice issued under section 52B (data-sharing code) of the Data Protection Act 1998 (as altered or replaced from time to time)."
—*(Chris Skidmore.)*

This amendment requires a statement issued under section 45E of the Statistics and Registration Service Act 2007 by the Statistics Board and relating to the exercise of its functions under sections 45B, 45C and 45D of that Act to be consistent with the data-sharing code of practice issued by the Information Commissioner under the Data Protection Act 1998.

Question proposed, That the clause, as amended, stand part of the Bill.

Louise Haigh: As the Minister has just outlined, clause 67 differentiates access to information held by Crown bodies and a power to require disclosures by other public authorities. In essence, it enables the statistical authorities to request information from Crown bodies and to demand it from other public authorities. I would be grateful if the Minister confirmed why there is that distinction. He may well be aware that the Royal Statistical Society and the ONS would like the Bill to be amended to include the power to require disclosure from Crown bodies in exactly the same way as from public authorities. What consideration has been given to that? Why are the same requirements not on both types of public authorities?

Chris Skidmore: The clause gives certainty and teeth to data supplied to the UK Statistics Authority. Official statistics are not an optional extra. If they are incomplete, decisions made by the Government and Parliament that rely on those statistics could be misinformed, late and lose impact. UKSA must have the data equipment necessary to produce the numbers that decision makers need to make the best decisions in the interests of the country.

Existing legislation provides precedents for requiring businesses and households to provide information for producing aggregate statistics about the economy and society. For instance, the Statistics of Trade Act 1947 requires businesses to report the data required for the production of UK economic statistics. For the past 100 years, the Census Act 1920 has required every household to provide information once every 10 years so that we can understand our population and society. To put that in context, censuses are long established but expensive. The 2011 census cost us almost £500 million. Census data are the statistical spine of decision making, including the allocation of public funds.

Allowing UKSA access to administrative data the Government already hold is more efficient. We should not be asking people in business questions when we already know the answers from other sources. Under the Statistics and Registration Service Act 2007, UKSA must seek legislation every time it needs access to Government datasets where there is no existing data-sharing gateway. That mechanism is limited and only removes barriers that existed before the 2007 Act, and will become increasingly redundant over time.

The clause realises the expectation that, where UKSA needs access to datasets to produce statistics, it should be given that access. Section 45B requires Crown bodies,

in particular central Government Departments, to provide data when UKSA asks for them, or, where necessary, have their refusal put before Parliament. Why treat Crown bodies differently from public authorities? That way of working, set out in sections 45B and 45C, ensures consistency between how a Crown body interacts with another on the one hand, and how a Crown body interacts with a non-Crown body on the other.

Sections 45C and 45D allow UKSA to require data from public authorities and large businesses. In practice, UKSA will focus on businesses that hold data likely to support to UKSA's data needs, reducing the existing burden of surveys on businesses and individuals. UKSA must be sure that the data it relies on will continue to be provided, to ensure the integrity of the statistics it produces and the integrity of decisions based on those statistics.

Section 45F makes it clear that public authorities and businesses must comply with the notice they receive from UKSA under sections 45C or 45D, which draws on existing precedents for enforcement seen for the census and business surveys. Section 45E also requires UKSA to publicly consult on a statement of principles and procedures it will apply when operating these new powers. UKSA will lay that before Parliament and the devolved legislatures.

Louise Haigh: Section 45B lays out that UKSA must

"specify the date by which or the period within which the public authority must respond to the request."

What kind of period are we are talking about? What kind of period does the Minister consider reasonable in which a public authority must respond to a request from UKSA?

Chris Skidmore: I will write to the hon. Lady on that particular point with further information. I am more than happy to do that. She correctly noted that timeframes are set out, which highlights the transparency arrangements already set down in the Bill. That has been well thought through, and we are determined to ensure that we work closely with UKSA going forward. UKSA will publicly consult on a new code of practice to support public authorities in consulting it on planned changes to data systems to protect the accuracy and integrity of its statistical outputs. Again, that will be laid before Parliament and the devolved legislatures.

We have spoken previously about codes of practice. Illustrative first drafts of the statement and the code have been made publicly available, including to members of the Committee, and they continue to be developed ahead of a full public consultation in a few months' time. We are determined to ensure that the research and statistics communities are given the tools to enable them to do their jobs efficiently and effectively going into the 21st century. We want to ensure that the UK is a leader in developing statistics and research.

Question put and agreed to.

Clause 67, as amended, accordingly ordered to stand part of the Bill.

Clause 68 ordered to stand part of the Bill.

Clause 69

OFCOM REPORTS ON INFRASTRUCTURE ETC

Question proposed, That the clause stand part of the Bill.

Louise Haigh: I welcome the other Minister back to his place, and I look forward to the lengthy correspondence that the Cabinet Office Minister and I will be having. The Minister for Digital and Culture and I also had lengthy correspondence when he was at the Cabinet Office, and I look forward to that continuing.

Will the Minister lay out what the clause seeks to achieve? What reports would Ofcom publish under this power that it currently cannot? Would this extend to requesting and publishing information that was referenced in an earlier debate—right at the beginning on part 1—potentially in relation to existing broadband and communications infrastructure and to where Openreach and other providers are rolling out broadband in order to ensure a more effective market? The Opposition welcome all attempts by regulators and Government to make as much data open as possible, so we very much welcome the powers in the clause.

The Minister for Digital and Culture (Matt Hancock): Clause 69 allows Ofcom to prepare and publish reports on underlying data at times it considers appropriate as opposed to at specified times, as is currently the case. The short answer to the hon. Lady's question is yes. Before the end of the year, Ofcom will publish a "Connected Nations" report, for example, which typically goes into detail about the connectivity of the infrastructure, but there are restrictions at the moment on when these can be published. We think it is better to allow Ofcom to prepare and publish reports at times that it considers appropriate.

Question put and agreed to.

Clause 69 accordingly ordered to stand part of the Bill.

Clauses 70 and 71 ordered to stand part of the Bill.

Clause 72

PROVISION OF INFORMATION TO OFCOM

Matt Hancock: I beg to move amendment 177, in clause 72, page 70, line 15, after "135", insert "of the Communications Act 2003".

This amendment makes it clear that the Act amended by clause 72 is the Communications Act 2003.

The amendment corrects a minor error to clause 72. We omitted the words

"of the Communications Act 2003".

I consider this to be a pretty technical amendment.

Amendment 177 agreed to.

Clause 72, as amended, ordered to stand part of the Bill.

Clause 73

INFORMATION REQUIRED FROM COMMUNICATIONS PROVIDERS

Question proposed, That the clause stand part of the Bill.

Louise Haigh: I would like to put on the record again that this Bill was clearly not ready for Committee. We have just seen another example of an amendment that was completely uncalled for. In the last part, amendments

[Louise Haigh]

had to be withdrawn that were incorrect. I hope that the proposals are properly examined in the Lords and that this is not a recurring theme throughout future legislation that this Government introduce. It is very disappointing to see the lack of preparation for this Bill.

Claire Perry (Devizes) (Con): The hon. Lady is doing a marvellous job for her Front-Bench team, but having sat through several Bill Committees, I assure her that this situation is not particularly unusual. What is important is getting the Bill absolutely right and making sure that we use this opportunity to scrutinise it. We should proceed in the spirit of us all wanting the best thing and stop taking pops at the drafting team.

Louise Haigh: I am assured by my hon. Friend the Member for Cardiff West that this was not common practice under the last Labour Government, and I am horrified to hear that it has been common practice over the past couple of years.

2.30 pm

Matt Hancock: Amendment 177, which was agreed on a cross-party basis, corrects what was in fact a printing error. I hope that the hon. Lady will withdraw her rather pernickety point. I am glad that the Committee has had the opportunity to correct the problem.

Louise Haigh: It is good to hear that it was the 177th amendment that the Government have had to table to this Bill.

Let us move on to clause 73. The Minister will be pleased to hear that we welcome the clause, which has clearly been drafted with consumers at its heart. The clause provides Ofcom with powers to require information that will enable and empower consumers to switch, thereby creating a much more efficient and open market with fewer barriers to entry.

Ofcom does not currently have powers to require communications providers to provide information on quality of service, such as how they are doing on customer service, complaints, fault repairs or the speed of installation, and it does not have the power to specify how it would want that information to be provided. We welcome these new powers, which will make it much easier for Ofcom to publish this important comparative information that will help consumers.

I would be grateful if the Minister expanded on the points raised in relation to clause 69. He said that BT is about to be forthcoming with information on its existing infrastructure and on the roll-out of broadband. Can he confirm whether that information has been provided? If not, when does he expect it to be provided?

Subsection (5) of proposed new section 137A of the Communications Act 2003 states that the power conferred on Ofcom

"is to be exercised by a demand, contained in a notice served on the communications provider".

Prior to that, a draft notice will stipulate a reasonable notice period. Can the Minister give us some examples of what he would consider to be a reasonable notice period for a particular dataset? Will that be in negotiation with a provider, or will it be set by Ofcom? What will be the consequence for communications providers that refuse to comply? Finally, how quickly would he like to see Ofcom publish the publishable data after receiving them from a communications provider?

We are happy to support clause 73 stand part.

Matt Hancock: Clause 73 paves the way for greater access to information to help consumers make more informed decisions. The hon. Lady has set out exactly why that is needed. The clause will also enable Ofcom to require providers to collect, retain or generate data for these purposes and to ensure that consumers are easily able to access information that is most relevant to their decision. The power will enable Ofcom to require information in machine-readable formats, for example, so that third parties can mash it and provide it in a usable, meaningful and accessible way for the consumer, thereby helping things such as comparison websites, which we strongly support.

On the hon. Lady's specific questions, the data will form part of Ofcom's data publication before the end of the year. She asked about a reasonable notice period, which will be for negotiation with providers. It is for Ofcom to decide when it is appropriate to make a publication, and it will endeavour to do so as soon as possible. On the consequences for providers that do not supply the data, these are highly regulated markets in which Ofcom has significant powers, some of which we are enhancing elsewhere in the Bill, so there will be very serious consequences for a provider that does not abide by a requirement from Ofcom to publish. I hope that answers the questions.

Question put and agreed to.

Clause 73 accordingly ordered to stand part of the Bill.

Clause 74

Appeals from decisions of OFCOM and others: standard of review

Question proposed, That the clause stand part of the Bill.

Louise Haigh: The clause will reform the appeals process against Ofcom decisions, speeding up the process and ensuring that consumers' interests are better prioritised. The Communications Act 2003 states clearly that Ofcom's principal duty is to further the interests of citizens and consumers, but clearly there are issues with how the current appeals process works.

The current process is that Ofcom makes a decision following full consultation with the industry and the public; under the Competition Appeal Tribunal rules, an affected body can then appeal against the decision. Ofcom has six weeks to lodge its defence, and a month later substantive appeals are considered in a court case management conference, at which procedural and substantive points are raised. Third parties can then intervene, after which the appellant can lodge a reply. About a month before the hearing, the parties can lodge skeleton arguments. The hearing then takes place, and judgment is usually reserved. That judgment can take

anything from weeks to up to a year. Parties then have about three weeks to decide whether they want to go to the Court of Appeal.

Not only is that process incredibly cumbersome, but it allows for considerable new evidence and new parties to the appeal, of which Ofcom had no knowledge at the consultation phase, to be brought forward mid-process. Under the new system, both the process of gathering evidence, including for the cross-examination of witnesses and experts, and the general treatment of that evidence are designed to be slimmed down. The system will still allow for an appeal, of course—that is only right for the sake of justice—but it will ensure that the appeals process does not unduly benefit those who can afford to litigate. It is alleged that it is currently those with the deepest pockets who bring forward the greatest number of appeals; indeed, most appellants have far deeper pockets than Ofcom has to defend itself with.

I have heard the concerns of some within the industry about the changes, as I am sure the Minister has. Although we are in favour of the Government's proposals, I would appreciate the Minister's response to some of those concerns. In a submission to the Committee, a group of the largest communications providers has claimed that the current appeals regime works well for consumers and has delivered consumer benefits to the tune of hundreds of millions of pounds.

Calum Kerr: I understand the rationale behind trying to split up the powers that Ofcom has been given and make the process slimmer, but it is quite an achievement to get BT, Sky, Virgin Media, Vodafone and O2 in agreement. I share the hon. Lady's concern and look forward to the Minister's response, which I hope will help to allay it.

Louise Haigh: I agree, and although I support the Government's objective, it is of concern that such a wide range of communications providers—the biggest investors in communications infrastructure in the UK—are so vehemently opposed to the changes. This is exactly what the Committee stage of any Bill is designed for: to test out arguments and make sure that the right thing is being done. Will the Minister confirm what impact assessment of the proposals has been made, and what benefit he anticipates the changes will bring to consumers?

The submission that I mentioned claims that if the proposed regime had been in place, the mobile call termination case in 2007 would have led to a £265 million loss to consumers over the two-year period from 2010 to 2012. It states that

"in each of the cases cited, the Tribunal's decision was that Ofcom's decision had not gone far enough in consumers' favour. The quantifiable financial impact of these appeals totalled a net benefit to consumers of around £350-400m."

It says that the merits review

"enabled these errors to be corrected, the finding of the Government's 2013 research was that on a JR"—

judicial review—

"standard, each of these decisions would have stood unadjusted."

No one is saying that Ofcom will get things right 100% of the time—clearly, it will not. The new appeals process is not saying that either, but it will substantially raise the bar for appeals by allowing only regulated bodies to contest how a decision was made. Is the Minister confident that the decisions cited in the evidence from BT and the other providers would still be corrected under the new regime? The providers claim that they would not.

We have heard mixed messages about whether the proposals will bring the communications regulator in line with other utilities regulators. Ofcom told us in evidence that they would do just that, but is it not the case that the price control decisions of both Ofgem and Ofwat are subject to merits review by the Competition and Markets Authority? Will the Minister confirm why that is the case for other industries but not for communications?

On SMEs, techUK is particularly concerned that the higher bar of judicial review will have a disproportionate impact on smaller providers, which brought 17% of appeals between 2010 and 2015. I would be grateful if the Minister assured us that his Department has fully considered the impact these changes will have on SMEs, and particularly on new entrants to the market.

I understand that there will always be winners and losers in any regulatory change. The Minister will no doubt enjoy basking under the adoring gaze of TalkTalk and Three, but he will have to live with the fact that he is in BT's and Virgin's bad books for now. What is also clear is that for most people this appeals regime is far from well understood, as the industry claims. In fact, they would find it very difficult to understand why changes that could benefit them are being held up, sometimes for years on end, and why big communications providers are spending millions of pounds on litigation when they should be ploughing that money into helping their customers.

That is no basis on which to continue an appeals regime that leads to excessive litigation and smothers changes that may help—indeed, in some cases, may transform—consumers' relationships with their communications providers. Clearly, during the exercise of that duty, Ofcom will be required to intervene and make a ruling, which sometimes the industry may not like.

If the broad contention on this side is that Ofcom should be given further powers to ensure that the industry acts in the best interests of consumers, there is little point in allowing an appeals process to continue that is so lengthy that it can render any changes useless. One particularly compelling example given in the evidence session was about the need for far greater switching for consumers. The chief executive of Three remarked that we are at the bottom of the class in terms of switching, and that despite nearly a decade of campaigning little has been done to get rid of provider-led switching. That was because when Ofcom tried to legislate on it, to enable consumers to switch, one of the major mobile providers was able to litigate and push the matter into the long grass, from where it has not emerged until today.

With all that in mind, and pending answers to the questions that I have put to the Minister, we are happy to support the clause.

Matt Hancock: That was an excellent assessment of the pros, cons and challenges around the proposed changes to appeals. Much of the analysis and thinking that the hon. Lady has just set out is what we went through in coming to the same conclusion that it is sensible to change the appeals process.

[Matt Hancock]

I will set out some of the detail of the changes and then I will answer the specific questions that were put. The clause alters the standard review applied by the Competition Appeal Tribunal when deciding appeals brought under the Competitions Act 2003 against decisions made by Ofcom. This is in order to make the appeals process more efficient. The changes will not apply to appeals against decisions made by Ofcom using powers under the Competition Act 1998 or the Enterprise Act 2002.

Currently, appeals can be brought and decided on the merits of a case, and this exceeds and effectively gold-plates article 4 of the EU framework directive that requires that the merits of a case are taken into account in any appeal. The result of this over-implementation is an unnecessarily intensive and burdensome standard of review that can result, as the hon. Lady set out, in very lengthy and costly appeals litigation, which can hinder timely and effective regulation, and risks Ofcom taking an overly risk-averse approach to regulating the sector properly.

Christian Matheson (City of Chester) (Lab): Would it also not give Ofcom much more credibility in the eyes of the organisations that it regulates, because they would realise that they had much less ability to overturn its decisions?

Matt Hancock: That is right. We heard the evidence from Three and TalkTalk, who are in favour of this change. That is no surprise, as they are essentially the insurgents in the infrastructure market, and the incumbents were less keen on this change. We also heard from Which? and Citizens Advice, which explained that it is no surprise that large companies want to keep the status quo.

It is not my job to bask in the reflected glory of the appreciation from Three or TalkTalk, nor is it to have undue concern, rather than due concern, for the complaints of those who disagree with this change.

2.45 pm

Calum Kerr: The briefing we received recognises the Government's line on the current approach but disagrees with the contention. It actually puts forward a form of words that it believes, if inserted, would not risk any issue with the relevant European directive. Have the Government considered that? I am happy to forward that form of words if the Minister does not know what I am referring to; it is in the latest briefing.

Matt Hancock: Again, I am happy to look at any detailed representation, but we have had significant and extensive discussions about this, including with techUK and others. On the SME point that techUK specifically raised, that was covered in the impact assessment that the hon. Member for Sheffield, Heeley asked about. It was published on 12 May; on page 15 it sets out the concern that, if we had a separate system for SMEs, we would end up with a yet more complicated process, as opposed to a simpler one, which I think would be an overall benefit.

Louise Haigh: I completely accept that we should not have separate regulatory systems for SMEs and larger providers. Will the Minister confirm that the new judicial review process will not unduly hinder SMEs, in contrast to the current "on the merits" appeal process?

Matt Hancock: I have looked at that specific point and I am satisfied that the new process does not, because a judicial review can take into account those sorts of concerns but is a more efficient process of appeal.

On the point raised by the hon. Member for Berwickshire, Roxburgh and Selkirk, I should say that we have considered using the language of the directive but we do not believe that it materially changes our approach. I said I would get back to the hon. Gentleman; I was a bit quicker than even I expected.

On that basis, I hope that the use of the well-tried and well-tested judicial review will prove a more efficient regulatory basis in future.

Louise Haigh: The Minister has not addressed a couple of points: the potential loss to consumers that the industry claims the new system will create and the cases that would not have been brought under the existing system; and the mixed messages we have heard about whether the Bill brings Ofcom into line with other utilities regulators.

Matt Hancock: On the first point, I am convinced that this change will act in the benefit of consumers, because we will have a quicker regulatory approach. The big incumbents will not be able to hold up a regulatory decision through aggressive use of the appeals process. Instead, we will have a more efficient appeals process. I am convinced that this will improve the situation for consumers.

Of course, it is possible to pick out individual cases that may have gone the other way or may not have been able to be considered under the new approach. First, it is not possible to know whether that is the case without testing them. Secondly, looking at individual cases out of context does not allow us to step back and look at the effective operation of the system as a whole. I am sure the hon. Lady agrees with that approach.

Louise Haigh: But is it not the point that those decisions were made by Ofcom and were incorrect, according to the tribunal? They were not made with consumers' best interests at heart and they would not have been appealed under the new system because the method by which they arrived at those decisions was correct. Is there any scope in the proposals to allow certain examples, such as those put forward by the industry, to be given a merits-based review, as with price control reviews by Ofgem?

Matt Hancock: The cases that the hon. Lady and the industry cited have been assessed, and we believe that judgment under a JR system would have gone the same way as under the old system—but quicker. I hope that deals with that concern. JR is used in a large number of other areas. Of course there are specific other cases in which it is not, but it is a strong basis of appeal that is

regularly used in public sector decisions. If material error is present, it can then be addressed by judicial review. I hope I have answered the hon. Lady's questions.

Question put and agreed to.

Clause 74 accordingly ordered to stand part of the Bill.

Clause 75

FUNCTIONS OF OFCOM IN RELATION TO THE BBC

Question proposed, That the clause stand part of the Bill.

Louise Haigh: We do not wish to oppose Ofcom's new role in regulating the BBC, for which clause 75 provides—as the Minister knows, we supported the BBC charter agreement last week in the House—but we have some concerns, which are shared by the BBC, about how Ofcom's new role will work out in practice.

Distinctiveness is an absolutely vital characteristic of the BBC and its services. It is one of the things that justifies its public funding. The BBC should deliver its public purposes and mission, and it should serve all audiences, through distinctive services. Critically, distinctiveness should be judged at the level of services, rather than programmes. That does not mean that the BBC should focus on "market failure" programming or never make a programme that the commercial sector might make. Instead, the test should be that every BBC programme aspires to be the very best in its genre. Overall, the range of programmes in the BBC services should be distinguishable from its commercial competitors. There is a concern that Ofcom could be too prescriptive in the standards it expects of the BBC. For example, it might focus on quotas, such as the number of religious or news hours, rather than a substantive, qualitative assessment, and rather than a standard, such as high-quality journalism.

Evidence shows that BBC services are distinctive and have become more so in recent years. Audiences agree: more than 80% of the people responding to the Government's charter review consultation said that the BBC serves audiences well, almost three quarters said that BBC services are distinctive and about two thirds said that they think it has a positive impact on the market.

The definition of distinctiveness in the agreement and the framework for measuring it are therefore critically important. The section of the charter agreement that relates to the new powers that will go to Ofcom requires Ofcom to set prescriptive and extensive regulatory requirements, which must be contained in an operating licence for BBC services. Ofcom must have a presumption against removing any of the current requirements on the BBC—there are about 140 quotas in the BBC's existing service licences—and seek to increase the requirements overall by both increasing existing requirements and adding new ones.

Ofcom has been given detailed guidance about what aspects of distinctiveness it must consider for the BBC's TV, radio and online services. That follows an old-fashioned approach to content regulation based on prescribing inputs, rather than securing audience outcomes, such as quality and impact. The BBC is concerned that it will introduce a prescriptive and inflexible regulatory framework that could restrict the BBC's editorial independence and creativity.

Clarity about the definition of distinctiveness would be welcome. It should be applied to services, not individual programmes. The extensive content quotas in clause 2 of the charter should be a response to a failure to be distinctive, not the starting point.

Christian Matheson: Does my hon. Friend share my concern that, when the Government came up with the idea of distinctiveness, they themselves were not absolutely clear what it meant? Frankly, we are still at the stage at which the Government might say, "We don't know what it is, but we might recognise it when we see it."

Louise Haigh: That is a very great concern. There is a serious risk of confusion about how the new regulatory regime is going to work for both Ofcom and the BBC. To be frank, I do not think quotas are appropriate in this respect. I have got nothing against quotas—I was selected on an all-women shortlist, which aim to increase the number of women in the parliamentary Labour party.

Matt Hancock: You'd have got through anyway.

Louise Haigh: The Minister is absolutely correct that I would have won it on an open shortlist. It is very kind of him to say that.

But quotas in this respect restrict creativity and innovation, which are prerequisites of distinctiveness. Ofcom, as an independent regulator, should have the freedom to determine how best to regulate the BBC to secure policy goals. I would be grateful if the Minister confirmed what consideration has been given to the impact this will have on the quality programming we have come to expect from the BBC.

Finally, there is a concern that Ofcom may prejudice value for money over public interest. It would significantly reassure the BBC and the public, and would provide a greater degree of certainty over how Ofcom will behave in its enhanced regulatory role, if the same principles applied to the BBC charter—that there must be parity between public interest and value for money—were applied to Ofcom as well.

Matt Hancock: I am glad we have cross-party support for the clause, as we do for the BBC charter. It is incredibly helpful to the BBC's role that it knows that the basis on which it operates and is regulated is supported on a cross-party basis.

It is very important—I will read this clearly on to the record—that distinctiveness as set out in the framework agreement is about BBC output and services as a whole, not specific programmes. Ofcom has the capability to make judgments about the overall distinctiveness of BBC output and services as a whole. That is the basis on which we expect it to operate under this legislation.

The hon. Lady asked whether there should be guidance underneath that. As she set out, there is existing guidance, and the public are very happy in large part with the result of that. I reject the idea that we cannot have any detail underneath the basis that distinctiveness should

[Matt Hancock]

be decided on BBC output and services as a whole. At the moment, as she set out, there is detail, and it works well.

This is essentially an incremental approach. The BBC already faces this guidance and operates successfully. The clause is not prescriptive in that regard. Ofcom needs to operate in a reasonable way and exercise its judgment to ensure that we get the much-loved BBC operating as well as it can, as it has in the past and as it should in the future.

Question put and agreed to.

Clause 75 accordingly ordered to stand part of the Bill.

Clause 76

TV LICENCE FEE CONCESSIONS BY REFERENCE TO AGE

Matt Hancock: I beg to move amendment 178, in clause 76, page 74, line 24, at end insert—

'( ) In subsection (4)(a) after "concession" insert "provided for by the regulations"."

Section 365A(4) inserted by clause 76(6) gives the BBC power, where they determine that a TV licence fee concession is to apply, to provide how entitlement to the concession may be established. This amendment makes a consequential amendment to the Secretary of State's power to make similar provision.

