PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TELECOMMUNICATIONS INFRASTRUCTURE (LEASEHOLD PROPERTY) BILL

First Sitting

Tuesday 11 February 2020

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not later than

Saturday 15 February 2020

The Committee consisted of the following Members:

Chairs: † Geraint Davies, Sir Edward Leigh

† Brereton, Jack *(Stoke-on-Trent South)* (Con)
† Davison, Dehenna *(Bishop Auckland)* (Con)
† Drummond, Mrs Flick *(Meon Valley)* (Con)
† Hill, Mike *(Hartlepool)* (Lab)
† Huddleston, Nigel *(Mid Worcestershire)* (Con)
† Hughes, Eddie *(Walsall North)* (Con)
† Lamont, John *(Berwickshire, Roxburgh and Selkirk)* (Con)
† McGinn, Conor *(St Helens North)* (Lab)
† Malhotra, Seema *(Feltham and Heston)* (Lab/Co-op)
† Nichols, Charlotte *(Warrington North)* (Lab)
† Nicolson, John *(Ochil and South Perthshire)* (SNP)
† Onwurah, Chi *(Newcastle upon Tyne Central)* (Lab)
† Robinson, Mary *(Cheadle)* (Con)
† Solloway, Amanda *(Derby North)* (Con)
† Wakeford, Christian *(Bury South)* (Con)
† Warman, Matt *(Parliamentary Under-Secretary of State for Digital, Culture, Media and Sport)*
† West, Catherine *(Hornsey and Wood Green)* (Lab)

Jo Dodd, Rob Page, *Committee Clerks*

† **attended the Committee**

Public Bill Committee

Tuesday 11 February 2020

[Geraint Davies *in the Chair*]

Telecommunications Infrastructure (Leasehold Property) Bill

9.25 am

The Chair: I have a few preliminary points. Please switch electronic devices to silent. Tea, coffee and other hot beverages are not allowed during sittings. We will first consider the programme motion on the amendment paper. We will then consider a motion to enable the reporting of written evidence for publication. I hope that we can take those matters without too much debate. I call the Minister to move the programme motion, which was agreed by the Programming Sub-Committee yesterday.

Ordered,

That—

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

(a) at 2.00 pm on Tuesday 11 February;

(b) at 11.30 am and 2.00 pm on Thursday 13 February;

(2) the proceedings shall be taken in the following order: Clauses 1 to 2; the Schedule; Clause 3; new Clauses; new Schedules; remaining proceedings on the Bill;

(3) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Thursday 13 February.—*(Matt Warman.)*

Resolved,

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

The Chair: Copies of written evidence that the Committee receives will be made available in the room.

We will now begin line-by-line consideration of the Bill. The selection list for today's sitting is available in the room. It shows how the selected amendments have been grouped for debate. Grouped amendments are generally on the same or similar lines. Please note that decisions on amendments take place in the order not in which they are debated, but in which they appear on the amendment paper. The selection list shows the order of debate. The decision on an amendment is taken when we come to the clause that it affects.

I have the pleasure of calling Chi Onwurah to move amendment 9 to clause 1 and to make some brief general remarks.

Clause 1

Code rights in respect of land connected to leased premises

Chi Onwurah (Newcastle upon Tyne Central) (Lab): I beg to move amendment 9, in clause 1, page 1, line 17, at end insert—

"(c) the operator intends to provide an electronic telecommunications service that can deliver an average download speed of at least one gigabit per second."

This amendment is intended to ensure that operators could apply for Part 4A order only if they intended to provide gigabit-capable broadband.

It is a great pleasure to serve under your chairmanship for the first time, Mr Davies. This is my first time on a Public Bill Committee for a number of years, so I hope that you will be, if not indulgent, at least understanding of any errors that I should make.

It is also a pleasure to serve on such an important Committee. We are often told by Government Ministers and by wide-eyed techno optimists that we are going through a digital revolution in this country. When hon. Members are uploading videos to TikTok, and centuries-old parliamentary regulations are accessible via an Android app, it is hard not to feel that we have entered a brave new world of connectivity.

That is the case not just in this place, of course; the internet is central to our lives and those of our constituents. Some 99% of adults under 45, and 81% of the adult population as a whole, use it regularly. Those are impressive figures, so let us hear some more: 98%, 97%, 8%. Those numbers represent the full-fibre coverage of, respectively, Japan, South Korea and the United Kingdom.

The previous Labour Government brought first-generation broadband to 50% of all households within 10 years. Over a similar timespan, Conservative Governments have managed to bring full-fibre broadband, the current generation of technology, to only 8% of households, while our economic competitors have been achieving full-fibre coverage. We are 35th out of 37 in the OECD rankings of broadband connectivity. When it comes to broadband, the only global race that the Government are running is a race to the bottom.

In the past 10 years we have witnessed a lost decade for telecoms infrastructure. The Government have repeatedly left our national infrastructure needs to the market, resulting in a deepening of our country's regional divide, which was already the worst in western Europe. Regional studies show a 30% gap in internet usage between the south-east and the north-west. In London, 85% of the population are internet users compared with 64% in my city of Newcastle. It is welcome that the Government have finally woken up to this problem, but I am still none the wiser about what "levelling up" actually means in this case.

Seema Malhotra (Feltham and Heston) (Lab/Co-op): My hon. