PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

DIGITAL ECONOMY BILL

Eleventh Sitting

Tuesday 1 November 2016

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Saturday 5 November 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

Tuesday 1 November 2016

[Graham Stringer *in the Chair*]

Digital Economy Bill

New Clause 5

Internet pornography: requirement to prevent publication of material involving persons subject to force etc

'(1) It is an offence for a person to make available on the internet pornographic material on a commercial basis to persons in the United Kingdom if they know or ought to know that the production of the pornographic material involved exploited persons.

(2) For the purposes of this section, exploited persons are persons who have been induced or encouraged to appear in the pornographic material as a result of exploitative conduct.

(3) Exploitative conduct means, but is not limited to—

(a) the use of force, threats (whether or not relating to violence) or any other form of coercion, or

(b) any form of deception.

(4) It is irrelevant where in the world the exploitative conduct takes place.

(5) For the purposes of this section, making pornographic material available on the internet on a commercial basis has the same meaning as section 15(2).

(6) A person guilty of an offence under subsection (1) shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.'—*(Thangam Debbonaire.)*

The purpose of this new clause is to make it an offence to make available pornographic material on a commercial basis where it could reasonably be known that persons have been induced to appear in the material by coercion, threats, force, deception, or by any other exploitative conduct.

Brought up, and read the First time.

9.25 am

Thangam Debbonaire (Bristol West) (Lab): I beg to move, That the clause be read a Second time.

As I have made clear in earlier contributions, I welcome the Government's intention to protect children from the harmful effects of pornography. However, the Bill does not deal with other harmful effects. Not only can pornography be a potential source of harm to adult viewers and a way of promoting the very worst forms of gender inequality and stereotyping—both issues were discussed in a recent House of Lords debate, which I will not address—but the process of producing pornography can itself be harmful to the people involved, because of trafficking, deception, coercion and violence. New clause 5 seeks to deal with that.

The high frequency of violent scenes in pornography, in particular violence directed against women, has been well reported, although I have evidence if the Minister would like it. Testimonies from and research about people who have experienced the porn industry reveal that in many cases such scenes involve genuine violence, and that coercion is involved. There are serious questions to be asked about the level of coercion involved in pornography and what is being done to address it.

Online pornography is the easiest way for people to make, distribute, share and consume pornography, for free and commercially; I tabled the new clause because I would like to hear from the Minister what the Government are doing about the safety of people involved in the production of porn. People watching pornography would not want unwittingly to watch acts of rape, violence or coercion, but I am not convinced that there is anything like an adequate framework to prevent that.

The new clause is intended to probe. If this country is to lead the way in ending modern slavery and preventing exploitation, as the Prime Minister has pledged, we need to do everything we can to prevent pornographic material produced through coercion, trafficking or violence from being made in or distributed from the UK. The new clause would make it an offence to make available in the UK online pornography that involves people who have been exploited. Words to explain that are included.

There are strong links between pornography, trafficking and prostitution, as part of a complex system of exploitation within and fuelled by the global sex industry. Organised crime groups, individual traffickers and pimps exploit people to make money, and online pornography presents them with an easy opportunity to make more money by exploiting a person who is already under their control. Someone who has been trafficked or is providing sexual services might also be filmed or photographed. The development of technology has made filming and uploading material to the internet extremely easy, and production of porn is no longer limited to large commercial enterprises.

Areas of the world known to have significant problems with human trafficking, including eastern Europe, Russia and the Philippines, are also known to have growing porn industries. Professor Donna Hughes has written extensively about trends in human trafficking:

"Brothel owners, pimps, and pornography producers place orders with traffickers for the number of women they need."

That has also been identified in the UK. A report by the POPPY Project as long ago as 2004 noted that some of the trafficked women it was caring for had been photographed or filmed naked by their traffickers, including while abuse of them was taking place.

Exploitation in internet pornography, however, is much wider than trafficking, which is why proposed new subsection (3) of the new clause sets out a broader definition of exploitative conduct. Coercion, drug use and violence, as well as poor labour conditions and low pay, have been well documented in the commercial porn industry. Evidence and first-hand testimonies from former porn industry insiders reveals that women are forced and coerced to participate in sexual acts that are often violent. They are constantly pressured for ever more extreme performances.

Many young women enter pornography as a result of coercion and deception about the realities. The young women are often extremely vulnerable. Many of them have experienced childhood sexual abuse, been in foster care or lived in poverty. Professor Hughes writes:

"Most women entering the pornography industry don't know what they will be subjected to...they need money and are looking for opportunities. The agents, directors and producers take extreme advantage of these often naive young women. Their first experience making commercial pornography is often brutal and traumatic."

One former porn performer from the US has said:

"When I was first introduced to my agent I told him I had no limits and would do it all. But I had NO idea what I was saying. I didn't know about all the hardcore sex acts I would be forced to do."

She also describes how she was threatened with being sued for large sums of money when she tried to pull out of performing in a scene, and speaks of being physically beaten on and off screen. She used alcohol and a range of prescription drugs to help her cope. Coercion in the industry goes beyond just pressuring or manipulating people to sign a contract; that is just the beginning. Coercion extends to forcing women to perform physically abusive scenes repeatedly.

Finally, I turn to the legal context. Dr Max Waltman, a researcher who has analysed the laws on pornography—including online pornography—in Sweden, Canada and the USA, as well as the political contexts in those countries, writes that

"testimonial evidence on violence, coercion, and trauma during pornography production revealed in public hearings repeatedly mirror both quantitative and qualitative data on these subjects in the lives of prostituted women around the world".

That evidence cannot simply be discarded as unrepresentative or "anecdotal".

Through the internet, pornographic material produced involving coercion, violence and even trafficking is accessible throughout the UK. While the viewers, distributors and host websites may not be directly involved in the coercion or violence, they are complicit in it by watching, paying for or receiving revenue by promoting the material. Viewers of pornography are not likely to be able to take action to find out the origins of the material, but promoters are. They have a responsibility to check the sources of the material they distribute. We hold supermarkets and clothes shops responsible for the conditions in their supply chains, so why not pornographers?

The clause recognises that it might not always be possible for a distributor to find out all the details of the production of material, so criminal responsibility is limited to cases where the distributor

"knows or ought to know"

that the material involved exploited persons. Nevertheless, I believe that such a clause would contribute to a greater awareness of the need to investigate the origins of pornographic material.

Section 54 of the Modern Slavery Act 2015 requires large companies to report on trafficking and forced labour in their supply chains. I would like the Minister to say whether or not that measure also applies to pornography; recent analysis found only patchy compliance with supply chain obligations. However, as I have already said, coercion in pornography extends beyond trafficking and forced labour, which is why I have tabled this new clause.

Finally, I turn again to the legal framework. Dr Waltman analysed the implications of the Swedish "sex buyer law"—the law that criminalised the demand side of prostitution while decriminalising the supply side—for the laws governing the production of pornography. He points out that, under Swedish law, the person paying for the sex act does not have to be the person having sex; it could be the producer of online pornography, paying people to have sex. Using this measure could mean that producing pornography with exploited persons was already illegal. Dr Waltman is exploring that possibility further and he has written about

"what the political obstacles are to challenge the production of pornography with real persons in Sweden. How come…the legislature did not recognize that the procuring provisions should apply to pornography production?"

Was the resistance to such an application based on law, or ideological perceptions?

I cannot answer those questions about the "sex buyer law" in Sweden, but I can pose related questions today about our own laws as they relate to online pornography, given that it is in the scope of the Bill. We already have a partial version of the Swedish "sex buyer law" in force in this country. Since April 2010, section 53A of the Sexual Offences Act 2003, as inserted by section 14 of the Policing and Crime Act 2009, passed by a Labour Government, has created a new offence of paying for the sexual services of a prostitute who has been subjected to force. This legislation set down a clear line that paying for sex with someone who had been trafficked or coerced was never acceptable, and it now needs to apply to pornography.

This probing new clause is designed to find out various things. For instance, will the Government consider using existing legislation to outlaw the distribution of internet pornography involving a prostitute who has been subjected to force or to widen the scope of the legislation by replacing the word "prostitute" with "person"? That would make it clearer that nobody should pay for sex with anyone who is trafficked, whether or not they define themselves as "a prostitute" and whether or not the sex takes place within a prostitution setting or in pornography. The dividing lines for people who are coerced, trafficked and harmed in the sex industry are not felt as clearly as our laws imply they are.

I may as well place on the record that I am also in favour of a "sex buyer law" in this country, but discussion of that issue is for another debate.

Finally, I would like to hear from the Minister answers to the following questions. First, what are the Government doing to hold the makers and distributors of internet pornography to account for coercion and violence committed in the course of pornography production, from which those makers and distributors are profiting? Will the Government consider the matter of abuse, coercion and trafficking in pornography, and how to safeguard people from harm? Will they consider what regulatory or legal framework would be adequate to ensure that consumers of pornography can be sure that they are not viewing rape or sexual assault, or sexual acts taking place under or as a result of the threat of violence or actual violence?

Will the Government ask their advisers to look into the potential for our existing legislation to be amended—or for new legislation—to prevent trafficking, coercion, violence and abuse in the making of pornography? Will they also consider all of these questions, keeping in mind that it is entirely possible that there is no regulatory or legal framework that could adequately protect people from violence, abuse, coercion and trafficking in online or offline pornography or in prostitution, and that we may one day have to consider that there needs to be stronger legislation against both? Although the new clause is intended only to probe, I end by urging the Minister to consider the issue seriously because it matters too much. The way we treat the most vulnerable in society is a measure of how we are as a nation.

The Minister for Digital and Culture (Matt Hancock): I want to respond to a powerful and impassioned speech by the hon. Member for Bristol West and set out why, while agreeing with much of the substance of what she says, we think that many of the issues are covered by existing legislation and why we think that enforcement is the biggest part of the challenge, as she pointed out. There are also some technical deficiencies with the proposed clause. I will deal with all those issues in the context of strongly supporting the thrust of her argument and the desire to protect vulnerable women.

New clause 5 seeks to make it a criminal offence to

"make available on the internet pornographic material on a commercial basis to persons in the United Kingdom if they know or ought to know that the production of the pornographic material involved exploited persons."

The language is similar to that used in other parts of the Bill, but it covers quite different ground in terms of the substance. I do not want to see people exploited in this way; the question is about what is provided for through existing law and how the new clause would affect that.

The offence is targeted at persons "making available" material that may have involved exploitation, rather than the exploitation itself. We are committed to ensuring that people are not subject to exploitation; this is a technical difference in respect of the way that the law applies. Tackling exploitation is the existing basis of the work of, for example, the National Crime Agency's child exploitation online protection command and the violence against women and girls strategy as well as the Modern Slavery Act 2015. Making sure that we implement the 2015 Act—recent legislation—and enforce it is a critical part of the work of the Home Office at the moment.

Thangam Debbonaire: I am grateful to the Minister for reassuring me that the 2015 Act could cover what I am talking about. My concern relates to whether that is actually happening. Could the Minister expand further on that point?

Matt Hancock: Of course. The expansion of enforcement in respect of the 2015 Act is an important part of the work of the Home Office at the moment. The Minister who took that legislation through Parliament is now the Secretary of State at the Department for Culture, Media and Sport, so Ministers at that Department have a good understanding of not just the legislation, but the need for enforcement.

Existing legislation, including the Criminal Justice and Immigration Act 2008, clearly makes it an offence to be in possession of "an extreme pornographic image"—which includes images depicting non-consensual sex—and to possess and distribute indecent images of children. In addition, the independent Internet Watch Foundation works to identify and remove child sexual abuse, which we discussed earlier in Committee, as well as criminally obscene content hosted anywhere in the world. We are able to take down criminally obscene content, and the approach has started to work effectively. The organisation works closely with Government, at national and local levels, and policing agencies to support investigations and prosecutions.

There are a couple of technical reasons why the new clause is deficient. First, the scope of the offence is unclear; there is no definition as to what constitutes pornographic material. It is not made clear whether the definition at clause 16 of the Bill is to be used. Similarly, it is not clear what is meant by "make available" on the internet: would that capture internet service providers who host the material or just the individual who actually uploaded it to a specific website?

Secondly, the proposed classification of the offence is summary only and the corresponding maximum penalty of six months' imprisonment, a level 5 fine or both, is incongruous for an offence dealing with this kind of conduct. Other sentences for offences in this area are much more serious. For example, the proposed maximum is much lower than for other offences relating to coercive conduct, such as trafficking for sexual exploitation, which carries a maximum of life imprisonment, and the possession of extreme pornographic images, which carries a maximum of three years' imprisonment, an unlimited fine or both.

I am also concerned that the offence as drafted could be difficult to prosecute. In practice, it is difficult to show that a person making material available online actually knew, or should have known, that an individual featured had been exploited. There may be no link, or a very tenuous link, between these individuals and those engaged in the exploitation itself. Lastly, there are also potential territorial difficulties involved in prosecuting this offence. In the absence of any express provision to the contrary, it is presumed that any criminal offence is subject to the jurisdiction only when it is perpetrated in the UK. This is an issue that we have dealt with elsewhere in the Bill.

I applaud the hon. Lady's intentions and have given assurances about the ongoing work in prosecuting other offences. I invite her to withdraw the motion.

Thangam Debbonaire: I thank the Minister for his responses. My understanding is that the implementation of the Modern Slavery Act does not cover this area of work so I will be following that up with the Minister and his colleagues. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 13

Offence to use digital ticket purchasing software to purchase excessive number of tickets

'(1) A person commits an offence if he or she utilizes digital ticket purchasing software to purchase tickets over and above the number permitted in the condition of sale.

(2) A person commits an offence if he or she knowingly resells or offers to resell a ticket that the person knows, or could reasonably suspect, was obtained using digital ticket purchasing software and was acting in the course of a business.

(3) For the purposes of subsection (2) a person shall be treated as acting in the course of a business if he or she does anything as a result of which he makes a profit or aims to make a profit.

(4) A person guilty of an offence under this section shall be liable on summary conviction to—

(a) imprisonment for a period not exceeding 51 weeks,

(b) a fine not exceeding level 5 on the standard scale, or

(c) both.

(5) In this section—

(a) "digital ticket purchasing software" means any machine, device, computer programme or computer software that, on its own or with human assistance,

bypasses security measures or access control systems on a retail ticket purchasing platform that assist in implementing a limit on the number of tickets that can be purchased, to purchase tickets.