The Chair: With this it will be convenient to discuss Government amendments 179 to 181.

Matt Hancock: Clause 76 will transfer policy responsibility for the concession that provides for free TV licences for those aged over 75 to the BBC. These technical amendments clarify the relationship between the Secretary of State's power to set concessions and the BBC's power to set concessions for those aged 65 and over. The amendments provide clarity, making it clear that the power of the BBC from June 2020 to determine age-related concessions for people over 65 extends to any such concession as previously provided for by the Secretary of State, with the exception of the current residential care concession. That was always the intended effect of the clause, and the amendments merely provide greater clarity in the drafting and remove any ambiguity.

Amendment 178 agreed to.

Amendments made: 179, in clause 76, page 74, line 26, after "section" insert "or section 365A"

This extends the definition of "concession" given in section 365(5) of the Communications Act 2003 to section 365A inserted by clause 76(6).

Amendment 180, in clause 76, page 74, leave out lines 28 and 29 and insert—

'(5A) Regulations under this section may not provide for a concession that requires the person to whom the TV licence is issued, or another person, to be of or above a specified age, unless—

(a) the age specified is below 65, and

(b) the requirement is not satisfied if the person concerned is 65 or over at the end of the month in which the licence is issued.

(5B) Subsection (5A) does not apply to—

(a) the concession provided for by regulation 3(d) of and Schedule 4 to the Communications (Television Licensing) Regulations 2004 (S.I. 2004/692) (accommodation for residential care), or

(b) a concession in substantially the same form."

This amendment allows the Secretary of State to continue the existing concession in relation to accommodation for residential care, including its age-related element, after May 2020, but after that date any other age-related concession would be a decision for the BBC (see amendment 181).

Amendment 181, in clause 76, page 74, line 33, leave out from "apply" to end of line 39 and insert—

'(1A) Any concession under this section must include a requirement that the person to whom the TV licence is issued, or another person, is of or above a specified age, which must be 65 or higher, at or before the end of the month in which the licence is issued.

(1B) A determination under this section—

(a) may in particular provide for a concession to apply, subject to subsection (1A), in circumstances where a concession has ceased to have effect by virtue of section 365(5A), but

(b) may not provide for a concession to apply in the same circumstances as a concession within section 365(5B)."—*(Matt Hancock.)*

This amends the power of the BBC from June 2020 to determine age-related concessions for people over 65, to make clear that it extends to any such concessions previously provided for by the Secretary of State, with the exception of the current residential care concession (see amendment 180).

Question proposed, That the clause, as amended, stand part of the Bill.

The Chair: With this it will be convenient to discuss new clause 38—*Responsibility for policy and funding of TV licence fee concessions*—

After section 365(5) of the Communications Act 2003 insert—

"(5A) It shall be the responsibility of the Secretary of State to—

(a) specify the conditions under which concessions are entitled, and

(b) provide the BBC with necessary funding to cover the cost of concessions,

and this responsibility shall not be delegated to any other body."

This new clause seeks to enshrine in statute that it should be the responsibility of the Government to set the entitlement for any concessions and to cover the cost of such concession. This new clause will ensure the entitlement and cost of over-75s TV licences remain with the Government. It would need to be agreed with Clause 76 not standing part of the Bill.

3 pm

Louise Haigh: I rise to address new clause 38, which is in my name and that of my hon. Friend the Member for Cardiff West. I am sorry to say that this is where any cross-party consensus on the Bill ends. We absolutely do not support clause 76 or any of the amendments to it. Not only the Opposition, but the more than 4 million over-75s in this country who currently make use of this benefit oppose the clause. The benefit was promised to them in last year's Conservative manifesto, a manifesto that, frankly, many of them will have voted for in good faith. Now, just 16 months into the Parliament, the Government are abandoning that pledge on the pretence that it should now be for the BBC to decide. Well, it will not only be Opposition Members, but millions of over-75s, and indeed future over-75s, who see right through that underhand tactic.

Just to concentrate the Committee's mind, I did a bit of research at 11 o'clock last night, when I was still in my office writing my speeches for today. Given that

more than 89% of over 75-year-olds make use of the free TV licence introduced by the previous Labour Government, in the Minister's West Suffolk constituency there will be 8,863 over-75s who potentially stand to lose out because of the Government's tactics—that is one of the highest numbers in the entire country. I do not have good news for the Parliamentary Secretary, Cabinet Office either: 7,121 over-75s in his constituency will be very unhappy with this measure.

An awful lot of disgruntled over-75s will be coming the Ministers' way in future surgeries. There will be quite a queue at their constituency offices. I would not rule out the pensioners having a copy of the Conservative manifesto in hand, because that manifesto contained a pretty unequivocal promise:

"We will maintain all the current pensioner benefits including Winter Fuel Payments, free bus passes, free prescriptions and TV licences for the next Parliament".

In fact, the header above that list of pensioner benefits said:

"We will guarantee your financial security".

Those benefits were all introduced by the previous Labour Government.

Kevin Brennan (Cardiff West) (Lab): Does the manifesto mention anywhere that the Government might transfer their responsibility for any of those benefits to an unelected body?

Louise Haigh: No, that is exactly my point. Whether or not the BBC gains responsibility for this provision is moot. The BBC is an unaccountable organisation when it comes to setting welfare policy. This represents the start of a slippery slope. Where does it end once the Government start asking other bodies to make decisions on who gets benefits? This is yet another broken promise—one promise has already been broken in part 3—so we are not doing very well. I am sure the powerful older voter lobby will not take this lying down.

Nigel Huddleston (Mid Worcestershire) (Con): Does the hon. Lady accept that this measure was not imposed on the BBC? The deal was negotiated with the BBC in exchange for other things, including opening up revenue opportunities such as by closing the iPlayer loophole.

Louise Haigh: It is interesting that the hon. Gentleman makes that point, because I was just about to say that I am sure the Government will argue that the BBC has been rewarded handsomely in the charter renewal process and that the BBC will decide its funding policy for over-75s within that context.

From 2018, the BBC is being asked to shoulder £200 million of the annual cost of free TV licences, and it will assume the full £745 million annual bill from 2020—that amounts to more than a fifth of the entire BBC budget. It is more than enough to fund Radio 4 ten times over, and it is almost enough to fund the entire budget of BBC 1. The BBC has been asked to take control of setting the entitlement for over-75 licences because the Government know that they cannot afford it at its current rate. We accept that the BBC has asked for responsibility for this policy, but that is because the cost of the policy was enforced on it through negotiations. It is outrageous that the BBC is being asked to fund it at all.

Kevin Brennan: It is interesting that my hon. Friend used the term "negotiations" and the Minister repeated it from a sedentary position. There is a difference between negotiations between equals and being negotiated with by someone holding a loaded gun to one's head.

Louise Haigh: That is absolutely right. The Opposition made clear in the debate on the BBC charter our utter condemnation of the underhand, aggressive, bully-boy way in which the Government "negotiated". It was not a negotiation. As a former trade union rep, I recognise a negotiation when I see one, and the way the Government handled the previous licence-fee settlement was nothing of the sort. That led us to the position we are currently in. The BBC should never have been given the responsibility for delivering on a Conservative party manifesto pledge. It should have felt able to reject even the suggestion that it take on the cost of free TV licences for the over-75s.

Nigel Huddleston: Is the hon. Lady suggesting that the BBC is not capable of effective negotiations? Its senior executives include Labour's former Secretary of State for Culture, Media and Sport.

Louise Haigh: The point is that, as my hon. Friend the Member for Cardiff West said, the BBC was essentially in negotiations with a gun to its head. It was not a free and fair negotiation. The individual to which the hon. Gentleman just referred does not sit on the BBC board, and I do not believe he was involved in the negotiations with the Government.

The fact that we have reached this point—that the BBC was in essence forced to agree to become an arm of the Department for Work and Pensions—says a lot about the overbearing, menacing way the Government treated an organisation that they should cherish, and the cavalier disregard they have shown to the over-75s to whom they made a promise last year. Call me old fashioned, but I believe that promises should be kept. Behaviour like the Government's brings disrepute on all Members from all parties. It makes people think that it is exactly what politicians do: we promise things in elections that we have absolutely no intention of delivering. It is a problem for all Members, whether Government or Opposition.

Despite public outcry, the Government have still not ruled out further stick-ups of the type that have got us into the position we are in now. They have refused to establish a transparent process to set the licence fees of the future. The Opposition do not consider it a done deal. With new clause 38, we are seeking to guarantee free TV licences to over-75s. That would give the responsibility for the policy and the funding of TV licences back to the Government, where it belongs. There would be no more wriggling out of a decision that should be laid firmly at the Minister's door.

If the Conservatives want to rid themselves of the cost of the free TV licence, they should have the courage to say that they are doing it. They should have put it in their manifesto and campaigned on it; they should not have created a non-ministerial branch office of the DWP in the BBC to do their dirty work for them. That is why if our new clause was accepted we would be calling for the scrapping of clause 76 in its entirety.

[Louise Haigh]

The new clause is very clear: it should be for the Secretary of State for Work and Pensions to specify the conditions under which people are entitled to concessions, and to provide the BBC with the necessary funding to cover the cost of those concessions. That is how it was set up under the previous Labour Government, and it is under those conditions that it should continue. The responsibility should not be delegated to any body other than the Government themselves. They should not be allowed to get away with delegating the responsibility and effectively forcing the BBC to take the rap.

This is a point of principle for the Opposition. We cannot accept a policy that takes the responsibility for even a tiny part of our social security system and gives it to an organisation with no direct accountability to the electorate. Unaccountable organisations do not have to face the consequences of their decisions, especially given the announcement we have heard today from the chief executive of Her Majesty's Revenue and Customs. Even HMRC does not want to see private sector involvement in decisions on tax credits. A non-ministerial body has said that the private sector should not be involved in who does or does not receive tax credits, or any other type of benefit. That is exactly the argument we are making.

Private sector organisations are the wrong bodies to be involved in deciding who gets benefits, not only because they are incentivised by profit but because they are unaccountable. They do not have to stand for election based on those decisions, and therefore they should not be allowed to make them. It is the equivalent of outsourcing children's services to Virgin and, in the process, asking them to pick up the tab for child benefit and requiring them to decide who gets it. Our social security system is far too precious for BBC executives, however noble their intentions or professional their considerations, to decide who is and who is not entitled to a benefit of any description. Labour introduced the free TV licence for the over-75s. It cannot be a BBC executive, unaccountable to the public and unaccountable to all our constituents, who calls time on it.

If the amendment falls, it will be high time that the Government were honest about what they were doing and honest with the voters. If they are not, Labour will do everything in its power to make it clear to those millions of over-75s exactly what is happening: their TV licence entitlement will be reduced or taken away not by the BBC, but by the Government who knowingly and cynically engineered the change.

Calum Kerr: What a fantastic presentation of a new clause, which I absolutely agree with.

Having looked into this whole area, I find it staggering. The BBC is faced with the prospect of huge cuts, but I am concerned that it is suddenly being passed the responsibility for setting policy. The Bill shows that the Government like to outsource as much as possible, because they outsourced most of the content to Ofcom in the early stages. However, the proposal relating to free TV licences for the over-75s is an absolute abdication of responsibility. We have all been invited to enough Age Concern events to know how isolated elderly people feel and how important television is for them. This is fundamentally welfare policy.

Kevin Brennan: On the point about isolation, does the hon. Gentleman agree that what the Government are effectively doing is equivalent to devolving concessionary fares to private bus companies and then letting them decide whether older people should have concessionary fares?

Calum Kerr: Absolutely. I see we are on a bus theme, which must be because the hon. Member for Hyndburn has returned to his place.

We must consider the risks inherent in this shift. With its budget potentially squeezed in future, the BBC is the one faced with choosing a priority. The BBC will have to decide whether someone should get a free TV licence. Fundamentally, that is welfare policy. I hope the Government are listening and will reconsider. The new clause is well worded and I fully endorse it on behalf of the Scottish National party.

Christian Matheson: I support the new clause and congratulate my hon. Friend the Member for Sheffield, Heeley on an outstanding contribution among numerous outstanding contributions during the Committee's considerations.

The hon. Member for Berwickshire, Roxburgh and Selkirk is absolutely right that the proposal is an outsourcing of responsibility, but there is more to it than that. The Government are not only putting a further financial squeeze on the BBC, but when, as may be inevitable, the allocation of TV licences to the over-75s has to be reviewed, they will apparently have a clean pair of hands. It will be, "Not us, guv—it was the BBC what did it", when that may well have been the intention all along. It is, again, outsourcing of responsibility and an attempt to evade responsibility, put on the financial squeeze, take a step back and say, "It's nothing to do with us. It's that bad BBC. Because that bad BBC is so bad, we shall cut them even more to punish them for how they have treated pensioners."

My hon. Friend the Member for Newcastle-under-Lyme (Paul Farrelly), who does not serve on this Committee, described the events of June and July 2015 when the so-called negotiation took place as a drive-by shooting when we were in the Culture, Media and Sport Committee. Hon. Members have today talked about negotiations with a gun to the head; a drive-by shooting is an appropriate description of what happened.

The BBC board was taken by surprise by the motives of the then Chancellor of the Exchequer, the right hon. Member for Tatton (Mr Osborne), and the then Secretary of State for Culture, Media and Sport. The Select Committee asked the chairwoman of the BBC Trust whether she and her fellow trust members had considered resigning in protest at what was happening; she declined to answer. I am sure that there were discussions.

3.15 pm

I also note that at a later meeting of the Select Committee, we asked the chairwoman about an apparently private meeting that she had with the former Prime Minister, David Cameron, without any officials being present, at which she was appointed to the board of the new BBC Trust. I do not, of course, seek to link the two events in any way. The Conservative party made a pledge in its manifesto, as it was entitled to, but it sought to get a public body outwith responsibility in that area to pay for that pledge.

Kevin Brennan: Is there not a further cynicism to this? The Government did that in the full knowledge that the policy had what the Treasury often calls "future reach", as the number of over-75s is likely to go up. Even given that the Government are partially compensating the BBC for this, they know full well that the policy will become more expensive.

Christian Matheson: That is an extremely good point, and it reads back to the point that I made earlier: when there has to be a review of the cost of the policy, and perhaps a reduction in the availability of free TV licences, Ministers—perhaps they will be shadow Ministers by that time—*[Interruption.]* We fight on to win. Conservative Members will be able to point to the BBC and say, "It was the BBC what done it", in order to evade all responsibility. But they will not evade responsibility, because this will not be forgotten, if they get away with doing it. There is a much better alternative: the excellent new clause proposed by my hon. Friend the Member for Sheffield, Heeley.

Louise Haigh: I am appalled by what is, as my hon. Friend is clearly laying out, a naked attempt to evade responsibility. Does he share my concern that this is the beginning of a slippery slope? Where exactly does this end? Once the principle that the Government are attempting to put in the Bill is in legislation, to whom else can they outsource responsibility for their social security policies?

Christian Matheson: My hon. Friend makes a good point. I am cautious about straying too far from the point under discussion, but she says that this is the beginning of a slippery slope. It is not, because the Government have form in this area. I look to you, Mr Streeter, for a little bit of latitude here.

There are, for example, massive cuts to local government funding; the Government have taken huge amounts of money away from local authorities, expect them to come up with cuts and reductions in services, and then say, "It is nothing to do with us; blame your local authority." There is one point on which I would disagree with my hon. Friend the Member for Sheffield, Heeley: this is not the beginning of a slippery slope; it is a continuation of form. The Government have been rumbled, and they know it.

Graham Jones (Hyndburn) (Lab): The amendment is important. It defines the Opposition against the Government. We value the BBC, but there is always a criticism, and the Government are reaffirming people's view that the Government do not really trust the BBC. If they can do anything to undermine the BBC, they will, instead of supporting it. During the passage of the charter, there has been to-ing and fro-ing, and criticism of the BBC, using the stick of distinctiveness and other sticks, such as the five-year break clause.

The Government always say that they are there to stand up for the BBC and give it the freedoms that it wants, but this is not a freedom, of course; it is a shackle. As my hon. Friend the Member for Cardiff West said, the Government are trying to outsource responsibility. They will not do it on bus passes; they will not say, "We'll make the bus companies make the decision on free bus passes", but they will make the BBC accountable for the over-75s' free TV licences. I do not think that the Government can escape that responsibility, or the accusation that they are continually chipping away at the BBC.

Let us talk about the issue in numbers. By 2020, when the BBC has to pay fully, the figure will be £700 million. That is a considerable amount of money for the BBC to find at a time when the Government have chipped away at BBC budgets through a bit of slicing here and another bit of slicing there, and even with a cap on the licence fee.

Kevin Brennan: Is it not correct that at that point the people at the BBC will be faced with a decision, which is to do what is in their nature—to make programmes, to produce content and so on—or to continue an aspect of what is, after all, social policy? Will they not always have to look at what their core activity is: programme making and their distinctive role in the broadcasting universe?

Graham Jones: Absolutely. My hon. Friend makes the point perfectly. There is no need to add too much to that, other than to say that if we want to talk about the Government's view of the BBC and this chipping away, which our new clause is designed to prevent, it is the outsourcing of programme making again to 100% programme making that will now be made out in the private sector and not in-house. Again, it is part of the package of making the BBC less viable, so that we arrive at a day when a tough decision might have to be made because the BBC as it exists now has been completely undermined. The policy is not to put it on a firmer footing. This £700 million is a huge part of that chipping away at the BBC.

Calum Kerr: In reality, the Government by all means could have had a financial settlement that reflects the same outcome, but the fact is they have passed the policy. Why pass the policy other than to abdicate responsibility?

Graham Jones: The hon. Gentleman anticipates what I was moving on to, which is that the policy is also about passing responsibility. The Government want to shape the decision and take the credit where there is an upside, and to dump it on the BBC where there is a downside. That is what this is about—so the BBC is left with it.

Suppose the Government wanted to offer further icing on the cake and have over-70s get the free TV licence. The Government would take the credit for that, but any difficult decisions, such as only over-80s getting the free licence and the 75-year-olds losing out, will of course be the BBC's fault. We can see exactly what is happening and the duplicity of the argument. The Government are setting the BBC up with a dilemma: it will take the stick for any downsides, but for any upsides the Government will be up there on the podium, all backslapping each other, saying, "Great social policy!"

There is no escaping that, and I do not think that the general public are fooled—they can see. It would make perfect sense for the Minister to accept new clause 38, because the public see what the Government are doing with that shift of responsibility for the over-75s. The public will not be fooled by the shift; they can see

[Graham Jones]

precisely what Ministers are trying to achieve. The public, too, will be concerned and asking how it affects them, the ordinary person. Will the BBC, faced with further cuts, have to say, "Well, we're sorry, it's only over-80s who will get it"? Decisions and responsibilities are outsourced to the BBC, and the licence fee payer, in particular those coming up to that age, will be wondering, "Hang on, I'm going to get the worst of both worlds—either a Tory Government or the BBC cutting my licence fee." I do not think that the public will be too happy. They will not not see through this—sorry about the double negative.

Louise Haigh: My hon. Friend is right. This predates the Minister's time in post, so I very much hope that he takes the opportunity to go back on his predecessor's decision. The Government thought they were being very clever with this move to outsource and put the duty on the BBC, but as my hon. Friend says, everyone will see right through this. Nobody will blame the BBC. The responsibility will lie clearly with the Government, and I hope that they are listening and will act on his points.

Graham Jones: We trust that the Government will listen to the public and see that they are on the wrong side of the argument, but perhaps we will find out in a few minutes that they do not recognise that.

Kevin Brennan: I do not think the 5,503 people in my constituency who will be affected are fools, but does my hon. Friend agree that any Member who votes for the change must think that the people in their constituency who will be affected by it are fools? To take an example at random, the hon. Member for Devizes has 6,478 constituents who will be affected.

Graham Jones: My hon. Friend makes a good point. I have glanced over the figures, and it seems that more people will be affected in the constituencies of Government Members. Perhaps those Members should be mindful of their constituents who will have real concerns about the proposal. They will not be fooled by the idea that the Government are taking a genuine and reasonable approach in giving the BBC responsibility for TV licences for over-75s.

If the Government have to take with one hand—and I do not agree with that—they could at least have made an attempt to give back with the other hand. Other than some minor giveaways to the BBC, they have made no attempt to correct even the fiscal element of the change, never mind the moral, ethical, social and public policy elements. The Government say in their explanatory notes that the BBC cannot expect to get any retransmission fees from Virgin, which is covered by the Bill, or Sky, which is not. There will therefore be no material change in the relationship between platform providers and content providers such as the BBC, which are forced to provide their content on those platforms. The Government could at least have corrected the fiscal element of the change by doing something about that commercial relationship, but instead they decided to take £700 million from the BBC. They already have a track record of slicing BBC funding for pet projects such as local TV or broadband.

The public will not be fooled. Thousands of constituents of Government Members will see the change and wonder why their Member of Parliament has taken this decision. Those in receipt of an over-75 TV licence, or coming up to that point, will think it is a deterioration in public policy. They will think, "This is not in my interests. I don't agree with it. Why has my Member of Parliament voted against the new clause?" Government Members should think long and hard about the new clause, because I am sure their constituents will not approve of them voting against it.

Mark Menzies (Fylde) (Con): I did not intend to speak to new clause 38, but the power of the arguments made by Opposition Members has led me to rise to my feet. As a vice-chairman of the all-party BBC group and a fan and defender of the BBC, I cannot let some of the comments that have been made go unanswered.

If the situation were as simple as costs being transferred from the Government to the licence fee payer so that older people lost out, I would be the first to join Opposition Members in the fight against it, but that is not what the Government are proposing. We have to look at the change in its totality. For example, there is no proposal to end the over-75s' free TV licence. It is clear that the Government wish that to continue. It was part of the negotiations and agreements that the BBC agreed to as part of the overall package. It was quite happy to accept responsibility for the over-75s' licence fee funding.

3.30 pm

The second point is that the BBC, as part of the negotiation process, has been given guaranteed increases in the licence fee. Under the previous settlement, that did not occur. More money from licence fee payers is going into the public sector broadcasts that many Government Members love. The other key point is that we are seeing an end to top-slicing. Under the previous settlement, top-slicing was money that went from licence fee payers to the private sector in order to license BT—one of the biggest beneficiaries—to provide for broadband investment. That was not directly helping broadcasters. Money going from the BBC to private sector broadband providers has now ended.

Louise Haigh: It is interesting to hear that the hon. Gentleman thinks that the Government have ended top-slicing. What is his opinion of the contestable fund that should have gone back to the BBC? There was an underspend in the top-slicing he mentioned. We have had no commitment from the Minister, so that will be a one-time-only thing, and we do not know that it will continue after the three-year period.

The Chair: Order. I am keen that we focus on the new clause and on clause 76 stand part, and not allow ourselves to get into a wider discussion about the future of the world and the BBC as we know it.

Mark Menzies: The other reason that I oppose new clause 38 is that the BBC, under the settlement, has a clear commitment to original content. Conservative Members should be reassured, as should older people listening and reading about the debate and the Government's measure. The money does not come from a money tree and would have to be found from somewhere,

and it would be found from taxpayers, many of whom are over 65. Elderly people themselves would have to find money to go towards paying for over-75s' free TV licences. That money is now coming out of the licence fee, so taxpayers' money is now available to go into other things. It is important that we do not forget our elderly constituents and that the Government in their totality do everything they can to ensure that the money that is freed up from being spent on the over-75s' free TV licence goes to older people.

Graham Jones: I am grateful to my hon. neighbour for giving way. I respect the fact that he has in the past been a passionate spokesperson for the BBC, and I hope that he continues to be. He argues that it is the Government's policy not to change the current arrangements for over-75s' free TV licences. One therefore has to ask: why is it the BBC's responsibility if it is the Government's policy?

Mark Menzies: I take compliments wherever they come from and I am certainly happy to take them from the hon. Gentleman. The key question for me is: are we, in one form or another, providing free TV licences for over-75s? Yes, we are. Is the BBC, under the current settlement, out of pocket? No, it is not because the licence fee is being increased and top-slicing is ending. The BBC is committing to continue to invest record sums of money in facilities such as BBC Salford, which has been truly transformational up in the north-west. If money were not an issue in the public sector, I would be saying, "Absolutely, let's continue to find more money for the BBC to provide TV licences to an even larger group of people."

Kevin Brennan: The hon. Gentleman is making a stout and reasoned defence of the Government's position and many aspects of the settlement with the BBC. I accept that, but can he say truthfully that he believes that it is the right move to transfer responsibility for this policy from the Government to the BBC?

Mark Menzies: I think it was part of the overall negotiation. Look at the package that was agreed, which included the end of top-slicing—a considerable liability that the BBC itself felt was an unfair burden on it under the previous settlement—and responsibility for broader licence fee management. Looking at it like that, I think it is a fair settlement during a difficult financial period.

It is easy to castigate the Government's move on measures such as this, but look at it against the backdrop I have outlined. There is more money for the BBC and also an agreement from the BBC. This was not objected to or protested against by the BBC management. They are not raising this as an unfair charge, in a way that at times the previous BBC management cited the issue of broadband top-slicing as unfair. The Government noticed that was unfair, acted upon it and removed it.

Graham Jones: The hon. Gentleman is making a passionate defence and trying to justify the Government's position. I applaud him for trying to make the best of what is a bad job. He talks about fairness and says that it is the 65-year-old licence fee payer who will subsidise the 75-year-old. There are twice as many over-75 TV licence holders in Beverley and Holderness as in Hyndburn. Where is the fairness in pensioners in Hyndburn subsidising pensioners in Beverley and Holderness, where there are twice as many free TV licences?

