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GENERAL COMMITTEES

Public Bill Committee

PRODUCT SECURITY AND TELECOMMUNICATIONS INFRASTRUCTURE BILL

Fourth Sitting

Thursday 17 March 2022

(Afternoon)

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not later than

Monday 21 March 2022

The Committee consisted of the following Members:

Chairs: Caroline Nokes, † Graham Stringer

† Baynes, Simon *(Clwyd South)* (Con)
Bhatti, Saqib *(Meriden)* (Con)
† Brennan, Kevin *(Cardiff West)* (Lab)
† Double, Steve *(St Austell and Newquay)* (Con)
† Edwards, Ruth *(Rushcliffe)* (Con)
† Elmore, Chris *(Ogmore)* (Lab)
Grundy, James *(Leigh)* (Con)
† Hart, Sally-Ann *(Hastings and Rye)* (Con)
Hollern, Kate *(Blackburn)* (Lab)
Long Bailey, Rebecca *(Salford and Eccles)* (Lab)
† Lopez, Julia *(Minister for Media, Data and Digital Infrastructure)*
† Mishra, Navendu *(Stockport)* (Lab)
† Osborne, Kate *(Jarrow)* (Lab)
† Randall, Tom *(Gedling)* (Con)
† Vara, Shailesh *(North West Cambridgeshire)* (Con)
Warburton, David *(Somerton and Frome)* (Con)
Whitley, Mick *(Birkenhead)* (Lab)

Huw Yardley, Bethan Harding, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 17 March 2022

(Afternoon)

[Graham Stringer *in the Chair*]

Product Security and Telecommunications Infrastructure Bill

Clause 61

Rent under tenancies conferring code rights: England and Wales

2 pm

Chris Elmore (Ogmore) (Lab): I beg to move amendment 8, in clause 61, page 45, line 37, at end insert—

"(4A) Where the assumptions in subsection (4) cause the market value of a landlord's agreement to decline, the rent payable under a new tenancy granted by order of the court under this Part of this Act shall not decline by more than 40%."

This amendment would provide a legal guarantee that site providers' rents fall by no more than 40% under any new agreement.

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

Clause stand part.

Clauses 62 to 65 stand part.

Chris Elmore: The Government introduced the electronic communications code in 2017 and promised at the time that reductions in rent would, in reality, be no more than 40%. However, as we heard from Protect and Connect during Tuesday's evidence session, there have been thousands of cases in which small tenant farmers, sports clubs and community organisations that host masts have seen their rents fall by vastly more than that, with many facing reductions of more than 90%. That was confirmed during the evidence session, when a question was asked about the average, followed by questions from other Members, including me. That clearly showed that there had been far higher reductions for some organisations and owners. One such case is James, a 71-year-old sheep farmer who has maintained a mast on his farm for 15 years, normally receiving £2,900 a year in rent. In 2020, James received a letter informing him that he was now being offered £200 a year under a new agreement. That was a reduction of 93% and a huge overnight shock to his personal and professional finances.

The average reduction for contracts negotiated by Cellnex UK, as Mark Bartlett informed us on Tuesday, has been 63%—a decrease that would cause a huge dent in the finances of all the kinds of organisation I have referred to and a figure well above what the Government promised in 2017. I am sure that members of this Committee would not be best pleased if a significant stream of their income fell by 63%.

I know that the Minister said at Second Reading that valuations pre 2017 were much too high, but surely she must recognise, after the oral evidence we heard on Tuesday, that the race to the bottom that we are seeing is not sustainable and that the level of reduction in rent that is occurring will deter other landowners from agreeing to host infrastructure in the first place, thus slowing the roll-out that this very legislation is designed to speed up.

Rather than leaving reductions to chance, the Opposition have tabled amendment 8, which would enshrine in law that rents under any new agreement fall by no more than 40%. That would strike a much fairer balance between operators and site providers by ensuring that what is a significant income stream for many individuals and community groups is not wiped out overnight. It would also contribute significantly to a faster roll-out of telecommunications infrastructure, as site owners would be more willing to engage. Speeding up the roll-out of new telecommunications infrastructure is the express desire of the Bill. I hope that Members from across the Committee will stand squarely behind their constituents by supporting this amendment.

Kevin Brennan (Cardiff West) (Lab): I rise briefly to support my hon. Friend in pushing the amendment, in order to hear what the Minister has to say in response. The amendment goes to the heart of what a lot of the Bill is about: balancing the rights of private property owners and the policy requirement to speed up the roll-out of digital infrastructure.

