PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

DIGITAL ECONOMY BILL

Fifth Sitting

Thursday 20 October 2016

(Morning)

CONTENTS

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Monday 24 October 2016

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	Hendry, Drew
Debbonaire, Thangam	Kerr, Calum
Foxcroft, Vicky	
Haigh, Louise	Matheson, Christian

NOES

Adams, Nigel	Menzies, Mark
Davies, Mims	Perry, Claire
Hancock, rh Matt	Skidmore, Chris
Huddleston, Nigel	Stuart, Graham
Mann, Scott	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.