(b) "retail ticket purchasing platform" shall mean a retail ticket purchasing website, application, phone system, or other technology platform used to sell tickets."

(6) Subsections (1) and (2) shall apply in respect of anything done whether in the United Kingdom or elsewhere.'—*(Nigel Adams.)*

This new clause creates an offence to use digital ticket purchasing software to purchase tickets for an event over and above the number permitted in the condition of sale. It also creates an offence to knowingly resell tickets using such software.

Brought up, and read the First time.

Nigel Adams (Selby and Ainsty) (Con): I beg to move, That the clause be read a Second time.

The new clause would make it an offence to use digital ticket purchasing software to purchase tickets for an event in excess of the number allowed by the retail ticket purchasing platform. It also creates an offence to knowingly resell tickets bought using such software. This is not a silver bullet. Ticket touting is a huge problem and touts use a variety of methods to obtain tickets. There is also the issue of regulation of secondary resellers. However, the new clause would address one problematic aspect: it would help to get a higher proportion of tickets into the hands of genuine fans on their first attempt.

I have told colleagues repeatedly in this place about my recent experience of trying to purchase tickets for a Green Day concert; I dread to think what a credibility hit I have caused fans by referencing the fact that I am a huge Green Day fan. The experience really did upset me. The primary ticketing website I was using, See Tickets, had been the victim of a computerised attack by organised touts using botnets. That meant that I and other fans lost out, but the tickets were available minutes later at grossly inflated prices on other sites.

The practice occurs every day on an industrial scale in all types of sporting and cultural events. Whenever tickets to popular events go on sale, they are snapped up by professional ticket touts and prices become prohibitive for many genuine fans, often hampering the ability of the artist to fill their venues.

9.45 am

I shall present a couple of case studies. On 10 June, Black Sabbath—not a band for which I would try to buy a ticket, though they have had a few hits in the past—announced their break-up tour. Tickets for this event were advertised by secondary sellers, including Viagogo, Stubhub and Seatwave, as being available for sale at 9 am on Wednesday 15—the exact time of the pre-sale by O2, the primary ticket vendor. When this began, the results on Google for researching Black Sabbath tickets did not show the primary ticket vendor as having the top result, but reams of secondary vendors, who just one hour after the O2 pre-sale began, had 2,280 tickets listed for re-sale, with 261 for the final show. Live Nation's pre-sale, six days later, also sold out within one minute, though there were plenty of tickets available on Ticketmaster's secondary site—the number almost doubling from the first pre-sale.

In the case of The Tragically Hip's latest tour—that does not refer to the state of my own hips—one third of tickets were snapped up by bots. That clearly demonstrates that these secondary sites are not primarily hosting honest fans who can no longer get to a gig and just want to recoup their costs, which is something that we should support. When dedicated re-sellers, who purchase as many tickets as they can without any intention of attending, dominate the market, fans who want to buy the tickets that other fans cannot use can have no confidence that they are not being ripped off. I have more evidence here: pages and pages of screenshots demonstrating how quickly large quantities of tickets become available on resale sites, from artists such as KT Tunstall; another favourite of the Minister's, Bros, and The 1975—a few recent ones. I have many more examples, but do not have time to go through them all.

I was inspired by a simple law that was recently passed in the state of New York following a campaign by American artists who faced the same problem. It was led by Lin-Manuel Miranda, an actor and composer, who wrote the smash hit musical "Hamilton", only to see a large proportion of each ticket release gobbled up by touts. Such laws have also been passed in nine other states and I understand that they are being considered by Congress in the US and by the Canadian legislature. The Ottawa Attorney General has made it clear that he wants to ban bots from selling tickets, introducing legislation to deal with the technology.

Our problem is identical to that in America and Canada. I have discussed this proposition with many interested industry parties and found absolute support right across the board, from primary ticketing sites, fans and consumer advocacy groups—most urgently the Fanfair Alliance, which has done a fantastic job campaigning on this issue—to artists themselves, including Josh Franceschi from the band You Me At Six, a superb band which I will have the pleasure of seeing next week. This is a young man who literally took matters into his own hands. Josh Franceschi was so incensed by ticket touting that, last week, he went to a store and sold tickets for his next gig, personally handing them over to his fans and taking the cash. He is passionate about this issue and we should do something to help him and many other artists like him. There is also the manager of Iron Maiden; that band, helped by Ticketmaster, recently employed a sophisticated patented ticketing system to try to beat the touts.

No artist wants to perform to empty seats because the touts have snapped up tickets and marked up prices—in the case of the Black Sabbath tour, by over 3,000% in some cases. The 1975's latest tour, sold out by primary retailers, still had some 1,800 tickets for sale on secondary ticket venue sites at inflated prices nine days later, demonstrating that the greed of the touts warps the market. The demand is there, but the touts are not willing to meet it. Artists, not be the parasitical touts, should have the ability to set ticket prices. If the artists wished to price the tickets at upwards of £2,000, they would do that, but if they choose not to do so in order to build their relationship with their fans, that should be their choice.

It is high time for legislation to help companies such as Ticketmaster, which blocks 5 billion bot attempts every year, yet estimates that, despite its software being 99% effective, 100 bots still get through every minute. I

therefore urge that we take this opportunity to ameliorate the problem, make digital touting harder and put some legal clout behind bands, fans and honest ticket sellers struggling to stay one step ahead of increasingly savvy touts exploiting ever-improving technology.

The Secretary of State is keen to see action, and she has told me herself that the existing Computer Misuse Act 1990 does not work. The new clause is supported by every secondary and primary ticketing site that I have spoken to, artists and, most importantly, genuine music fans, many of whom will be watching our sitting today and listening to what the Minister has to say. I agree wholeheartedly with the Prime Minister, who has promised to govern for the many and not for the privileged few. My amendment will allow that to happen.

Christian Matheson (City of Chester) (Lab): I rise briefly to support the new clause and to pay tribute to my good friend and fellow Select Committee member, the hon. Member for Selby and Ainsty, who has form on campaigning in this area. He is known as a music fan, and the new clause is the culmination of a long campaign on behalf of music fans everywhere.

Moreover, I do not believe that the hon. Gentleman will damage the credibility of Green Day, because he has a track record of supporting live music—this is certainly nothing like David Cameron suggesting that he was a Smiths fan and having Johnny Marr tweeting him to back off. While I am on the subject, I remind the Committee that I was at the last concert of The Smiths, which was in Brixton Academy, probably in December 1986 or '87.

In those days, ticket touts were blokes in long macs shouting, "Any spare tickets?", which was a problem, but manageable. The hon. Member for Selby and Ainsty has been outlining industrial-scale, mechanical touting, which is way beyond my experience of those days 20, 30 or even 40 years ago. The problem absolutely needs to be addressed and the new clause does so. I am pleased to support it and, if the Minister is planning to accept it in principle, I suggest that he could do worse than recognise the work of the hon. Gentleman, give him the credit for the new clause, along with my hon. Friends on the Front Bench, and the chance he so richly deserves to make a mark.

Calum Kerr (Berwickshire, Roxburgh and Selkirk) (SNP): I could not possibly be as glowing about the hon. Member for Selby and Ainsty as the hon. Member for City of Chester has been. There is a love-in across the Benches this morning.

I, too, rise briefly to support the new clause. To paraphrase a well-known quote by Eric Hoffer, the American moral philosopher, every good idea begins as a movement, becomes a business and eventually degenerates into a racket. That is what we have here. Online sales and fan-to-fan ticket sites are fantastic at enabling people to get access to the music events they want to go to, but because of the evolution of technology, software and bots, we now have a distorted market, about which we absolutely need to do something.

I want the hon. Member for Selby and Ainsty to be able to go to see his favourite band, Green Day—as he was mentioning them, it occurred to me that one of their songs, and the name of their 2004 album, seemed appropriate for a gentleman who might yet end up in the White House. I must also add that my hon. Friend the Member for Perth and North Perthshire (Pete Wishart) suggests that MP4 tickets are very easy to get hold of—he is determined that they are stopped from selling below ticket value.

I commend the hon. Member for Selby and Ainsty on his new clause and I am happy to support it.

Louise Haigh (Sheffield, Heeley) (Lab): I rise briefly to support the new clause. My hon. Friend the Member for Cardiff West and I were proud to put our names to it. I commend the hon. Member for Selby and Ainsty for bravely revealing his devotion to Green Day. I stand in solidarity with him—I, too, am a big fan.

This issue has been a problem for too long for fans of musicians of all descriptions. It prices people out of access to their favourite bands and acts and thereby entrenches a class barrier to culture, which cannot be allowed to continue. For as long as there have been ticketed events, there have been people making money out of the fact that demand for live sports or music outstrips supply. As my hon. Friend the Member for City of Chester pointed out, the development of technology has escalated the problem. Punters simply do not stand a chance against digital ticket purchasing software. The new clause would kick away one of the legs that ticket touts rely on.

The current legislation contained in the Consumer Rights Act 2015 is extremely patchy. It can compel ticket resale sites to publish information such as seat number and face value, but it is not enforced sufficiently and tickets are routinely sold at a high mark-up. Unless Parliament gets tough now, resale sites will continue brazenly to flout the law. It is high time that Parliament closed the legal loophole. That is what the industry, musicians and fans are calling for. I take the opportunity to thank my hon. Friend the Member for Washington and Sunderland West (Mrs Hodgson), who has been calling for this change for some time. We wholeheartedly support new clause 13.

Matt Hancock: I recognise the strength of feeling across the Committee on this matter. I will certainly do the bidding of the hon. Member for City of Chester and pay tribute to the work of my hon. Friend the Member for Selby and Ainsty, who is a long-standing supporter of live music and has made his case. Last week, he introduced me to Josh Franceschi in the House of Commons, who was able to make his plea very directly.

I match my hon. Friend's Green Day ticketing problem and raise him my Paul Simon ticket problem. I had a similar experience when buying tickets to see Paul Simon next week at the Royal Albert Hall, to which I am looking forward enormously. I had to pay an eye-watering amount for the tickets—much higher than the face value.

Claire Perry (Devizes) (Con): If even the Minister cannot obtain tickets, given the strings he can pull, what hope is there for the ordinary punter?

Matt Hancock: I stress that I bought my tickets to see Paul Simon completely off my own bat, as a fan. My wife and I are enormously looking forward to going. I am prepared to pay the very high price because it will be

such an amazing concert, but it would be far better if I could pay the face value or something close to it. I went online immediately the tickets were released and a huge number had gone already. Secondary ticketing sites were the only way that I could get the tickets. Like my hon. Friend the Member for Selby and Ainsty, I was bent over my laptop pressing the button trying to get the tickets as quickly as possible. I only say that to explain to the Committee that I feel the pain of all those who end up having to pay far more than face value because of automated bots.

The Committee will know that we asked Professor Michael Waterson to review secondary ticketing. His very good independent report makes a number of points relevant to the new clause. The offences set out in the Computer Misuse Act 1990 have broad application and the Waterson review concludes that unauthorised use of a computerised ticketing system to avoid ticket volume constraints may give rise to breaches of that Act. Such breaches need to be reported, investigated and case law then established.

Having said that, I recognise the very clear sense in the debate that there remains a problem to be solved. I reiterate the words of the Secretary of State, who said last week that

"the advice has always been that the Computer Misuse Act applied. I want to look carefully at that and see how best we can get to a robust position on this matter".

She proposed to convene a meeting of all interested parties. If we can get it scheduled, we will have that meeting within a month; if not, I commit to holding it before Christmas.

Kevin Brennan (Cardiff West) (Lab): It is welcome to have a deadline, but would it not be better if that meeting took place before Report, so that the Commons has an opportunity to consider the points made at it?

10 am

Matt Hancock: We will seek to have it before the Bill reaches Report, but I will commit to having it before Christmas. Consideration of the Bill will still be ongoing after Christmas in the other place. At the same time, we need to work on making sure that, should we make progress in this area, we get the details and technicalities right and consult appropriately.

There are some technical deficiencies in the new clause. I ask my hon. Friend the Member for Selby and Ainsty to withdraw it, with that clear commitment to making progress in this area while there is still an opportunity—should that be the outcome—to amend this Bill.

A series of non-legislative work is also needed to tackle the problem. As my hon. Friend says, this is not a panacea. Today, we are announcing the new national cyber-security policy and that includes support, through the National Cyber Security Centre, for further action. The centre is in touch with ticketing organisations to enable this and I suggest that we also invite them to attend the meeting to see what progress can be made.

With those assurances, I ask my hon. Friend to withdraw the motion and I look forward to working with him and others to see what we can do to tackle this problem.

Nigel Adams: I am grateful to the Minister for his response. It was remiss of me not to mention the tremendous work of the hon. Member for Washington and Sunderland West, who chairs the all-party group on secondary ticketing. She does an amazing amount of work on this subject. In fact, I spent a day with her tramping up and down in the middle of 50-odd touts outside Wembley. I know how passionate she is about this issue and I appreciate her support.

My right hon. Friend the Minister has made a brilliant case for action on this problem. I am not at all surprised that he is a Paul Simon fan. At some stage, I will invite the Minister to a rock show. I love Paul Simon as well and I am sure the Minister will have paid several hundreds of pounds to go and see him. It seems outrageous, but the Minister will have a good time. "Catch him while you can" springs to mind.

I would be grateful to know when the Waterson review is likely to appear. The industry has been waiting for this for some time. It is a great piece of work, but I do not think it goes far enough on industrial ticket touting and bots. Can the Minister put on the record when the industry is likely to see the Government's response to this review?

Drew Hendry (Inverness, Nairn, Badenoch and Strathspey) (SNP): "The sound of silence."

Nigel Adams: Indeed, there is a sound of silence on this particular review response.

I am delighted that the Minister has committed to following up the Secretary of State's pledge to hold a meeting before Christmas. With something as technical as this, it is crucial to get all the players round the table: primary, secondary ticketing sites, representatives of both the fans and artists and, dare I say it, the Minister could probably do with me there as well.

Matt Hancock: On the response to the Waterson report, it will be published in due course. The question is whether it is best to hold back publication until after the work I have just committed to is done, to incorporate fully the views of the fans, artists, the ticket-selling industry and, potentially, even my hon. Friend.

Nigel Adams: It would be a sensible move. Perhaps it is not a bad idea to have this round-table and take soundings from the industry before the Government respond to the review; I do not think that the Waterson review goes quite far enough in tackling bots, although there is plenty of good work in there for the Government to consider.