This morning we debated an instance in which there would be no real financial cost to the private property owners from doing the right thing. In that instance, the state was ensuring that their properties could be accessed to put in the necessary infrastructure to roll out digital infrastructure in an urban setting—big blocks of flats, where lots of people might not have very good access to the internet and so on. In that instance, the Government were not prepared to accept our amendment, even though it would not have had any significant detrimental impact on the private property owners. In other words, they took the view that in that instance the private property owners, even if they would be only marginally inconvenienced, had to have their property rights protected, because this was a retrospective imposition and they would not have given permission.

In this instance—in fairness, I think this was not intended in 2017—private property owners have suffered, or might suffer, significant detriment to the income they can acquire through somebody else's use of their land with the state's assistance. In those circumstances, it is not unreasonable to say that the balance should be to ensure that they are not affected in a way that causes a massive reduction in the income they can earn from the use of their land.

If that was not a strong enough argument in itself, which perhaps it is not, the way the market has reacted to what happened after 2017 and the problems that there have undoubtedly been, with people reluctant to get involved with rolling out the infrastructure we need for the future, which we all want to achieve through the Bill and by other means, is further evidence that an adjustment perhaps needs to be made. The Minister could discuss with the Committee whether that adjustment is exactly what is contained in the amendment, but whether something should be done to address the arguments

and concerns that have been expressed to us by those who own land on which such infrastructure is sited is certainly worth further consideration.

The Minister for Media, Data and Digital Infrastructure (Julia Lopez): I thank the hon. Members for Ogmore and for Cardiff West for their contributions and for the amendment. I acknowledge that this is a tricky issue. There have been problems between both parties since the 2017 reforms, but we maintain that the 2017 valuation provisions created the right balance between the public need for digital communications and landowner rights. I think there is agreement that the prices being paid for rights to install communications apparatus before that date were simply too high. With digital communications becoming an increasingly critical part of our daily lives, that needed to be addressed.

The new pricing regime is more closely aligned to those for utilities such as water, electricity and gas. We think that that is the correct position. As I said earlier today, we are not seeking to take sides. We are on the side of good digital connectivity for our constituents, and we firmly believe that landowners should still receive fair payments that, among other things, take into account any alternative uses that the land may have and any losses or damages that may be incurred. I was alive to the concerns expressed to me by the Protect and Connect campaign, but also to those raised by individual Members about tricky constituency cases. When I came into my role in September, I met individual Members to discuss those cases. I also met Protect and Connect.

I tested the cases that were brought to my attention and asked for further details, which often were not forthcoming. There was a catch-all excuse that a lot of them were under non-disclosure agreements and the precise amount of rents settled at could not be disclosed. My broad view is that there were initial concerns and difficult cases where the mobile network operators were too aggressive in their negotiations—I think that was effectively acknowledged in the panel discussions earlier in the week—but we seem to have found an equilibrium now, helped partly by some of the cases that have gone through the courts.

We now have a body of case law that can be referred to in some of these tricky negotiations. We are also trying to deter people from going to the courts in the first place, by introducing more alternative dispute resolution mechanisms. I say that to reassure Members. There were problems initially. As far as I can tell from my case load, the correspondence coming in, the discussions that I have had with Members and the lack of additional noise on the subject in the Chamber, a better equilibrium has now been found between the mobile network operators and the landowners. If that is not the case, I am happy to look at those cases again, and we are introducing mechanisms to provide better negotiations between parties via the legislation.

Turning to the amendment, I am not sure why the hon. Member for Ogmore thinks that a specific limit should be imposed on the percentage by which rent can be reduced when the rental payment is determined by a court. Further, it is unclear why he has chosen arbitrarily to apply a figure of 40%. We have strongly resisted specifically regulating the amount of rent payable under a code agreement. Our preference has been to allow the parties to freely negotiate the amount payable under an agreement, based on a statutory framework either in the code, the Landlord and Tenant Act 1954 or the Business Tenancies (Northern Ireland) Order 1996. Even where the parties cannot reach an agreement and the court has to impose its terms, including the rent to be paid, the court has the freedom to reach its own conclusions using that framework, rather than having its discretion restricted by statutory rent controls. As I said, my understanding is that we now have a much better equilibrium, in that we have amounts of rent that both parties are much more content with.

I understand the concerns about whether this has stymied roll-out. If operators cannot get their infrastructure on to land, I imagine that they would start paying more to try to incentivise landowners to take it on. I think we have also seen cases where it has been in the landowner's interests to try to drag the process out so that they are on the old rents, rather than the reduced, new rents. I think that has also contributed to some of the delays.

If the amount of rent is controlled in the way suggested in this amendment, we will be heading closer to a regime that will apply reductions on a blanket basis, rather than take into account the broader range of relevant circumstances, as permitted by the legal framework. I suspect that that is something that both site providers and operators would be keen to avoid.