Mark Menzies: If you will forgive me, Mr Streeter, I will not get into the debate of whether Beverley and Holderness or Hyndburn should be the ultimate beneficiaries, because that is ultimately about Lancashire and Yorkshire—a subject I will stay well away from.

I conclude by saying I appreciate the efforts of the Opposition in raising this point, but we have to appreciate that, at the end of this settlement, the BBC will have more resources going into it.

Louise Haigh: Will the hon. Gentleman give way?

Mark Menzies: I hope the hon. Lady will forgive me; I have given way to her several times. The BBC will have more resources as a result of this. The over-75 licence fee will become the responsibility of the BBC, but the indications from the Government are clear: we are committed to free licences for the over-75s, as we promised in our manifesto.

Matt Hancock: It was going so well and we were having such a rational debate until that sudden outburst. Let me respond to the points that were made. I am proud to support clause 76, which safeguards the TV licence and delivers on our manifesto commitment to maintain free TV licences in this Parliament. Until that speech right at the end, we heard an awful lot of bluster but saw little light, so I will remind the Committee of a few facts.

First, transferring the responsibility for the free TV licences to the BBC as part of the funding settlement was agreed with the BBC and is what it says on the tin: it is part of a funding settlement. The question of who pays is part of the funding of the BBC. In July last year, Tony Hall, the Director General of the BBC, said:

"I think we have a deal here which is a strong deal for the BBC. It gives us financial stability."

I suggest that anybody who votes against clause 76 votes against financial stability of the BBC and is ultimately voting to put the free TV licence at risk. I will be saying to all 8,853 of my constituents who get a free TV licence that we are safeguarding the free TV licence.

In the run-up to the 2015 general election, during which we committed to protecting the TV licence in this Parliament, who was it that wanted to do away with it? Who was it? A certain Mr Ed Balls, who is now more famous for being on the TV than for talking about TV policy. When he was questioned about whether the universal free TV licence should stay, while he was saying that the universal winter fuel payments should not, he said:

"I think you have to be pragmatic"

about the TV licence. It was the Labour party that put the free TV licence at risk and we are proud that we supported it in our manifesto.

The director-general did not stop there. He also said:

"The government's decision here to put the cost of the over-75s on us has been more than matched by the deal coming back for the BBC."

[Matt Hancock]

Unfortunately for those who seek to cause a fuss about this, their view on funding seems to go against the view of the director-general of the BBC.

Kevin Brennan: Will the Minister give way?

Matt Hancock: I will give way if the hon. Gentleman can explain why he disagrees with the director-general of the BBC.

Kevin Brennan: The Minister does not understand parliamentary procedure. That is not a reason to give way. He should give way to allow me to ask him a question, to avoid my having to make a speech. My question—a straightforward question, which does not require anything but a straightforward answer—is on what principle he thinks that this is the right move.

Matt Hancock: On the principle that the BBC is responsible for the funding of the BBC according to the licence fee negotiations agreed with the Government. This is a funding decision, and funding issues are for the BBC.

I have given the Opposition a couple of quotations from the head of the BBC about why he agrees with the policy. Let me give them another quotation:

"The Labour party welcomes the fact that the charter provides the BBC with the funding and security it needs as it prepares to enter its second century of broadcasting."—[*Official Report*, 18 October 2016; Vol. 615, c. 699.]

Not my words, but those of the boss of the hon. Member for Sheffield, Heeley, the shadow Secretary of State for Culture, Media and Sport, the hon. Member for West Bromwich East (Mr Watson). Well, I agree with her boss—he was absolutely right.

Louise Haigh: Will the Minister give way?

Matt Hancock: Of course I will give way—if the hon. Lady can explain why she disagrees with her boss.

Louise Haigh: I made it clear that we support the BBC charter, but my boss—as the Minister calls him—and I also made it clear that we do not support this element of it.

I have two more quotations to put to the Minister. In the Lords debate on the charter two weeks ago, the assessment of the former BBC director-general, John Birt, was that

"the impact…will be—over the span of a decade—to take almost exactly 25% out of the real resources available to the BBC for its core services. A massive reduction in programming is therefore simply unavoidable."—[*Official Report, House of Lords,* 12 October 2016; Vol. 774, c. 1950.]

The former chairman of the BBC Trust, Chris Patten, then said:

"I agree with what the noble Lord, Lord Birt, said about the licence fee settlement—not just the finance on the table but the way it was done. It was a scandal to do it like that".—[*Official Report, House of Lords,* 12 October 2016; Vol. 774, c. 1954.]

The Opposition absolutely agree.

Matt Hancock: That is not related to clause 76. What is related to the clause is the fact that the BBC agrees it has the funding it needs, as I set out and as agreed by the shadow Secretary of State for Culture, Media and Sport.

My next point is about why we are transferring the power and why it would be wrong to adopt new clause 38, which would undermine the BBC's funding settlement. The reason is that the BBC asked for it. It is incumbent on those who propose new clause 38 and oppose clause 76 to explain why they disagree with the BBC, with this strong settlement and with all those who say that we have provided a good funding settlement for the BBC. Instead of pressing the new clause, I suggest that the hon. Lady should support clause 76, to put the BBC's funding on a sustainable footing for years to come.

Louise Haigh: The hon. Member for Fylde said that he opposed our new clause on two grounds, of which the first was that the BBC provides free TV licences. It does, but we have absolutely no guarantee that it will continue to do so.

The Minister is correct that the BBC asked for this, but as I referred to earlier, the BBC asked for the policy on who should and should not get a free TV licence because the funding was forced on it. It asked for that funding because it wants to reduce the number of people who get free TV licences in the future—it as much as said that to us. We do not want the BBC to have that policy; nor do we want it to have the funding settlement. It is a principle that we fundamentally oppose, so we intend to test the will of the Committee.

The Chair: We will come to the new clause later in our proceedings, but right now the question is that clause 76, as amended, stand part of the Bill.

Question put and agreed to.

Clause 76, as amended, ordered to stand part of the Bill.

Clause 77

Direct marketing code

3.45 pm

Louise Haigh: I beg to move amendment 195, in clause 77, page 75, line 22, leave out "direct marketing" and insert

"any form of marketing, including direct marketing, or customer engagement".

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

Amendment 196, in clause 77, page 75, line 27, leave out "direct marketing" and insert "marketing and customer engagement".

Amendment 197, in clause 77, page 75, line 40, leave out subsection (4) and insert—

'(4) In this section—

"customer engagement" means the interactions initiated between a business and an individual or group of individuals for marketing and other business purposes;

"direct marketing" means the processing and use of personal information for marketing purposes;

"marketing" means the business processes through which goods and services are moved from being concepts to things that customers and potential customers want."

New clause 34—*Power of Information Commissioner to take action on unsolicited communications*—

'(1) The Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I.2003/2426) are amended as follows.

(2) In Regulation 31(1), between "sections 55A to 55E" and "of the Data Protection Act 1998" insert "and section 61".

(3) In Schedule 1, after paragraph 8B insert—

8C In subsections (1) and (3) of section 61—

(a) for "an offence under this Act" there shall be substituted "a contravention of the Privacy and Electronic Communications (EC Directive) Regulations 2000";

(b) for "guilty of that offence" there shall be substituted "liable for that contravention"; and

(c) for "proceeded against and published accordingly" there shall be substituted "served with a notice, proceeded against of punished accordingly".'

This new clause seeks to allow the Information Commissioner's Office to take action against company directors for breaches not only of the Data Protection Act 1998, but of the 2003 EU regulations on unsolicited communications.

Louise Haigh: Thousands of individuals are plagued by nuisance calls every day. I will turn to that in my remarks on clause stand part, but I shall speak to the amendments and new clause first. We welcome the inclusion in the Bill of a direct marketing code. If it works effectively, it will contain practical guidance and promote good practice in direct marketing activities. It will help to guide the experiences of companies and individuals, but direct marketing, as we know, is fairly narrowly defined and refers to the direct selling of products and services to the public. It is covered under the Data Protection Act 1998 and the privacy and electronic communications regulations. The rules cover not only commercial organisations but not-for-profit organisations such as charities and political parties. The rules for direct marketing are very clear and are becoming—absolutely rightly—increasingly tougher.

There are two types of nuisance call: live marketing calls—unwanted marketing calls from a real person—or automated marketing calls, which are pre-recorded marketing messages that are played when someone answers the phone. They are covered by a raft of legislation and regulation attempting to clamp down on that type of behaviour. Our amendments attempt to broaden the definition of the new direct marketing codes, so the law will cover not only direct consumer marketing but consumer engagement.

Direct marketing uses personal data and demographic insights relating to residence and the habits of people previously to market to people individually and directly. Consumer engagement is much broader and involves the use of personal data to engage with customers for a broad set of business processes, which include, but are not restricted to, direct marketing. TV advertising, for example, is not considered to be direct marketing, but TV advertising campaigns can be designed with information derived from consumer data and used to target broad groups of consumers based on data derived from individuals.

In our view, the direct marketing code, which we very much welcome, and the Information Commissioner's guidance in this field should cover this broader use of individuals' data. As we have said throughout, we want data to be used responsibly, and this simple amendment would extend the code to apply to all uses of data in consumer marketing, and not just the kind that is used to directly target people.

Matt Hancock: What a welcome return to sense from the Opposition. The amendments tabled to clause 77 relate to the definition of direct marketing, which, as defined in the Data Protection Act, is

"the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals."

The definition captures any advertising or marketing material, not just commercial marketing, which is a point that the hon. Lady made, as well as all promotional material, including material promoting the aims of not-for-profit organisations. It also covers any messages that include some marketing elements, even if that is not the main purpose of the message.

The privacy and electronic communications regulations put direct marketing by electronic means into the scope of the definition, thus making it applicable to telephone calls, both live and automated, faxes, emails, text messages and other forms of electronic communication. It is essential that the definition of direct marketing in the PECR remains aligned with the definition in the Data Protection Act, so that the Information Commissioner's Office's powers of enforcement for nuisance calls to remain effective and enforceable in law.

New clause 34 is intended to amend the PECR, to extend to company directors and other officers liability for breaches when those officers have allowed breaches to occur or when breaches have happened because of something they have failed to do. In that way, the Information Commissioner could impose fines on company officers rather than just on companies as at present. The proposal relates to nuisance calls made by organisations. They are a blight on society, causing significant distress to elderly and vulnerable people in particular.

The Chair: It may be helpful for the Minister to know that, because of a miscommunication between Mr Kerr and myself, Mr Kerr will speak to new clause 34 when the Minister sits down, so the Minister may want to save his comments until later. Please continue.

Matt Hancock: I hope that I will still agree with new clause 34 then; I think I will, because I am so enthusiastic about it.

Calum Kerr: Feel free to carry on, Minister, if you are enjoying yourself.

Matt Hancock: I thank the hon. Gentleman.

I hope that, having answered the hon. Lady's questions in relation to amendments that I think are intended to probe and in anticipation of our coming on to new clause 34, she will be able to withdraw her amendment.

Calum Kerr: I am sorry for the miscommunication; it was my fault. Actually, having read the newspapers at the weekend, I think that the Minister may be in agreement on extending the penalties in relation to nuisance callers to company directors; I certainly read a number of quotes about the importance of doing that. What I am unclear about—perhaps he will enlighten me—is whether

[Calum Kerr]

he intends to accept our new clause or whether he has another vehicle by which he intends to make this change. I would be grateful to him if he intervened, because there is no point in my—

Matt Hancock: We agree with moving liability on to individuals rather than on to companies, because sometimes those companies will be closed down, bought up and restarted under a different name very quickly. We propose to do that by tabling a Government amendment.

Calum Kerr: I thank the Minister for that intervention. I had thought that I might have done his homework for him already with new clause 34. Perhaps he might consider embracing the cross-party consensual nature that might return after the BBC fun and games—except on tobacco ads, which certainly go too far.

Matt Hancock: Before I was stopped by Mr Streeter, I was going to say precisely that—namely that I have just announced that we intend to introduce such measures. We need to consult on the exact details of those measures, which is why I do not propose to accept the new clause, but we intend to put into place something of similar substance.

Calum Kerr: Excellent. I thank the Minister for that and given that comment, rather than outlining the full case for why I think accepting new clause 34 is a good idea, I will embrace the positivity and happily sit down, without pressing my new clause, knowing that the Government will introduce a similar measure.

Louise Haigh: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Graham Jones: I have a couple of points that I would like the Government to consider on clause stand part and why there is a deficiency, not only in the Bill but in all the other regulations, guidance and advice that support it.

My first point is simply that people the length and breadth of this country are sick and fed up of direct marketing. They are sick and fed up of the back of their doors having a mound of unwanted mail that they have to dispose of, which has come from companies that they have no interest in. I have a high number of empty properties—2,500—in my area, and in some cases this goes beyond being a nuisance and an aggravation, and becomes a fire hazard. We have mounds of direct mail behind the door, and it is never-ending and never stops.

People receive not only physical mail but email. Businesses the length and breadth of Britain—I have made the point that this is not a business-friendly Bill and it should be, as it is a Digital Economy Bill—are sick and fed up of their email boxes being stuffed full of unwanted emails, which are costing them a fortune as they have to put someone on them to go through them. It has got to stop. We have to act as a Parliament, and the Government have got to sit up and take notice. How much is this costing British businesses? How much is it aggravating UK citizens?

These companies seem to get away with it. There is a free-for-all at the minute. There is no way anyone can tell me that a mound of mail does not come through my letterbox weekly or there is not a long sequence of unwanted emails in my inbox, and no one can tell me that companies in my constituency and every other constituency do not face huge costs.

Kevin Brennan: My hon. Friend is right about that wider point, even though the clause deals particularly with calls. I do not know about him, but I am fed up of receiving calls even in my parliamentary office—I know that other hon. Members have had this—from energy companies, which continually seek to talk to me about energy bills. Does he agree that if the problem is getting to the heart of Parliament, it really is getting out of hand?

Graham Jones: My hon. Friend is absolutely right. As busy MPs, the last thing we want is to deal with that. I will come to clause 77, which is about marketing calls—all these things are interlinked. As he says, we get a mound of marketing calls, as do businesses. They are piling up, and they are unwanted.

I appeal to the Government to consider introducing mandatory pro formas in all these fields—marketing calls, but also email, direct mail and conventional snail mail. On a letter, I want to see the name and address of the people who sent it, so that I can tick the box saying "no more mail" and stick it back in that red box. I want to know how they have got my information, too. On digital communications, I want to see a pro forma on the bottom that says, "No more. I don't want to receive any more. How did you get my details, and which company are you?" I want straightforward pro formas on the bottom of all those things. On marketing calls, I want those who are calling to have to explain explicitly who they are and where they got the data from and ask, "Do you wish to proceed with the call?" That would be very helpful. Having pro formas on all that marketing would empower individuals. This is about taking back control and empowering the UK citizen against some of these things, and simple pro formas would go a long way to helping that.

I ask the Government to consider introducing some amelioration or making some concession on this issue on Report. The British people would be eternally grateful to the Minister. He would become legendary in this place. His career path would be stratospheric. He would have helped so many people on a daily basis that he would be remembered forever as the Minister who resolved the issue of direct marketing calls. He has an opportunity to do that. A pro forma would suffice.

I come to a second issue: the exposés that, sadly, all too frequently appear on our television screens, on Channel 4 or "Panorama". Every now and again, we hear scandals about marketing companies that act on behalf of charities and raise money through telemarketing. Those scandals often reveal undesirable elements and policies in those companies that go against the grain of what it is to be a British citizen. Those marketing calls must be dealt with, and clause 77 fails to deal with—

The Chair: Order. It may help the hon. Gentleman to know that clause 77 is not intended to deal with the kinds of TV issues that he is concerned about. It is concerned with telephone calls, texts and emails.

Graham Jones: Yes. The Minister must look at marketing calls from companies seeking money on behalf of charities. Those scandals must go on no longer. I ask him to address that matter. He could take several measures that do not cause distress but identify the skimming off of huge amounts by those companies, which target easy pickings from the old, the vulnerable and people with dementia. That is unacceptable. Those marketing scandals must not continue.

Mark Menzies: If I may briefly comment with regard to the direct marketing code of practice, I first welcome wholeheartedly the Minister's desire to accept the terms of new clause 34, proposed by the hon. Member for Berwickshire, Roxburgh and Selkirk. This is a blight for all our constituents, regardless of which side of the House we sit on.

4 pm

On the marketing code, I urge the Minister to take on board the point made by the hon. Member for Hyndburn about looking at the ability to capture and identify people who are making illegal and unsolicited marketing calls, often to very vulnerable people. As we heard in evidence, it is very difficult to identify and pin those people down. Some of the things required are the website address, telephone number and company name. These people are professional crooks and shysters. They are disreputable and know exactly how to inveigle their way round the law to take advantage of vulnerable people. I urge the Minister, when is he looking at this measure in its totality, to consider ways in which we can strengthen the ability to capture and identify people who target the vulnerable and the elderly.

Matt Hancock: The hon. Member for Hyndburn made an impassioned plea. I recognise the long-standing interest of my hon. Friend the Member for Fylde in this issue and the work he has done.

Graham Jones: A Lancashire alliance!

Matt Hancock: There is a real Lancashire alliance to ensure people do not get pestered. The clause will place a statutory duty on the Information Commissioner to publish a direct marketing code of practice. I am sure that the Information Commissioner will have heard the plea for a pro forma, which could appear in such statutory guidance.

We all know, from being sent emails that we are not interested in, how powerful it is almost always to have an "unsubscribe" link at the bottom; we can get rid of a lot of junk by clicking that. Nuisance calls continue to blight people's lives, particularly the vulnerable, who rely on their phones as a main point of contact. So far in 2016, the Information Commissioner's Office has issued fines totalling £1.5 million to companies behind nuisance marketing. Those firms were responsible for 70 million calls and more than half a million spam text messages. That should give the Committee a feel of the scale of the problem.

We think that the new code will support a reduction in the number of unwanted direct marketing calls by making it easier for the Information Commissioner to take effective action against organisations in breach of the direct marketing code under the Data Protection Act and the privacy and electronic communications regulations. In response to the specific question whether this applies also to snail mail, the answer is yes. The mail preference service to which individuals can subscribe to prevent direct marketing mail already exists but is also covered by the statutory code of practice.

Graham Jones: Does the Minister agree that it would bring not only function but pleasure to have a return mailing address on the front, so that we could take no more and shove this mail back in the red box?

Matt Hancock: I am sure the Information Commissioner will have heard the hon. Gentleman's plea. There is such logic and force behind it that I am sure it will be taken into account.

Kevin Brennan: We very much support the concession that the Minister made following the evidence session and the amendments tabled. Does he think that anything more could be done where the origin of these calls is overseas, as with very many of them?

Matt Hancock: I propose after consultation to bring in measures to ensure that the liability is on the individual. That will significantly strengthen the hand of the regulator here, alongside the code of practice, but I am open to working with the hon. Gentleman and others to see what else we can do for calls that originate from overseas. I entirely understand the problem. Ultimately, we are trying to stop as much spamming as possible, while allowing people to communicate and use modern means of communication.

Calum Kerr: Last week I had a call from a director from Ofcom, who had just returned from south-east Asia, discussing nuisance calls. As the Government go around the world setting up their new trade agreements, perhaps they might consider this one of the clauses they build in around nuisance calls.

Matt Hancock: That is an interesting suggestion. Of course, this will apply to overseas companies; it is just that, as we have discussed in other parts of the Bill, that is harder to enforce against.

Finally, there was discussion about charities making nuisance calls. Charities, and agents on their behalf, were covered in the Charities (Protection and Social Investment) Act 2016, which introduced a new regulator specifically for charities in this space. With those explanations, I urge that the clause stand part of the Bill.

Question put and agreed to.

Clause 77 accordingly ordered to stand part of the Bill.

Clauses 78 to 81 ordered to stand part of the Bill.

Clause 82

COMMENCEMENT

Matt Hancock: I beg to move amendment 182, in clause 82, page 80, line 3, at end insert—

"() section (Power to apply settlement finality regime to payment institutions);"

This provides for new clause NC29 to come into force on royal assent. By convention regulations made under the section inserted by that clause would not be made so as to come into force earlier than two months after royal assent.

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

Government amendment 184.

Government new clause 29—*Power to apply settlement finality regime to payment institutions.*

Government new clause 30—*Bank of England oversight of payment systems.*

Government new schedule 2—*Bank of England oversight of payment systems.*

Government amendment 187.

Matt Hancock: We are committed to creating a more competitive financial services sector. Like many other parts of the Bill, this one covers the private sector. Greater competition in financial services creates better outcomes for consumers and lowers the cost and broadens the range of services available. These measures pave the way for a broader access to payment systems, driving competition in them.

New clause 29 allows the Treasury to extend the benefits of the existing settlement finality regime to non-bank firms that provide payment services, such as Worldpay, through statutory instrument. The existing regulations provide that payments initiated in these systems by banks cannot be unwound if a bank becomes insolvent while it has an unsettled transaction in the system. This is important for the integrity of payment systems, but currently does not extend to payments initiated by non-bank payment institutions, which are a growing part of the financial services system. Extending coverage to transactions initiated by non-bank payment institutions will therefore enable those institutions to obtain direct access to payment systems.

New clause 30 and new schedule 2 amend the Banking Act 2009 so that the Treasury can formally recognise a non-bank payment system for regulatory oversight by the Bank of England. Currently, the Bank of England may only supervise interbank payment systems. Without this change, if a non-bank system were to grow rapidly, the Treasury and the Bank of England would have limited tools to address any financial stability risks stemming from a non-bank system in a timely manner. This is required now, as a systemically important non-bank system is made more likely by broadening access to payment systems, as it creates the conditions that make non-bank systems more likely to grow.

Together, the two measures enable broader access to payment systems. The impact assessments for both are with the Regulatory Policy Committee and we expect them to be non-qualifying on the grounds that they are pro-competition, support financial stability and have a low regulatory burden.

Amendment 182 agreed to.

Matt Hancock: I beg to move amendment 183, in clause 82, page 80, line 14, leave out "section" and insert "sections (Suspension of radio licences for inciting crime or disorder) and".

This provides for new clause NC28 to come into force 2 months after Royal Assent.

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

Government new clause 27—*Digital additional services: seriously harmful extrinsic material.*

Government new clause 28—*Suspension of radio licences for inciting crime or disorder.*

Matt Hancock: We take very seriously the responsibility to ensure that the broadcasting regulatory framework is as robust as possible. As part of the cross-Government strategy to ensure we are doing all we can to counter the pernicious impact of extremism and extremist narratives, we and Ofcom have carefully assessed whether consumers are fully protected from the most harmful content on TV and radio. That work identified potential anomalies in the current broadcasting legislation, which the amendment and new clauses seek to address.

Ofcom requires broadcasters to hold a licence to broadcast on TV or radio in the UK. The licence regime has developed over time and in response to technological developments. Different licence regimes apply depending on the way in which broadcast content is received.

New clause 27 relates to a subset of Ofcom licences known as digital television additional services licences—in effect, a catch-all for the range of services that do not fall under the more usual licences required to broadcast directly via satellite and cable or the digital television platform. There are two DTAS licenses, or portal channels, which provide viewers using connected or smart TVs on the freeview platform with access to internet-streamed television channels by first going through the electronic program guide.

A potential anomaly we want to address arises because one of the portal channels has begun contracting with internet-streamed channel providers based outside the European economic area, which could potentially give rise to a situation where that internet-streamed channel includes seriously harmful content without Ofcom or any other regulator having recourse to act. I want to absolutely clear that there is no suggestion that any of the current DTAS licensees would purposefully provide access to seriously harmful content, but I am sure the Committee will agree that having that happen inadvertently, and finding regulators are unable to act, is not a position we would like to be in. The amendment puts it beyond doubt that Ofcom is able to set conditions to act.

New clause 28 concerns radio. At present, there is a limitation in Ofcom's ability quickly to deal with the exceptional circumstance of a terrestrial radio station, whether analogue or digital, repeatedly broadcasting harmful material that incites listeners to crime or disorder. We are acting to prevent such an outcome.

Amendment 183 agreed to.

Amendment made: 184, in clause 82, page 80, line 14, at end insert—

"() section (Bank of England oversight of payment systems) and Schedule (Bank of England oversight of payment systems)."—*(Matt Hancock.)*

The amendment provides for the new clause and Schedule about the Bank of England's oversight of payment systems (NC30 and NS2) to come into force 2 months after Royal Assent.

Clause 82, as amended, ordered to stand part of the Bill.

Clause 83

Extent

Matt Hancock: I beg to move amendment 185, in clause 83, page 80, line 31, at end insert—

'( ) Section (Qualifications in information technology: payment of tuition fees) extends to England and Wales only."

This amendment is consequential on NC26.

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

Government new clause 26—*Qualifications in information technology: payment of tuition fees.*

Government amendment 186.

Matt Hancock: This is one of the clauses I am most excited about. We are committed to public investment in skills and learning to ensure everyone has the chance to master the basic skills required to get on in life and work. We are very clear that, in addition to numeracy and literacy, that now includes digital. Our workplaces and homes are increasingly integrated with digital technologies, so we are clear that a sound grasp of basic digital skills is as important as numeracy and literacy.