I am happy to withdraw my new clause at this stage, following the Minister's clear commitment to solve the problem. I am hopeful that the issue will be resolved at some stage during the passage of the Bill. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

The Chair: I have done a quick count. I think there are nine new clauses and two new schedules left. I remind hon. Members that we have an hour and 20 minutes before we have to finish.

New Clause 15

STORAGE OF UPLOADED WORKS

"(1) The Electronic Commerce (EC Directive) Regulations 2002 is amended as follows.

(2) After Regulation 19 (a)(ii) insert—

"(iii) does not play an active role in the storage of information including by optimising the presentation of the uploaded works or promoting them."."—*(Kevin Brennan.)*

This new clause clarifies circumstances when a digital service is deemed an active provider of copyright protected content.

Brought up, and read the First time.

Kevin Brennan: I beg to move, That the clause be read a Second time.

I hope that the Minister enjoys his concert next week; I am sure he will be feelin' groovy. I rise to speak to new clause 15, which is a probing new clause to clarify when a digital service is deemed to be an active provider of copyright-protected content. Taking on board what you have said, Mr Stringer, I will truncate my remarks.

The Electronic Commerce (EC Directive) Regulations 2002, which put into law the EU's e-commerce directive 2000, include certain exemptions from liability for online services, including copyright-protected works. The fundamental concern from the music industry is that the hosting defence provided by regulation 19 of the 2002 regulations acts as a safe harbour and allows some services, including user-uploaded services such as YouTube, to circumvent the normal rules of licensing.

Those services can use copyright-protected content—a song by Paul Simon or Green Day, for example—to build businesses without fairly remunerating rights holders. In recent years, the music industry has argued that the online content market has developed in such a way that there is now a value gap between rights holders, such as artists, record companies and publishers and so on, and the digital services themselves, such as YouTube.

As evidence of that, the recent report by UK Music, "Measuring Music 2016", highlighted that user-uploaded service YouTube, the most widely used global streaming platform, increased its payments to music rights holders by 11% in 2015, despite consumption on the service growing by 132%. That is the value gap in a nutshell. Further industry analysis indicates that video streams increased by 88% year on year, but generated only a 0.4% increase in revenues. Nine of the top 10 most watched videos on YouTube are official music videos by artists such as Adele, Psy, Taylor Swift and Justin Bieber.

The inequality ensuing from that safe harbour is not only between those who produce music and those who promote it online; the provisions in new clause 15 have benefits for other sectors that seek to achieve a level playing field in online markets, too. The current legal ambiguity and imbalance has created a distortion in the digital market itself, with services such as YouTube benefiting from those exemptions while other services, such as Apple Music and Spotify, do not. The reality is that many people principally use YouTube to play music. It is nonsense to suppose it is not an active provider of copyright-protected content as those other services are.

There was, and continues to be, a justification for exemptions in some areas for passive hosts, but those must reflect the balance between the rights of rights holders and users. The industry is concerned that existing provisions are not sufficiently defined and as a result are open to deliberate manipulation. New clause 15, which stands in my name and that of my hon. Friend the Member for Sheffield, Heeley, aims to clarify the legislative framework, so that creators and rights holders can secure a fair and proper value for the use of their work by online services in a fair and properly functioning market.

Will the Minister clarify some issues? Many of the matters raised by new clause 15 are being considered by European institutions at this very moment. On 14 September, the day after Second Reading, the European Commission published a draft directive on copyright that seeks to address many of these points. That is a welcome development, and the Minister will probably to refer to it in his response. After the recent referendum put us on the path towards Brexit, many issues have been raised in relation to these proposals. It is highly conceivable that we will be Brexiting at the same time as Europe begins to adopt copyright rules for a digital age.

I would like to ask the Minister a few questions. First, will he assure us that the UK Government remain committed to engaging constructively with the European Union on matters relating to the draft copyright directive, and that they will put the interests of the creative industries at the heart of their representations? Secondly, will he support the positive measures in the draft directive that address the value gap between rights holders—particularly the music industry—and digital services?

Thirdly, and more generally, once article 50 is triggered, how do the UK Government intend to implement legislation agreed in Europe before we Brexit? Finally, what commitments is the Minister prepared to make today to reassure UK creators and rights holders that they will not miss out on any positive measures contained in the draft directive as a result of leaving the European Union?

Nigel Adams: I rise briefly to speak to the new clause tabled by the hon. Member for Cardiff West. I understand that it seeks to clarify a rule that already exists. As has been mentioned previously, I chair the all-party parliamentary group on music. Earlier in the year, we held a dinner with representatives from the industry and services such as Spotify and Apple Music. The intention of the dinner was better to understand the growing music-streaming market and what measures are needed to help it flourish further for the benefit of creators, fans and those services. I was taken by the agreement across the room about the existence of a value gap between rights holders and some digital services, and the need to ensure fairness in the way music rights are valued and negotiated.

The Government's response to the EU's digital platforms consultation, published at the beginning of the year, stated:

"Clarification of terms used in the Directive would, we believe, help to address these concerns."

I hope the Minister and the Government remain committed to that view and the intention behind the new clause to clarify existing law.

Matt Hancock: As we have debated, the Bill sends a clear message about copyright infringement, not least because we are increasing the penalty for online copyright

infringement from two to 10 years. Of course, I know about the concern in the music industry and elsewhere that online intermediaries need to do more to share revenues fairly with creators. That is what this new clause seeks to tackle, and I agree with that concern.

The hon. Member for Cardiff West mentioned the interaction of the Bill with EU law. The change proposed by the new clause is already the position in European Court of Justice case law, and we support that position in the UK. That provides some clarification to the existing position.

Let me answer the specific questions. First, we are heavily engaged in the digital single market negotiations and the discussions ongoing in Europe. While we are a member of the EU, we will continue to do that. The issue of the value gap, which the hon. Gentleman mentioned, is important, and the development of ECJ case law in that direction has been helpful.

That brings me to Brexit because, as the e-commerce directive is EU single-market legislation, we will have to consider what the best future system will be as we exit the European Union. We will have to consider how the e-commerce regulations as a whole should work in the future. That will be part of the debate about leaving the European Union. For the time being, ECJ case law supports the intentions in the new clause, and I would be wary about making piecemeal changes to the regime. I acknowledge the need, through the Brexit negotiations and the process of setting domestic law where there is currently European law, to take into account the important considerations that have been raised.

Kevin Brennan: The new clause was a probing amendment, and I thank the Minister for his response. It is important to have the Government's response on the record.

We debate this issue in the context of the UK music industry's growth: over a four-year period, it has grown by 17%. During that same period, there has been a massive shift from consumers owning music towards the streaming of music. The value of subscription streaming services has jumped from £168 million in 2014 to £251 million in 2015. So there is a model, if you like, in the market, which can produce value for the industry, but it is being undermined by the value gap that is created by the different treatment of these different types of services.

I accept that the Minister has put on the record the Government's current position and said that there will be a positive engagement with this issue. On that basis, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 16

E-BOOK LENDING

'In section 43(2) of the Digital Economy Act 2010, leave out from "limited time" to "and loan."'

This new clause aims to extend public lending rights to remote offsite e-book lending.—(Kevin Brennan.)

Brought up, and read the First time.

10.15 am

Kevin Brennan: I beg to move that the new clause be read a Second time.

This new clause would enable the consideration of public lending right for remote e-lending from libraries. That would be achieved by amending section 43(2) of the Digital Economy Act 2010, which sets remote loans outside the definition of lending under public lending right.

I do not know whether the Minister, like me, is a bit of a dinosaur and prefers his books to come in physical form—I am currently reading Bruce Springsteen's autobiography, which I recommend, as well as Ed Balls's book on politics, which is also very good. However, in this Digital Economy Bill we should acknowledge the increasing role of e-books and their impact on the income of authors. The spirit of the Bill is that we should better reflect how technology has changed our economy, so it is important that we go further in some places to acknowledge where technological change has outpaced legislation in relation to the arts.

Our approach here should be informed by the fact that we have the Digital Economy Act 2010. At the time that it was passed, some opportunities were missed. We should keep that in mind as we discuss this Bill and make sure that we do not allow those opportunities to pass by again as the Bill completes its stages in the House of Commons and afterwards in the other place.

The Digital Economy Act 2010 made some progress but it failed to forecast how our relationship with books would change. In particular, the 2010 Act touched on the subject of e-books, but its wording ignored the main way libraries would end up lending e-books: remotely, over an internet connection. Of course, remote lending is a natural continuation of the function of e-books. One of the main benefits of e-books is that they escape physical constraints such as location and storage.

However, under current legislation, authors receive no payment when a public library loans their book remotely, which is different from any other form of book loan. Last year, 2.3 million remote loans were made, but they were not counted at all towards authors' payments because the 2010 Act allowed only for on-site loans of e-books, of which there was a negligible number—who will go to a library when they can borrow the book remotely? That is the whole point of e-books. There is no reason in principle why the distinction should exist; that is what the philosophy of this Bill is supposed to be. Nevertheless, as a result, the public lending right—a right for authors established in 1979—has not been honoured, due to the failure of the 2010 Act to keep up with technological change.

I hope that we can take the opportunity today to avoid repeating that mistake. The Society of Authors, the Association of Illustrators, and the Authors' Licensing and Collecting Society all support the new clause. Public lending right is designed to balance the social need for free public access to books against an author's right to be remunerated for the use of their work. Indeed, public lending right provides a significant and much-valued part of many authors' incomes, particularly those authors whose books are sold mainly to libraries and those whose books are no longer in print.

The recent opinion of the Advocate General, relating to a case on rental and lending in respect of copyright works that is currently before the Court of Justice of the European Union, asserted that the lending of electronic books is the modern equivalent of the lending of printed books. I am aware that the Government expressed a

[Kevin Brennan]

desire to reflect this technological change in their March 2013 response to the independent review of e-lending in public libraries in England, but for some reason—perhaps the Minister can tell us why—they have neglected to take the opportunity presented by this Bill to put the matter right.

Furthermore, figures from March this year show that 343 libraries in the UK have been shut down in the past six years, with another 111 closures planned for 2016, which will result in the loss of almost 8,000 jobs. So it is particularly nonsensical not to apply PLR to remote e-book lending, given that it is becoming increasingly hard to visit a physical library. PLR is a legal right and a keystone of a society in which authors receive reward for their considerable cultural contribution. While we can all benefit from technological change and new ways of accessing creative works, it is important that the obligation to remunerate authors fairly is acknowledged and honoured.

Having acknowledged this loophole and the difficulties it causes, it is vital that the Bill addresses the issue, so that right-holders are treated equitably. Will the Minister take action on this issue and accept the new clause—and if not, why?

Matt Hancock: I wholeheartedly support the hon. Member for Cardiff West in his analysis of the increasing range of digital services at libraries across the country and the importance of those digital services to the communities they serve. I also agree with what he said about the increasing range of e-books and the importance of e-book lending. I am touched by his care for our delivering on the Conservative party manifesto and can tell him that we will deliver on this one too.

Libraries are increasingly providing remote e-book lending, so readers have the opportunity to borrow physical and audio books. Over the last year, 2 million e-book loans were made, which shows how important this is. We have been carefully looking at options for how to implement the manifesto commitment and appropriately compensate authors for remote e-lending, including by extending the PLR to e-books. In doing so, we have engaged with representatives of authors, libraries, agents, publishers and booksellers as well as the Public Lending Right Office. The collaborative input is very valuable and helps to ensure that we achieve an outcome that will be supported by all.

Like the hon. Member for Cardiff West, I am a mixed book reader. I am reading "Down and Out in London and Paris"—a well-thumbed hard copy. I am reading "King Lear" on an e-book, although I would say it is more studying than reading, because it is quite hard work. I bought a Kindle book at the weekend. I fully appreciate all types of books: hard copy and soft, hardback and soft.

The hon. Gentleman will understand how keen we are to implement our manifesto commitment. However, we want to take the time to get it right. Furthermore, we need to ensure that the measure is compatible with the copyright directive while we remain within the European Union. In doing so, we are also paying close attention to a relevant court case, again in the European Court of Justice, where we expect a ruling later this year that will have a bearing on how any clause to bring this into place would be drafted.

For those reasons, we are taking our time to get this right. With that explanation, I hope the hon. Member will withdraw his new clause.

Kevin Brennan: I will, but I do not think that there is any real need for the Minister not to commit carrying the measure out in the Bill. It simply extends what is already available. If someone borrowed an e-book by turning up at a library, the author would receive their public lending right, but if they did so remotely through the same library service, the author would not. Clearly that is an unacceptable injustice and anomaly.

The Minister has said that the Government need to take their time. It was March 2013 when they said in their response to the independent review that they intended to reflect that technology change. Three years and eight months later, we have a Bill in Committee in the House of Commons and still the Government say they need to take their time to get it right. This Bill is the right time to get it right. I hope the Minister will reflect further on the raft of amendments to this defective Bill that will be introduced in the House of Lords if we do not put this right in the House of Commons. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 19

PERSONAL DATA BREACHES

'(1) The Data Protection Act 1998 is amended as follows.

(2) After section 24 insert—

"24A Personal data breaches: notification to the Commissioner

(1) In this section, section 24B and section 24C, "personal data breach" means unauthorised or unlawful processing of personal data or accidental loss or destruction of, or damage to, personal data.

(2) Subject to subsections (3), (4)(c) and (4)(d), if a personal data breach occurs, the data controller in respect of the personal data concerned in that breach shall, without undue delay, notify the breach to the Commissioner.

(3) The notification referred to in subsection (2) is not required to the extent that the personal data concerned in the personal data breach are exempt from the seventh data protection principle.

(4) The Secretary of State may by regulations—

(a) prescribe matters which a notification under subsection (2) must contain;

(b) prescribe the period within which, following detection of a personal data breach, a notification under subsection (2) must be given;

(c) provide that subsection (2) shall not apply to certain data controllers;

(d) provide that subsection (2) shall not apply to personal data breaches of a particular description or descriptions.

24B Personal data breaches: notification to the data subject

'(1) Subject to subsections (2), (3), (4), (6)(b) and (6)(c), if a personal data breach is likely to adversely affect the personal data or privacy of a data subject, the data controller in respect of the personal data concerned in that breach shall also, without undue delay, notify the breach to the data subject concerned, insofar as it is reasonably practicable to do so.

(2) The notification referred to in subsection (1) is not required to the extent that the personal data concerned in the personal data breach are exempt from the seventh data protection principle.