I am aware that it has been alleged that the Government expected rents to fall by in the region of 40% following the 2017 reforms. It is unclear whether it is on that basis that the hon. Member for Ogmore chose the statutory cap of 40% in his amendment. At the time of the 2017 reforms, which I confess predate me, the fact is that the Government were unsure what the level of rent reductions would be. We were clear that that was the case. Independent analysis contained in the impact assessment that accompanied those reforms predicted that reductions could be 40%, but that was never a Government prediction nor a target.

Chris Elmore: I did say in my opening remarks where the 40% comes from. Just to help the Minister, it does relate to the 2017 change, but also the Government's own analysis from the time. I do of course accept that she was not the Minister, but her party was in government, and those are her own Government's figures.

Julia Lopez: That certainly is a fair point to make, and I apologise for not picking that up in the hon. Member's comments.

A cap is likely to be even more detrimental to constituents in rural communities, who will benefit from the increased connectivity and reliability that we hope the Bill will bring.

As I have explained, agreements to which the code applies can currently be renewed in various ways, depending on the type of agreement and where in the UK it was entered into. The intention of clause 61, along with clause 62, is to create a clearer and more consistent legislative framework under which agreements are renewed. Central to that is ensuring that, no matter where in the UK an agreement is renewed, the financial terms are calculated in the same way. That will help to ensure that there is not a digital divide across the UK, with one country receiving additional investment at the expense of others because operating costs are cheaper.

[Julia Lopez]

The amendment suggests limiting any reduction in rent that may be imposed by the court when agreements are renewed under the 1954 Act. While that proposal is well intentioned, we do not believe that it should be allowed to proceed. It is vital that there is fairness throughout the UK. The Bill as drafted provides a clear framework, which will not only result in all payments being calculated in the same way, but in the ability to renew agreements quickly and cost-effectively. We think that will expand the digital network.

Kevin Brennan: I take what the Minister said about the figure of 40%, but it was contained, as my hon. Friend the Member for Ogmore said, in a previous Government's impact assessment. I remind her that, when Ministers issue impact assessments, they sign them, as she did with this one, saying:

"I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options."

When her predecessor signed the impact assessment on behalf of the Government to say, "This is the Government's official view of what is likely to happen," their official view was that rents would drop, probably by 40%.

Julia Lopez: I accept the point that the hon. Gentleman is making. I also accept that in some cases rent reductions were much greater than expected. As we discussed earlier in the week, some of those were the result of overly aggressive behaviour by mobile network operators. We need to address some of the challenges that were raised by some of the changes that were made. In the body of case law, we now have a better equilibrium between landowners and operators, which should help to address some of those cases.

On some of the more emotive cases that have been raised with me over my tenure, I have sought to understand the details. Those cases are not always as has been presented, and I am led to believe that, in terms of a lot of the initially very difficult cases that came after the 2017 reforms were initially introduced, we are now in a very different place.

It is vital that there is fairness throughout the UK. As drafted, the Bill provides a clear framework that will not only result in all rental payments being calculated in the same way, but in the ability to renew agreements quickly and cost-effectively. We hope that will help us expand the digital network across the whole of our country. In those circumstances, I ask the hon. Member for Ogmore to withdraw his amendment.

I will now turn to clauses 61 to 65, which deal with the renewal of agreements to which the code applies that have expired or are about to expire. There are several ways in which such agreements can be renewed, depending on the type of agreement and where in the UK it was entered into. The aim of the clauses is to make all the routes to renewal as clear and consistent as possible, so that the process is the same across the UK.

2.15 pm

When agreements to which the code applies come to an end, it is important that there is a clear legislative framework in which their renewal can be negotiated and any disagreements dealt with. Making sure that renewal can be completed quickly and consistently not only provides certainty for all parties, but may deliver real benefits for consumers. Renewing such agreements ensures that operators can optimise their use of existing sites to provide greater network capacity and increase access to 5G services.

In England and Wales, there are two statutory routes to renewing the agreements. The first is in part 5 of the code and applies, for example, to most new agreements entered into since the code came into force on 28 December 2017; the other is set out in part II of the Landlord and Tenant Act 1954. Clause 61 applies specifically to agreements that are to be renewed under the second statutory route—that is, under part II of the 1954 Act.

Importantly, the two statutory routes contain different provisions relating to the financial terms of any renewal agreement imposed by a court. Under part 5 of the code, the amount that an operator is required to pay for rights to use private land is calculated on a no-network basis and the fact that the land will be used to host telecoms apparatus cannot be taken into account in assessing the amount to be paid by the operator. In effect, telecoms operators cannot be charged more than anyone else wishing to use the land would be. We think that that is the correct approach and should apply to all agreements to which the code applies.