Too many adults are unable effectively to use the digital technologies that allow them to keep in touch with friends and family, find the cheapest offers for goods and services, search for jobs online and work effectively and productively in those jobs. All too often, the digitally excluded come from the least advantaged parts of our society—the less well paid, the older and the more geographically remote. We are committed to making society work for everyone, and we take the issue of digital exclusion very seriously. That is why we intend, in this amendment, to create a duty on the Secretary of State for Education to ensure that, where specified, digital skills qualifications are made available by providers and that they are free of charge to people aged 19 and over who need them and do not already have the relevant qualification.

This duty will measure the duties for maths and English provision for adults. The justification is clear: people who can effectively use digital technology pay less for goods and services, save time on routine tasks, can more easily connect with society and can attract a wage premium in the labour market. We want to enhance social mobility and give everyone the opportunity to acquire the skills they need to succeed in the modern workplace.

4.15 pm

Louise Haigh: We very much welcome the new clause and are pleased that, once again, the Government have heeded the Opposition's advice. We said clearly at the beginning of the process that, in regard to the digital skills that are needed to support and improve the digital economy, the Bill was lacking. I want to put on record the fantastic work already going on across the UK in supporting adults to learn digital skills, not least by organisations such as the Tinder Foundation and community organisations—I will abuse my position now and reference organisations such as the Heeley Development Trust and Heeley City Farm in my constituency, which through community work already skill up adults in digital skills. We very much support the clause and look forward to the Government taking our advice more in the future.

Amendment 183 agreed to.

Clause 83, as amended, ordered to stand part of the Bill.

Clause 84 ordered to stand part of the Bill.

New Clause 26

Qualifications in information technology: payment of tuition fees

'(1) The Apprenticeships, Skills, Children and Learning Act 2009 is amended as follows.

(2) In section 88(1) (qualifications for persons aged 19 or over: payment of tuition fees), for "1(a) or (b)" substitute "1(a), (b) or (ba)".

(3) In paragraph 1 of Schedule 5 (qualifications for persons aged 19 or over), after paragraph (b) insert—

(ba) a specified qualification in making use of information technology;".

(4) After paragraph 5 of that Schedule insert—

"Power to specify qualification in information technology

5A The level of attainment demonstrated by a specified qualification in making use of information technology must be the level which, in the opinion of the Secretary of State, is the minimum required in that respect by persons aged 19 or over in order to be able to operate effectively in day-to-day life."'—*(Matt Hancock.)*

This clause creates an obligation on the Secretary of State to ensure that courses of study for qualifications in information technology are free of charge for persons in England aged 19 or over. The qualifications will be specified in regulations under Schedule 5 to the Apprenticeships, Skills, Children and Learning Act 2009.

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

New Clause 27

Digital additional services: seriously harmful extrinsic material

After section 24 of the Broadcasting Act 1996 (digital additional services) insert—

"24A Duty to prevent access to seriously harmful extrinsic material

(1) In carrying out their functions, OFCOM must do all that they consider appropriate to prevent digital additional services from enabling members of the public to access seriously harmful extrinsic material.

(2) "Seriously harmful extrinsic material", in relation to a digital additional service, means material that—

(a) is not included in the service, and

(b) appears to OFCOM—

(i) to have the potential to cause serious harm, or

(ii) to be likely to encourage or incite the commission of crime or lead to disorder.”’ —*(Matt Hancock.)*

This new clause would require OFCOM to seek to prevent digital television additional services enabling access to seriously harmful content that does not form part of the service, for instance by linking to content streamed from the internet. OFCOM could do this by imposing licence conditions in relation to such services.

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

New Clause 28

Suspension of radio licences for inciting crime or disorder

‘(1) In Chapter 2 of Part 3 of the Broadcasting Act 1990 (sound broadcasting services), for section 111B (power to suspend licence to provide satellite service) substitute—

“111B Suspension of licences for inciting crime or disorder

(1) OFCOM must serve a notice under subsection (2) on the holder of a licence granted under this Chapter if they are satisfied that—

(a) the licence holder has included in the licensed service one or more programmes containing material likely to encourage or incite the commission of crime or to lead to disorder,

(b) in doing so the licence holder has failed to comply with a condition included in the licence in compliance with section 263 of the Communications Act 2003, and

(c) the failure would justify the revocation of the licence.

(2) A notice under this subsection must—

(a) state that OFCOM are satisfied as mentioned in subsection (1),

(b) specify the respects in which, in their opinion, the licence holder has failed to comply with the condition mentioned there,

(c) state that OFCOM may revoke the licence after the end of the period of 21 days beginning with the day on which the notice is served on the licence holder, and

(d) inform the licence holder of the right to make representations to OFCOM in that period about the matters that appear to OFCOM to provide grounds for revoking the licence.

(3) The effect of a notice under subsection (2) is to suspend the licence from the time when the notice is served on the licence holder until either—

(a) the revocation of the licence takes effect, or

(b) OFCOM decide not to revoke the licence.

(4) If, after considering any representations made to them by the licence holder in the 21 day period mentioned in subsection (2)(c), OFCOM are satisfied that it is necessary in the public interest to revoke the licence, they must serve on the licence holder a notice revoking the licence.

(5) The revocation of a licence by a notice under subsection (4) takes effect from whatever time is specified in the notice.

(6) That time must not be earlier than the end of the period of 28 days beginning with the day on which the notice under subsection (4) is served on the licence holder.

(7) Section 111 does not apply to the revocation of a licence under this section.”

(2) In section 62(10) of the Broadcasting Act 1996 (application of sections 109 and 111 of the 1990 Act to digital sound programme services) for the words from “section 109” to “1990 Act” substitute “sections 109, 111 and 111B of the 1990 Act (enforcement)”.

(3) In section 250(3) of the Communications Act 2003 (application of sections 109 to 111A of the 1990 Act to radio licensable content services) for “111A” substitute “111B”.’—*(Matt Hancock.)*

This new Clause gives OFCOM power to suspend immediately, and subsequently revoke, the licence of any licensed radio service if material is included that is likely to encourage or incite crime or lead to disorder. It replaces a power applying only to satellite and cable services.

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

New Clause 29

Power to apply settlement finality regime to payment institutions

In Part 24 of the Financial Services and Markets Act 2000 (insolvency) after section 379 insert—

‘*Settlement Finality*

“379A Power to apply settlement finality regime to payment institutions

(1) The Treasury may by regulations made by statutory instrument provide for the application to payment institutions, as participants in payment or securities settlement systems, of provision in subordinate legislation—

(a) modifying the law of insolvency or related law in relation to such systems, or

(b) relating to the securing of rights and obligations.

(2) “Payment institution” means—

(a) an authorised payment institution or small payment institution within the meaning of the Payment Services Regulations 2009 (S.I. 2009/209), or

(b) a person whose head office, registered office or place of residence, as the case may be, is outside the United Kingdom and whose functions correspond to those of an institution within paragraph (a).

(3) “Payment or securities settlement system” means arrangements between a number of participants for or in connection with the clearing or execution of instructions by participants relating to any of the following—

(a) the placing of money at the disposal of a recipient;

(b) the assumption or discharge of a payment obligation;

(c) the transfer of the title to, or an interest in, securities.

(4) “Subordinate legislation” has the same meaning as in the Interpretation Act 1978.

(5) Regulations under this section may—

(a) make consequential, supplemental or transitional provision;

(b) amend subordinate legislation.

(6) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.”’—*(Matt Hancock.)*

The inserted section enables the Treasury to apply a settlement finality regime to payment institutions. The current settlement finality regime for payment systems and securities settlement systems is in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I 1999/2979).

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

New Clause 30

Bank of England oversight of payment systems

“Schedule (Bank of England oversight of payment systems) extends Part 5 of the Banking Act 2009 (Bank of England oversight of inter-bank payment systems) to other payment systems; and makes consequential provision.”—*(Matt Hancock.)*

The new clause introduces new Schedule NS2 which extends the Bank of England's oversight of payment systems, by removing the current restriction that limits the Bank's oversight to systems for payments between financial institutions.

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

New Clause 1

Strategic review of sharing telecommunications infrastructure

'(1) Within six months of this Act coming into force, the Secretary of State shall commission a strategic review of the sharing of telecommunications infrastructure and shall lay the report of the review before each House of Parliament.

(2) The review under subsection (1) shall consider measures to maximise the sharing of telecommunications infrastructure by telecommunications service providers.'—*(Calum Kerr.)*

Brought up, and read the First time.

Calum Kerr: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss new clause 20—*Strategic review of mobile network coverage*—

'(1) Within six months of this Act coming into force, the Secretary of State shall commission a strategic review of mobile network coverage and shall lay the report of the review before each House of Parliament.

(2) The review under subsection (1) shall consider measures to ensure universal mobile network coverage for residences and businesses across all telecommunications providers.

(3) The review under subsection (1) shall also consider measures to ensure savings made by telecommunication providers under sections (4), (5) and (6) of this Act are reinvested into expanding network coverage.'

Calum Kerr: We seem to have raced through this final section, for which I commend all right hon. and hon. Members. We do not need the gift of foresight to know that the Minister will tell me, "We do not do reviews in this Government. We expect someone else to do them for us." Let me briefly explain why I support new clause 1, which I will not press to a vote, and I will then touch on new clause 20.

We heard an excellent articulation in the evidence sessions of the value of third-party infrastructure as an effective means of maximising communication roll-out across the country. Today, about a third of the UK's 27,000 masts are independently operated, and that contrasts with about 60% of masts globally. In EU countries, it is 80%. Independent analysis has shown that independently operated towers across Europe and North America host at least twice as many masts as when those towers are operated by the mobile companies themselves. As we map a new digital future—we are all excited to see what the new Minister does with his digital strategy for the country—we should be conscious of the fact that we will need a lot more masts. We know that he knows that. Technology such as 5G is higher frequency and covers shorter distances. Unless we want our country to resemble the back of a hedgehog, we need to look at effective ways of minimising the number of masts while maximising the coverage we need.

With the approach in the new clause, we are looking to encourage the Government to be consciously competent and to come forward with a model or measures that will enhance the further deployment of shared infrastructure, so that as we deploy 5G and embrace the technology of the future, we minimise the impact on our environment.

New clause 20 is certainly a different take on this area. It is well meaning but not quite right, to be honest. I do not think the idea of a universal service applies in the same way for mobile as it does for wired. It is probably something we will evolve to as the worlds of wired and wireless networks intertwine and overlap going forward. I would be happy to support the new clause, but I would welcome some more discussion.

I hope the Government and the new Minister and team recognise that third-party infrastructure will be central to driving the coverage model in rural and urban areas as we look to put a lot more masts out there to deliver the potential speeds and capability of the technology in the future. If the Minister will not give me a review, perhaps he will at least throw me a bone or two that things are beyond, "Hopefully the Select Committee will do a review." The Select Committee has only so much bandwidth to do it.

Matt Hancock: I can do better than merely asking the Select Committee, although I do think that Select Committees do important reports and should not be denigrated. Ofcom has also been given a statutory duty to provide a report to the Secretary of State every three years on the state of the UK's communications infrastructure, including the extent to which UK networks share infrastructure. That is precisely what the new clause asks for as a one-off. I assure the hon. Gentleman that the reports will happen regularly. The next three-yearly report is due in 2017, which is the same time that new clause 1 specifies for its review.

Moving on to new clause 20, we recognise the importance of improving mobile coverage. I support the intention behind it, but I do not think a statutory review is necessary at this time. We already have building blocks in place to deliver extensive mobile connectivity, and it is happening. The changes that we have debated today will give Ofcom the ability to provide data to ensure that we know how effective mobile connectivity is. We have legally binding licence obligations to ensure that each mobile operator provides voice coverage to at least 90% of the UK land mass. Taken together, 98% of the UK will have a mobile signal by the end of 2017, according to the agreements.

Louise Haigh: Does the Minister envisage, then, that Ofcom will gather data to produce reports on the extent of mobile coverage against the Government targets set with mobile network operators?

Matt Hancock: I do expect that. I can confirm my expectation that that is what Ofcom will do.

Louise Haigh: How often does the Minister expect Ofcom to produce those reports?

Matt Hancock: We just changed the rules so that instead of being restricted to producing such reports three times a year, Ofcom can do so whenever it thinks

[Matt Hancock]

it appropriate. That will provide for Ofcom to be able to do so as much as possible, but I committed earlier today to having a connected nations report before the end of this year. I hope that that provides for what the hon. Lady seeks in new clause 20 and that the hon. Members will not press their new clauses.

Calum Kerr: I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

Ordered, That further consideration be now adjourned.—*(Graham Stuart.)*

4.26 pm

Adjourned till Tuesday 1 November at twenty-five past Nine o'clock.

Written evidence reported to the House

DEB 67 CLOSER (Cohort & Longitudinal Studies Enhancement Resources) Partnership

DEB 68 David Redford-Crowe

DEB 69 Dr Edgar A Whitley (follow-up)

DEB 70 Community Land Scotland

DEB 71 Women's Aid

DEB 72 StubHub

DEB 73 Russell Harris

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

DIGITAL ECONOMY BILL

Eleventh Sitting

Tuesday 1 November 2016

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Bill, as amended, to be reported.
Written evidence reported to the House.

PBC (Bill 045) 2016 - 2017

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 5 November 2016

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The Committee consisted of the following Members:

Chairs: Mr Gary Streeter, †Graham Stringer

† Adams, Nigel *(Selby and Ainsty)* (Con)
† Brennan, Kevin *(Cardiff West)* (Lab)
† Davies, Mims *(Eastleigh)* (Con)
† Debbonaire, Thangam *(Bristol West)* (Lab)
† Foxcroft, Vicky *(Lewisham, Deptford)* (Lab)
† Haigh, Louise *(Sheffield, Heeley)* (Lab)
† Hancock, Matt *(Minister for Digital and Culture)*
† Hendry, Drew *(Inverness, Nairn, Badenoch and Strathspey)* (SNP)
† Huddleston, Nigel *(Mid Worcestershire)* (Con)
† Jones, Graham *(Hyndburn)* (Lab)
† Kerr, Calum *(Berwickshire, Roxburgh and Selkirk)* (SNP)
† Mann, Scott *(North Cornwall)* (Con)
† Matheson, Christian *(City of Chester)* (Lab)
† Menzies, Mark *(Fylde)* (Con)
† Perry, Claire *(Devizes)* (Con)
† Skidmore, Chris *(Parliamentary Secretary, Cabinet Office)*
† Stuart, Graham *(Beverley and Holderness)* (Con)
† Sunak, Rishi *(Richmond (Yorks))* (Con)

Marek Kubala, *Committee Clerk*

† attended the Committee

Public Bill Committee

Tuesday 1 November 2016

[Graham Stringer *in the Chair*]

Digital Economy Bill

New Clause 5

Internet pornography: requirement to prevent publication of material involving persons subject to force etc

'(1) It is an offence for a person to make available on the internet pornographic material on a commercial basis to persons in the United Kingdom if they know or ought to know that the production of the pornographic material involved exploited persons.

(2) For the purposes of this section, exploited persons are persons who have been induced or encouraged to appear in the pornographic material as a result of exploitative conduct.

(3) Exploitative conduct means, but is not limited to—

(a) the use of force, threats (whether or not relating to violence) or any other form of coercion, or

(b) any form of deception.

(4) It is irrelevant where in the world the exploitative conduct takes place.

(5) For the purposes of this section, making pornographic material available on the internet on a commercial basis has the same meaning as section 15(2).

(6) A person guilty of an offence under subsection (1) shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.'—*(Thangam Debbonaire.)*

The purpose of this new clause is to make it an offence to make available pornographic material on a commercial basis where it could reasonably be known that persons have been induced to appear in the material by coercion, threats, force, deception, or by any other exploitative conduct.

Brought up, and read the First time.

9.25 am

Thangam Debbonaire (Bristol West) (Lab): I beg to move, That the clause be read a Second time.

As I have made clear in earlier contributions, I welcome the Government's intention to protect children from the harmful effects of pornography. However, the Bill does not deal with other harmful effects. Not only can pornography be a potential source of harm to adult viewers and a way of promoting the very worst forms of gender inequality and stereotyping—both issues were discussed in a recent House of Lords debate, which I will not address—but the process of producing pornography can itself be harmful to the people involved, because of trafficking, deception, coercion and violence. New clause 5 seeks to deal with that.

The high frequency of violent scenes in pornography, in particular violence directed against women, has been well reported, although I have evidence if the Minister would like it. Testimonies from and research about people who have experienced the porn industry reveal that in many cases such scenes involve genuine violence, and that coercion is involved. There are serious questions to be asked about the level of coercion involved in pornography and what is being done to address it.

Online pornography is the easiest way for people to make, distribute, share and consume pornography, for free and commercially; I tabled the new clause because I would like to hear from the Minister what the Government are doing about the safety of people involved in the production of porn. People watching pornography would not want unwittingly to watch acts of rape, violence or coercion, but I am not convinced that there is anything like an adequate framework to prevent that.

The new clause is intended to probe. If this country is to lead the way in ending modern slavery and preventing exploitation, as the Prime Minister has pledged, we need to do everything we can to prevent pornographic material produced through coercion, trafficking or violence from being made in or distributed from the UK. The new clause would make it an offence to make available in the UK online pornography that involves people who have been exploited. Words to explain that are included.

There are strong links between pornography, trafficking and prostitution, as part of a complex system of exploitation within and fuelled by the global sex industry. Organised crime groups, individual traffickers and pimps exploit people to make money, and online pornography presents them with an easy opportunity to make more money by exploiting a person who is already under their control. Someone who has been trafficked or is providing sexual services might also be filmed or photographed. The development of technology has made filming and uploading material to the internet extremely easy, and production of porn is no longer limited to large commercial enterprises.

Areas of the world known to have significant problems with human trafficking, including eastern Europe, Russia and the Philippines, are also known to have growing porn industries. Professor Donna Hughes has written extensively about trends in human trafficking:

> "Brothel owners, pimps, and pornography producers place orders with traffickers for the number of women they need."

That has also been identified in the UK. A report by the POPPY Project as long ago as 2004 noted that some of the trafficked women it was caring for had been photographed or filmed naked by their traffickers, including while abuse of them was taking place.

Exploitation in internet pornography, however, is much wider than trafficking, which is why proposed new subsection (3) of the new clause sets out a broader definition of exploitative conduct. Coercion, drug use and violence, as well as poor labour conditions and low pay, have been well documented in the commercial porn industry. Evidence and first-hand testimonies from former porn industry insiders reveals that women are forced and coerced to participate in sexual acts that are often violent. They are constantly pressured for ever more extreme performances.

Many young women enter pornography as a result of coercion and deception about the realities. The young women are often extremely vulnerable. Many of them have experienced childhood sexual abuse, been in foster care or lived in poverty. Professor Hughes writes:

> "Most women entering the pornography industry don't know what they will be subjected to...they need money and are looking for opportunities. The agents, directors and producers take extreme advantage of these often naive young women. Their first experience making commercial pornography is often brutal and traumatic."

One former porn performer from the US has said:

"When I was first introduced to my agent I told him I had no limits and would do it all. But I had NO idea what I was saying. I didn't know about all the hardcore sex acts I would be forced to do."

She also describes how she was threatened with being sued for large sums of money when she tried to pull out of performing in a scene, and speaks of being physically beaten on and off screen. She used alcohol and a range of prescription drugs to help her cope. Coercion in the industry goes beyond just pressuring or manipulating people to sign a contract; that is just the beginning. Coercion extends to forcing women to perform physically abusive scenes repeatedly.

Finally, I turn to the legal context. Dr Max Waltman, a researcher who has analysed the laws on pornography—including online pornography—in Sweden, Canada and the USA, as well as the political contexts in those countries, writes that

"testimonial evidence on violence, coercion, and trauma during pornography production revealed in public hearings repeatedly mirror both quantitative and qualitative data on these subjects in the lives of prostituted women around the world".

That evidence cannot simply be discarded as unrepresentative or "anecdotal".

Through the internet, pornographic material produced involving coercion, violence and even trafficking is accessible throughout the UK. While the viewers, distributors and host websites may not be directly involved in the coercion or violence, they are complicit in it by watching, paying for or receiving revenue by promoting the material. Viewers of pornography are not likely to be able to take action to find out the origins of the material, but promoters are. They have a responsibility to check the sources of the material they distribute. We hold supermarkets and clothes shops responsible for the conditions in their supply chains, so why not pornographers?

The clause recognises that it might not always be possible for a distributor to find out all the details of the production of material, so criminal responsibility is limited to cases where the distributor

"knows or ought to know"

that the material involved exploited persons. Nevertheless, I believe that such a clause would contribute to a greater awareness of the need to investigate the origins of pornographic material.

Section 54 of the Modern Slavery Act 2015 requires large companies to report on trafficking and forced labour in their supply chains. I would like the Minister to say whether or not that measure also applies to pornography; recent analysis found only patchy compliance with supply chain obligations. However, as I have already said, coercion in pornography extends beyond trafficking and forced labour, which is why I have tabled this new clause.

Finally, I turn again to the legal framework. Dr Waltman analysed the implications of the Swedish "sex buyer law"—the law that criminalised the demand side of prostitution while decriminalising the supply side—for the laws governing the production of pornography. He points out that, under Swedish law, the person paying for the sex act does not have to be the person having sex; it could be the producer of online pornography, paying people to have sex. Using this measure could mean that producing pornography with exploited persons was already illegal. Dr Waltman is exploring that possibility further and he has written about

"what the political obstacles are to challenge the production of pornography with real persons in Sweden. How come…the legislature did not recognize that the procuring provisions should apply to pornography production?"

Was the resistance to such an application based on law, or ideological perceptions?

I cannot answer those questions about the "sex buyer law" in Sweden, but I can pose related questions today about our own laws as they relate to online pornography, given that it is in the scope of the Bill. We already have a partial version of the Swedish "sex buyer law" in force in this country. Since April 2010, section 53A of the Sexual Offences Act 2003, as inserted by section 14 of the Policing and Crime Act 2009, passed by a Labour Government, has created a new offence of paying for the sexual services of a prostitute who has been subjected to force. This legislation set down a clear line that paying for sex with someone who had been trafficked or coerced was never acceptable, and it now needs to apply to pornography.

This probing new clause is designed to find out various things. For instance, will the Government consider using existing legislation to outlaw the distribution of internet pornography involving a prostitute who has been subjected to force or to widen the scope of the legislation by replacing the word "prostitute" with "person"? That would make it clearer that nobody should pay for sex with anyone who is trafficked, whether or not they define themselves as "a prostitute" and whether or not the sex takes place within a prostitution setting or in pornography. The dividing lines for people who are coerced, trafficked and harmed in the sex industry are not felt as clearly as our laws imply they are.

I may as well place on the record that I am also in favour of a "sex buyer law" in this country, but discussion of that issue is for another debate.

Finally, I would like to hear from the Minister answers to the following questions. First, what are the Government doing to hold the makers and distributors of internet pornography to account for coercion and violence committed in the course of pornography production, from which those makers and distributors are profiting? Will the Government consider the matter of abuse, coercion and trafficking in pornography, and how to safeguard people from harm? Will they consider what regulatory or legal framework would be adequate to ensure that consumers of pornography can be sure that they are not viewing rape or sexual assault, or sexual acts taking place under or as a result of the threat of violence or actual violence?

Will the Government ask their advisers to look into the potential for our existing legislation to be amended—or for new legislation—to prevent trafficking, coercion, violence and abuse in the making of pornography? Will they also consider all of these questions, keeping in mind that it is entirely possible that there is no regulatory or legal framework that could adequately protect people from violence, abuse, coercion and trafficking in online or offline pornography or in prostitution, and that we may one day have to consider that there needs to be stronger legislation against both? Although the new clause is intended only to probe, I end by urging the Minister to consider the issue seriously because it matters too much. The way we treat the most vulnerable in society is a measure of how we are as a nation.

The Minister for Digital and Culture (Matt Hancock): I want to respond to a powerful and impassioned speech by the hon. Member for Bristol West and set out why, while agreeing with much of the substance of what she says, we think that many of the issues are covered by existing legislation and why we think that enforcement is the biggest part of the challenge, as she pointed out. There are also some technical deficiencies with the proposed clause. I will deal with all those issues in the context of strongly supporting the thrust of her argument and the desire to protect vulnerable women.

New clause 5 seeks to make it a criminal offence to

"make available on the internet pornographic material on a commercial basis to persons in the United Kingdom if they know or ought to know that the production of the pornographic material involved exploited persons."

The language is similar to that used in other parts of the Bill, but it covers quite different ground in terms of the substance. I do not want to see people exploited in this way; the question is about what is provided for through existing law and how the new clause would affect that.

The offence is targeted at persons "making available" material that may have involved exploitation, rather than the exploitation itself. We are committed to ensuring that people are not subject to exploitation; this is a technical difference in respect of the way that the law applies. Tackling exploitation is the existing basis of the work of, for example, the National Crime Agency's child exploitation online protection command and the violence against women and girls strategy as well as the Modern Slavery Act 2015. Making sure that we implement the 2015 Act—recent legislation—and enforce it is a critical part of the work of the Home Office at the moment.

Thangam Debbonaire: I am grateful to the Minister for reassuring me that the 2015 Act could cover what I am talking about. My concern relates to whether that is actually happening. Could the Minister expand further on that point?

Matt Hancock: Of course. The expansion of enforcement in respect of the 2015 Act is an important part of the work of the Home Office at the moment. The Minister who took that legislation through Parliament is now the Secretary of State at the Department for Culture, Media and Sport, so Ministers at that Department have a good understanding of not just the legislation, but the need for enforcement.

Existing legislation, including the Criminal Justice and Immigration Act 2008, clearly makes it an offence to be in possession of "an extreme pornographic image"—which includes images depicting non-consensual sex—and to possess and distribute indecent images of children. In addition, the independent Internet Watch Foundation works to identify and remove child sexual abuse, which we discussed earlier in Committee, as well as criminally obscene content hosted anywhere in the world. We are able to take down criminally obscene content, and the approach has started to work effectively. The organisation works closely with Government, at national and local levels, and policing agencies to support investigations and prosecutions.

There are a couple of technical reasons why the new clause is deficient. First, the scope of the offence is unclear; there is no definition as to what constitutes pornographic material. It is not made clear whether the definition at clause 16 of the Bill is to be used. Similarly, it is not clear what is meant by "make available" on the internet: would that capture internet service providers who host the material or just the individual who actually uploaded it to a specific website?

Secondly, the proposed classification of the offence is summary only and the corresponding maximum penalty of six months' imprisonment, a level 5 fine or both, is incongruous for an offence dealing with this kind of conduct. Other sentences for offences in this area are much more serious. For example, the proposed maximum is much lower than for other offences relating to coercive conduct, such as trafficking for sexual exploitation, which carries a maximum of life imprisonment, and the possession of extreme pornographic images, which carries a maximum of three years' imprisonment, an unlimited fine or both.

I am also concerned that the offence as drafted could be difficult to prosecute. In practice, it is difficult to show that a person making material available online actually knew, or should have known, that an individual featured had been exploited. There may be no link, or a very tenuous link, between these individuals and those engaged in the exploitation itself. Lastly, there are also potential territorial difficulties involved in prosecuting this offence. In the absence of any express provision to the contrary, it is presumed that any criminal offence is subject to the jurisdiction only when it is perpetrated in the UK. This is an issue that we have dealt with elsewhere in the Bill.

I applaud the hon. Lady's intentions and have given assurances about the ongoing work in prosecuting other offences. I invite her to withdraw the motion.

Thangam Debbonaire: I thank the Minister for his responses. My understanding is that the implementation of the Modern Slavery Act does not cover this area of work so I will be following that up with the Minister and his colleagues. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 13

OFFENCE TO USE DIGITAL TICKET PURCHASING SOFTWARE TO PURCHASE EXCESSIVE NUMBER OF TICKETS

'(1) A person commits an offence if he or she utilizes digital ticket purchasing software to purchase tickets over and above the number permitted in the condition of sale.

(2) A person commits an offence if he or she knowingly resells or offers to resell a ticket that the person knows, or could reasonably suspect, was obtained using digital ticket purchasing software and was acting in the course of a business.

(3) For the purposes of subsection (2) a person shall be treated as acting in the course of a business if he or she does anything as a result of which he makes a profit or aims to make a profit.

(4) A person guilty of an offence under this section shall be liable on summary conviction to—

(a) imprisonment for a period not exceeding 51 weeks,

(b) a fine not exceeding level 5 on the standard scale, or

(c) both.

(5) In this section—

(a) "digital ticket purchasing software" means any machine, device, computer programme or computer software that, on its own or with human assistance,

bypasses security measures or access control systems on a retail ticket purchasing platform that assist in implementing a limit on the number of tickets that can be purchased, to purchase tickets.

(b) "retail ticket purchasing platform" shall mean a retail ticket purchasing website, application, phone system, or other technology platform used to sell tickets."

(6) Subsections (1) and (2) shall apply in respect of anything done whether in the United Kingdom or elsewhere.'—*(Nigel Adams.)*

This new clause creates an offence to use digital ticket purchasing software to purchase tickets for an event over and above the number permitted in the condition of sale. It also creates an offence to knowingly resell tickets using such software.

Brought up, and read the First time.

Nigel Adams (Selby and Ainsty) (Con): I beg to move, That the clause be read a Second time.

The new clause would make it an offence to use digital ticket purchasing software to purchase tickets for an event in excess of the number allowed by the retail ticket purchasing platform. It also creates an offence to knowingly resell tickets bought using such software. This is not a silver bullet. Ticket touting is a huge problem and touts use a variety of methods to obtain tickets. There is also the issue of regulation of secondary resellers. However, the new clause would address one problematic aspect: it would help to get a higher proportion of tickets into the hands of genuine fans on their first attempt.

I have told colleagues repeatedly in this place about my recent experience of trying to purchase tickets for a Green Day concert; I dread to think what a credibility hit I have caused fans by referencing the fact that I am a huge Green Day fan. The experience really did upset me. The primary ticketing website I was using, See Tickets, had been the victim of a computerised attack by organised touts using botnets. That meant that I and other fans lost out, but the tickets were available minutes later at grossly inflated prices on other sites.

The practice occurs every day on an industrial scale in all types of sporting and cultural events. Whenever tickets to popular events go on sale, they are snapped up by professional ticket touts and prices become prohibitive for many genuine fans, often hampering the ability of the artist to fill their venues.

9.45 am

I shall present a couple of case studies. On 10 June, Black Sabbath—not a band for which I would try to buy a ticket, though they have had a few hits in the past—announced their break-up tour. Tickets for this event were advertised by secondary sellers, including Viagogo, Stubhub and Seatwave, as being available for sale at 9 am on Wednesday 15—the exact time of the pre-sale by O2, the primary ticket vendor. When this began, the results on Google for researching Black Sabbath tickets did not show the primary ticket vendor as having the top result, but reams of secondary vendors, who just one hour after the O2 pre-sale began, had 2,280 tickets listed for re-sale, with 261 for the final show. Live Nation's pre-sale, six days later, also sold out within one minute, though there were plenty of tickets available on Ticketmaster's secondary site—the number almost doubling from the first pre-sale.

In the case of The Tragically Hip's latest tour—that does not refer to the state of my own hips—one third of tickets were snapped up by bots. That clearly demonstrates that these secondary sites are not primarily hosting honest fans who can no longer get to a gig and just want to recoup their costs, which is something that we should support. When dedicated re-sellers, who purchase as many tickets as they can without any intention of attending, dominate the market, fans who want to buy the tickets that other fans cannot use can have no confidence that they are not being ripped off. I have more evidence here: pages and pages of screenshots demonstrating how quickly large quantities of tickets become available on resale sites, from artists such as KT Tunstall; another favourite of the Minister's, Bros, and The 1975—a few recent ones. I have many more examples, but do not have time to go through them all.

I was inspired by a simple law that was recently passed in the state of New York following a campaign by American artists who faced the same problem. It was led by Lin-Manuel Miranda, an actor and composer, who wrote the smash hit musical "Hamilton", only to see a large proportion of each ticket release gobbled up by touts. Such laws have also been passed in nine other states and I understand that they are being considered by Congress in the US and by the Canadian legislature. The Ottawa Attorney General has made it clear that he wants to ban bots from selling tickets, introducing legislation to deal with the technology.

Our problem is identical to that in America and Canada. I have discussed this proposition with many interested industry parties and found absolute support right across the board, from primary ticketing sites, fans and consumer advocacy groups—most urgently the Fanfair Alliance, which has done a fantastic job campaigning on this issue—to artists themselves, including Josh Franceschi from the band You Me At Six, a superb band which I will have the pleasure of seeing next week. This is a young man who literally took matters into his own hands. Josh Franceschi was so incensed by ticket touting that, last week, he went to a store and sold tickets for his next gig, personally handing them over to his fans and taking the cash. He is passionate about this issue and we should do something to help him and many other artists like him. There is also the manager of Iron Maiden; that band, helped by Ticketmaster, recently employed a sophisticated patented ticketing system to try to beat the touts.

No artist wants to perform to empty seats because the touts have snapped up tickets and marked up prices—in the case of the Black Sabbath tour, by over 3,000% in some cases. The 1975's latest tour, sold out by primary retailers, still had some 1,800 tickets for sale on secondary ticket venue sites at inflated prices nine days later, demonstrating that the greed of the touts warps the market. The demand is there, but the touts are not willing to meet it. Artists, not be the parasitical touts, should have the ability to set ticket prices. If the artists wished to price the tickets at upwards of £2,000, they would do that, but if they choose not to do so in order to build their relationship with their fans, that should be their choice.

It is high time for legislation to help companies such as Ticketmaster, which blocks 5 billion bot attempts every year, yet estimates that, despite its software being 99% effective, 100 bots still get through every minute. I

therefore urge that we take this opportunity to ameliorate the problem, make digital touting harder and put some legal clout behind bands, fans and honest ticket sellers struggling to stay one step ahead of increasingly savvy touts exploiting ever-improving technology.

The Secretary of State is keen to see action, and she has told me herself that the existing Computer Misuse Act 1990 does not work. The new clause is supported by every secondary and primary ticketing site that I have spoken to, artists and, most importantly, genuine music fans, many of whom will be watching our sitting today and listening to what the Minister has to say. I agree wholeheartedly with the Prime Minister, who has promised to govern for the many and not for the privileged few. My amendment will allow that to happen.

Christian Matheson (City of Chester) (Lab): I rise briefly to support the new clause and to pay tribute to my good friend and fellow Select Committee member, the hon. Member for Selby and Ainsty, who has form on campaigning in this area. He is known as a music fan, and the new clause is the culmination of a long campaign on behalf of music fans everywhere.

Moreover, I do not believe that the hon. Gentleman will damage the credibility of Green Day, because he has a track record of supporting live music—this is certainly nothing like David Cameron suggesting that he was a Smiths fan and having Johnny Marr tweeting him to back off. While I am on the subject, I remind the Committee that I was at the last concert of The Smiths, which was in Brixton Academy, probably in December 1986 or ’87.

In those days, ticket touts were blokes in long macs shouting, “Any spare tickets?”, which was a problem, but manageable. The hon. Member for Selby and Ainsty has been outlining industrial-scale, mechanical touting, which is way beyond my experience of those days 20, 30 or even 40 years ago. The problem absolutely needs to be addressed and the new clause does so. I am pleased to support it and, if the Minister is planning to accept it in principle, I suggest that he could do worse than recognise the work of the hon. Gentleman, give him the credit for the new clause, along with my hon. Friends on the Front Bench, and the chance he so richly deserves to make a mark.

Calum Kerr (Berwickshire, Roxburgh and Selkirk) (SNP): I could not possibly be as glowing about the hon. Member for Selby and Ainsty as the hon. Member for City of Chester has been. There is a love-in across the Benches this morning.

I, too, rise briefly to support the new clause. To paraphrase a well-known quote by Eric Hoffer, the American moral philosopher, every good idea begins as a movement, becomes a business and eventually degenerates into a racket. That is what we have here. Online sales and fan-to-fan ticket sites are fantastic at enabling people to get access to the music events they want to go to, but because of the evolution of technology, software and bots, we now have a distorted market, about which we absolutely need to do something.

I want the hon. Member for Selby and Ainsty to be able to go to see his favourite band, Green Day—as he was mentioning them, it occurred to me that one of their songs, and the name of their 2004 album, seemed appropriate for a gentleman who might yet end up in the White House. I must also add that my hon. Friend the Member for Perth and North Perthshire (Pete Wishart) suggests that MP4 tickets are very easy to get hold of—he is determined that they are stopped from selling below ticket value.

I commend the hon. Member for Selby and Ainsty on his new clause and I am happy to support it.

Louise Haigh (Sheffield, Heeley) (Lab): I rise briefly to support the new clause. My hon. Friend the Member for Cardiff West and I were proud to put our names to it. I commend the hon. Member for Selby and Ainsty for bravely revealing his devotion to Green Day. I stand in solidarity with him—I, too, am a big fan.

This issue has been a problem for too long for fans of musicians of all descriptions. It prices people out of access to their favourite bands and acts and thereby entrenches a class barrier to culture, which cannot be allowed to continue. For as long as there have been ticketed events, there have been people making money out of the fact that demand for live sports or music outstrips supply. As my hon. Friend the Member for City of Chester pointed out, the development of technology has escalated the problem. Punters simply do not stand a chance against digital ticket purchasing software. The new clause would kick away one of the legs that ticket touts rely on.

The current legislation contained in the Consumer Rights Act 2015 is extremely patchy. It can compel ticket resale sites to publish information such as seat number and face value, but it is not enforced sufficiently and tickets are routinely sold at a high mark-up. Unless Parliament gets tough now, resale sites will continue brazenly to flout the law. It is high time that Parliament closed the legal loophole. That is what the industry, musicians and fans are calling for. I take the opportunity to thank my hon. Friend the Member for Washington and Sunderland West (Mrs Hodgson), who has been calling for this change for some time. We wholeheartedly support new clause 13.

Matt Hancock: I recognise the strength of feeling across the Committee on this matter. I will certainly do the bidding of the hon. Member for City of Chester and pay tribute to the work of my hon. Friend the Member for Selby and Ainsty, who is a long-standing supporter of live music and has made his case. Last week, he introduced me to Josh Franceschi in the House of Commons, who was able to make his plea very directly.

I match my hon. Friend’s Green Day ticketing problem and raise him my Paul Simon ticket problem. I had a similar experience when buying tickets to see Paul Simon next week at the Royal Albert Hall, to which I am looking forward enormously. I had to pay an eye-watering amount for the tickets—much higher than the face value.

Claire Perry (Devizes) (Con): If even the Minister cannot obtain tickets, given the strings he can pull, what hope is there for the ordinary punter?

Matt Hancock: I stress that I bought my tickets to see Paul Simon completely off my own bat, as a fan. My wife and I are enormously looking forward to going. I am prepared to pay the very high price because it will be

such an amazing concert, but it would be far better if I could pay the face value or something close to it. I went online immediately the tickets were released and a huge number had gone already. Secondary ticketing sites were the only way that I could get the tickets. Like my hon. Friend the Member for Selby and Ainsty, I was bent over my laptop pressing the button trying to get the tickets as quickly as possible. I only say that to explain to the Committee that I feel the pain of all those who end up having to pay far more than face value because of automated bots.

The Committee will know that we asked Professor Michael Waterson to review secondary ticketing. His very good independent report makes a number of points relevant to the new clause. The offences set out in the Computer Misuse Act 1990 have broad application and the Waterson review concludes that unauthorised use of a computerised ticketing system to avoid ticket volume constraints may give rise to breaches of that Act. Such breaches need to be reported, investigated and case law then established.

Having said that, I recognise the very clear sense in the debate that there remains a problem to be solved. I reiterate the words of the Secretary of State, who said last week that

"the advice has always been that the Computer Misuse Act applied. I want to look carefully at that and see how best we can get to a robust position on this matter".

She proposed to convene a meeting of all interested parties. If we can get it scheduled, we will have that meeting within a month; if not, I commit to holding it before Christmas.

Kevin Brennan (Cardiff West) (Lab): It is welcome to have a deadline, but would it not be better if that meeting took place before Report, so that the Commons has an opportunity to consider the points made at it?

10 am

Matt Hancock: We will seek to have it before the Bill reaches Report, but I will commit to having it before Christmas. Consideration of the Bill will still be ongoing after Christmas in the other place. At the same time, we need to work on making sure that, should we make progress in this area, we get the details and technicalities right and consult appropriately.

There are some technical deficiencies in the new clause. I ask my hon. Friend the Member for Selby and Ainsty to withdraw it, with that clear commitment to making progress in this area while there is still an opportunity—should that be the outcome—to amend this Bill.

A series of non-legislative work is also needed to tackle the problem. As my hon. Friend says, this is not a panacea. Today, we are announcing the new national cyber-security policy and that includes support, through the National Cyber Security Centre, for further action. The centre is in touch with ticketing organisations to enable this and I suggest that we also invite them to attend the meeting to see what progress can be made.

With those assurances, I ask my hon. Friend to withdraw the motion and I look forward to working with him and others to see what we can do to tackle this problem.

Nigel Adams: I am grateful to the Minister for his response. It was remiss of me not to mention the tremendous work of the hon. Member for Washington and Sunderland West, who chairs the all-party group on secondary ticketing. She does an amazing amount of work on this subject. In fact, I spent a day with her tramping up and down in the middle of 50-odd touts outside Wembley. I know how passionate she is about this issue and I appreciate her support.

My right hon. Friend the Minister has made a brilliant case for action on this problem. I am not at all surprised that he is a Paul Simon fan. At some stage, I will invite the Minister to a rock show. I love Paul Simon as well and I am sure the Minister will have paid several hundreds of pounds to go and see him. It seems outrageous, but the Minister will have a good time. "Catch him while you can" springs to mind.

I would be grateful to know when the Waterson review is likely to appear. The industry has been waiting for this for some time. It is a great piece of work, but I do not think it goes far enough on industrial ticket touting and bots. Can the Minister put on the record when the industry is likely to see the Government's response to this review?

Drew Hendry (Inverness, Nairn, Badenoch and Strathspey) (SNP): "The sound of silence."

Nigel Adams: Indeed, there is a sound of silence on this particular review response.

I am delighted that the Minister has committed to following up the Secretary of State's pledge to hold a meeting before Christmas. With something as technical as this, it is crucial to get all the players round the table: primary, secondary ticketing sites, representatives of both the fans and artists and, dare I say it, the Minister could probably do with me there as well.

Matt Hancock: On the response to the Waterson report, it will be published in due course. The question is whether it is best to hold back publication until after the work I have just committed to is done, to incorporate fully the views of the fans, artists, the ticket-selling industry and, potentially, even my hon. Friend.

Nigel Adams: It would be a sensible move. Perhaps it is not a bad idea to have this round-table and take soundings from the industry before the Government respond to the review; I do not think that the Waterson review goes quite far enough in tackling bots, although there is plenty of good work in there for the Government to consider.

I am happy to withdraw my new clause at this stage, following the Minister's clear commitment to solve the problem. I am hopeful that the issue will be resolved at some stage during the passage of the Bill. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

The Chair: I have done a quick count. I think there are nine new clauses and two new schedules left. I remind hon. Members that we have an hour and 20 minutes before we have to finish.

New Clause 15

Storage of uploaded works

"(1) The Electronic Commerce (EC Directive) Regulations 2002 is amended as follows.

(2) After Regulation 19 (a)(ii) insert—

"(iii) does not play an active role in the storage of information including by optimising the presentation of the uploaded works or promoting them."."—*(Kevin Brennan.)*

This new clause clarifies circumstances when a digital service is deemed an active provider of copyright protected content.

Brought up, and read the First time.

Kevin Brennan: I beg to move, That the clause be read a Second time.

I hope that the Minister enjoys his concert next week; I am sure he will be feelin' groovy. I rise to speak to new clause 15, which is a probing new clause to clarify when a digital service is deemed to be an active provider of copyright-protected content. Taking on board what you have said, Mr Stringer, I will truncate my remarks.

The Electronic Commerce (EC Directive) Regulations 2002, which put into law the EU's e-commerce directive 2000, include certain exemptions from liability for online services, including copyright-protected works. The fundamental concern from the music industry is that the hosting defence provided by regulation 19 of the 2002 regulations acts as a safe harbour and allows some services, including user-uploaded services such as YouTube, to circumvent the normal rules of licensing.

Those services can use copyright-protected content—a song by Paul Simon or Green Day, for example—to build businesses without fairly remunerating rights holders. In recent years, the music industry has argued that the online content market has developed in such a way that there is now a value gap between rights holders, such as artists, record companies and publishers and so on, and the digital services themselves, such as YouTube.

As evidence of that, the recent report by UK Music, "Measuring Music 2016", highlighted that user-uploaded service YouTube, the most widely used global streaming platform, increased its payments to music rights holders by 11% in 2015, despite consumption on the service growing by 132%. That is the value gap in a nutshell. Further industry analysis indicates that video streams increased by 88% year on year, but generated only a 0.4% increase in revenues. Nine of the top 10 most watched videos on YouTube are official music videos by artists such as Adele, Psy, Taylor Swift and Justin Bieber.

The inequality ensuing from that safe harbour is not only between those who produce music and those who promote it online; the provisions in new clause 15 have benefits for other sectors that seek to achieve a level playing field in online markets, too. The current legal ambiguity and imbalance has created a distortion in the digital market itself, with services such as YouTube benefiting from those exemptions while other services, such as Apple Music and Spotify, do not. The reality is that many people principally use YouTube to play music. It is nonsense to suppose it is not an active provider of copyright-protected content as those other services are.

There was, and continues to be, a justification for exemptions in some areas for passive hosts, but those must reflect the balance between the rights of rights holders and users. The industry is concerned that existing provisions are not sufficiently defined and as a result are open to deliberate manipulation. New clause 15, which stands in my name and that of my hon. Friend the Member for Sheffield, Heeley, aims to clarify the legislative framework, so that creators and rights holders can secure a fair and proper value for the use of their work by online services in a fair and properly functioning market.

Will the Minister clarify some issues? Many of the matters raised by new clause 15 are being considered by European institutions at this very moment. On 14 September, the day after Second Reading, the European Commission published a draft directive on copyright that seeks to address many of these points. That is a welcome development, and the Minister will probably to refer to it in his response. After the recent referendum put us on the path towards Brexit, many issues have been raised in relation to these proposals. It is highly conceivable that we will be Brexiting at the same time as Europe begins to adopt copyright rules for a digital age.

I would like to ask the Minister a few questions. First, will he assure us that the UK Government remain committed to engaging constructively with the European Union on matters relating to the draft copyright directive, and that they will put the interests of the creative industries at the heart of their representations? Secondly, will he support the positive measures in the draft directive that address the value gap between rights holders—particularly the music industry—and digital services?

Thirdly, and more generally, once article 50 is triggered, how do the UK Government intend to implement legislation agreed in Europe before we Brexit? Finally, what commitments is the Minister prepared to make today to reassure UK creators and rights holders that they will not miss out on any positive measures contained in the draft directive as a result of leaving the European Union?

Nigel Adams: I rise briefly to speak to the new clause tabled by the hon. Member for Cardiff West. I understand that it seeks to clarify a rule that already exists. As has been mentioned previously, I chair the all-party parliamentary group on music. Earlier in the year, we held a dinner with representatives from the industry and services such as Spotify and Apple Music. The intention of the dinner was better to understand the growing music-streaming market and what measures are needed to help it flourish further for the benefit of creators, fans and those services. I was taken by the agreement across the room about the existence of a value gap between rights holders and some digital services, and the need to ensure fairness in the way music rights are valued and negotiated.

The Government's response to the EU's digital platforms consultation, published at the beginning of the year, stated:

"Clarification of terms used in the Directive would, we believe, help to address these concerns."

I hope the Minister and the Government remain committed to that view and the intention behind the new clause to clarify existing law.

Matt Hancock: As we have debated, the Bill sends a clear message about copyright infringement, not least because we are increasing the penalty for online copyright

infringement from two to 10 years. Of course, I know about the concern in the music industry and elsewhere that online intermediaries need to do more to share revenues fairly with creators. That is what this new clause seeks to tackle, and I agree with that concern.

The hon. Member for Cardiff West mentioned the interaction of the Bill with EU law. The change proposed by the new clause is already the position in European Court of Justice case law, and we support that position in the UK. That provides some clarification to the existing position.

Let me answer the specific questions. First, we are heavily engaged in the digital single market negotiations and the discussions ongoing in Europe. While we are a member of the EU, we will continue to do that. The issue of the value gap, which the hon. Gentleman mentioned, is important, and the development of ECJ case law in that direction has been helpful.

That brings me to Brexit because, as the e-commerce directive is EU single-market legislation, we will have to consider what the best future system will be as we exit the European Union. We will have to consider how the e-commerce regulations as a whole should work in the future. That will be part of the debate about leaving the European Union. For the time being, ECJ case law supports the intentions in the new clause, and I would be wary about making piecemeal changes to the regime. I acknowledge the need, through the Brexit negotiations and the process of setting domestic law where there is currently European law, to take into account the important considerations that have been raised.

Kevin Brennan: The new clause was a probing amendment, and I thank the Minister for his response. It is important to have the Government's response on the record.

We debate this issue in the context of the UK music industry's growth: over a four-year period, it has grown by 17%. During that same period, there has been a massive shift from consumers owning music towards the streaming of music. The value of subscription streaming services has jumped from £168 million in 2014 to £251 million in 2015. So there is a model, if you like, in the market, which can produce value for the industry, but it is being undermined by the value gap that is created by the different treatment of these different types of services.

I accept that the Minister has put on the record the Government's current position and said that there will be a positive engagement with this issue. On that basis, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 16

E-BOOK LENDING

'In section 43(2) of the Digital Economy Act 2010, leave out from "limited time" to "and loan."'

This new clause aims to extend public lending rights to remote offsite e-book lending.—(Kevin Brennan.)

Brought up, and read the First time.

10.15 am

Kevin Brennan: I beg to move that the new clause be read a Second time.

This new clause would enable the consideration of public lending right for remote e-lending from libraries. That would be achieved by amending section 43(2) of the Digital Economy Act 2010, which sets remote loans outside the definition of lending under public lending right.

I do not know whether the Minister, like me, is a bit of a dinosaur and prefers his books to come in physical form—I am currently reading Bruce Springsteen's autobiography, which I recommend, as well as Ed Balls's book on politics, which is also very good. However, in this Digital Economy Bill we should acknowledge the increasing role of e-books and their impact on the income of authors. The spirit of the Bill is that we should better reflect how technology has changed our economy, so it is important that we go further in some places to acknowledge where technological change has outpaced legislation in relation to the arts.

Our approach here should be informed by the fact that we have the Digital Economy Act 2010. At the time that it was passed, some opportunities were missed. We should keep that in mind as we discuss this Bill and make sure that we do not allow those opportunities to pass by again as the Bill completes its stages in the House of Commons and afterwards in the other place.