(3) The notification referred to in subsection (1) is not required to the extent that the personal data concerned in the personal data breach are exempt from section 7(1).

(4) The notification referred to in subsection (1) is not required if the data controller has demonstrated, to the satisfaction of the Commissioner—

(a) that the data controller has implemented appropriate measures which render the data unintelligible to any person who is not authorised to access it, and

(b) that those measures were applied to the data concerned in that personal data breach.

(5) If the data controller has not notified the data subject in compliance with subsection (1), the Commissioner may, having considered the likely adverse effects of the personal data breach, require the data controller to do so.

(6) The Secretary of State may by regulations—

(a) prescribe matters which a notification under subsection (1) must contain;

(b) provide that subsection (1) shall not apply to certain data controllers;

(c) provide that subsection (1) shall not apply to personal data breaches of a particular description or descriptions.

24C Personal data breaches: audit

'(1) Data controllers shall maintain an inventory of personal data breaches comprising—

(a) the facts surrounding the breach,

(b) the effects of that breach, and

(c) remedial action taken

which shall be sufficient to enable the Commissioner to verify compliance with the provisions of sections 24A and 24B. The inventory shall only include information necessary for this purpose.

(2) The Commissioner may audit the compliance of data controllers with the provisions of sections 24A, 24B and 24C(1).

(3) In section 40 (Enforcement notices)—

(a) in subsection (1)—

(i) after "data protection principles," insert "or section 24A, 24B or 24C";

(ii) for "principle or principles" substitute "principle, principles, section or sections";

(b) in subsection 6(a) after "principles" insert "or the section or sections".

(4) In section 41 (Cancellation of enforcement notice")—

(a) in subsection (1) after "principles" insert "or the section or sections";

(b) in subsection (2) after "principles" insert "or the section or sections".

(5) In section 41A (Assessment notices)—

(a) in subsection (1) after "data protection principles" insert "or section 24A, 24B or 24C";

(b) in subsection (10)(b) after "data protection principles" insert "or section 24A, 24B or 24C".

(6) In section 41C (Code of practice about assessment notices)—

(a) in subsection (4)(a) after "principles" insert "and sections 24A, 24B and 24C";

(b) in subsection (4)(b) after "principles" insert "or sections".

(7) In section 43 (Information notices)—

(a) in subsection 43(1)—

(i) after "data protection principles" insert "or section 24A, 24B or 24C";

(ii) after "the principles" insert "or those sections";

(b) in subsection 43(2)(b) after "principles" insert "or section 24A, 24B or 24C".

(8) In section 55A (Power of Commissioner to impose monetary penalty)—

(a) after subsection (1) insert—

"(1A) The Commissioner may also serve a data controller with a monetary penalty notice if the Commissioner is satisfied that there has been a serious contravention of section 24A, 24B or 24C by the data controller.";

(b) in subsection (3A) after "subsection (1)" insert "or (1A)";

(c) in subsection (4) omit "determined by the Commissioner and";

(d) in subsection (5)—

(i) after "The amount" insert "specified in a monetary penalty notice served under subsection (1) shall be";

(ii) after "Commissioner" insert "and";

(e) after subsection (5) insert—

"(5A) The amount specified in a monetary penalty notice served under subsection (1A) shall be £1,000.

(5B) The Secretary of State may by regulations amend subsection (5A) to change the amount specified therein."

(9) In section 55B (Monetary penalty notices: procedural rights)—

(a) in subsection (3)(a) omit "and";

(b) after subsection (3)(a) insert—

(aa) specify the provision of this Act of which the Commissioner is satisfied there has been a serious contravention, and";

(c) after subsection (3) insert—

"(3A) A data controller may discharge liability for a monetary penalty in respect of a contravention of section 24A, 24B or 24C if he pays to the Commissioner the amount of £800 before the time within which the data controller may make representations to the Commissioner has expired.

(3B) A notice of intent served in respect of a contravention of section 24A, 24B or 24C must include a statement informing the data controller of the opportunity to discharge liability for the monetary penalty.

(3C) The Secretary of State may by regulations amend subsection (3A) to change the amount specified therein, save that the amount specified in subsection (3A) must be less than the amount specified in section 55A(5A).";

(d) in subsection (5) after "served" insert "under section 55A(1)";

(e) after subsection (5) insert—

"(5A) A person on whom a monetary penalty notice is served under section 55A(1A) may appeal to the Tribunal against the issue of the monetary penalty notice."

(10) In section 55C(2)(b) (Guidance about monetary penalty notices) at the end insert "specified in a monetary penalty notice served under section 55A(1)".

(12) In section 67 (Orders, regulations and rules)—

(a) in subsection (4)—

(i) after "order" insert "or regulations";

(ii) after "section 22(1)," insert "section 24A(4)(c) or (d), 24B(6)(b) or(c),";

(b) in subsection (5)—

(i) after subsection (c) insert "(ca) regulations under section 24A(4)(a) or (b) or section 24B(6)(a),";

(ii) for "(ca) regulations under section 55A(5) or (7) or 55B(3)(b)," substitute "(cb) regulations under section 55A(5), (5B) or (7) or 55B(3)(b) or (3C),".

(13) In section 71 (Index of defined expressions) after "personal data |section 1(1)" insert "personal data breach |section 24A(1)".

(14) In paragraph 1 of Schedule 9—

(a) after paragraph 1(1)(a) insert—

"(aa) that a data controller has contravened or is contravening any provision of section 24A, 24B or 24C, or";

(b) in paragraph 1(1B) after "principles" insert "or section 24A, 24B or 24C";

(c) in paragraph (3)(d)(ii) after "principles" insert "or section 24A, 24B or 24C";

(d) in paragraph (3)(f) after "principles" insert "or section 24A, 24B or 24C.""

This new clause seeks to create a general obligation on data controllers to notify the Information Commissioner and data subjects in the event of a breach of personal data security. The proposed obligation is similar to that imposed on electronic communication service providers by the Privacy and Electronic Communications (EC Directive) Regulations 2003.—(Louise Haigh.)

Brought up, and read the First time.

Louise Haigh: I beg to move, That the clause be read a Second time.

New clause 19 would provide a general obligation on companies to report personal data breaches. This crucial amendment gets to the heart of the regulatory system around cyber-security. Cyber-security is one of the greatest challenges we face as a country. Despite the Government's multi-million pound strategy and their further welcome announcement today, we do not believe they have faced up to the challenge yet. Some 90% of large UK firms were attacked in 2014. That is an astonishing figure, and yet only 28% of those businesses reported their cyber-attack to the police. As the Minister knows, national crime statistics rose for the first time in 20 years last year, because scams and cybercrime are now included.

Throughout discussion of the Bill, we have made it clear that we feel it does nothing to address the real challenges facing the digital economy. The Bill should have equipped the sector for the digital future—a future as replete with challenges as with opportunities. None of those challenges could be greater than cyber-security. That security says to consumers and individuals that, in this coming century, when data will be the lifeblood and the exchange of personal data the currency, nothing is more critical to ensure that that runs smoothly than their trust.

This multi-billion-pound sector, which now amounts to 11% of our GDP, is utterly reliant on the mutual trust fostered between consumers and producers, which is why the new clause is so critical. It would establish for the first time a duty on all companies to report any breach of cyber-security. The legislation as it stands is simply inadequate. The Data Protection Acts deal extensively with the protection of personal data, but there is no legal obligation on companies to report data breaches. The privacy and electronic communications regulations include an obligation to report data breaches, but that only applies to telecommunications companies and internet service providers and, at that stage, only requires companies to consider information customers.

Clearly, however, it is not only communications providers that hold sensitive data about people that carry the potential to be commodified. Insurance companies have had their data stolen, to be sold to claims management companies; banks are hacked, as J.P. Morgan was in 2014; and TK Maxx suffered the largest retail hack to date with the loss of credit and debit card information. Yet none of those examples had a duty to report to their customers to ensure that further harm was not done with their information.

The net impact of the lack in existing legislation is that the vast majority of attacks go unreported, and people are left in the dark when their personal data have been hacked, leaked, stolen or sold. If we are to talk meaningfully about data ownership, we cannot allow that to continue. We welcome yesterday's announcement that the Government will be implementing the general data protection regulation. As the Minister knows, the GDPR provides for a general obligation on all companies to report breaches to regulators and customers. Will he make it clear how he expects to fulfil that obligation and whether he is willing to accept the new clause?

Fundamentally, we are keen that the UK's digital economy is not seen as a soft touch on cybercrime. That is why the new clause would impose a general obligation on data controllers to notify the Information Commissioner and data subjects in the event of breaches of personal data security. We believe that that would be a major step forward, and we look forward to the Minister's comments.

Matt Hancock: I hope that we can deal with this new clause fairly quickly. I strongly support the hon. Lady's assertion that cyber-security is vital, and I appreciate her welcome for the national cyber-security strategy that the Chancellor of the Exchequer set out today. People say that there are two types of company: those that have had a cyber-attack and know about it; and those that have had one and do not know about it. It is vital that cyber-security is a priority for all companies that use the internet.

As the hon. Lady said, we have announced that the general data protection regulation will apply in the UK from May 2018. That new regime will introduce tough measures on breach notification, making it a requirement for all data controllers and processors to report data breaches to the Information Commissioner if they are likely to result in a risk to the rights and freedoms of individuals. Breaches must also be notified to the individuals affected where there is a high risk to their rights and freedoms. Under the GDPR, the sanctions available will be worth up to 4% of total global annual turnover, or €20 million, so it will be strongly in the interests of organisations to comply with the requirements.

I suggest that the bringing into UK law of the GDPR is the appropriate place to make the change that the hon. Lady suggests in her new clause. I therefore ask her to withdraw the motion.

Louise Haigh: If the Government intend to implement regulations in May 2018, I am not convinced why they cannot amend this legislation now.

Matt Hancock: The implementation of GDPR is a much bigger piece of work than simply this change. It is better to bring the whole thing in properly and in good order, rather than piecemeal.

Louise Haigh: It is highly unsatisfactory that, for the next 18 months, companies receiving cyber-attacks will still not be reporting them to customers that have had

their data stolen, hacked or lost, but it is welcome that the Government will be implementing the general data protection regulation. The Opposition will continue to scrutinise the implementation of their cyber-security strategy, so, with the Minister's assurances, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

10.30 am

New Clause 21

CODE OF PRACTICE: ACCESSIBILITY TO ON-DEMAND AUDIOVISUAL SERVICES FOR PEOPLE WITH DISABILITIES AFFECTING HEARING AND/OR SIGHT

'(1) The Secretary of State shall by regulations establish a code of practice for the augmentation of on-demand audiovisual programme services to require providers of such services to accompany designated output with designated levels of—

(a) subtitling,

(b) signing, or

(c) audio-description.

(2) The code shall require minimum levels of provision of one or more type of audiovisual augmentation.

(3) The code shall make provisions about the meeting of obligations established, including by allocating relevant responsibilities between—

(a) broadcasters,

(b) platform operators, and

(c) any other provider or purveyor of programmes or programme services.

(4) The Secretary of State shall, before making regulations under subsection (1), conduct a public consultation to inform the Secretary of State's determination of the elements of the code.

(5) The Secretary of State may delegate such duties and powers conferred under this section to an appropriate designated authority or agency as the Secretary of State thinks appropriate.

(6) For the purpose of subsection (1) a service is an on-demand audiovisual programme if it falls within the definition given in Section 368A (Meaning of "on-demand programme service") of the Communications Act 2003 (as inserted by the Audiovisual Media Service Regulations 2009).'—*(Louise Haigh.)*

Brought up, and read the First time.

Louise Haigh: I beg to move, That the clause be read a Second Time.

The new clause is a very simple amendment, one that I hope the Committee will agree is long overdue. The Communications Act 2003 ensured that access services—subtitles, audio description or sign language—are available on TV that is watched at a prescribed time and channel.

The way in which we watch and consume television has changed considerably since 2003; it is worth remembering that once the Communications Act 2003 reached Royal Assent, it would be a full five years before BBC iPlayer launched online. Similar on-demand services launched in the same year. Although subtitling is at or near 100% across the public service broadcasters, 76% of the UK's 90 on-demand providers still offer no subtitles at all—despite the fact that, according to Ofcom's figures, some 18% of the UK population use them.

The principles behind the Communications Act 2003 recognise that those with sensory loss should not be denied access to the information and services that many of us take for granted. Obviously, that principle still applies, yet, because of changes to technology, those with sensory loss cannot keep up.

In July 2013, the then Minister for the Digital Economy acknowledged this paradox, saying:

"If it is clear that progress isn't being made in three years' time…we will consider legislation."

We say that time is up. That is why the Opposition have helpfully brought forward a new clause to remind the Government of their commitment. The clause would merely update the existing regulatory regime that has worked so well for linear TV and apply it to on-demand.

There is no reason to believe that a burden will be imposed. The current code has a sliding scale for access services provision so that new and smaller broadcasters are either exempt or have gradually increasing targets. No linear broadcasters are ever required to spend more than 1% of their relevant turnover on access services. The new clause would be subject to public consultation. It is eminently reasonable and long overdue. It is clearly time the Government acted to reflect the digital world in which we live and allowed those with sensory loss to play a full and active part in it.

Matt Hancock: The creation of a digitally inclusive society is a crucial commitment for this Government. If somebody is not able to enjoy and exploit the benefits and convenience afforded to able bodied people, it is for us to better understand why and to work with interested parties to identify and implement a remedy.

The current statutory targets for subtitling, signing and audio description—collectively known by domestic TV channels as "access services"—cover 83 channels, over 90% of the audience share for broadcast TV. Over the years, the provision of access services has increased. Most notably, the number of service providers reporting subtitles grew from seven channels in 2013 to 22 in 2015. However, there is still clearly room for improvement.

We have become a society that wants to watch TV at a time and place convenient for us. As with much of the Bill, changes in technology outgrow the underpinning regulatory framework. It is not unreasonable to expect that content should have subtitles when it is made available at a time and place that are convenient for the viewer—even more so if access services were present at the scheduled broadcast time.

Ofcom currently possesses the power to encourage the 116 on-demand services providers in the UK to provide these services, but it does not have the power to require them. We have been considering what can be done—as the hon. Lady might imagine, given the previous commitment. We have been engaged in discussion with Ofcom to determine how we can address the shortcoming so that an increase in the provision of access services for video on demand can be achieved. We will continue that engagement with Ofcom. It made its position clear in evidence to the Committee, having previously argued that the law as it stood was what was needed.