That valuation framework is not currently available under the 1954 Act, so the no-network assumption does not apply and operators renewing agreements under that statutory route may be required to pay more than they would had part 5 of the code applied. We think the different outcomes are unfair, so the provisions in clause 61 extend the statutory valuation framework in the code to renewal of agreements under part II of the 1954 Act. We think that will result in fairer outcomes and ensure that the financial terms of all agreements to which the code applies that are completed or renewed after the Bill comes into force reflect the same valuation principles.

Clause 62 makes equivalent provision for agreements in Northern Ireland that were entered into before 28 December 2017 and are to be renewed under the Business Tenancies (Northern Ireland) Order 1996, not under part 5 of the code. That will ensure that the same valuation principles underpin the renewal of all agreements to which the code applies across the UK.

The statutory valuation regimes under the 1954 Act and the 1996 order deal solely with the assessment of the rent or the price that an operator is required to pay to keep its apparatus on the land. That is not the only sum a landowner can claim where an agreement is instead renewed under the code, as the code also makes provision for a landowner to recover compensation for any loss or damage that may result from the code agreement. This ensures that landowners are not left out of pocket and can recoup the costs they incur as a result of having telecoms apparatus on their land. There is no equivalent right to compensation in either the 1954 Act or the 1996 order. Clauses 63 and 64 therefore extend the rights of landowners to claim compensation under those provisions.

I hope the Committee will agree to these clauses standing part of the Bill.

Chris Elmore: I listened to the Minister's remarks, and she acknowledges some of the historical cases, but I refer her to this Committee's first sitting, where I asked Eleanor Griggs of the National Farmers Union about reductions in recent cases. Ms Griggs said that in in recent times, the NFU had made representations in cases in which farmers had received 90% decreases. Later, she referred to a farm in the constituency of the hon. Member for St Austell and Newquay where there was a significant reduction, from £3,500 to £17.50 a year.

We have to acknowledge the impact on many organisations, including farmers, churches, and particularly community groups. I have examples in my constituency of community groups that run scout halls or guide huts losing 60%, 70%, 80% or 90% of the income they use to balance their budgets and ensure that they can run services for children and young people throughout the year. The Minister has committed to review even more of the cases that come through for her personal intervention, but I think there should be a minimum threshold of 40%, which the Government committed to previously in their impact assessment, as my hon. Friend the Member for Cardiff West pointed out. I am therefore not minded to withdraw the amendment. I also hope that their lordships will consider it as part of any future scrutiny in the other place.

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 7.

Division No. 6]

AYES

Brennan, Kevin	Mishra, Navendu
Elmore, Chris	Osborne, Kate

NOES

Baynes, Simon	Lopez, Julia
Double, Steve	Randall, Tom
Edwards, Ruth	
Hart, Sally-Ann	Vara, Shailesh

Question accordingly negatived.

Clause 61 ordered to stand part of the Bill.

Clauses 62 to 65 ordered to stand part of the Bill.

Clause 66

UNRESPONSIVE OCCUPIERS

Question proposed, That the clause stand part of the Bill.

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

Government amendments 2 to 4.

That the schedule be the schedule to the Bill.

Julia Lopez: I am afraid I have to tell the Committee that this does not get any more inspiring.

The clause creates a bespoke process for telecoms operators to seek access to certain types of land where a person repeatedly fails to respond to requests for access to install apparatus under or over land for the purposes of providing an electronic communications service. The clause sets out that process by inserting into the electronic communications code new part 4ZA, which makes provision for a court to impose an agreement where the operator needs that person, "the landowner", to confer or be bound by code rights. Part 4ZA will apply in situations where an operator intends to provide an electronic communications service and to achieve that must install electronic communications apparatus under or over, but not on, relevant land. "Relevant land" is defined as land that is not covered by buildings, and that is neither a garden, a park nor a recreational area. The provision also takes a power for the Secretary of State to specify through regulations further types of land that may be "relevant land", but may only do so following consultation.

The provisions will require an operator to have given two warning notices, followed by a final notice. Those three notices all follow an initial request notice, giving a total of four. The Bill sets out that there must be a period of 14 days between the giving of each notice. For the landowner to fall out of scope of proposed new part 4ZA, all that is required of them is to respond to any of these notices in writing, before the operator applies to the court under part 4ZA. If any response is received, the operator will no longer be able to apply for a part 4ZA order and must either negotiate for a code agreement or apply for rights to be imposed by the courts in the normal way.