The Digital Economy Act 2010 made some progress but it failed to forecast how our relationship with books would change. In particular, the 2010 Act touched on the subject of e-books, but its wording ignored the main way libraries would end up lending e-books: remotely, over an internet connection. Of course, remote lending is a natural continuation of the function of e-books. One of the main benefits of e-books is that they escape physical constraints such as location and storage.

However, under current legislation, authors receive no payment when a public library loans their book remotely, which is different from any other form of book loan. Last year, 2.3 million remote loans were made, but they were not counted at all towards authors' payments because the 2010 Act allowed only for on-site loans of e-books, of which there was a negligible number—who will go to a library when they can borrow the book remotely? That is the whole point of e-books. There is no reason in principle why the distinction should exist; that is what the philosophy of this Bill is supposed to be. Nevertheless, as a result, the public lending right—a right for authors established in 1979—has not been honoured, due to the failure of the 2010 Act to keep up with technological change.

I hope that we can take the opportunity today to avoid repeating that mistake. The Society of Authors, the Association of Illustrators, and the Authors' Licensing and Collecting Society all support the new clause. Public lending right is designed to balance the social need for free public access to books against an author's right to be remunerated for the use of their work. Indeed, public lending right provides a significant and much-valued part of many authors' incomes, particularly those authors whose books are sold mainly to libraries and those whose books are no longer in print.

The recent opinion of the Advocate General, relating to a case on rental and lending in respect of copyright works that is currently before the Court of Justice of the European Union, asserted that the lending of electronic books is the modern equivalent of the lending of printed books. I am aware that the Government expressed a

[Kevin Brennan]

desire to reflect this technological change in their March 2013 response to the independent review of e-lending in public libraries in England, but for some reason—perhaps the Minister can tell us why—they have neglected to take the opportunity presented by this Bill to put the matter right.

Furthermore, figures from March this year show that 343 libraries in the UK have been shut down in the past six years, with another 111 closures planned for 2016, which will result in the loss of almost 8,000 jobs. So it is particularly nonsensical not to apply PLR to remote e-book lending, given that it is becoming increasingly hard to visit a physical library. PLR is a legal right and a keystone of a society in which authors receive reward for their considerable cultural contribution. While we can all benefit from technological change and new ways of accessing creative works, it is important that the obligation to remunerate authors fairly is acknowledged and honoured.

Having acknowledged this loophole and the difficulties it causes, it is vital that the Bill addresses the issue, so that right-holders are treated equitably. Will the Minister take action on this issue and accept the new clause—and if not, why?

Matt Hancock: I wholeheartedly support the hon. Member for Cardiff West in his analysis of the increasing range of digital services at libraries across the country and the importance of those digital services to the communities they serve. I also agree with what he said about the increasing range of e-books and the importance of e-book lending. I am touched by his care for our delivering on the Conservative party manifesto and can tell him that we will deliver on this one too.

Libraries are increasingly providing remote e-book lending, so readers have the opportunity to borrow physical and audio books. Over the last year, 2 million e-book loans were made, which shows how important this is. We have been carefully looking at options for how to implement the manifesto commitment and appropriately compensate authors for remote e-lending, including by extending the PLR to e-books. In doing so, we have engaged with representatives of authors, libraries, agents, publishers and booksellers as well as the Public Lending Right Office. The collaborative input is very valuable and helps to ensure that we achieve an outcome that will be supported by all.

Like the hon. Member for Cardiff West, I am a mixed book reader. I am reading “Down and Out in London and Paris”—a well-thumbed hard copy. I am reading “King Lear” on an e-book, although I would say it is more studying than reading, because it is quite hard work. I bought a Kindle book at the weekend. I fully appreciate all types of books: hard copy and soft, hardback and soft.

The hon. Gentleman will understand how keen we are to implement our manifesto commitment. However, we want to take the time to get it right. Furthermore, we need to ensure that the measure is compatible with the copyright directive while we remain within the European Union. In doing so, we are also paying close attention to a relevant court case, again in the European Court of Justice, where we expect a ruling later this year that will have a bearing on how any clause to bring this into place would be drafted.

For those reasons, we are taking our time to get this right. With that explanation, I hope the hon. Member will withdraw his new clause.

Kevin Brennan: I will, but I do not think that there is any real need for the Minister not to commit carrying the measure out in the Bill. It simply extends what is already available. If someone borrowed an e-book by turning up at a library, the author would receive their public lending right, but if they did so remotely through the same library service, the author would not. Clearly that is an unacceptable injustice and anomaly.

The Minister has said that the Government need to take their time. It was March 2013 when they said in their response to the independent review that they intended to reflect that technology change. Three years and eight months later, we have a Bill in Committee in the House of Commons and still the Government say they need to take their time to get it right. This Bill is the right time to get it right. I hope the Minister will reflect further on the raft of amendments to this defective Bill that will be introduced in the House of Lords if we do not put this right in the House of Commons. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 19

Personal data breaches

‘(1) The Data Protection Act 1998 is amended as follows.

(2) After section 24 insert—

“24A Personal data breaches: notification to the Commissioner

(1) In this section, section 24B and section 24C, “personal data breach” means unauthorised or unlawful processing of personal data or accidental loss or destruction of, or damage to, personal data.

(2) Subject to subsections (3), (4)(c) and (4)(d), if a personal data breach occurs, the data controller in respect of the personal data concerned in that breach shall, without undue delay, notify the breach to the Commissioner.

(3) The notification referred to in subsection (2) is not required to the extent that the personal data concerned in the personal data breach are exempt from the seventh data protection principle.

(4) The Secretary of State may by regulations—

(a) prescribe matters which a notification under subsection (2) must contain;

(b) prescribe the period within which, following detection of a personal data breach, a notification under subsection (2) must be given;

(c) provide that subsection (2) shall not apply to certain data controllers;

(d) provide that subsection (2) shall not apply to personal data breaches of a particular description or descriptions.

24B Personal data breaches: notification to the data subject

‘(1) Subject to subsections (2), (3), (4), (6)(b) and (6)(c), if a personal data breach is likely to adversely affect the personal data or privacy of a data subject, the data controller in respect of the personal data concerned in that breach shall also, without undue delay, notify the breach to the data subject concerned, insofar as it is reasonably practicable to do so.

(2) The notification referred to in subsection (1) is not required to the extent that the personal data concerned in the personal data breach are exempt from the seventh data protection principle.

(3) The notification referred to in subsection (1) is not required to the extent that the personal data concerned in the personal data breach are exempt from section 7(1).

(4) The notification referred to in subsection (1) is not required if the data controller has demonstrated, to the satisfaction of the Commissioner—

(a) that the data controller has implemented appropriate measures which render the data unintelligible to any person who is not authorised to access it, and

(b) that those measures were applied to the data concerned in that personal data breach.

(5) If the data controller has not notified the data subject in compliance with subsection (1), the Commissioner may, having considered the likely adverse effects of the personal data breach, require the data controller to do so.

(6) The Secretary of State may by regulations—

(a) prescribe matters which a notification under subsection (1) must contain;

(b) provide that subsection (1) shall not apply to certain data controllers;

(c) provide that subsection (1) shall not apply to personal data breaches of a particular description or descriptions.

24C Personal data breaches: audit

‘(1) Data controllers shall maintain an inventory of personal data breaches comprising—

(a) the facts surrounding the breach,

(b) the effects of that breach, and

(c) remedial action taken

which shall be sufficient to enable the Commissioner to verify compliance with the provisions of sections 24A and 24B. The inventory shall only include information necessary for this purpose.

(2) The Commissioner may audit the compliance of data controllers with the provisions of sections 24A, 24B and 24C(1).

(3) In section 40 (Enforcement notices)—

(a) in subsection (1)—

(i) after “data protection principles,” insert “or section 24A, 24B or 24C”;

(ii) for “principle or principles” substitute “principle, principles, section or sections”;

(b) in subsection 6(a) after “principles” insert “or the section or sections”.

(4) In section 41 (Cancellation of enforcement notice”)—

(a) in subsection (1) after “principles” insert “or the section or sections”;

(b) in subsection (2) after “principles” insert “or the section or sections”.

(5) In section 41A (Assessment notices)—

(a) in subsection (1) after “data protection principles” insert “or section 24A, 24B or 24C”;

(b) in subsection (10)(b) after “data protection principles” insert “or section 24A, 24B or 24C”.

(6) In section 41C (Code of practice about assessment notices)—

(a) in subsection (4)(a) after “principles” insert “and sections 24A, 24B and 24C”;

(b) in subsection (4)(b) after “principles” insert “or sections”.

(7) In section 43 (Information notices)—

(a) in subsection 43(1)—

(i) after “data protection principles” insert “or section 24A, 24B or 24C”;

(ii) after “the principles” insert “or those sections”;

(b) in subsection 43(2)(b) after “principles” insert “or section 24A, 24B or 24C”.

(8) In section 55A (Power of Commissioner to impose monetary penalty)—

(a) after subsection (1) insert—

“(1A) The Commissioner may also serve a data controller with a monetary penalty notice if the Commissioner is satisfied that there has been a serious contravention of section 24A, 24B or 24C by the data controller.”;

(b) in subsection (3A) after “subsection (1)” insert “or (1A)”;

(c) in subsection (4) omit “determined by the Commissioner and”;

(d) in subsection (5)—

(i) after “The amount” insert “specified in a monetary penalty notice served under subsection (1) shall be”;

(ii) after “Commissioner” insert “and”;

(e) after subsection (5) insert—

“(5A) The amount specified in a monetary penalty notice served under subsection (1A) shall be £1,000.

(5B) The Secretary of State may by regulations amend subsection (5A) to change the amount specified therein.”

(9) In section 55B (Monetary penalty notices: procedural rights)—

(a) in subsection (3)(a) omit “and”;

(b) after subsection (3)(a) insert—

(aa) specify the provision of this Act of which the Commissioner is satisfied there has been a serious contravention, and”;

(c) after subsection (3) insert—

“(3A) A data controller may discharge liability for a monetary penalty in respect of a contravention of section 24A, 24B or 24C if he pays to the Commissioner the amount of £800 before the time within which the data controller may make representations to the Commissioner has expired.

(3B) A notice of intent served in respect of a contravention of section 24A, 24B or 24C must include a statement informing the data controller of the opportunity to discharge liability for the monetary penalty.

(3C) The Secretary of State may by regulations amend subsection (3A) to change the amount specified therein, save that the amount specified in subsection (3A) must be less than the amount specified in section 55A(5A).”;

(d) in subsection (5) after “served” insert “under section 55A(1)”;

(e) after subsection (5) insert—

“(5A) A person on whom a monetary penalty notice is served under section 55A(1A) may appeal to the Tribunal against the issue of the monetary penalty notice.”

(10) In section 55C(2)(b) (Guidance about monetary penalty notices) at the end insert “specified in a monetary penalty notice served under section 55A(1)”.

(12) In section 67 (Orders, regulations and rules)—

(a) in subsection (4)—

(i) after “order” insert “or regulations”;

(ii) after “section 22(1),” insert “section 24A(4)(c) or (d), 24B(6)(b) or(c),”;

(b) in subsection (5)—

(i) after subsection (c) insert “(ca) regulations under section 24A(4)(a) or (b) or section 24B(6)(a),”;

(ii) for “(ca) regulations under section 55A(5) or (7) or 55B(3)(b),” substitute “(cb) regulations under section 55A(5), (5B) or (7) or 55B(3)(b) or (3C),”.

(13) In section 71 (Index of defined expressions) after "personal data |section 1(1)" insert "personal data breach |section 24A(1)".

(14) In paragraph 1 of Schedule 9—

(a) after paragraph 1(1)(a) insert—

"(aa) that a data controller has contravened or is contravening any provision of section 24A, 24B or 24C, or";

(b) in paragraph 1(1B) after "principles" insert "or section 24A, 24B or 24C";

(c) in paragraph (3)(d)(ii) after "principles" insert "or section 24A, 24B or 24C";

(d) in paragraph (3)(f) after "principles" insert "or section 24A, 24B or 24C.""

This new clause seeks to create a general obligation on data controllers to notify the Information Commissioner and data subjects in the event of a breach of personal data security. The proposed obligation is similar to that imposed on electronic communication service providers by the Privacy and Electronic Communications (EC Directive) Regulations 2003.—(Louise Haigh.)

Brought up, and read the First time.

Louise Haigh: I beg to move, That the clause be read a Second time.

New clause 19 would provide a general obligation on companies to report personal data breaches. This crucial amendment gets to the heart of the regulatory system around cyber-security. Cyber-security is one of the greatest challenges we face as a country. Despite the Government's multi-million pound strategy and their further welcome announcement today, we do not believe they have faced up to the challenge yet. Some 90% of large UK firms were attacked in 2014. That is an astonishing figure, and yet only 28% of those businesses reported their cyber-attack to the police. As the Minister knows, national crime statistics rose for the first time in 20 years last year, because scams and cybercrime are now included.

Throughout discussion of the Bill, we have made it clear that we feel it does nothing to address the real challenges facing the digital economy. The Bill should have equipped the sector for the digital future—a future as replete with challenges as with opportunities. None of those challenges could be greater than cyber-security. That security says to consumers and individuals that, in this coming century, when data will be the lifeblood and the exchange of personal data the currency, nothing is more critical to ensure that that runs smoothly than their trust.

This multi-billion-pound sector, which now amounts to 11% of our GDP, is utterly reliant on the mutual trust fostered between consumers and producers, which is why the new clause is so critical. It would establish for the first time a duty on all companies to report any breach of cyber-security. The legislation as it stands is simply inadequate. The Data Protection Acts deal extensively with the protection of personal data, but there is no legal obligation on companies to report data breaches. The privacy and electronic communications regulations include an obligation to report data breaches, but that only applies to telecommunications companies and internet service providers and, at that stage, only requires companies to consider information customers.

Clearly, however, it is not only communications providers that hold sensitive data about people that carry the potential to be commodified. Insurance companies have had their data stolen, to be sold to claims management companies; banks are hacked, as J.P. Morgan was in 2014; and TK Maxx suffered the largest retail hack to date with the loss of credit and debit card information. Yet none of those examples had a duty to report to their customers to ensure that further harm was not done with their information.

The net impact of the lack in existing legislation is that the vast majority of attacks go unreported, and people are left in the dark when their personal data have been hacked, leaked, stolen or sold. If we are to talk meaningfully about data ownership, we cannot allow that to continue. We welcome yesterday's announcement that the Government will be implementing the general data protection regulation. As the Minister knows, the GDPR provides for a general obligation on all companies to report breaches to regulators and customers. Will he make it clear how he expects to fulfil that obligation and whether he is willing to accept the new clause?

Fundamentally, we are keen that the UK's digital economy is not seen as a soft touch on cybercrime. That is why the new clause would impose a general obligation on data controllers to notify the Information Commissioner and data subjects in the event of breaches of personal data security. We believe that that would be a major step forward, and we look forward to the Minister's comments.

Matt Hancock: I hope that we can deal with this new clause fairly quickly. I strongly support the hon. Lady's assertion that cyber-security is vital, and I appreciate her welcome for the national cyber-security strategy that the Chancellor of the Exchequer set out today. People say that there are two types of company: those that have had a cyber-attack and know about it; and those that have had one and do not know about it. It is vital that cyber-security is a priority for all companies that use the internet.

As the hon. Lady said, we have announced that the general data protection regulation will apply in the UK from May 2018. That new regime will introduce tough measures on breach notification, making it a requirement for all data controllers and processors to report data breaches to the Information Commissioner if they are likely to result in a risk to the rights and freedoms of individuals. Breaches must also be notified to the individuals affected where there is a high risk to their rights and freedoms. Under the GDPR, the sanctions available will be worth up to 4% of total global annual turnover, or €20 million, so it will be strongly in the interests of organisations to comply with the requirements.

I suggest that the bringing into UK law of the GDPR is the appropriate place to make the change that the hon. Lady suggests in her new clause. I therefore ask her to withdraw the motion.

Louise Haigh: If the Government intend to implement regulations in May 2018, I am not convinced why they cannot amend this legislation now.

Matt Hancock: The implementation of GDPR is a much bigger piece of work than simply this change. It is better to bring the whole thing in properly and in good order, rather than piecemeal.

Louise Haigh: It is highly unsatisfactory that, for the next 18 months, companies receiving cyber-attacks will still not be reporting them to customers that have had

their data stolen, hacked or lost, but it is welcome that the Government will be implementing the general data protection regulation. The Opposition will continue to scrutinise the implementation of their cyber-security strategy, so, with the Minister's assurances, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

10.30 am

New Clause 21

CODE OF PRACTICE: ACCESSIBILITY TO ON-DEMAND AUDIOVISUAL SERVICES FOR PEOPLE WITH DISABILITIES AFFECTING HEARING AND/OR SIGHT

'(1) The Secretary of State shall by regulations establish a code of practice for the augmentation of on-demand audiovisual programme services to require providers of such services to accompany designated output with designated levels of—

(a) subtitling,

(b) signing, or

(c) audio-description.

(2) The code shall require minimum levels of provision of one or more type of audiovisual augmentation.

(3) The code shall make provisions about the meeting of obligations established, including by allocating relevant responsibilities between—

(a) broadcasters,

(b) platform operators, and

(c) any other provider or purveyor of programmes or programme services.

(4) The Secretary of State shall, before making regulations under subsection (1), conduct a public consultation to inform the Secretary of State's determination of the elements of the code.

(5) The Secretary of State may delegate such duties and powers conferred under this section to an appropriate designated authority or agency as the Secretary of State thinks appropriate.

(6) For the purpose of subsection (1) a service is an on-demand audiovisual programme if it falls within the definition given in Section 368A (Meaning of "on-demand programme service") of the Communications Act 2003 (as inserted by the Audiovisual Media Service Regulations 2009).'—*(Louise Haigh.)*

Brought up, and read the First time.

Louise Haigh: I beg to move, That the clause be read a Second Time.

The new clause is a very simple amendment, one that I hope the Committee will agree is long overdue. The Communications Act 2003 ensured that access services—subtitles, audio description or sign language—are available on TV that is watched at a prescribed time and channel.

The way in which we watch and consume television has changed considerably since 2003; it is worth remembering that once the Communications Act 2003 reached Royal Assent, it would be a full five years before BBC iPlayer launched online. Similar on-demand services launched in the same year. Although subtitling is at or near 100% across the public service broadcasters, 76% of the UK's 90 on-demand providers still offer no subtitles at all—despite the fact that, according to Ofcom's figures, some 18% of the UK population use them.

The principles behind the Communications Act 2003 recognise that those with sensory loss should not be denied access to the information and services that many of us take for granted. Obviously, that principle still applies, yet, because of changes to technology, those with sensory loss cannot keep up.

In July 2013, the then Minister for the Digital Economy acknowledged this paradox, saying:

"If it is clear that progress isn't being made in three years' time…we will consider legislation."

We say that time is up. That is why the Opposition have helpfully brought forward a new clause to remind the Government of their commitment. The clause would merely update the existing regulatory regime that has worked so well for linear TV and apply it to on-demand.

There is no reason to believe that a burden will be imposed. The current code has a sliding scale for access services provision so that new and smaller broadcasters are either exempt or have gradually increasing targets. No linear broadcasters are ever required to spend more than 1% of their relevant turnover on access services. The new clause would be subject to public consultation. It is eminently reasonable and long overdue. It is clearly time the Government acted to reflect the digital world in which we live and allowed those with sensory loss to play a full and active part in it.

Matt Hancock: The creation of a digitally inclusive society is a crucial commitment for this Government. If somebody is not able to enjoy and exploit the benefits and convenience afforded to able bodied people, it is for us to better understand why and to work with interested parties to identify and implement a remedy.

The current statutory targets for subtitling, signing and audio description—collectively known by domestic TV channels as "access services"—cover 83 channels, over 90% of the audience share for broadcast TV. Over the years, the provision of access services has increased. Most notably, the number of service providers reporting subtitles grew from seven channels in 2013 to 22 in 2015. However, there is still clearly room for improvement.

We have become a society that wants to watch TV at a time and place convenient for us. As with much of the Bill, changes in technology outgrow the underpinning regulatory framework. It is not unreasonable to expect that content should have subtitles when it is made available at a time and place that are convenient for the viewer—even more so if access services were present at the scheduled broadcast time.

Ofcom currently possesses the power to encourage the 116 on-demand services providers in the UK to provide these services, but it does not have the power to require them. We have been considering what can be done—as the hon. Lady might imagine, given the previous commitment. We have been engaged in discussion with Ofcom to determine how we can address the shortcoming so that an increase in the provision of access services for video on demand can be achieved. We will continue that engagement with Ofcom. It made its position clear in evidence to the Committee, having previously argued that the law as it stood was what was needed.

I urge the hon. Lady to withdraw the new clause. It would require a code of practice that would be too prescriptive and would get into the micromanagement that we talked about earlier in our consideration of the Bill. Also, I would want the clause to specify that it is for Ofcom, not the Secretary of State, to make such a code.

Louise Haigh: I would be grateful if the Minister gave us a firm timeframe for this work with Ofcom; this is yet another area that could easily have been addressed in the Bill. He is saying, "Work is ongoing. We might come back to it later." There are so many areas of the Bill that could have been addressed by ongoing work. It all shows yet again that the Bill should have been delayed and brought forward when it was fit for Committee and ready to tackle all the issues.

Matt Hancock: The hon. Lady is clearly wrong about that, for two reasons. First, I do not want to delay the other measures in the Bill; she seems to want to delay a whole series of things that will improve mobile roll-out and broadband roll-out and will put age verification in place, and I think that would be a mistake.

Secondly, in the Committee's consideration of the Bill, we have had opportunities for further debate that have not been taken up. That shows that there has been full and proper scrutiny of the whole Bill. In this case, after the publication of the Bill, Ofcom said that it thought there was a need for the change in the law. We should take that seriously, consult Ofcom and consider exactly what needs to happen.

Louise Haigh: I repeat that in July 2013, the Minister's predecessor said:

> "If it is clear that progress isn't being made in three years' time…we will consider legislation."

The Government have had more than three years to do this. It is not that Ofcom came forward after the Bill was published. The Bill presented a perfect opportunity, so will he commit to the exact timeframe for giving Ofcom the powers?

Matt Hancock: Ofcom previously said that it had all the necessary powers, but its position has changed. When the regulator changes position, it is reasonable to take that into account and to consult on ensuring that we can get the powers into place.

I make no bones about it: the support for access services for video on demand has not been in place before. We made big strides in the previous Parliament. We are committed to doing more to ensure that the support is more widely available. Instead of the tone of delay that is coming from those on the Opposition Benches, we should have a tone of support. That is what I propose, so I ask the hon. Lady to withdraw the new clause.

Louise Haigh: It is completely outrageous to suggest that we are the ones arguing for delay.

Kevin Brennan: It's your tone that is the problem, Minister.

The Chair: Order.

Louise Haigh: The Minister's predecessor said more than three years ago that the Government would legislate. I say to the Minister that he will legislate in haste and repent at his leisure. He may live to repent in terms of some of the measures that have been brought forward and some that have been missed in the Bill. I will seek assurances from Ofcom, seeing as the Minister has not been able to provide them, and we may return to the issue on Report, but for now I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 24

Employers in the digital economy

"Where a business provides a digital service in which they act as an intermediary between labour suppliers and consumers where that service retains significant control over the service providers the labour suppliers shall be defined as employees of that business, as defined in section 230 of the Employment Rights Act 1996."—*(Louise Haigh.)*

Brought up, and read the First time.

Louise Haigh: The digital economy is the fastest growing area of the UK economy. We are very proud that, as a proportion of GDP, it is the largest in the G20. It employs more than 1.3 million workers, of whom a significant proportion—many more will not be categorised in that figure—are employed in the so-called gig economy. As we heard following the Uber ruling on Friday, many of those people do not enjoy very basic workers' rights. The London employment tribunal found that Uber was a transportation business and that the drivers who work through the app do work for Uber. The judgment against Uber was hailed as a landmark by the union that brought the claim, GMB, and rightly so. I am a proud member of that union.

Friday's landmark ruling should have ripple effects across the entire digital economy. At its best, the disruptive force of technology is reframing our relationship with each other and the world around us, whether that is farmers using millimetre-accurate GPS to guide their crops or technical experts in safety-critical industries using live data to monitor the manufacturing process. While the digital economy is heralding an unprecedented opportunity for many, the reality can be very different for the more than a million workers employed within the industry. Too often they will find themselves overworked, underpaid and exploited by bosses they never meet, and who do not even fulfil their basic duties as an employer.

Uber is the totemic example. Their "workers"—who pay Uber commission for every taxi ride completed—are not guaranteed breaks, holiday pay or even the minimum wage. Astonishingly, Uber did everything they could to argue to the tribunal that these people were not employees or workers. The judgement states that

> "Any organisation (a) running an enterprise at the heart of which is the function of carrying people in motor cars from where they are to where they want to be and (b) operating in part through a company discharging the regulated responsibilities of a PHV [private hire vehicle] operator, but (c) requiring drivers and passengers to agree, as a matter of contract, that it does not provide transportation services…and (d) resorting in its documentation to fictions, twisted language and even brand new terminology, merits, we think, a degree of scepticism."

We could not agree more, and it is a bitter irony that a force that is making this era one of the most inter-connected in history has left many workers more isolated than ever before. The Government—who have promised to look out for those that are "just managing"—seem to have been blindsided by the challenges faced by the most enterprising of workers in our economy. There are few workers who would better match that description of

"just managing" than the taxi drivers who work upwards of 60, 70 and 80 hours per week and still struggle to pay their bills.