I urge the hon. Lady to withdraw the new clause. It would require a code of practice that would be too prescriptive and would get into the micromanagement that we talked about earlier in our consideration of the Bill. Also, I would want the clause to specify that it is for Ofcom, not the Secretary of State, to make such a code.

Louise Haigh: I would be grateful if the Minister gave us a firm timeframe for this work with Ofcom; this is yet another area that could easily have been addressed in the Bill. He is saying, "Work is ongoing. We might come back to it later." There are so many areas of the Bill that could have been addressed by ongoing work. It all shows yet again that the Bill should have been delayed and brought forward when it was fit for Committee and ready to tackle all the issues.

Matt Hancock: The hon. Lady is clearly wrong about that, for two reasons. First, I do not want to delay the other measures in the Bill; she seems to want to delay a whole series of things that will improve mobile roll-out and broadband roll-out and will put age verification in place, and I think that would be a mistake.

Secondly, in the Committee's consideration of the Bill, we have had opportunities for further debate that have not been taken up. That shows that there has been full and proper scrutiny of the whole Bill. In this case, after the publication of the Bill, Ofcom said that it thought there was a need for the change in the law. We should take that seriously, consult Ofcom and consider exactly what needs to happen.

Louise Haigh: I repeat that in July 2013, the Minister's predecessor said:

"If it is clear that progress isn't being made in three years' time…we will consider legislation."

The Government have had more than three years to do this. It is not that Ofcom came forward after the Bill was published. The Bill presented a perfect opportunity, so will he commit to the exact timeframe for giving Ofcom the powers?

Matt Hancock: Ofcom previously said that it had all the necessary powers, but its position has changed. When the regulator changes position, it is reasonable to take that into account and to consult on ensuring that we can get the powers into place.

I make no bones about it: the support for access services for video on demand has not been in place before. We made big strides in the previous Parliament. We are committed to doing more to ensure that the support is more widely available. Instead of the tone of delay that is coming from those on the Opposition Benches, we should have a tone of support. That is what I propose, so I ask the hon. Lady to withdraw the new clause.

Louise Haigh: It is completely outrageous to suggest that we are the ones arguing for delay.

Kevin Brennan: It's your tone that is the problem, Minister.

The Chair: Order.

Louise Haigh: The Minister's predecessor said more than three years ago that the Government would legislate. I say to the Minister that he will legislate in haste and repent at his leisure. He may live to repent in terms of some of the measures that have been brought forward and some that have been missed in the Bill. I will seek assurances from Ofcom, seeing as the Minister has not been able to provide them, and we may return to the issue on Report, but for now I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 24

EMPLOYERS IN THE DIGITAL ECONOMY

"Where a business provides a digital service in which they act as an intermediary between labour suppliers and consumers where that service retains significant control over the service providers the labour suppliers shall be defined as employees of that business, as defined in section 230 of the Employment Rights Act 1996."—*(Louise Haigh.)*

Brought up, and read the First time.

Louise Haigh: The digital economy is the fastest growing area of the UK economy. We are very proud that, as a proportion of GDP, it is the largest in the G20. It employs more than 1.3 million workers, of whom a significant proportion—many more will not be categorised in that figure—are employed in the so-called gig economy. As we heard following the Uber ruling on Friday, many of those people do not enjoy very basic workers' rights. The London employment tribunal found that Uber was a transportation business and that the drivers who work through the app do work for Uber. The judgment against Uber was hailed as a landmark by the union that brought the claim, GMB, and rightly so. I am a proud member of that union.

Friday's landmark ruling should have ripple effects across the entire digital economy. At its best, the disruptive force of technology is reframing our relationship with each other and the world around us, whether that is farmers using millimetre-accurate GPS to guide their crops or technical experts in safety-critical industries using live data to monitor the manufacturing process. While the digital economy is heralding an unprecedented opportunity for many, the reality can be very different for the more than a million workers employed within the industry. Too often they will find themselves overworked, underpaid and exploited by bosses they never meet, and who do not even fulfil their basic duties as an employer.

Uber is the totemic example. Their "workers"—who pay Uber commission for every taxi ride completed—are not guaranteed breaks, holiday pay or even the minimum wage. Astonishingly, Uber did everything they could to argue to the tribunal that these people were not employees or workers. The judgement states that

"Any organisation (a) running an enterprise at the heart of which is the function of carrying people in motor cars from where they are to where they want to be and (b) operating in part through a company discharging the regulated responsibilities of a PHV [private hire vehicle] operator, but (c) requiring drivers and passengers to agree, as a matter of contract, that it does not provide transportation services…and (d) resorting in its documentation to fictions, twisted language and even brand new terminology, merits, we think, a degree of scepticism."

We could not agree more, and it is a bitter irony that a force that is making this era one of the most inter-connected in history has left many workers more isolated than ever before. The Government—who have promised to look out for those that are "just managing"—seem to have been blindsided by the challenges faced by the most enterprising of workers in our economy. There are few workers who would better match that description of

"just managing" than the taxi drivers who work upwards of 60, 70 and 80 hours per week and still struggle to pay their bills.

The new clause goes further than the Uber ruling; it would require drivers and other workers to be treated as employees of digital intermediaries. In so doing, their rights to sick pay and holiday pay would be protected as well as the right to paid breaks and the right to the bare minimum wage. When companies such as Uber inevitably try to wriggle out of their responsibilities by appealing against this recent decision, they will have nowhere to go.

We hope that the Government will step into the breach and move to enshrine the rights of workers employed in this emerging sector in law. This decision applies solely to Uber, but the principle should surely hold across the economy. It could affect many tens of thousands of people. So far, the Government's only announcement has been a two-sentence press release issued on a Friday afternoon referring to a review that has no end in sight. If that is all that the Government can muster, it is hard to believe that they have grasped the scale of the challenge. This will be creating considerable insecurity for both the businesses operating in the digital economy and the workers involved.

I hope that the Minister is acutely aware of both the urgency and the importance of new clause 21 and why it was wholly inadequate for there to be no mention of workers and their protections in the Digital Economy Bill. Hopefully, the Minister will go away and consider measures that will fill the legal vacuum now created, and provide reassurance to the burgeoning digital workforce who, by virtue of a technological sleight of hand, are denied the rights that many of us take for granted. That is clearly an injustice of the first order.

Matt Hancock: The hon. Lady asks for us to act, and then sets out the way in which we are acting. That demonstrates that this important area is being considered by the Government.

Technology is indeed changing employment patterns, and the system must keep up with it. Clearly, employers must take their employment law responsibilities seriously and they cannot simply opt out of them. This means making sure that workers are paid properly and enjoy the employment rights to which they are entitled. As a very strong supporter of the living wage and the national living wage, which we introduced, I am a great proponent of ensuring that the labour market operates fairly. Part of that fairness is making sure that it is also flexible. That needs to be considered too, alongside the rights.

10.45 am

The truth is that about nine out of 10 Uber drivers—the hon. Lady mentioned Uber specifically—say that they value flexibility. The Opposition's righteous anger is slightly misplaced: in making the case against all flexibility, she is making the case against those very drivers.

As the hon. Lady will have seen in recent announcements, we have decided to take an overall approach to looking at this challenging area. She mentioned the review we are having, which is led by the former head of the No. 10 policy unit under the Labour Government: Matthew Taylor, now chief executive of the Royal Society for the encouragement of Arts. We have taken a cross-party, broad approach and he is incredibly well placed to undertake the review.

Christian Matheson: Will the Minister tell us which trade unions are actively involved in the review?

Matt Hancock: I have no doubt that Matthew Taylor will get in contact with lots of trade unions. It is a good idea to take a cross-party approach. The review will last for about six months and among other things it will consider security, pay and rights, skills and progression, and specifically the appropriate balance of rights and responsibilities of new business models and whether the definitions of employment status need to be updated to reflect new forms of working such as on-demand platforms. It will tackle some of those issues. With that explanation, I hope that the hon. Lady will see that we are taking a sensible, reasonable approach and will withdraw her new clause.

Louise Haigh: The Opposition have been nothing but reasonable in Committee. The Minister refers to righteous anger; for those taxi workers in London, Sheffield and across the country who are working and not guaranteed paid breaks or the minimum wage, it is not righteous anger but justifiable anger on their behalf. We are arguing not against all flexibility but for those basic rights to be enshrined in law. They should never be compromised for anyone's convenience.

We are pleased finally to see a timeframe and have a commitment that the review will report back in six months. We will keep a close eye on the review and hope that it will take note of today's debate. With that, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 31

REVIEW OF INFORMATION DISCLOSURE AND DATA OWNERSHIP

'(1) The Secretary of State must commission an independent review of information disclosure and data ownership under Chapter 1 of Part 5 of this Act.

(2) In conducting the review, the designated independent reviewer must consult—

(a) specialists in data sharing,

(b) people and organisations who campaign for the rights of citizens to privacy and control regarding their personal information, and

(c) any other persons and organisations the review considers appropriate.

(3) The Secretary of State must lay a report of the review before each House of Parliament within six months of this Act coming into force.

(4) The Secretary of State may not make an order under section 82(4) bringing the provisions of Chapter 1 of Part 5 of this Act into force until each House of Parliament has passed a resolution approving the findings of the review mentioned in subsection (3).'.—*(Louise Haigh.)*

Brought up, and read the First time.

Louise Haigh: I beg to move, That the clause be read a Second time.

[Louise Haigh]

A great deal of our lengthy debate on part 5 has focused on data ownership and control. The Government have stated elsewhere that their policy is that citizens should own and control their own data, but sadly the Bill takes us backwards in that regard by adopting a completely paternalistic approach to data sharing, with a "Government knows best" attitude. We are blindly to assume that our data are being kept, shared and used appropriately while we are kept in the dark about how they are being used and for what purpose.

As the former Prime Minister famously said, "Sunlight is the best disinfectant," and as I have previously argued, a register for all data-sharing arrangements is necessary—in fact, essential—to ensure trust in the Government's data sharing. Quite simply, we cannot have trust when there is no transparency, and that is true for Governments of any colour. The new clause would require the Government to commission an independent review of information and data ownership under chapter 1 of part 5, which would seek to establish the direction in which the Government's stated policy intent for individuals to have control over their data is heading.

The Minister has given us all kinds of assurances that the codes of practice will sufficiently embed the principles, which have been debated at length, but as they are not statutory, there must be some form of mechanism to ensure that the spirit of the codes and the intention he stated in our debates are adhered to. Following the announcement that the Government will implement the general data protection regulation, the codes and the legislation are already out of date. I understand the role of Select Committees in this House, but the proposals made in the Bill are about incredibly detailed practices relating to the day-to-day operation of the civil service that are unlikely to be unearthed through a Select Committee report without a whistleblower or any kind of proactive publication, as suggested in our new clause on the new register.

The use of administrative data has been discussed at length, but it is not to be confused with the use of big data—a wholly different beast that has not been tackled in the Bill. That is another missed opportunity. A committee has been established in the Cabinet Office to consider the ethics of big data. That is absolutely necessary, but, again, it should have been conducted as an independent review, rather than something led by Government. My fear is that we are lagging well behind other Administrations with respect to how we treat data, and in the embedding of consent and control into our data regimes. We run a serious risk of sleepwalking into a major scandal.

Before I was elected I worked in the City of London, for Aviva. There I was put on a project looking at the type of things that we could do with big data. Aviva is a gold star insurer so it certainly was not indulging in unethical behaviour, but the kind of data that, if allowed, actuaries would like to test is simply not known—it would horrify the average consumer. There are many providers in the market for data, and many ways beyond our imagination in which our data could be commodified. It would take only a "Dispatches" exposé, or a scandal in *The Mail on Sunday*, and the Government would be forced to react; then, as all Governments do, they would over-react.

The Bill provides an excellent opportunity to look at the issues in the cold light of day, rather than the heat of reaction. I strongly urge the Ministers to take that opportunity and accept the new clause.

The Parliamentary Secretary, Cabinet Office (Chris Skidmore): There are several problems with the new clause. First, it would delay the delivery of significant public benefits; secondly, it seeks more consultation on measures where there has already been a long and broad-ranging consultation effort over many years; thirdly, it is asking for even more Parliamentary time, when the scheme, future pilots and data-sharing measures are already subject to significant and continued Parliamentary scrutiny.

We believe that the proposed review and subsequent delay would prevent us from delivering significant public benefits, such as extending the warm home discount, which had the support of the Committee last week. If implementation of warm home discount reform were delayed by one year because of the time needed to carry out the review and then to establish the necessary data-sharing arrangements, the Government would potentially help about 750,000 fewer fuel-poor homes in 2018-19. Further, there would be a delay to our ability to implement the benefits of more effectively targeting the £640 million-a-year energy company obligation.

The measure is not short on consultation. That process started in April 2014 and has involved civil society groups, experts and practitioners. There was a public consultation. The draft clauses were published in February 2016. There has been lots of discussion and the Government have listened. That is why information can be shared only for specific objectives, which can be added to only if they satisfy the public benefit test. It is why we have new unlawful disclosure offences, and a code of practice that has been welcomed by the Information Commissioner. The proposed review would require the Government to consult the very people we have already consulted in developing the public service delivery power.

The Bill is also not short on parliamentary oversight. There must be agreement by Parliament to new objectives for sharing data, new public authorities—a list will be drawn up—and the code of practice. The code of practice clearly sets out the process for public bodies to maintain public confidence, with privacy and impact assessments and by ensuring that all data-sharing arrangements are public. That is clearly set out in paragraphs 74 to 78 in part 5. The further scrutiny sought in the new clause is unnecessary duplication. The purpose of scrutiny by Parliament is to decide whether the powers should be taken, so no purpose would be served by having another review before the powers are commenced. For that reason I ask the hon. Lady to withdraw the amendment.

Louise Haigh: The Minister is dead right. We would like some more consultation on the review, not least because nearly all of the Government's consultees are unhappy with the proposals in the Bill.

I hope that we have thrashed out many of the part 5 issues and that the Government will act and amend the provisions in the other place. If that does not happen, we shall return to the matter on Report. I beg to ask leave with withdraw the motion.

Clause, by leave, withdrawn.