If granted, a part 4ZA order will impose an agreement between a landowner and an operator, conferring the rights requested in the initial notice. The terms of that agreement are to be specified in regulations. It may reassure the Committee that those regulations will be subject to the affirmative procedure. Furthermore, before the regulations are made, the Bill expressly obliges the Secretary of State to consult with a range of parties.

Importantly, the provisions impose a six-year maximum time limit on the period for which rights conferred under a part 4ZA order may last. I emphasise that detail, because it forms an important part of the Bill's safeguards for landowners' property rights. This clause provides a much needed process that will play a large part in ensuring that homes and businesses benefit from the national gigabit broadband upgrade and are not left behind.

I will now turn to the amendments tabled in relation to clause 66, all of which are technical amendments. Amendments 2 and 3 have been tabled in order to make a minor clarification to the text of the electronic communications code, to avoid any possible unintended interpretation of the legislation. Amendments 2 and 3 clarify that the right mentioned in paragraph 26(8) and paragraph 27G(4) of the electronic communications code to require the removal of apparatus applies in relation to apparatus placed under or over land. By inserting the words "under or over" into paragraph 26(8) and paragraph 27G(4) of the code, these amendments clarify that part 6 of the code may be used by a landowner to require the operator to remove apparatus installed "under or over", as well as on, the land.

Without amendments 2 and 3, paragraph 26(8) and 27G(4) as currently worded may be interpreted to mean that while equipment installed on land under the "interim rights" or "unresponsive occupier" process could be removed via the part 6 process, equipment

[Julia Lopez]

installed under or over land under these processes might not. That is not the policy intention, and as such this amendment is being introduced to clarify the policy position.

Amendment 4 makes a minor amendment to remove a provision which has been found to have no effect. The provision in question—paragraph 3(9) of the schedule to clause 66 in the Bill—was intended to ensure that part 5 of the code does not apply to the process created by clause 66 in the Bill. Part 5 of the code sets out that code rights may persist even after the agreement which underpins them expires. It was never intended that part 5 should apply to rights gained through part 4ZA, due to the importance of the time limits I have mentioned. The Bill provision that this amendment removes was intended to ensure that part 5 did not apply to rights gained through part 4ZA. However, we are satisfied a different part in the code already ensures this. As such, paragraph 3(9) in the schedule of the Bill has no real effect and ought to be removed.

In practical terms, there is no legal or policy change effected through this amendment, beyond increasing the clarity of legislation. This amendment simply removes a provision which had no effect in the first place, and thus tidies the legislation. I hope that everyone will accept that that is beneficial.

Chris Elmore: I want to make clear the Opposition's support for clause 66. From all my conversations with industry, it is quite clear that where there is an unresponsive landowner, it is extremely complicated to then meet the public's demands. If the Bill is about improving digital activity for all our constituents, particularly in some of the most rural and hard to reach communities—I find it hard to believe that includes my own constituency, but it does—then this is an important and welcome change.

Kevin Brennan: Despite the very thorough explanation that the Minister gave of what is a technical clause, I understand what the difference is between something being placed over or under land, but I am not sure what the difference is between something placed over or on land. There must be a technical reason why it is there; does she know the answer to that?

Julia Lopez: I think it being on land is a much more intrusive process. For instance, we could be talking about a cable that happens to be going over somebody's land, and therefore to do something to it would not require a great deal of intrusion. Similarly, if it was the matter of being able to dig at the side of a road, it is technically access land, but only underneath the surface of the land—I hope this makes sense. It is much less intrusive process. I think it is a process that could be objected to far less by a landowner; they are not being asked if somebody can drive over their land, put something unattractive on it or inconvenience them in any way. We are talking about underground works and cabling works that objectively would have no real impact on their land.

Question put and agreed to.

Clause 66 accordingly ordered to stand part of the Bill.

Schedule

UNRESPONSIVE OCCUPIERS: CONSEQUENTIAL AMENDMENTS

Amendments made: 2, in the schedule, page 66, line 17, at end insert—

"(c) in sub-paragraph (8), after "placed on" insert ", under or over"."

This amendment clarifies that the right mentioned in paragraph 26(8) of the electronic communications code to require the removal of apparatus applies in relation to apparatus placed under or over land.

Amendment 3, in schedule, page 66, line 18, after "sub-paragraph (4)" insert—

"(a) after "placed on" insert ", under or over";

(b) "

This amendment clarifies that the right mentioned in paragraph 27G(4) of the electronic communications code to require the removal of apparatus applies in relation to apparatus placed under or over land.