The new clause goes further than the Uber ruling; it would require drivers and other workers to be treated as employees of digital intermediaries. In so doing, their rights to sick pay and holiday pay would be protected as well as the right to paid breaks and the right to the bare minimum wage. When companies such as Uber inevitably try to wriggle out of their responsibilities by appealing against this recent decision, they will have nowhere to go.

We hope that the Government will step into the breach and move to enshrine the rights of workers employed in this emerging sector in law. This decision applies solely to Uber, but the principle should surely hold across the economy. It could affect many tens of thousands of people. So far, the Government's only announcement has been a two-sentence press release issued on a Friday afternoon referring to a review that has no end in sight. If that is all that the Government can muster, it is hard to believe that they have grasped the scale of the challenge. This will be creating considerable insecurity for both the businesses operating in the digital economy and the workers involved.

I hope that the Minister is acutely aware of both the urgency and the importance of new clause 21 and why it was wholly inadequate for there to be no mention of workers and their protections in the Digital Economy Bill. Hopefully, the Minister will go away and consider measures that will fill the legal vacuum now created, and provide reassurance to the burgeoning digital workforce who, by virtue of a technological sleight of hand, are denied the rights that many of us take for granted. That is clearly an injustice of the first order.

Matt Hancock: The hon. Lady asks for us to act, and then sets out the way in which we are acting. That demonstrates that this important area is being considered by the Government.

Technology is indeed changing employment patterns, and the system must keep up with it. Clearly, employers must take their employment law responsibilities seriously and they cannot simply opt out of them. This means making sure that workers are paid properly and enjoy the employment rights to which they are entitled. As a very strong supporter of the living wage and the national living wage, which we introduced, I am a great proponent of ensuring that the labour market operates fairly. Part of that fairness is making sure that it is also flexible. That needs to be considered too, alongside the rights.

10.45 am

The truth is that about nine out of 10 Uber drivers—the hon. Lady mentioned Uber specifically—say that they value flexibility. The Opposition's righteous anger is slightly misplaced: in making the case against all flexibility, she is making the case against those very drivers.

As the hon. Lady will have seen in recent announcements, we have decided to take an overall approach to looking at this challenging area. She mentioned the review we are having, which is led by the former head of the No. 10 policy unit under the Labour Government: Matthew Taylor, now chief executive of the Royal Society for the encouragement of Arts. We have taken a cross-party, broad approach and he is incredibly well placed to undertake the review.

Christian Matheson: Will the Minister tell us which trade unions are actively involved in the review?

Matt Hancock: I have no doubt that Matthew Taylor will get in contact with lots of trade unions. It is a good idea to take a cross-party approach. The review will last for about six months and among other things it will consider security, pay and rights, skills and progression, and specifically the appropriate balance of rights and responsibilities of new business models and whether the definitions of employment status need to be updated to reflect new forms of working such as on-demand platforms. It will tackle some of those issues. With that explanation, I hope that the hon. Lady will see that we are taking a sensible, reasonable approach and will withdraw her new clause.

Louise Haigh: The Opposition have been nothing but reasonable in Committee. The Minister refers to righteous anger; for those taxi workers in London, Sheffield and across the country who are working and not guaranteed paid breaks or the minimum wage, it is not righteous anger but justifiable anger on their behalf. We are arguing not against all flexibility but for those basic rights to be enshrined in law. They should never be compromised for anyone's convenience.

We are pleased finally to see a timeframe and have a commitment that the review will report back in six months. We will keep a close eye on the review and hope that it will take note of today's debate. With that, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 31

Review of information disclosure and data ownership

'(1) The Secretary of State must commission an independent review of information disclosure and data ownership under Chapter 1 of Part 5 of this Act.

(2) In conducting the review, the designated independent reviewer must consult—

(a) specialists in data sharing,

(b) people and organisations who campaign for the rights of citizens to privacy and control regarding their personal information, and

(c) any other persons and organisations the review considers appropriate.

(3) The Secretary of State must lay a report of the review before each House of Parliament within six months of this Act coming into force.

(4) The Secretary of State may not make an order under section 82(4) bringing the provisions of Chapter 1 of Part 5 of this Act into force until each House of Parliament has passed a resolution approving the findings of the review mentioned in subsection (3).'.—*(Louise Haigh.)*

Brought up, and read the First time.

Louise Haigh: I beg to move, That the clause be read a Second time.

[Louise Haigh]

A great deal of our lengthy debate on part 5 has focused on data ownership and control. The Government have stated elsewhere that their policy is that citizens should own and control their own data, but sadly the Bill takes us backwards in that regard by adopting a completely paternalistic approach to data sharing, with a "Government knows best" attitude. We are blindly to assume that our data are being kept, shared and used appropriately while we are kept in the dark about how they are being used and for what purpose.

As the former Prime Minister famously said, "Sunlight is the best disinfectant," and as I have previously argued, a register for all data-sharing arrangements is necessary—in fact, essential—to ensure trust in the Government's data sharing. Quite simply, we cannot have trust when there is no transparency, and that is true for Governments of any colour. The new clause would require the Government to commission an independent review of information and data ownership under chapter 1 of part 5, which would seek to establish the direction in which the Government's stated policy intent for individuals to have control over their data is heading.

The Minister has given us all kinds of assurances that the codes of practice will sufficiently embed the principles, which have been debated at length, but as they are not statutory, there must be some form of mechanism to ensure that the spirit of the codes and the intention he stated in our debates are adhered to. Following the announcement that the Government will implement the general data protection regulation, the codes and the legislation are already out of date. I understand the role of Select Committees in this House, but the proposals made in the Bill are about incredibly detailed practices relating to the day-to-day operation of the civil service that are unlikely to be unearthed through a Select Committee report without a whistleblower or any kind of proactive publication, as suggested in our new clause on the new register.

The use of administrative data has been discussed at length, but it is not to be confused with the use of big data—a wholly different beast that has not been tackled in the Bill. That is another missed opportunity. A committee has been established in the Cabinet Office to consider the ethics of big data. That is absolutely necessary, but, again, it should have been conducted as an independent review, rather than something led by Government. My fear is that we are lagging well behind other Administrations with respect to how we treat data, and in the embedding of consent and control into our data regimes. We run a serious risk of sleepwalking into a major scandal.

Before I was elected I worked in the City of London, for Aviva. There I was put on a project looking at the type of things that we could do with big data. Aviva is a gold star insurer so it certainly was not indulging in unethical behaviour, but the kind of data that, if allowed, actuaries would like to test is simply not known—it would horrify the average consumer. There are many providers in the market for data, and many ways beyond our imagination in which our data could be commodified. It would take only a "Dispatches" exposé, or a scandal in *The Mail on Sunday*, and the Government would be forced to react; then, as all Governments do, they would over-react.

The Bill provides an excellent opportunity to look at the issues in the cold light of day, rather than the heat of reaction. I strongly urge the Ministers to take that opportunity and accept the new clause.

The Parliamentary Secretary, Cabinet Office (Chris Skidmore): There are several problems with the new clause. First, it would delay the delivery of significant public benefits; secondly, it seeks more consultation on measures where there has already been a long and broad-ranging consultation effort over many years; thirdly, it is asking for even more Parliamentary time, when the scheme, future pilots and data-sharing measures are already subject to significant and continued Parliamentary scrutiny.

We believe that the proposed review and subsequent delay would prevent us from delivering significant public benefits, such as extending the warm home discount, which had the support of the Committee last week. If implementation of warm home discount reform were delayed by one year because of the time needed to carry out the review and then to establish the necessary data-sharing arrangements, the Government would potentially help about 750,000 fewer fuel-poor homes in 2018-19. Further, there would be a delay to our ability to implement the benefits of more effectively targeting the £640 million-a-year energy company obligation.

The measure is not short on consultation. That process started in April 2014 and has involved civil society groups, experts and practitioners. There was a public consultation. The draft clauses were published in February 2016. There has been lots of discussion and the Government have listened. That is why information can be shared only for specific objectives, which can be added to only if they satisfy the public benefit test. It is why we have new unlawful disclosure offences, and a code of practice that has been welcomed by the Information Commissioner. The proposed review would require the Government to consult the very people we have already consulted in developing the public service delivery power.

The Bill is also not short on parliamentary oversight. There must be agreement by Parliament to new objectives for sharing data, new public authorities—a list will be drawn up—and the code of practice. The code of practice clearly sets out the process for public bodies to maintain public confidence, with privacy and impact assessments and by ensuring that all data-sharing arrangements are public. That is clearly set out in paragraphs 74 to 78 in part 5. The further scrutiny sought in the new clause is unnecessary duplication. The purpose of scrutiny by Parliament is to decide whether the powers should be taken, so no purpose would be served by having another review before the powers are commenced. For that reason I ask the hon. Lady to withdraw the amendment.

Louise Haigh: The Minister is dead right. We would like some more consultation on the review, not least because nearly all of the Government's consultees are unhappy with the proposals in the Bill.

I hope that we have thrashed out many of the part 5 issues and that the Government will act and amend the provisions in the other place. If that does not happen, we shall return to the matter on Report. I beg to ask leave with withdraw the motion.

Clause, by leave, withdrawn.

New Clause 32

OFCOM POWER TO ENFORCE STRUCTURAL SEPARATION OF BT OPENREACH

'After section 49C of the Communications Act 2003 insert—

"(49D) OFCOM has the power to enforce the structural separation of BT Openreach, should OFCOM consider this necessary."'—*(Calum Kerr.)*

Brought up, and read the First time.

Calum Kerr: I beg to move, That the clause be read a Second time.

I will outline the rationale and seek reassurances as to how the Government intend to deal with this matter. We propose that the Bill be amended to ensure that Ofcom has the strongest legal basis to deliver all the options highlighted in its digital communications review. Ofcom is consulting at the moment on how it could introduce legal separation for Openreach within the BT group, but structural separation remains an option.

Drew Hendry: Does my hon. Friend agree that the current structure is insufficient to provide an incentive to effectively invest in the network that is required? Ofcom has itself said that the existing ownership allows it to discriminate against competitors.

Calum Kerr: I thank my hon. Friend for his comments. At the crux of the debate as to where we go in terms of connectivity is BT, which has a case to answer regarding its investment. Ofcom has a case to answer on being technology agnostic. We have to be bolder and push more ambitiously for fibre. The Minister has told us "fibre means fibre", so we look forward to seeing progress. Sometimes I think the Government have consumed too much fibre.

It is essential that Ofcom is confident it can enforce separation of Openreach should it conclude it is necessary. It is important to understand the position today. Ofcom considers that it does have the power under the EU framework directive to impose structural separation. The problem with that approach is that Brexit means Brexit. Should Ofcom decide that separation is the right approach, would it take its case to the EU Commission at the time of Brexit? That would be fraught with difficulty, not least as BT might appeal and we would have a long drawn-out process.

It is also worth noting that the telecoms framework under which Ofcom regulates the UK is EU legislation. We need to consider that BT has stated publicly that it believes there is no mechanism for structural separation even within the EU. We are trying to flush out some of the Government's thinking. The new clause is designed to avoid the potential uncertainty and paralysis should Ofcom want to go down this route. Even if Ofcom does not use this power, having it there will have the added benefit of strengthening its hand in negotiation and enforcement as we all try to improve UK infrastructure.

The SNP's position is that the digital communications review is following the right lines. Structural separation at this stage is the right approach, but we need to ensure that the final option is available. Given the change in relation to the EU, I would welcome the Government's comments on how they propose to ensure that is an option.

Matt Hancock: We have made it clear that the UK needs a competitive and effective market in telecoms, and I have made it clear that fibre is the future. Fibre means fibre. The amendment seeks to ensure Ofcom has the power to impose structural separation on BT Openreach if Ofcom considers it necessary. There is already a process available to Ofcom to pursue structural separation should it be considered necessary. The Committee knows that Ofcom is currently considering how Openreach should be structured. We have made it clear that Ofcom should take whatever action it considers necessary and that structural separation remains an option.

Of course, in a rapidly moving sector such as communications, circumstances can change. We regularly review whether Ofcom has the right powers. We will need to do that in the context of our exit from the European Union, but at present Ofcom has the appropriate powers that it needs and it will continue to have them. With that explanation, I hope the hon. Gentleman will withdraw the amendment.

Calum Kerr: I thank the Minister for his comments, but the position in relation to having the powers is a weak answer. If there were a separation, we would enter into uncertainty without explicit powers. I will not press the motion to a vote, but I encourage the Government, as the picture on the EU evolves, to be clearer, and if they think it necessary to introduce something specific, so that we have a measure available.

I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 36

BILL CAPS FOR ALL MOBILE PHONE CONTRACTS

'(1) A telecommunications service provider supplying a contract relating to a hand-held mobile telephone must, at the time of entering into such a contract, allow the end-user the opportunity to place a financial cap on the monthly bill under that contract.

(2) A telecommunications service provider under subsection (1) must not begin to supply a contracted service to an end-user unless the end-user has either—

(a) requested the monthly cap be put in place and agreed the amount of that cap, or

(b) decided, on a durable medium, not to put a monthly cap in place.

(3) The end-user should bear no cost for the supply of any service above the cap if the provider has—

(a) failed to impose a cap agreed under subsection (2)(a),

(b) introduce, or amend, a cap following the end-user's instructions under subsection (2)(b), or

(c) removed the cap without the end-user's instructions or has removed it without obtaining the consumer's express consent on a durable medium under subsection (2).'—*(Louise Haigh.)*

Brought up, and read the First time.

11 am

Louise Haigh: I beg to move, That the clause be read a Second time.

This new clause would mean that mobile phone service providers must give all consumers the opportunity to put a financial cap on their monthly mobile phone bill

[Louise Haigh]

and that a mobile phone service cannot be provided until the service provider has put in place a cap of the agreed amount, if the consumer has made an express request. The new clause would be welcomed by many who have found that, when they receive an email or check their bank balance at the end of the month, their monthly mobile phone bill has come in much higher than expected.

The reason for the new clause is clear: mobile phone tariffs are complex, particularly on data. Few of us understand how much data we need for an average month, and consumers of all kinds can find that they use much more data than expected. Citizens Advice has provided me with an example that reveals the problem. One man changed his shift patterns and started using his phone to watch films during the night. His network sent a text message to tell him that he had gone over his monthly allowance, but he did not think too much about it until he received a bill for more than £2,000 at the end of the month. His service was subsequently cut off. Research suggests that as many as one in five consumers finds it difficult to keep track of how much they spend on data. The average unexpectedly high bill is usually double the cost of the original monthly fee.

Citizens Advice has received more than 60,000 inquiries about telephone and broadband debt, with its in-depth specialists dealing with nearly 27,000 individual mobile phone debt cases. Mobile phones have become a staple of our everyday life, and a voluntary cap would help consumers, particularly those who can ill afford an occasional doubling of their bill. Consumers support the measure, with more than 77% welcoming the idea.

This is not the first time that the proposal has been considered. In 2012, Ofcom considered introducing regulations but could not overcome the objections of providers, who argued that it would be too costly. Since then, two mobile phone providers have led the way and proved that it can be done. With the Bill's new provisions on Ofcom appeals, I hope the Government will now consider our new clause.

Matt Hancock: The new clause seeks to place a mandatory obligation on mobile phone service providers to agree a financial cap on monthly bills with the customer at the time of entering into the contract, or to secure an agreement from the customer that they do not wish to have a financial cap. Consumers can avoid bill shocks in a number of different ways, so this additional measure is not necessary.

Before purchasing a mobile contract, consumers can already calculate their normal usage based on their last couple of bills. Once a consumer has established their monthly usage, Ofcom-accredited comparison websites are available to them. In fact, the Bill makes further progress on switching. Mobile phone providers are also taking steps to protect their customers from bill shock. As the hon. Lady says, many providers alert customers when they are close to reaching usage allowance limits and offer apps that enable consumers to monitor that usage.

Drew Hendry: I hear what the Minister is saying, and he is right that mobile phone operators have put measures in place, but none of them actually caps the amount paid so that people can avoid the situation where, for example, a child runs up exorbitant bills by overriding those limits.

Matt Hancock: I do not think that is true. There are examples of contracts that have caps or prepayment. Such contracts exist and they would not be complemented by the new clause, which is about ensuring that information and agreement are available at the start of a contract. The new clause proposes that such an agreement is available or that the person explicitly chooses not to have a cap, which in substance is the same position as now—it would just change what is in the vast quantities of small print at the bottom of these contracts.

Louise Haigh: The provisions in the new clause will not be a negative process, as the Minister has just outlined; they will require people to request a cap, rather than to agree that a cap is not put in place. Does the Minister honestly believe that enough information is provided when customers negotiate a contract with a telecoms provider about how much data are going to cost and how much additional data—over the agreed limit—will cost? Does the law currently guard against the example I provided of the gentleman who was watching films, completely oblivious to the fact that he was running up a bill of hundreds of pounds?

Matt Hancock: I think that that information has to be provided. Further, it is Ofcom's job to ensure that that sort of information is provided in a reasonable way, and it has the capability to do that.

Can we guard against anybody using a mobile phone in a way completely different to their own intention at the point of signing the contract, having not taken into account the impact of that behaviour on the price? It is very hard to do that. I also do not see how the new clause would do that. It would simply change the way that a contract is written in the first place, giving the same options of either a capped or non-capped contract. It still provides for the two, so I do not think it would make a substantive difference.

That is not to deny that there is not always a challenge here to make sure that people get the best possible information, and crucially that switching is available and, as is provided for, that if somebody enters into a contract and wants to change that contract shortly after entering into it, they have the ability to do so. One provider now gives new customers the ability to put on a block on outgoing calls after they have reached their allowance, which they can turn on and off via their account, for example. There are dynamic ways of dealing with this within contracts, and I think that is probably the best way to do it, rather than with primary legislation.

Having said all of that, I of course recognise that this is an important and challenging area, but I hope that with that explanation the hon. Members will withdraw the new clause.

Louise Haigh: The Minister has not given us a good enough reason for why consumers should not have the ability to put a financial cap on their monthly bills. He has laid out some voluntary mechanisms that various communications providers have implemented, which is

all well and good for their customers, but I am sure he will accept that that is a very haphazard way to deal with this issue.

Matt Hancock: The proposal in the new clause is itself a voluntary proposal, because it provides for the agreement from a customer should they not wish to see a financial cap. In substance, that is exactly what the new clause provides for.

Louise Haigh: It is voluntary for the consumer but not for the telecoms provider. The Minister, in his typical, patronising way, is trying to put this differently from how the Opposition is putting it.

Drew Hendry: Does the hon. Lady agree that it is just common sense to allow the consumer the choice to avoid high bills?

Louise Haigh: Absolutely. I do not think the Minister has made a case at all for not allowing this to happen, or why mobile phone companies should object to people voluntarily placing a financial cap on their bills to avoid the kind of excessive bills that can be, and are, run up by even the most tech-savvy of people. We will divide the Committee on the new clause, because we have not been provided with sufficient explanation as to why it should not go forward.

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

The Committee divided: Ayes 8, Noes 10.

Division No. 8]

AYES

Brennan, Kevin
Debbonaire, Thangam
Foxcroft, Vicky
Haigh, Louise
Hendry, Drew
Jones, Graham
Kerr, Calum
Matheson, Christian

NOES

Adams, Nigel
Davies, Mims
Hancock, rh Matt
Huddleston, Nigel
Mann, Scott
Menzies, Mark
Perry, Claire
Skidmore, Chris
Stuart, Graham
Sunak, Rishi

Question accordingly negatived.

New Clause 37

"DUTY TO PROVIDE FREE WI-FI ON RAIL SERVICES

'(1) The Railways Act 1993 is amended as follows.

(2) After section 26 insert—

"(26D) In deciding whether to select the person who is to be the franchisee under a franchise agreement by means of an invitation to tender and whom so to select, the appropriate franchising authority must stipulate a requirement for franchisees to provide free wi-fi for passengers."

This new clause requires the Secretary of State to stipulate in the "franchise agreement" a requirement for franchisees to provide free wi-fi for passengers.—(Louise Haigh.)

Brought up, and read the First time.

Louise Haigh: I beg to move, That the clause be read a second time. We have reached our final new clause, which was tabled in frustration at the amount of time I spend on trains every week and how shockingly poor the quality and consistency of wi-fi is, even when one has paid for the privilege of accessing it, in addition to not inconsiderable rail fares. To make things worse, the Sheffield to London line has appalling mobile network coverage; I can make a call on about 15% of the journey, just when we are in the stations. That is why our new clause on the mobile strategic review is absolutely necessary to ensure that network coverage is extended across the UK and to keep those mobile network operators on target. We need decent quality wi-fi on all our public transport and in all our public spaces. We now have a record high of 1.65 billion rail passenger journeys every year. Without decent network and internet coverage, they are essentially unproductive journeys that could be used to boost our economy. Indeed, many of our cities outside London lose out on investment precisely because the connecting transport has such poor mobile and internet coverage.

I have spoken to several London-based tech companies that have chosen to invest in cities other than Sheffield, because they would essentially lose the time travelling from London through being unable to work. You would be forgiven for thinking that this was deepest, darkest Peru rather than one of the biggest cities in the UK, just two hours' train journey from London; but I was in Peru earlier this year and they have free wi-fi on their buses and in public spaces. In fact, of the top 10 most wi-fi-friendly cities in the world, the UK does not even feature. From Taipei to Florence and Tel Aviv to Hong Kong, the rest of the world is far ahead of us on access to free public wi-fi, which is boosting their tourism industries and domestic industries. There is benefit to be had for the train operating companies as well. In some US states, people recognise that they can deliver passenger-oriented services as part of wider, often safety-related, communications projects that they need to undertake, and harvest passengers' use of social media as a valuable data source for plugging gaps in their travel information services, as well as for monitoring reactions to network performance and being able to take remedial steps.

I am sure that the Minister is going to tell the Committee about the Government's superconnected cities programme, which got off to a shaky start—though they are to be congratulated on the progress that has already been made in delivering free wi-fi to trains and buses across Leeds, Bradford, Edinburgh, Newport, Cardiff, Greater Manchester, York and Oxford. As ever, though, we will push the Government and the Minister to be more ambitious and achieve everything they are capable of achieving, investing in the digital infrastructure that we need to ensure that our digital economy can continue to thrive across the whole country. Alongside roads and rail, it is the Government's job to ensure that our country is fully equipped with the digital infrastructure necessary for the digital revolution. As has been said many times, I am afraid that this Bill, unamended, does not cut it.

Our proposal would not require a single penny of public money. It would simply chip into the tens of millions of pounds of profit that the train companies make off the back of publicly-funded infrastructure. It would simply put into franchise agreements a requirement for all trains to provide free wi-fi and we have been very flexible and reasonable about the level at which that

[Louise Haigh]

should be provided. Ultimately, we need to see free wi-fi on all our public transport. Sheffield's longer bus journeys already offer free wi-fi, while York and Newcastle have opened up their public spaces. It will mean that people and businesses can be more productive and we can all spend less on our data packages.

Drew Hendry: In a progressive spirit, we join in the support for this measure. As someone who travels regularly, having taken my position in this House, on some of the train services, I note that the difference between the contract that the Scottish Government have organised through the franchise with ScotRail with intercity wi-fi, and what is available here is quite stark. In fact, all new electrical multiple units of 318s, 320s, 334s and 380s in Scotland come with wi-fi and power sockets. I urge the Minister to consider including that and to ensure that customers in England and Wales get the same sort of service as those in Scotland.

11.15 am

Matt Hancock: It is highly appropriate to end this sitting with the new clause because the intent behind it has cross-party support from both parts of the Opposition represented here. Government Members not only recognise, but are enthusiastic and passionate about getting better wi-fi on trains. My hon. Friend the Member for Devizes, as a Transport Minister and more specifically a Rail Minister, was instrumental in getting Britain to where we are with wi-fi on trains. It is something all MPs understand as we travel around the country. Our frustration is shared by the great British travelling public and the demands for better and faster free wi-fi on trains will continue until they are sated.

Requiring free wi-fi on trains has been undertaken through new franchises and implemented also in existing franchises. The obligation to provide free wi-fi is now secured in 10 of the 15 franchises and we forecast that more than 90% of passenger journeys will have access to wi-fi by the end of 2018 and almost 100% by 2020. There have been further programmes, such as the superconnected cities programme. The hon. Member for Sheffield, Heeley says she wants to press us to achieve all we can, and we accept the challenge.

For all new franchises, the current specifications will require a minimum of 1 megabit per second per passenger, which allows for web browsing, basic email and social media activity. Crucially, this is set to increase by 25% every year with a focus on ensuring that it is reliable and consistent because dropped calls or frequent breaks in ability to access wi-fi are seriously frustrating.

There are even stronger bids in some competitions. For example, the East Anglia franchise, which I use a lot, will provide up to 100 megabits per second to the train by 2019, then 500 megabits per second by 2021 and 1 gigabit per second by the end of 2021 on key intercity routes, not least the Norwich in 90 and Ipswich in 60 plans. That is totally brilliant and I pay tribute to my hon. Friend the Member for Devizes for making it happen.

Wi-fi was previously dependent on mobile coverage that trains went through, but train operators have started to innovate and have done deals with mobile operators to make sure they have enough 4G coverage down the track. Chiltern is an example. It agreed a deal with EE to provide 100% coverage from London to Birmingham. This is happening. Specifying a particular technology in legislation is likely to provide more problems than solutions. Our changes in driving wi-fi through contracts with operators is more likely to be successful in getting more connectivity faster. That is the approach I propose.

In a moment, I will ask the hon. Member for Sheffield, Heeley to withdraw the motion, but first I want to pay tribute to all the people who have helped to make this Committee happen, including the Opposition. We have had cheerful and sometimes forthright debates, but in the best spirit of improving the digital economy for all the citizens we serve. I pay tribute particularly to the hon. Member for Sheffield, Heeley who, in her first performance in her new position, has shown the rest of us how to do it. She has been charming and brilliant. I can only say, thank goodness for Jeremy Corbyn.

I thank you, Mr Stringer, and Mr Streeter for chairing the Committee so effectively and efficiently, and for ensuring that I made fewer mistakes than I otherwise would. I thank the Clerk and the staff of the Public Bill Office, who have helped enormously to keep us on the straight and narrow. I thank the Doorkeepers for holding the doors open long enough for my Whip to ensure that we had all our people here when necessary. I thank the *Hansard* reporters for no doubt capturing us accurately, in sometimes quite complicated language. I thank the police, my officials in DCMS—in particular the Bill team—and also those from across Government, because the Bill has measures in it from many different Departments. There has been great cross-Government collaboration and I put on record my thanks to my policy officials, the Bill team and my private office team. I thank all those who have given oral or written evidence to the Committee, which has improved our ability to scrutinise the Bill. With that, I hope that the hon. Member for Sheffield, Heeley will withdraw this final new clause and we can report to the House a well-scrutinised Bill.

Louise Haigh: It is very welcome to hear that all new franchise agreements—the Minister is nodding—will contain a requirement for wi-fi. I am happy to withdraw the motion.

Before I do, I add my thanks to you, Mr Stringer, and to Mr Streeter. You have both kept us in order and guided us through, particularly me in my first time on the Front Bench in a Bill Committee. I was put in this job two days before the Committee proceedings began, when I had not yet read the Bill. To say that this was being thrown in at the deep end is something of an understatement. I add particular thanks to the Clerk, who has been incredibly helpful in getting our last-minute amendments together, to the *Hansard* writers, to the police and Doorkeepers, and of course to all the civil servants who have been in and out of here through a revolving door as we have cantered through the various clauses. I also thank all my hon. Friends who have contributed, SNP Committee members and Government Committee members. I thank both Whips who have kept us to time—we are going to get there eventually.

It has been unsettling to agree with the Minister on so many things but I have been very relieved to find that he still manages to infuriate me. I believe we have stress-tested the Bill pretty roundly. We have found it wanting in

several areas and I am confident that it will receive amendments in the other place. I am disappointed to see it emerge relatively unscathed from Committee, but I am confident that it will return from the other place in better shape. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Schedule 1

Electronic communications code: consequential amendments

"Part 1

General provision

Interpretation

1 In this Part—

"the commencement date" means the day on which Schedule 3A to the Communications Act 2003 comes into force;

"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;

"the existing code" means Schedule 2 to the Telecommunications Act 1984;

"the new code" means Schedule 3A to the Communications Act 2003.

References to the code or provisions of the code

2 (1) In any enactment passed or made before the commencement date, unless the context requires otherwise—

(a) a reference to the existing code is to be read as a reference to the new code;

(b) a reference to a provision of the existing code listed in column 1 of the table is to be read as a reference to the provision of the new code in the corresponding entry in column 2.

(2) This paragraph does not affect the amendments made by Part 2 of this Schedule or the power to make amendments by regulations under section 6.

(3) This paragraph does not affect section 17(2) of the Interpretation Act 1978 (effect of repeal and re-enactment) in relation to any reference to a provision of the existing code not listed in the table.

Table

Existing code	*New code*
Paragraph 9	Part 8
Paragraph 21	Part 6
Paragraph 23	Part 10
Paragraph 29	Paragraph 17

References to a conduit system

3 In any enactment passed or made before the commencement date, unless the context requires otherwise—

(a) a reference to a conduit system, where it is defined by reference to the existing code, is to be read as a reference to an infrastructure system as defined by paragraph 7(1) of the new code, and;

(b) a reference to provision of such a system is to be read in accordance with paragraph 7(2) of the new code (reference to provision includes establishing or maintaining).

Part 2

Amendments of particular enactments

Landlord and Tenant Act 1954 (c. 56)

4 In section 43 of the Landlord and Tenant Act 1954 (tenancies to which provisions on security of tenure for business etc tenants do not apply) after subsection (3) insert—

"(4) This Part does not apply to a tenancy—

(a) 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), and

(b) which is granted after that Schedule comes into force.""

Opencast Coal Act 1958 (c. 69)

5 (1) Section 45 of the Opencast Coal Act 1958 (provisions as to telegraphic lines) is amended as follows.

(2) In subsection (2) for "paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

(3) In section (4) for "Paragraph 1(2) of the electronic communications code" substitute "Paragraph 103(2) of the electronic communications code".

Land Drainage (Scotland) Act 1958 (c. 24)

6 In section 17 of the Land Drainage Act (Scotland) Act 1958 (application of paragraph 23 of the code) for "Paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

Pipe-lines Act 1962 (c. 58)

7 In section 40(2) of the Pipe-lines Act 1962 (avoidance of interference with lines) for "Paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

Harbours Act 1964 (c. 40)

8 In section 53 of the Harbours Act 1964 (application of paragraph 23 of the code) for "Paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

Fair Trading Act 1973 (c. 41)

9 In section 137(3)(f) of the Fair Trading Act 1973 (general interpretation: services covered) for "paragraph 29 of Schedule 2 to the Telecommunications Act 1984" substitute "paragraph 17 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

Highways Act 1980 (c. 66)

10 The Highways Act 1980 is amended as follows.

11 In section 177(12) (restriction of construction over highways: application of paragraph 23 of code) for "paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

12 (1) Section 334 (savings relating to electronic communications apparatus) is amended as follows.

(2) In subsection (8) for "Paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

(3) In subsection (9) for "the said paragraph 23" substitute "Part 10 of the electronic communications code".

(4) In subsection (11)—

(a) for "Sub-paragraph (8) of paragraph 23" substitute "Paragraph 68";

(b) for "that paragraph" substitute "Part 10 of the code".

(5) In subsection (12) for "1(2)" "substitute "103(2)".

(6) In subsection (13) for "Paragraph 21 of the electronic communications code (restriction on removal of electronic communications apparatus)" substitute "Part 6 of the electronic communications code (rights to require removal of electronic communications apparatus)".

Roads (Scotland) Act 1984 (c. 54)

13 The Roads (Scotland) Act 1984 is amended as follows.

14 (1) Section 50 (planting of trees etc by roads authority) is amended as follows.

(2) In subsection (3) for "Paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

(3) In subsection (4)—

(a) for "sub-paragraph (8) of paragraph 23" substitute "Paragraph 68"

(b) for "that paragraph" substitute "Part 10 of the code".

15 (1) Section 75 (bridges over and tunnels under navigable waterways) is amended as follows.

(2) In subsection (9) for "Paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

(3) In subsection (10)—

(a) for "sub-paragraph (8) of paragraph 23" substitute "paragraph 68"

(b) for "that paragraph" substitute "Part 10 of the code".

16 (1) Section 132 (saving for operators of telecommunications code systems) is amended as follows.

(2) In the heading for "telecommunications code systems" substitute "electronic communications code networks".

(3) In subsection (4) for "paragraph 1(2) of the electronic communications code" substitute "paragraph 103(2) of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

(4) In subsection (5) for "Paragraph 21 of the electronic communications code (restriction on removal of electronic communications apparatus)" substitute "Part 6 of the electronic communications code (rights to require removal of electronic communications apparatus)".

Housing Act 1985 (c. 68)

17 Section 298 of the Housing Act 1985 (telecommunications apparatus) is amended as follows.

18 For the heading substitute "Electronic communications apparatus".

19 In subsection (2) for "paragraph 21 of the electronic communications code" substitute "Part 6 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

20 In subsection (3) for "paragraph 23" substitute "Part 10".

Food and Environment Protection Act 1985 (c. 48)

21 The Food and Environment Protection Act 1985 is amended as follows.

22 In section 8A (electronic communications apparatus: operations in tidal waters etc) for the words from "paragraph 11" to "1984" substitute "Part 9 of Schedule 3A of the Communications Act 2003 (the electronic communications code)".

23 In section 9(8) (defence to operating without licence under Part 2)—

(a) for "paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A of the Communications Act 2003 (the electronic communications code)";

(b) omit the words from "In this subsection" to the end.

Airports Act 1986 (c. 31)

24 The Airports Act 1986 is amended as follows.

25 (1) Section 62 (electronic communications apparatus) is amended as follows.

(2) In subsection (1) for "Paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A of the Communications Act 2003 (the electronic communications code)".

(3) In subsection (4) for "Paragraph 23" substitute "Part 10".

(4) In subsection (5)—

(a) for "Sub-paragraph (8) of paragraph 23" substitute "Paragraph 68";

(b) for "that paragraph" substitute "Part 10 of the code".

(5) In subsection (6) for "1(2)" substitute "103(2)"

(6) In subsection (7) for "Paragraph 21 of the electronic communications code (restriction on removal of apparatus)" substitute "Part 6 of the electronic communications code (rights to require removal of apparatus)".

Landlord and Tenant Act 1987 (c. 31)

26 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—

"(db) the conferral of a code right under Schedule 3A to the Communications Act 2003 (the electronic communications code);".

Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22)

27 In paragraph 4 of Schedule 4 to the Road Traffic (Driver Licensing and Information Systems) Act 1989 (application of paragraph 23 of code to licence holders) for "Paragraph 23 of Schedule 2 to the Telecommunications Act 1984" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

Electricity Act 1989 (c. 29)

28 In paragraph 1(6) of Schedule 16 to the Electricity Act 1989 (application of paragraph 23) for "Paragraph 23 of Schedule 2 to the Telecommunications Act 1984" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

Town and Country Planning Act 1990 (c. 8)

29 (1) Section 256 of the Town and Country Planning Act 1990 (electronic communications apparatus: orders by the Secretary of State) is amended as follows.

(2) In subsection (5) for "Paragraph 1(2) of the electronic communications code" substitute "Paragraph 103(2) of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

(3) In subsection (6) for "Paragraph 21 of the electronic communications code (restriction on removal of electronic communications apparatus)" substitute "Part 6 of the electronic communications code (rights to require removal of electronic communications apparatus)".

Water Industry Act 1991 (c. 56)

30 In paragraph 4 of Schedule 13 to the Water Industry Act 1991—

(a) for "paragraph 23" substitute "Part 10";

(b) for "Schedule 2 to the Telecommunications Act 1984" substitute "Schedule 3A to the Communications Act 2003";

(c) in the heading, for "telecommunication systems" substitute "electronic communications networks".

Water Resources Act 1991 (c. 57)

31 In Schedule 22 to the Water Resources Act 1991 (protection of particular undertakings)—

(a) in paragraph 5 for "Paragraph 23 of Schedule 2 to the Telecommunications Act 1984" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)";

(b) for the italic heading before paragraph 5 substitute "Protection for electronic communications networks".

Electricity (Northern Ireland) Order 1992 (S.I. 1992/231)

32 In paragraph 3(2) of Schedule 4 to the Electricity (Northern Ireland) Order 1992 (application of paragraph 23) for "paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

Cardiff Bay Barrage Act 1993 (c. 42)

33 In paragraph 16 of Schedule 2 to the Cardiff Bay Barrage Act 1993 (application of paragraph 23) for "Paragraph 23 of Schedule 2 to the Telecommunications Act 1984" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

Roads (Northern Ireland) Order 1993 (S.I. 1993/3160)

34 (1) Schedule 9 to the Roads (Northern Ireland) Order 1993 (saving provisions) is amended as follows.

(2) In paragraph 2(2) for "Paragraph 1(2) of the electronic communications code" substitute "Paragraph 103(2) of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

(3) In paragraph 2(3) for "Paragraph 21 of the electronic communications code (restrictions on removal of apparatus)" substitute "Part 6 of the electronic communications code (rights to require removal of apparatus)".

(4) In paragraph 3 for "Paragraph 23" substitute "Part 10".

Airports (Northern Ireland) Order 1994 (S.I. 1994/426)

35 (1) Article 12 of the Airports (Northern Ireland) Order 1994 (provisions as to electronic communications apparatus) is amended as follows.

(2) In paragraph (1) for "Paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

(3) In paragraph (3A) for "Paragraph 23" substitute "Part 10".

(4) In paragraph (4)—

(a) for "Sub-paragraph (8) of paragraph 23" substitute "Paragraph 68";

(b) for "that paragraph" substitute "Part 10 of the code".

(5) In paragraph (5) for "1(2)" substitute "103(2)".

(6) In paragraph (6) for "Paragraph 21 of the electronic communications code (restriction on removal of apparatus)" substitute "Part 6 of the electronic communications code (rights to require removal of apparatus)".

(7) Omit paragraph (7).

Landlord and Tenant (Covenants) Act 1995 (c. 30)

36 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)."

Gas Act 1995 (c. 45)

37 In paragraph 2(7) of Schedule 4 to the Gas Act 1995 (application of paragraph 23 to public gas transporters) for "Paragraph 23 of Schedule 2 to the Telecommunications Act 1984" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

Channel Tunnel Rail Link Act 1996 (c. 61)

38 (1) Part 4 of Schedule 15 to the Channel Tunnel Rail Link Act 1996 (protection of telecommunications operators) is amended as follows.

(2) For the heading substitute "Protection of electronic communications code operators".

(3) In paragraph 2(1) for "Paragraph 21 of the electronic communications code" substitute "Part 6 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

(4) In paragraph 2(2) for "Paragraph 23" substitute "Part 10".

(5) In paragraph 3 for "paragraph 9" substitute "Part 8".

(6) In paragraph 4(1) for "paragraph 23" substitute "Part 10".

Gas (Northern Ireland) Order 1996 (S.I. 1996/275)

39 (1) Schedule 3 to the Gas (Northern Ireland) Order 1996 (other powers etc of licence holders) is amended as follows.

(2) In paragraph 1(1) omit the following definitions—

(a) "public telecommunications operator";

(b) "telecommunication apparatus" and "electronic communications network";

(c) "telecommunications code".

(3) In paragraph 3(2) for "paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

Business Tenancies (Northern Ireland) Order 1996 (SI 1996/725 (NI 5))

40 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), where the tenancy is granted after that Schedule comes into force."

Town and Country Planning (Scotland) Act 1997 (c. 8)

41 (1) Section 212 of the Town and Country Planning (Scotland) Act 1997 (electronic communications apparatus) is amended as follows.

(2) In subsection (7) for "Paragraph 1(2) of the electronic communications code" substitute "Paragraph 103(2) of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

(3) In subsection (8) for "Paragraph 21 of the electronic communications code (restriction on removal of electronic communications apparatus)" substitute "Part 6 of the electronic communications code (rights to require removal of apparatus)".

Enterprise Act 2002 (c. 40)

42 The Enterprise Act 2002 is amended as follows.

43 In section 128(5) (mergers: references to supply of services) for the words from "(within" to the end substitute "(within the meaning of paragraph 17 of Schedule 3A to the Communications Act 2003 (the electronic communications code)) for sharing the use of electronic communications apparatus."

44 In section 234(5) (enforcement of consumer legislation: references to supply of services) for the words from "(within" to the end substitute "(within the meaning of paragraph 17 of Schedule 3A to the Communications Act 2003 (the electronic communications code)) for sharing the use of electronic communications apparatus."

Communications Act 2003 (c. 21)

45 The Communications Act 2003 is amended as follows.

46 (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 87 of that Schedule."

47 (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 91 of Schedule 3A 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) regulations under paragraph 91 of Schedule 3A 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.”

48 Schedule 3 is repealed.

Land Reform (Scotland) Act 2003 (asp 2)

49 (1) Schedule 1 to the Land Reform (Scotland) Act 2003 (path orders) is amended as follows.

(2) In paragraph 12 for “Paragraph 1(2) of the electronic communications code” substitute “Paragraph 103(2) of Schedule 3A to the Communications Act 2003 (the electronic communications code)”.

(3) In paragraph 13 for “Paragraph 21 of that code (restriction on removal of apparatus)” substitute “Part 6 of the electronic communications code (rights to require removal of apparatus)”.

Housing and Regeneration Act 2008 (c. 17)

50 The Housing and Regeneration Act 2008 is amended as follows.

51 In section 2(3) (objects of the Homes and Communities Agency: interpretation) in paragraph (a) of the definition of “infrastructure” for “telecommunications” substitute “electronic communications”.

52 In section 57(1) (interpretation of Part 1) omit the definition of “conduit system” and insert in the appropriate place—

““infrastructure system” has the meaning given by paragraph 7(1) of Schedule 3A to the Communications Act 2003 (the electronic communications code), and a reference to providing such a system is to be read in accordance with paragraph 7(2) of the code (reference to provision includes establishing or maintaining),”.

53 In the table in section 58 (index of defined expressions in Part 1) omit the entry for “conduit system (and providing such a system)” and insert in the appropriate place—

“Infrastructure system (and providing such a system)	Section 57(1)”.

Crossrail Act 2008 (c. 18)

54 (1) Part 4 of Schedule 17 to the Crossrail Act 2008 (protective provisions) is amended as follows.

(2) In paragraph 1(2) for the definition of “electronic communications code” substitute—

““electronic communications code” means the code set out in Schedule 3A to the Communications Act 2003;”.

(3) In paragraph 2(1) for “paragraph 23” substitute “Part 10”.

(4) In paragraph 2(2) for “Paragraphs 21 and 23” substitute “Parts 6 and 10”.

(5) In paragraph 3 for “paragraph 9” substitute “Part 8”.

(6) In paragraph 4(1) for “paragraph 23” substitute “Part 10”.

Marine (Scotland) Act 2010 (asp 5)

55 The Marine (Scotland) Act 2010 is amended as follows.

56 In section 36(1) (electronic communications apparatus) for the words from “paragraph 11” to “apparatus)” substitute “Part 9 of Schedule 3A to the Communications Act 2003 (the electronic communications code) (works in connection with electronic communications apparatus).

57 (1) Section 41 (defence to offences: electronic communications: emergency works) is amended as follows.

(2) In subsection (1) for “paragraph 23 of the electronic communications code” substitute “Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)”.

(3) Omit subsection (2).”—(*Matt Hancock.*)

The new Schedule replaces Schedule 3 to the Bill and contains the amendments in that Schedule with other amendments consequential on the replacement of the electronic communications code.

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

New Schedule 2

Bank of England oversight of payment systems

“Part 1

Extension of Bank of England oversight of payment systems

1 The Banking Act 2009 is amended as follows.

2 In the heading to Part 5 (inter-bank payment systems) omit “Inter-bank”.

3 In section 181 (overview) for “payments between financial institutions” substitute “transferring money”.

4 (1) Section 182 (interpretation: “inter-bank payment system”) is amended as follows.

(2) In subsection (1)—

(a) omit “inter-bank”;

(b) omit the words from “between financial institutions” to the end.

(3) After subsection (1) insert—

“(1A) But “payment system” does not include any arrangements for the physical movement of cash.”

(4) Omit subsections (2) and (3).

(5) In subsection (5) for “an inter-bank” substitute “a”.

(6) In the heading omit “inter-bank”.

5 In section 183 (interpretation: other expressions), in paragraph (a) for “an inter-bank” substitute “a”.

6 (1) Section 184 (recognition order) is amended as follows.

(2) In subsection (1) for “an inter-bank” substitute “a”.

(3) In subsection (2) omit “inter-bank”.

(4) In subsection (3) for “an inter-bank” substitute “a payment”.

7 In section 185 (recognition criteria), in subsection (1) for “an inter-bank” substitute “a”.

8 In section 186A (amendment of recognition order), in subsections (2)(b) and (4), omit “inter-bank”.

9 In section 187 (de-recognition), in subsections (2), (3)(b) and (5), omit “inter-bank”.

10 In section 188 (principles), in subsection (1) omit “inter-bank”.

11 In section 189 (codes of practice) omit “inter-bank”.

12 In section 190 (system rules), in subsection (1) omit “inter-bank”.

13 In section 191 (directions), in subsection (1) omit “inter-bank”.

14 In section 192 (role of FCA and PRA), in subsections (2)(a) and (b) and (3), omit “inter-bank”.

15 In section 193 (inspection), in subsections (1) and (2), omit “inter-bank”.

16 In section 194 (inspection: warrant), in subsection (1)(a) omit “inter-bank”.

17 In section 195 (independent report), in subsection (1) omit “inter-bank”.

18 In section 196 (compliance failure) omit “inter-bank”.

19 In section 197 (publication), in subsection (1) omit “inter-bank”.

20 In section 198 (penalty), in subsection (1) omit “inter-bank”.

21 In section 199 (closure), in subsection (2) omit “inter-bank”.

22 In section 200 (management disqualification), in subsections (1) and (2), omit “inter-bank”.

23 In section 201 (warning), in subsection (1) for “an inter-bank” substitute “a”.

24 In section 202A (injunctions), in subsections (2)(a) and (3)(a), omit “inter-bank”.

25 In section 203 (fees), in subsection (1) omit “inter-bank”.

26 In section 204 (information), in subsections (1A), (2) and (4)(c), omit “inter-bank”.

27 In section 205 (pretending to be recognised), in subsection (1) omit “inter-bank”.

28 In section 206A (services forming part of recognised inter-bank payment system), in subsections (1), (2) and (7)(a) and in the heading, omit "inter-bank".

29 In section 259 (statutory instruments), in the Table in subsection (3)—

(a) in the heading for the entries in Part 5, omit "Inter-bank";

(b) in the entry for section 206A, in the second column omit "inter-bank".

30 In section 261 (index of defined terms), in the Table—

(a) omit the entry for "Inter-bank payment system";

(b) at the appropriate place insert—

"Payment system	182"

PART 2

CONSEQUENTIAL AMENDMENTS

Financial Services Act 2012

31 The Financial Services Act 2012 is amended as follows.

32 (1) Section 68 (cases in which Treasury may arrange independent enquiries) is amended as follows.

(2) In subsection (3), in paragraphs (a) and (b)(ii), omit "inter-bank".

(3) In subsection (5), in the definition of "recognised inter-bank payment system"—

(a) omit the first "inter-bank";

(b) for "an inter-bank" substitute "a".

33 In section 85 (relevant functions in relation to complaints scheme), in subsection (3)(a) omit "inter-bank".

34 In section 110 (payment to Treasury of penalties received by Bank of England), in subsection (5)(d) omit "inter-bank".

Financial Services (Banking Reform) Act 2013

35 The Financial Services (Banking Reform) Act 2013 is amended as follows.

36 In section 45 (procedure), in subsection (1)(a) omit "inter-bank".

37 In section 46 (amendment of designation order), in subsection (2)(a) omit "inter-bank".

38 In section 47 (revocation of designation orders), in subsection (3)(a) omit "inter-bank".

39 In section 98 (duty of regulators to ensure co-ordinated exercise of functions), in subsection (5)(b) omit "inter-bank".

40 In section 110 (interpretation), in subsection (1), in the definition of "recognised inter-bank payment system"—

(a) omit the first "inter-bank";

(b) for "an inter-bank" substitute "a".

41 In section 112 (interpretation: infrastructure companies), in subsections (2)(a), (4)(b) and (5), omit "inter-bank".

42 In section 113 (interpretation: other expressions), in subsection (1)—

(a) in the definition of "operator" omit "inter-bank";

(b) in the definition of "recognised inter-bank payment system"—

(i) omit the first "inter-bank";

(ii) for "an inter-bank" substitute "a";

(c) in the definition of "the relevant system", in paragraphs (a) and (c), omit "inter-bank".

43 In section 115 (objective of FMI administration), in subsection (1) omit "inter-bank".

44 In section 120 (power to direct FMI administrator), in subsection (8) omit "inter-bank".

45 In section 127 (interpretation of Part 6), in subsection (1), in the definition of "operator" and in the definition of "recognised inter-bank payment system", omit "inter-bank"."—(*Matt Hancock.*)

This is the Schedule introduced by new clause NC30.

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

Title

Amendments made: 186, in title, line 8, after "functions;" insert

"to make provision about qualifications in information technology;".

This amendment is consequential on new clause NC26.

Amendment 187, in title, line 8, after "functions;" insert

"to make provision about payment systems and securities settlement systems;".—(*Matt Hancock.*)

The amendment is consequential on new clauses NC29 and NC30 and new Schedule NS2.

Bill, as amended, to be reported.

11.25 am

Committee rose.

Written evidence reported to the House

DEB 74 Letter from Yoti addressed to the office of Louise Haigh MP

DEB 75 Cicero Group

DEB 76 Ticketmaster

DEB 77 Thornton Estates; Frances Chester-Master, Chester-Master Ltd; and Scottish Land and Estates (almost identical submissions)

DEB 78 Hub Professional Services Ltd

DEB 79 AP Wireless

DEB 80 Market Research Society

DEB 81 Paul W. Smith, Acland Bracewell Surveyors Ltd

DEB 82 The Communications Consumer Panel and the Advisory Committee for Older and Disabled People

DEB 83 FanFair Alliance

DEB 84 Internet Telephony Services Providers Association (ITSPA)

DEB 85 Scope

DEB 86 Batcheller Monkhouse

DEB 87 Strutt & Parker

DEB 88 Central Association of Agricultural Valuers (CAAV)