New Clause 32

OFCOM POWER TO ENFORCE STRUCTURAL SEPARATION OF BT OPENREACH

'After section 49C of the Communications Act 2003 insert—

"(49D) OFCOM has the power to enforce the structural separation of BT Openreach, should OFCOM consider this necessary."'—*(Calum Kerr.)*

Brought up, and read the First time.

Calum Kerr: I beg to move, That the clause be read a Second time.

I will outline the rationale and seek reassurances as to how the Government intend to deal with this matter. We propose that the Bill be amended to ensure that Ofcom has the strongest legal basis to deliver all the options highlighted in its digital communications review. Ofcom is consulting at the moment on how it could introduce legal separation for Openreach within the BT group, but structural separation remains an option.

Drew Hendry: Does my hon. Friend agree that the current structure is insufficient to provide an incentive to effectively invest in the network that is required? Ofcom has itself said that the existing ownership allows it to discriminate against competitors.

Calum Kerr: I thank my hon. Friend for his comments. At the crux of the debate as to where we go in terms of connectivity is BT, which has a case to answer regarding its investment. Ofcom has a case to answer on being technology agnostic. We have to be bolder and push more ambitiously for fibre. The Minister has told us "fibre means fibre", so we look forward to seeing progress. Sometimes I think the Government have consumed too much fibre.

It is essential that Ofcom is confident it can enforce separation of Openreach should it conclude it is necessary. It is important to understand the position today. Ofcom considers that it does have the power under the EU framework directive to impose structural separation. The problem with that approach is that Brexit means Brexit. Should Ofcom decide that separation is the right approach, would it take its case to the EU Commission at the time of Brexit? That would be fraught with difficulty, not least as BT might appeal and we would have a long drawn-out process.

It is also worth noting that the telecoms framework under which Ofcom regulates the UK is EU legislation. We need to consider that BT has stated publicly that it believes there is no mechanism for structural separation even within the EU. We are trying to flush out some of the Government's thinking. The new clause is designed to avoid the potential uncertainty and paralysis should Ofcom want to go down this route. Even if Ofcom does not use this power, having it there will have the added benefit of strengthening its hand in negotiation and enforcement as we all try to improve UK infrastructure.

The SNP's position is that the digital communications review is following the right lines. Structural separation at this stage is the right approach, but we need to ensure that the final option is available. Given the change in relation to the EU, I would welcome the Government's comments on how they propose to ensure that is an option.

Matt Hancock: We have made it clear that the UK needs a competitive and effective market in telecoms, and I have made it clear that fibre is the future. Fibre means fibre. The amendment seeks to ensure Ofcom has the power to impose structural separation on BT Openreach if Ofcom considers it necessary. There is already a process available to Ofcom to pursue structural separation should it be considered necessary. The Committee knows that Ofcom is currently considering how Openreach should be structured. We have made it clear that Ofcom should take whatever action it considers necessary and that structural separation remains an option.

Of course, in a rapidly moving sector such as communications, circumstances can change. We regularly review whether Ofcom has the right powers. We will need to do that in the context of our exit from the European Union, but at present Ofcom has the appropriate powers that it needs and it will continue to have them. With that explanation, I hope the hon. Gentleman will withdraw the amendment.

Calum Kerr: I thank the Minister for his comments, but the position in relation to having the powers is a weak answer. If there were a separation, we would enter into uncertainty without explicit powers. I will not press the motion to a vote, but I encourage the Government, as the picture on the EU evolves, to be clearer, and if they think it necessary to introduce something specific, so that we have a measure available.

I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 36

BILL CAPS FOR ALL MOBILE PHONE CONTRACTS

'(1) A telecommunications service provider supplying a contract relating to a hand-held mobile telephone must, at the time of entering into such a contract, allow the end-user the opportunity to place a financial cap on the monthly bill under that contract.

(2) A telecommunications service provider under subsection (1) must not begin to supply a contracted service to an end-user unless the end-user has either—

(a) requested the monthly cap be put in place and agreed the amount of that cap, or

(b) decided, on a durable medium, not to put a monthly cap in place.

(3) The end-user should bear no cost for the supply of any service above the cap if the provider has—

(a) failed to impose a cap agreed under subsection (2)(a),

(b) introduce, or amend, a cap following the end-user's instructions under subsection (2)(b), or

(c) removed the cap without the end-user's instructions or has removed it without obtaining the consumer's express consent on a durable medium under subsection (2).'—*(Louise Haigh.)*

Brought up, and read the First time.

11 am

Louise Haigh: I beg to move, That the clause be read a Second time.

This new clause would mean that mobile phone service providers must give all consumers the opportunity to put a financial cap on their monthly mobile phone bill

[Louise Haigh]

and that a mobile phone service cannot be provided until the service provider has put in place a cap of the agreed amount, if the consumer has made an express request. The new clause would be welcomed by many who have found that, when they receive an email or check their bank balance at the end of the month, their monthly mobile phone bill has come in much higher than expected.

The reason for the new clause is clear: mobile phone tariffs are complex, particularly on data. Few of us understand how much data we need for an average month, and consumers of all kinds can find that they use much more data than expected. Citizens Advice has provided me with an example that reveals the problem. One man changed his shift patterns and started using his phone to watch films during the night. His network sent a text message to tell him that he had gone over his monthly allowance, but he did not think too much about it until he received a bill for more than £2,000 at the end of the month. His service was subsequently cut off. Research suggests that as many as one in five consumers finds it difficult to keep track of how much they spend on data. The average unexpectedly high bill is usually double the cost of the original monthly fee.

Citizens Advice has received more than 60,000 inquiries about telephone and broadband debt, with its in-depth specialists dealing with nearly 27,000 individual mobile phone debt cases. Mobile phones have become a staple of our everyday life, and a voluntary cap would help consumers, particularly those who can ill afford an occasional doubling of their bill. Consumers support the measure, with more than 77% welcoming the idea.

This is not the first time that the proposal has been considered. In 2012, Ofcom considered introducing regulations but could not overcome the objections of providers, who argued that it would be too costly. Since then, two mobile phone providers have led the way and proved that it can be done. With the Bill's new provisions on Ofcom appeals, I hope the Government will now consider our new clause.

Matt Hancock: The new clause seeks to place a mandatory obligation on mobile phone service providers to agree a financial cap on monthly bills with the customer at the time of entering into the contract, or to secure an agreement from the customer that they do not wish to have a financial cap. Consumers can avoid bill shocks in a number of different ways, so this additional measure is not necessary.

Before purchasing a mobile contract, consumers can already calculate their normal usage based on their last couple of bills. Once a consumer has established their monthly usage, Ofcom-accredited comparison websites are available to them. In fact, the Bill makes further progress on switching. Mobile phone providers are also taking steps to protect their customers from bill shock. As the hon. Lady says, many providers alert customers when they are close to reaching usage allowance limits and offer apps that enable consumers to monitor that usage.

Drew Hendry: I hear what the Minister is saying, and he is right that mobile phone operators have put measures in place, but none of them actually caps the amount paid so that people can avoid the situation where, for example, a child runs up exorbitant bills by overriding those limits.

Matt Hancock: I do not think that is true. There are examples of contracts that have caps or prepayment. Such contracts exist and they would not be complemented by the new clause, which is about ensuring that information and agreement are available at the start of a contract. The new clause proposes that such an agreement is available or that the person explicitly chooses not to have a cap, which in substance is the same position as now—it would just change what is in the vast quantities of small print at the bottom of these contracts.

Louise Haigh: The provisions in the new clause will not be a negative process, as the Minister has just outlined; they will require people to request a cap, rather than to agree that a cap is not put in place. Does the Minister honestly believe that enough information is provided when customers negotiate a contract with a telecoms provider about how much data are going to cost and how much additional data—over the agreed limit—will cost? Does the law currently guard against the example I provided of the gentleman who was watching films, completely oblivious to the fact that he was running up a bill of hundreds of pounds?

Matt Hancock: I think that that information has to be provided. Further, it is Ofcom's job to ensure that that sort of information is provided in a reasonable way, and it has the capability to do that.

Can we guard against anybody using a mobile phone in a way completely different to their own intention at the point of signing the contract, having not taken into account the impact of that behaviour on the price? It is very hard to do that. I also do not see how the new clause would do that. It would simply change the way that a contract is written in the first place, giving the same options of either a capped or non-capped contract. It still provides for the two, so I do not think it would make a substantive difference.

That is not to deny that there is not always a challenge here to make sure that people get the best possible information, and crucially that switching is available and, as is provided for, that if somebody enters into a contract and wants to change that contract shortly after entering into it, they have the ability to do so. One provider now gives new customers the ability to put on a block on outgoing calls after they have reached their allowance, which they can turn on and off via their account, for example. There are dynamic ways of dealing with this within contracts, and I think that is probably the best way to do it, rather than with primary legislation.

Having said all of that, I of course recognise that this is an important and challenging area, but I hope that with that explanation the hon. Members will withdraw the new clause.

Louise Haigh: The Minister has not given us a good enough reason for why consumers should not have the ability to put a financial cap on their monthly bills. He has laid out some voluntary mechanisms that various communications providers have implemented, which is

all well and good for their customers, but I am sure he will accept that that is a very haphazard way to deal with this issue.

Matt Hancock: The proposal in the new clause is itself a voluntary proposal, because it provides for the agreement from a customer should they not wish to see a financial cap. In substance, that is exactly what the new clause provides for.

Louise Haigh: It is voluntary for the consumer but not for the telecoms provider. The Minister, in his typical, patronising way, is trying to put this differently from how the Opposition is putting it.

Drew Hendry: Does the hon. Lady agree that it is just common sense to allow the consumer the choice to avoid high bills?

Louise Haigh: Absolutely. I do not think the Minister has made a case at all for not allowing this to happen, or why mobile phone companies should object to people voluntarily placing a financial cap on their bills to avoid the kind of excessive bills that can be, and are, run up by even the most tech-savvy of people. We will divide the Committee on the new clause, because we have not been provided with sufficient explanation as to why it should not go forward.

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

The Committee divided: Ayes 8, Noes 10.

Division No. 8]

AYES

Brennan, Kevin	Hendry, Drew
Debbonaire, Thangam	Jones, Graham
Foxcroft, Vicky	Kerr, Calum
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.

New Clause 37

"Duty to provide free wi-fi on rail services

'(1) The Railways Act 1993 is amended as follows.

(2) After section 26 insert—

"(26D) In deciding whether to select the person who is to be the franchisee under a franchise agreement by means of an invitation to tender and whom so to select, the appropriate franchising authority must stipulate a requirement for franchisees to provide free wi-fi for passengers."

This new clause requires the Secretary of State to stipulate in the "franchise agreement" a requirement for franchisees to provide free wi-fi for passengers.—(Louise Haigh.)

Brought up, and read the First time.

Louise Haigh: I beg to move, That the clause be read a second time. We have reached our final new clause, which was tabled in frustration at the amount of time I spend on trains every week and how shockingly poor the quality and consistency of wi-fi is, even when one has paid for the privilege of accessing it, in addition to not inconsiderable rail fares. To make things worse, the Sheffield to London line has appalling mobile network coverage; I can make a call on about 15% of the journey, just when we are in the stations. That is why our new clause on the mobile strategic review is absolutely necessary to ensure that network coverage is extended across the UK and to keep those mobile network operators on target. We need decent quality wi-fi on all our public transport and in all our public spaces. We now have a record high of 1.65 billion rail passenger journeys every year. Without decent network and internet coverage, they are essentially unproductive journeys that could be used to boost our economy. Indeed, many of our cities outside London lose out on investment precisely because the connecting transport has such poor mobile and internet coverage.

I have spoken to several London-based tech companies that have chosen to invest in cities other than Sheffield, because they would essentially lose the time travelling from London through being unable to work. You would be forgiven for thinking that this was deepest, darkest Peru rather than one of the biggest cities in the UK, just two hours' train journey from London; but I was in Peru earlier this year and they have free wi-fi on their buses and in public spaces. In fact, of the top 10 most wi-fi-friendly cities in the world, the UK does not even feature. From Taipei to Florence and Tel Aviv to Hong Kong, the rest of the world is far ahead of us on access to free public wi-fi, which is boosting their tourism industries and domestic industries. There is benefit to be had for the train operating companies as well. In some US states, people recognise that they can deliver passenger-oriented services as part of wider, often safety-related, communications projects that they need to undertake, and harvest passengers' use of social media as a valuable data source for plugging gaps in their travel information services, as well as for monitoring reactions to network performance and being able to take remedial steps.

I am sure that the Minister is going to tell the Committee about the Government's superconnected cities programme, which got off to a shaky start—though they are to be congratulated on the progress that has already been made in delivering free wi-fi to trains and buses across Leeds, Bradford, Edinburgh, Newport, Cardiff, Greater Manchester, York and Oxford. As ever, though, we will push the Government and the Minister to be more ambitious and achieve everything they are capable of achieving, investing in the digital infrastructure that we need to ensure that our digital economy can continue to thrive across the whole country. Alongside roads and rail, it is the Government's job to ensure that our country is fully equipped with the digital infrastructure necessary for the digital revolution. As has been said many times, I am afraid that this Bill, unamended, does not cut it.

Our proposal would not require a single penny of public money. It would simply chip into the tens of millions of pounds of profit that the train companies make off the back of publicly-funded infrastructure. It would simply put into franchise agreements a requirement for all trains to provide free wi-fi and we have been very flexible and reasonable about the level at which that

[Louise Haigh]

should be provided. Ultimately, we need to see free wi-fi on all our public transport. Sheffield's longer bus journeys already offer free wi-fi, while York and Newcastle have opened up their public spaces. It will mean that people and businesses can be more productive and we can all spend less on our data packages.

Drew Hendry: In a progressive spirit, we join in the support for this measure. As someone who travels regularly, having taken my position in this House, on some of the train services, I note that the difference between the contract that the Scottish Government have organised through the franchise with ScotRail with intercity wi-fi, and what is available here is quite stark. In fact, all new electrical multiple units of 318s, 320s, 334s and 380s in Scotland come with wi-fi and power sockets. I urge the Minister to consider including that and to ensure that customers in England and Wales get the same sort of service as those in Scotland.

11.15 am

Matt Hancock: It is highly appropriate to end this sitting with the new clause because the intent behind it has cross-party support from both parts of the Opposition represented here. Government Members not only recognise, but are enthusiastic and passionate about getting better wi-fi on trains. My hon. Friend the Member for Devizes, as a Transport Minister and more specifically a Rail Minister, was instrumental in getting Britain to where we are with wi-fi on trains. It is something all MPs understand as we travel around the country. Our frustration is shared by the great British travelling public and the demands for better and faster free wi-fi on trains will continue until they are sated.