Amendment 4, in the schedule, page 66, line 20, leave out sub-paragraph (9).—*(Julia Lopez.)*

This amendment removes the amendment to paragraph 30(3) of the electronic communications code. The amendment to paragraph 30(3) is unnecessary because paragraph 30(2) would not in any event apply to a code right conferred by virtue of an order under new paragraph 27ZE of the code.

Schedule, as amended, agreed to.

Clause 67

ARRANGEMENTS PENDING DETERMINATION OF CERTAIN APPLICATIONS UNDER CODE

Question proposed, That the clause stand part of the Bill.

2.30 pm

Julia Lopez: The clause deals with situations where once an agreement to which part 5 of the code applies has run its initially agreed course, one of the parties wants it to be terminated, modified or replaced by an agreement with different terms. In those circumstances, the matter can be referred to a tribunal if the parties cannot resolve matters themselves. It can take time for such disputes to be dealt with, and paragraph 35 of the code deals with the circumstances in which an interim order can be requested, which will apply until the full dispute is heard.

Our policy intention for interim orders is to allow any specific priority aspect of a dispute to be looked at, so that temporary arrangements can be imposed where appropriate. At present, however, paragraph 35 of the code is restricted, so that only a site provider can ask for an interim order, and they can do so only in relation to the consideration paid by an operator. The clause widens that provision so that either party can ask for an interim order and can do so in relation to any term of the former agreement. That will enable specific issues to be dealt with at a much earlier stage of the dispute. In particular, it will mean that operators are given the same opportunity as site providers have to ask for the financial terms of an agreement to be reviewed on an interim basis. This will help ensure that once an agreement to which part 5 of the code applies has run its initially

agreed course, there are no unnecessary delays to the valuation framework of the code being applied to new financial arrangements.

It will also provide the courts with greater flexibility to look at situations where a party needs an urgent change to any term of their agreement. We think that will be particularly helpful where an operator needs urgent changes to terms so that they can upgrade or continue using an existing site. There are likely to be situations where this will also benefit site providers. However, the clause is not to be used as a way of circumventing the usual negotiation process. Parties will be expected to negotiate in the usual way before making an application to the court, and to comply with the ADR requirements that the Bill introduces.

We think the clause will help many operators benefit from the full code framework at a much earlier stage, which will allow them to take advantage of provisions to upgrade and share apparatus and the code valuation framework as introduced in 2017. That will result in more investment in the expansion and upgrading of digital networks, ensuring that consumers receive the best coverage and connectivity possible.

Question put and agreed to.

Clause 67 accordingly ordered to stand part of the Bill.

Clause 68

Use of alternative dispute resolution

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clause 69 stand part.

Julia Lopez: I will now speak to clauses 68 and 69, which introduce measures on alternative dispute resolution and complaints relating to the conduct of operators. The purpose is to encourage more collaborative discussions between landowners and telecoms operators, and to ensure that litigation is used only as a last resort where an agreement cannot be reached.

Clause 68 sets out two new requirements for operators and one new requirement for courts. Together, they will encourage the greater use of alternative dispute resolution processes. The requirements are as follows. First, when a request notice is sent for access to land or other rights under the electronic communications code, all operators must inform the landowner of the availability of ADR processes if the landowner is unhappy with the offer made. Secondly, in cases where an agreement cannot be reached operators must consider using ADR processes before applying to the courts. If the matter relates to modification of an expired agreement, either party must consider ADR before applying to the court. Finally, when awarding costs, the courts will be required to take into account any unreasonable refusal to engage in ADR by either party.

Some landowners and their representatives have told us that they find negotiations for code rights difficult. In some cases, landowners have felt pressured to accept any terms offered, to avoid the risk of being taken to court—this relates to the David and Goliath situation that we discussed earlier in the week. The measures in clause 68 address this issue by encouraging the use of ADR in order to minimise the risk of landowners feeling such pressure, and to facilitate co-operative discussions between landowners and telecoms.

Clause 69 inserts new subsection (ca) into paragraph 103 of the electronic communications code, which lists the issues that Ofcom's code of practice must deal with. Subsection (ca) adds to the list

"the handling by operators of complaints relating to the failure of operators to comply with the code of practice".

Landowners and their representatives have reported to the Government that, in some cases, they are reluctant to enter into code agreements because they are concerned about how the operator or their contractors will behave when they access the relevant land. The clause works to address the issue by requiring Ofcom to prepare guidance, following consultation, regarding operators' handling of conduct. To complement that, we will bring forward secondary legislation to introduce a new statutory requirement for operators to have a complaints process for code matters, enforced by Ofcom.

Question put and agreed to.

Clause 68 accordingly ordered to stand part of the Bill.

Clause 69 ordered to stand part of the Bill.

Clause 70

Power to impose time limits on the determination of code proceedings

Julia Lopez: I beg to move amendment 5, in clause 70, page 60, line 15, at end insert—

", and

(b) amend or repeal any of the following provisions (which provide signposts to those regulations)—

(i) paragraph 2A of Schedule 3 to the New Roads and Street Works Act 1991;

(ii) section 107(1A) of this Act;

(iii) paragraph 97 of Schedule 3A to this Act;

(iv) section 69(5A) of the Marine and Coastal Access Act 2009;

(v) section 27(6A) of the Marine (Scotland) Act 2010.".

This amendment ensures that the power conferred by the new section 119A of the 2003 Act includes power to amend or revoke certain signposts in primary legislation which might otherwise be rendered otiose by the exercise of that power.

The Chair: With this it will be convenient to discuss clause stand part.

Julia Lopez: It is clearly desirable that legal disputes relating to code rights be dealt with as quickly as possible; that will minimise delays to network deployment and expansion in a number of ways.

Fast dispute resolution will make sure that, where the public interest test is satisfied, operators can get the rights they need for network deployment and expansion as soon as possible. It also means that where that test is not satisfied, that is identified promptly, so that operators know they have to explore different options. Finally, fast dispute resolution is in the best interests of all parties. Protracted legal proceedings take time, cost money and harm ongoing stakeholder relationships.

[Julia Lopez]

However, while we recognise that fast dispute resolution has a lot of benefit, it is important that there be no undue interference with the judicial process and the ability of courts to deal with cases justly. Time limits should not, for example, interfere with a court's ability to provide the parties with sufficient opportunities to identify, locate or produce evidence. Any statutory provisions relating to the time within which disputes must be determined therefore require careful consideration and close scrutiny.

Legislation already makes limited provision for certain applications relating to new code rights to be heard within six months, but this provision sits outside the code; it is in the Electronic Communications and Wireless Telegraphy Regulations 2011. It was introduced in the course of our transposing European legislation, rather than as a specific element of the domestic code framework.

The new power in clause 70 will enable the Secretary of State to make regulations that are broader in scope, and can specify a period within which a full range of code-related disputes must be determined. As the clause makes clear, regulations made under it may amend or revoke provisions made under the 2011 regulations. That gives the Secretary of State flexibility to consider a full range of approaches, including having no time-limited period at all, if appropriate.

Other, wider measures that we are introducing in the Bill, and potentially in subsequent secondary legislation, will affect court resources. In many cases, the changes will ensure that caseloads are more evenly distributed, particularly between the first-tier and upper-tier tribunals. Rather than seeking to make changes relating to dispute time limits now, we are therefore putting in clause 70 a power permitting the Secretary of State to make regulations on this issue in future. That will enable the Government to revisit the measures as a whole, once the other measures in the Bill come into force, so that their overall impact can be assessed when considering whether changes are appropriate. We will, of course, work closely with the Ministry of Justice and the Northern Ireland and Scotland Governments before making any further proposals on this issue.

Amendment 5 provides a very limited power for the Secretary of State to amend a specified list of provisions in primary legislation. The provisions signpost to regulations about time limits for disputes on code rights. It is clearly desirable that legal disputes relating to code rights be dealt with very quickly. Any statutory provision relating to the time within which disputes must be determined requires careful consideration. The amendment ensures that, if changes are made to the existing regulations, corresponding amendments can be made to legislation that signposts those regulations.

Chris Elmore: This point also relates to previous clauses, but I think links best to clause 70. The Minister mentioned that the Secretary of State would review dispute resolution at a later date. Throughout the oral evidence sessions, there were calls from the NFU, Protect and Connect and other organisations for the dispute resolution to become compulsory. If resolutions were slowing down, and decisions were not being reached, would the Minister consider introducing, through secondary legislation, a compulsory element, so that we can avoid some of the concerns raised by the witnesses, particularly those representing landowner and club groups and so on?

Julia Lopez: I think it is implicit in what I said that we will keep all of this under close review, because we do not want any of the changes we make to slow the roll-out. We hope that the changes have their intended effect, which is ultimately not about any particular group's interests, beyond their getting better digital connectivity. We are always happy to keep this under close review. We do not think a mandatory ADR would serve our overall goal. If problems come up over the next few years, these powers will enable us to make changes.

Amendment 5 agreed to.

Clause 70, as amended, ordered to stand part of the Bill.

Clause 71

RIGHTS OF NETWORK PROVIDERS IN RELATION TO INFRASTRUCTURE

Question proposed, That the clause stand part of the Bill.