Requiring free wi-fi on trains has been undertaken through new franchises and implemented also in existing franchises. The obligation to provide free wi-fi is now secured in 10 of the 15 franchises and we forecast that more than 90% of passenger journeys will have access to wi-fi by the end of 2018 and almost 100% by 2020. There have been further programmes, such as the superconnected cities programme. The hon. Member for Sheffield, Heeley says she wants to press us to achieve all we can, and we accept the challenge.

For all new franchises, the current specifications will require a minimum of 1 megabit per second per passenger, which allows for web browsing, basic email and social media activity. Crucially, this is set to increase by 25% every year with a focus on ensuring that it is reliable and consistent because dropped calls or frequent breaks in ability to access wi-fi are seriously frustrating.

There are even stronger bids in some competitions. For example, the East Anglia franchise, which I use a lot, will provide up to 100 megabits per second to the train by 2019, then 500 megabits per second by 2021 and 1 gigabit per second by the end of 2021 on key intercity routes, not least the Norwich in 90 and Ipswich in 60 plans. That is totally brilliant and I pay tribute to my hon. Friend the Member for Devizes for making it happen.

Wi-fi was previously dependent on mobile coverage that trains went through, but train operators have started to innovate and have done deals with mobile operators to make sure they have enough 4G coverage down the track. Chiltern is an example. It agreed a deal with EE to provide 100% coverage from London to Birmingham. This is happening. Specifying a particular technology in legislation is likely to provide more problems than solutions. Our changes in driving wi-fi through contracts with operators is more likely to be successful in getting more connectivity faster. That is the approach I propose.

In a moment, I will ask the hon. Member for Sheffield, Heeley to withdraw the motion, but first I want to pay tribute to all the people who have helped to make this Committee happen, including the Opposition. We have had cheerful and sometimes forthright debates, but in the best spirit of improving the digital economy for all the citizens we serve. I pay tribute particularly to the hon. Member for Sheffield, Heeley who, in her first performance in her new position, has shown the rest of us how to do it. She has been charming and brilliant. I can only say, thank goodness for Jeremy Corbyn.

I thank you, Mr Stringer, and Mr Streeter for chairing the Committee so effectively and efficiently, and for ensuring that I made fewer mistakes than I otherwise would. I thank the Clerk and the staff of the Public Bill Office, who have helped enormously to keep us on the straight and narrow. I thank the Doorkeepers for holding the doors open long enough for my Whip to ensure that we had all our people here when necessary. I thank the *Hansard* reporters for no doubt capturing us accurately, in sometimes quite complicated language. I thank the police, my officials in DCMS—in particular the Bill team—and also those from across Government, because the Bill has measures in it from many different Departments. There has been great cross-Government collaboration and I put on record my thanks to my policy officials, the Bill team and my private office team. I thank all those who have given oral or written evidence to the Committee, which has improved our ability to scrutinise the Bill. With that, I hope that the hon. Member for Sheffield, Heeley will withdraw this final new clause and we can report to the House a well-scrutinised Bill.

Louise Haigh: It is very welcome to hear that all new franchise agreements—the Minister is nodding—will contain a requirement for wi-fi. I am happy to withdraw the motion.

Before I do, I add my thanks to you, Mr Stringer, and to Mr Streeter. You have both kept us in order and guided us through, particularly me in my first time on the Front Bench in a Bill Committee. I was put in this job two days before the Committee proceedings began, when I had not yet read the Bill. To say that this was being thrown in at the deep end is something of an understatement. I add particular thanks to the Clerk, who has been incredibly helpful in getting our last-minute amendments together, to the *Hansard* writers, to the police and Doorkeepers, and of course to all the civil servants who have been in and out of here through a revolving door as we have cantered through the various clauses. I also thank all my hon. Friends who have contributed, SNP Committee members and Government Committee members. I thank both Whips who have kept us to time—we are going to get there eventually.

It has been unsettling to agree with the Minister on so many things but I have been very relieved to find that he still manages to infuriate me. I believe we have stress-tested the Bill pretty roundly. We have found it wanting in

several areas and I am confident that it will receive amendments in the other place. I am disappointed to see it emerge relatively unscathed from Committee, but I am confident that it will return from the other place in better shape. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Schedule 1

ELECTRONIC COMMUNICATIONS CODE: CONSEQUENTIAL AMENDMENTS

"PART 1

GENERAL PROVISION

Interpretation

1 In this Part—

"the commencement date" means the day on which Schedule 3A to the Communications Act 2003 comes into force;

"enactment" includes—

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

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

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

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

"the existing code" means Schedule 2 to the Telecommunications Act 1984;

"the new code" means Schedule 3A to the Communications Act 2003.

References to the code or provisions of the code

2 (1) In any enactment passed or made before the commencement date, unless the context requires otherwise—

(a) a reference to the existing code is to be read as a reference to the new code;

(b) a reference to a provision of the existing code listed in column 1 of the table is to be read as a reference to the provision of the new code in the corresponding entry in column 2.

(2) This paragraph does not affect the amendments made by Part 2 of this Schedule or the power to make amendments by regulations under section 6.

(3) This paragraph does not affect section 17(2) of the Interpretation Act 1978 (effect of repeal and re-enactment) in relation to any reference to a provision of the existing code not listed in the table.

Table

Existing code	*New code*
Paragraph 9	Part 8
Paragraph 21	Part 6
Paragraph 23	Part 10
Paragraph 29	Paragraph 17

References to a conduit system

3 In any enactment passed or made before the commencement date, unless the context requires otherwise—

(a) a reference to a conduit system, where it is defined by reference to the existing code, is to be read as a reference to an infrastructure system as defined by paragraph 7(1) of the new code, and;

(b) a reference to provision of such a system is to be read in accordance with paragraph 7(2) of the new code (reference to provision includes establishing or maintaining).

PART 2

AMENDMENTS OF PARTICULAR ENACTMENTS

Landlord and Tenant Act 1954 (c. 56)

4 In section 43 of the Landlord and Tenant Act 1954 (tenancies to which provisions on security of tenure for business etc tenants do not apply) after subsection (3) insert—

"(4) This Part does not apply to a tenancy—

(a) the primary purpose of which is to grant code rights within the meaning of Schedule 3A to the Communications Act 2003 (the electronic communications code), and

(b) which is granted after that Schedule comes into force.""

Opencast Coal Act 1958 (c. 69)

5 (1) Section 45 of the Opencast Coal Act 1958 (provisions as to telegraphic lines) is amended as follows.

(2) In subsection (2) for "paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

(3) In section (4) for "Paragraph 1(2) of the electronic communications code" substitute "Paragraph 103(2) of the electronic communications code".

Land Drainage (Scotland) Act 1958 (c. 24)

6 In section 17 of the Land Drainage Act (Scotland) Act 1958 (application of paragraph 23 of the code) for "Paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

Pipe-lines Act 1962 (c. 58)

7 In section 40(2) of the Pipe-lines Act 1962 (avoidance of interference with lines) for "Paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

Harbours Act 1964 (c. 40)

8 In section 53 of the Harbours Act 1964 (application of paragraph 23 of the code) for "Paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

Fair Trading Act 1973 (c. 41)

9 In section 137(3)(f) of the Fair Trading Act 1973 (general interpretation: services covered) for "paragraph 29 of Schedule 2 to the Telecommunications Act 1984" substitute "paragraph 17 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

Highways Act 1980 (c. 66)

10 The Highways Act 1980 is amended as follows.

11 In section 177(12) (restriction of construction over highways: application of paragraph 23 of code) for "paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

12 (1) Section 334 (savings relating to electronic communications apparatus) is amended as follows.

(2) In subsection (8) for "Paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

(3) In subsection (9) for "the said paragraph 23" substitute "Part 10 of the electronic communications code".

(4) In subsection (11)—

(a) for "Sub-paragraph (8) of paragraph 23" substitute "Paragraph 68";

(b) for "that paragraph" substitute "Part 10 of the code".

(5) In subsection (12) for "1(2)" "substitute "103(2)".

(6) In subsection (13) for "Paragraph 21 of the electronic communications code (restriction on removal of electronic communications apparatus)" substitute "Part 6 of the electronic communications code (rights to require removal of electronic communications apparatus)".

Roads (Scotland) Act 1984 (c. 54)

13 The Roads (Scotland) Act 1984 is amended as follows.

14 (1) Section 50 (planting of trees etc by roads authority) is amended as follows.

(2) In subsection (3) for "Paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

(3) In subsection (4)—

(a) for "sub-paragraph (8) of paragraph 23" substitute "Paragraph 68"

(b) for "that paragraph" substitute "Part 10 of the code".

15 (1) Section 75 (bridges over and tunnels under navigable waterways) is amended as follows.

(2) In subsection (9) for "Paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

(3) In subsection (10)—

(a) for "sub-paragraph (8) of paragraph 23" substitute "paragraph 68"

(b) for "that paragraph" substitute "Part 10 of the code".

16 (1) Section 132 (saving for operators of telecommunications code systems) is amended as follows.

(2) In the heading for "telecommunications code systems" substitute "electronic communications code networks".

(3) In subsection (4) for "paragraph 1(2) of the electronic communications code" substitute "paragraph 103(2) of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

(4) In subsection (5) for "Paragraph 21 of the electronic communications code (restriction on removal of electronic communications apparatus)" substitute "Part 6 of the electronic communications code (rights to require removal of electronic communications apparatus)".

Housing Act 1985 (c. 68)

17 Section 298 of the Housing Act 1985 (telecommunications apparatus) is amended as follows.

18 For the heading substitute "Electronic communications apparatus".

19 In subsection (2) for "paragraph 21 of the electronic communications code" substitute "Part 6 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

20 In subsection (3) for "paragraph 23" substitute "Part 10".

Food and Environment Protection Act 1985 (c. 48)

21 The Food and Environment Protection Act 1985 is amended as follows.

22 In section 8A (electronic communications apparatus: operations in tidal waters etc) for the words from "paragraph 11" to "1984" substitute "Part 9 of Schedule 3A of the Communications Act 2003 (the electronic communications code)".

23 In section 9(8) (defence to operating without licence under Part 2)—

(a) for "paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A of the Communications Act 2003 (the electronic communications code)";

(b) omit the words from "In this subsection" to the end.

Airports Act 1986 (c. 31)

24 The Airports Act 1986 is amended as follows.

25 (1) Section 62 (electronic communications apparatus) is amended as follows.

(2) In subsection (1) for "Paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A of the Communications Act 2003 (the electronic communications code)".

(3) In subsection (4) for "Paragraph 23" substitute "Part 10".

(4) In subsection (5)—

(a) for "Sub-paragraph (8) of paragraph 23" substitute "Paragraph 68";

(b) for "that paragraph" substitute "Part 10 of the code".

(5) In subsection (6) for "1(2)" substitute "103(2)"

(6) In subsection (7) for "Paragraph 21 of the electronic communications code (restriction on removal of apparatus)" substitute "Part 6 of the electronic communications code (rights to require removal of apparatus)".

Landlord and Tenant Act 1987 (c. 31)

26 In section 4(2) of the Landlord and Tenant Act 1987 (disposals which are not relevant disposals for purposes of tenants' right of first refusal) after paragraph (da) insert—

"(db) the conferral of a code right under Schedule 3A to the Communications Act 2003 (the electronic communications code);".

Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22)

27 In paragraph 4 of Schedule 4 to the Road Traffic (Driver Licensing and Information Systems) Act 1989 (application of paragraph 23 of code to licence holders) for "Paragraph 23 of Schedule 2 to the Telecommunications Act 1984" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

Electricity Act 1989 (c. 29)

28 In paragraph 1(6) of Schedule 16 to the Electricity Act 1989 (application of paragraph 23) for "Paragraph 23 of Schedule 2 to the Telecommunications Act 1984" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

Town and Country Planning Act 1990 (c. 8)

29 (1) Section 256 of the Town and Country Planning Act 1990 (electronic communications apparatus: orders by the Secretary of State) is amended as follows.

(2) In subsection (5) for "Paragraph 1(2) of the electronic communications code" substitute "Paragraph 103(2) of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

(3) In subsection (6) for "Paragraph 21 of the electronic communications code (restriction on removal of electronic communications apparatus)" substitute "Part 6 of the electronic communications code (rights to require removal of electronic communications apparatus)".

Water Industry Act 1991 (c. 56)

30 In paragraph 4 of Schedule 13 to the Water Industry Act 1991—

(a) for "paragraph 23" substitute "Part 10";

(b) for "Schedule 2 to the Telecommunications Act 1984" substitute "Schedule 3A to the Communications Act 2003";

(c) in the heading, for "telecommunication systems" substitute "electronic communications networks".

Water Resources Act 1991 (c. 57)

31 In Schedule 22 to the Water Resources Act 1991 (protection of particular undertakings)—

(a) in paragraph 5 for "Paragraph 23 of Schedule 2 to the Telecommunications Act 1984" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)";

(b) for the italic heading before paragraph 5 substitute "Protection for electronic communications networks".

Electricity (Northern Ireland) Order 1992 (S.I. 1992/231)

32 In paragraph 3(2) of Schedule 4 to the Electricity (Northern Ireland) Order 1992 (application of paragraph 23) for "paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

Cardiff Bay Barrage Act 1993 (c. 42)

33 In paragraph 16 of Schedule 2 to the Cardiff Bay Barrage Act 1993 (application of paragraph 23) for "Paragraph 23 of Schedule 2 to the Telecommunications Act 1984" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

Roads (Northern Ireland) Order 1993 (S.I. 1993/3160)

34 (1) Schedule 9 to the Roads (Northern Ireland) Order 1993 (saving provisions) is amended as follows.

(2) In paragraph 2(2) for "Paragraph 1(2) of the electronic communications code" substitute "Paragraph 103(2) of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

(3) In paragraph 2(3) for "Paragraph 21 of the electronic communications code (restrictions on removal of apparatus)" substitute "Part 6 of the electronic communications code (rights to require removal of apparatus)".

(4) In paragraph 3 for "Paragraph 23" substitute "Part 10".

Airports (Northern Ireland) Order 1994 (S.I. 1994/426)

35 (1) Article 12 of the Airports (Northern Ireland) Order 1994 (provisions as to electronic communications apparatus) is amended as follows.