Julia Lopez: Sharing infrastructure in the roll-out of gigabit-capable networks can greatly reduce the cost of deploying networks, increase the pace of roll-out and reduce the frustrating need to dig up streets, preventing unnecessary disruption to the local populations we represent and reducing carbon emissions. The Communications (Access to Infrastructure) Regulations 2016 enable sharing of information about access to physical infrastructure across the utility, transport and communications sectors. They include the right to access that infrastructure on fair and reasonable commercial terms and conditions. The 2016 regulations were implemented in the UK, following the European broadband cost reduction directive, to reduce the cost of deploying high-speed electronic communications networks.

We recently published our response to a call for evidence on a review of those regulations. We set out that there may be areas where the 2016 regulations could be made easier to understand and use. We said we would legislate to allow future changes to the 2016 regulations via secondary legislation, rather than having to rely on primary legislation. This legislation would be subject to a further consultation with Ofcom and such other persons the Secretary of State considers appropriate. It would also be scrutinised in the Parliament through the affirmative procedure.

Clause 71 grants the Secretary of State the power to make provisions, through regulations, conferring rights on network providers in relation to infrastructure for the purpose of developing communications networks. These provisions include the power to amend, revoke or replace the 2016 regulations. The clause details the areas in which provisions may be made by the Secretary of State through regulations. These areas include: provisions relating to grants of access to relevant infrastructure; the carrying out of work as specified; procedures and forms of request by network providers for rights conferred by the regulations; and disputes under the regulations.

Question put and agreed to.

Clause 71 accordingly ordered to stand part of the Bill.

Clause 72

POWER TO MAKE CONSEQUENTIAL AMENDMENTS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clause 73 stand part.

Julia Lopez: Clause 72 confers on the Secretary of State a power to make any changes to other legislation that are required as a consequence of part 2 of the Bill coming into force. By way of example, changes may be needed to ensure that legislation that references the electronic communications code continues to work correctly after the Bill is passed. The power can be used to amend any legislation. In the case of primary legislation, it is limited to legislation passed or made before the end of the parliamentary Session in which the Bill is passed.

Clause 72 requires that any regulations made using this power that amend or repeal primary legislation be subject to the affirmative procedure. The negative procedure will apply to any other regulations made using this power. Where any changes are required to devolved legislation, the UK Government will work with the devolved Administrations to ensure that the wider legislative framework operates as intended. Clause 73 provides a straightforward explanation regarding references in this Bill to the electronic communications code.

Kevin Brennan: As the clause impacts the devolved Administrations and gives Ministers the right to interfere with primary legislation that is being passed by the devolved Governments, what consultation there has been with the Senedd, Scottish Parliament and Northern Ireland Assembly about this power of the UK Government?

Julia Lopez: We have official-level contact frequently, in case something has to be changed. I would like to reassure the hon. Gentleman that I have met my counterparts in the Scottish and Welsh Administrations, including one of his colleagues in the Labour Administration. I will continue to have those meetings, in case changes that would have any meaningful impact are required as a result of the legislation.

Question put and agreed to.

Clause 72 accordingly ordered to stand part of the Bill.

Clause 73 ordered to stand part of the Bill.

Clause 74

POWER TO MAKE TRANSITIONAL OR SAVING PROVISION

Question proposed, That the clause stand part of the Bill.

2.45 pm

The Chair: With this it will be convenient to discuss clauses 75 to 78 stand part.

Julia Lopez: Clause 74 allows the Secretary of State to make transitional or saving provisions. This is required to provide for a smooth introduction of the new legal framework by, for example, specifying grace periods before the legislation comes into force. Clause 75 makes provision about a number of technical matters that regulations made under the Bill address, and enables such regulations to be exercisable by statutory instrument.

Clause 76 sets out the extent of the provisions of the Bill. Both cyber-security and telecommunications are reserved matters, and, for the most part, the Bill extends across the UK. Clause 77 sets out the commencement. Clause 27, on matters of enforcement, comes into force on Royal Assent, and the remaining clauses come into force via commencement regulations made by the Secretary of State. Clause 78 is the short title of the Bill.

Question put and agreed to.

Clause 74 accordingly ordered to stand part of the Bill.

Clauses 75 to 78 ordered to stand part of the Bill.

Ordered, that further consideration be now adjourned.—*(Steve Double.)*

2.47 pm

Adjourned till Tuesday 22 March at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

PSTIB10 BT Group

PSTIB11 Central Association of Agricultural Valuers (CAAV)

PSTIB12 British Property Federation (BPF)

PSTIB13 Blacks solicitors LLP

PSTIB14 Notcutts Ltd

PSTIB15 Charles Anderson

PSTIB16 Sandra Parkinson