(2) In paragraph (1) for "Paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

(3) In paragraph (3A) for "Paragraph 23" substitute "Part 10".

(4) In paragraph (4)—

(a) for "Sub-paragraph (8) of paragraph 23" substitute "Paragraph 68";

(b) for "that paragraph" substitute "Part 10 of the code".

(5) In paragraph (5) for "1(2)" substitute "103(2)".

(6) In paragraph (6) for "Paragraph 21 of the electronic communications code (restriction on removal of apparatus)" substitute "Part 6 of the electronic communications code (rights to require removal of apparatus)".

(7) Omit paragraph (7).

Landlord and Tenant (Covenants) Act 1995 (c. 30)

36 In section 5 of the Landlord and Tenant (Covenants) Act 1995 (tenant released from covenants on assignment of tenancy), after subsection (4) insert—

(5) This section is subject to paragraph 15(4) of Schedule 3A to the Communications Act 2003 (which places conditions on the release of an operator from liability under an agreement granting code rights under the electronic communications code)."

Gas Act 1995 (c. 45)

37 In paragraph 2(7) of Schedule 4 to the Gas Act 1995 (application of paragraph 23 to public gas transporters) for "Paragraph 23 of Schedule 2 to the Telecommunications Act 1984" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

Channel Tunnel Rail Link Act 1996 (c. 61)

38 (1) Part 4 of Schedule 15 to the Channel Tunnel Rail Link Act 1996 (protection of telecommunications operators) is amended as follows.

(2) For the heading substitute "Protection of electronic communications code operators".

(3) In paragraph 2(1) for "Paragraph 21 of the electronic communications code" substitute "Part 6 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

(4) In paragraph 2(2) for "Paragraph 23" substitute "Part 10".

(5) In paragraph 3 for "paragraph 9" substitute "Part 8".

(6) In paragraph 4(1) for "paragraph 23" substitute "Part 10".

Gas (Northern Ireland) Order 1996 (S.I. 1996/275)

39 (1) Schedule 3 to the Gas (Northern Ireland) Order 1996 (other powers etc of licence holders) is amended as follows.

(2) In paragraph 1(1) omit the following definitions—

(a) "public telecommunications operator";

(b) "telecommunication apparatus" and "electronic communications network";

(c) "telecommunications code".

(3) In paragraph 3(2) for "paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

Business Tenancies (Northern Ireland) Order 1996 (SI 1996/725 (NI 5))

40 In Article 4(1) of the Business Tenancies (Northern Ireland) Order 1996 (tenancies to which the Order does not apply) after paragraph (k) insert—

"(l) a tenancy the primary purpose of which is to grant code rights within the meaning of Schedule 3A to the Communications Act 2003 (the electronic communications code), where the tenancy is granted after that Schedule comes into force."

Town and Country Planning (Scotland) Act 1997 (c. 8)

41 (1) Section 212 of the Town and Country Planning (Scotland) Act 1997 (electronic communications apparatus) is amended as follows.

(2) In subsection (7) for "Paragraph 1(2) of the electronic communications code" substitute "Paragraph 103(2) of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

(3) In subsection (8) for "Paragraph 21 of the electronic communications code (restriction on removal of electronic communications apparatus)" substitute "Part 6 of the electronic communications code (rights to require removal of apparatus)".

Enterprise Act 2002 (c. 40)

42 The Enterprise Act 2002 is amended as follows.

43 In section 128(5) (mergers: references to supply of services) for the words from "(within" to the end substitute "(within the meaning of paragraph 17 of Schedule 3A to the Communications Act 2003 (the electronic communications code)) for sharing the use of electronic communications apparatus."

44 In section 234(5) (enforcement of consumer legislation: references to supply of services) for the words from "(within" to the end substitute "(within the meaning of paragraph 17 of Schedule 3A to the Communications Act 2003 (the electronic communications code)) for sharing the use of electronic communications apparatus."

Communications Act 2003 (c. 21)

45 The Communications Act 2003 is amended as follows.

46 (1) Section 394 (service of notifications and other documents) is amended as follows.

(2) In subsection (2) omit paragraph (d).

(3) After subsection (10) insert—

(11) In its application to Schedule 3A this section is subject to paragraph 87 of that Schedule."

47 (1) Section 402 (power of Secretary of State to make orders and regulations) is amended as follows.

(2) In subsection (2) after paragraph (a) insert—

"(aa) regulations under paragraph 91 of Schedule 3A which amend, repeal or modify the application of primary legislation,".

(3) After subsection (2) insert—

(2A) A statutory instrument containing (whether alone or with other provisions) regulations under paragraph 91 of Schedule 3A which amend, repeal or modify the application of primary legislation, may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

(4) After subsection (3) insert—

(4) In this section "primary legislation" means—

(a) an Act of Parliament,

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

(c) an Act of the Scottish Parliament, or

(d) Northern Ireland legislation."

48 Schedule 3 is repealed.

Land Reform (Scotland) Act 2003 (asp 2)

49 (1) Schedule 1 to the Land Reform (Scotland) Act 2003 (path orders) is amended as follows.

(2) In paragraph 12 for "Paragraph 1(2) of the electronic communications code" substitute "Paragraph 103(2) of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

(3) In paragraph 13 for "Paragraph 21 of that code (restriction on removal of apparatus)" substitute "Part 6 of the electronic communications code (rights to require removal of apparatus)".

Housing and Regeneration Act 2008 (c. 17)

50 The Housing and Regeneration Act 2008 is amended as follows.

51 In section 2(3) (objects of the Homes and Communities Agency: interpretation) in paragraph (a) of the definition of "infrastructure" for "telecommunications" substitute "electronic communications".

52 In section 57(1) (interpretation of Part 1) omit the definition of "conduit system" and insert in the appropriate place—

> ""infrastructure system" has the meaning given by paragraph 7(1) of Schedule 3A to the Communications Act 2003 (the electronic communications code), and a reference to providing such a system is to be read in accordance with paragraph 7(2) of the code (reference to provision includes establishing or maintaining),".

53 In the table in section 58 (index of defined expressions in Part 1) omit the entry for "conduit system (and providing such a system)" and insert in the appropriate place—

"Infrastructure system (and providing such a system)	Section 57(1)".

Crossrail Act 2008 (c. 18)

54 (1) Part 4 of Schedule 17 to the Crossrail Act 2008 (protective provisions) is amended as follows.

(2) In paragraph 1(2) for the definition of "electronic communications code" substitute—

> ""electronic communications code" means the code set out in Schedule 3A to the Communications Act 2003;".

(3) In paragraph 2(1) for "paragraph 23" substitute "Part 10".

(4) In paragraph 2(2) for "Paragraphs 21 and 23" substitute "Parts 6 and 10".

(5) In paragraph 3 for "paragraph 9" substitute "Part 8".

(6) In paragraph 4(1) for "paragraph 23" substitute "Part 10".

Marine (Scotland) Act 2010 (asp 5)

55 The Marine (Scotland) Act 2010 is amended as follows.

56 In section 36(1) (electronic communications apparatus) for the words from "paragraph 11" to "apparatus)" substitute "Part 9 of Schedule 3A to the Communications Act 2003 (the electronic communications code) (works in connection with electronic communications apparatus).

57 (1) Section 41 (defence to offences: electronic communications: emergency works) is amended as follows.

(2) In subsection (1) for "paragraph 23 of the electronic communications code" substitute "Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)".

(3) Omit subsection (2)."—(*Matt Hancock.*)

The new Schedule replaces Schedule 3 to the Bill and contains the amendments in that Schedule with other amendments consequential on the replacement of the electronic communications code.

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

New Schedule 2

Bank of England oversight of payment systems

"Part 1

Extension of Bank of England oversight of payment systems

1 The Banking Act 2009 is amended as follows.

2 In the heading to Part 5 (inter-bank payment systems) omit "Inter-bank".

3 In section 181 (overview) for "payments between financial institutions" substitute "transferring money".

4 (1) Section 182 (interpretation: "inter-bank payment system") is amended as follows.

(2) In subsection (1)—

(a) omit "inter-bank";

(b) omit the words from "between financial institutions" to the end.

(3) After subsection (1) insert—

"(1A) But "payment system" does not include any arrangements for the physical movement of cash."

(4) Omit subsections (2) and (3).

(5) In subsection (5) for "an inter-bank" substitute "a".

(6) In the heading omit "inter-bank".

5 In section 183 (interpretation: other expressions), in paragraph (a) for "an inter-bank" substitute "a".

6 (1) Section 184 (recognition order) is amended as follows.

(2) In subsection (1) for "an inter-bank" substitute "a".

(3) In subsection (2) omit "inter-bank".

(4) In subsection (3) for "an inter-bank" substitute "a payment".

7 In section 185 (recognition criteria), in subsection (1) for "an inter-bank" substitute "a".

8 In section 186A (amendment of recognition order), in subsections (2)(b) and (4), omit "inter-bank".

9 In section 187 (de-recognition), in subsections (2), (3)(b) and (5), omit "inter-bank".

10 In section 188 (principles), in subsection (1) omit "inter-bank".

11 In section 189 (codes of practice) omit "inter-bank".

12 In section 190 (system rules), in subsection (1) omit "inter-bank".

13 In section 191 (directions), in subsection (1) omit "inter-bank".

14 In section 192 (role of FCA and PRA), in subsections (2)(a) and (b) and (3), omit "inter-bank".

15 In section 193 (inspection), in subsections (1) and (2), omit "inter-bank".

16 In section 194 (inspection: warrant), in subsection (1)(a) omit "inter-bank".

17 In section 195 (independent report), in subsection (1) omit "inter-bank".

18 In section 196 (compliance failure) omit "inter-bank".

19 In section 197 (publication), in subsection (1) omit "inter-bank".

20 In section 198 (penalty), in subsection (1) omit "inter-bank".

21 In section 199 (closure), in subsection (2) omit "inter-bank".

22 In section 200 (management disqualification), in subsections (1) and (2), omit "inter-bank".

23 In section 201 (warning), in subsection (1) for "an inter-bank" substitute "a".

24 In section 202A (injunctions), in subsections (2)(a) and (3)(a), omit "inter-bank".

25 In section 203 (fees), in subsection (1) omit "inter-bank".

26 In section 204 (information), in subsections (1A), (2) and (4)(c), omit "inter-bank".

27 In section 205 (pretending to be recognised), in subsection (1) omit "inter-bank".

28 In section 206A (services forming part of recognised inter-bank payment system), in subsections (1), (2) and (7)(a) and in the heading, omit "inter-bank".

29 In section 259 (statutory instruments), in the Table in subsection (3)—

(a) in the heading for the entries in Part 5, omit "Inter-bank";

(b) in the entry for section 206A, in the second column omit "inter-bank".

30 In section 261 (index of defined terms), in the Table—

(a) omit the entry for "Inter-bank payment system";

(b) at the appropriate place insert—

"Payment system	182"

Part 2

Consequential amendments

Financial Services Act 2012

31 The Financial Services Act 2012 is amended as follows.

32 (1) Section 68 (cases in which Treasury may arrange independent enquiries) is amended as follows.

(2) In subsection (3), in paragraphs (a) and (b)(ii), omit "inter-bank".

(3) In subsection (5), in the definition of "recognised inter-bank payment system"—

(a) omit the first "inter-bank";

(b) for "an inter-bank" substitute "a".

33 In section 85 (relevant functions in relation to complaints scheme), in subsection (3)(a) omit "inter-bank".

34 In section 110 (payment to Treasury of penalties received by Bank of England), in subsection (5)(d) omit "inter-bank".

Financial Services (Banking Reform) Act 2013

35 The Financial Services (Banking Reform) Act 2013 is amended as follows.

36 In section 45 (procedure), in subsection (1)(a) omit "inter-bank".

37 In section 46 (amendment of designation order), in subsection (2)(a) omit "inter-bank".

38 In section 47 (revocation of designation orders), in subsection (3)(a) omit "inter-bank".

39 In section 98 (duty of regulators to ensure co-ordinated exercise of functions), in subsection (5)(b) omit "inter-bank".

40 In section 110 (interpretation), in subsection (1), in the definition of "recognised inter-bank payment system"—

(a) omit the first "inter-bank";

(b) for "an inter-bank" substitute "a".

41 In section 112 (interpretation: infrastructure companies), in subsections (2)(a), (4)(b) and (5), omit "inter-bank".

42 In section 113 (interpretation: other expressions), in subsection (1)—

(a) in the definition of "operator" omit "inter-bank";

(b) in the definition of "recognised inter-bank payment system"—

(i) omit the first "inter-bank";

(ii) for "an inter-bank" substitute "a";

(c) in the definition of "the relevant system", in paragraphs (a) and (c), omit "inter-bank".

43 In section 115 (objective of FMI administration), in subsection (1) omit "inter-bank".

44 In section 120 (power to direct FMI administrator), in subsection (8) omit "inter-bank".

45 In section 127 (interpretation of Part 6), in subsection (1), in the definition of "operator" and in the definition of "recognised inter-bank payment system", omit "inter-bank"."—(*Matt Hancock.*)

This is the Schedule introduced by new clause NC30.

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

Title

Amendments made: 186, in title, line 8, after "functions;" insert

"to make provision about qualifications in information technology;".

This amendment is consequential on new clause NC26.

Amendment 187, in title, line 8, after "functions;" insert

"to make provision about payment systems and securities settlement systems;".—(*Matt Hancock.*)

The amendment is consequential on new clauses NC29 and NC30 and new Schedule NS2.

Bill, as amended, to be reported.

11.25 am

Committee rose.

Written evidence reported to the House

DEB 74 Letter from Yoti addressed to the office of Louise Haigh MP

DEB 75 Cicero Group

DEB 76 Ticketmaster

DEB 77 Thornton Estates; Frances Chester-Master, Chester-Master Ltd; and Scottish Land and Estates (almost identical submissions)

DEB 78 Hub Professional Services Ltd

DEB 79 AP Wireless

DEB 80 Market Research Society

DEB 81 Paul W. Smith, Acland Bracewell Surveyors Ltd

DEB 82 The Communications Consumer Panel and the Advisory Committee for Older and Disabled People

DEB 83 FanFair Alliance

DEB 84 Internet Telephony Services Providers Association (ITSPA)

DEB 85 Scope

DEB 86 Batcheller Monkhouse

DEB 87 Strutt & Parker

DEB 88 Central Association of Agricultural Valuers (CAAV)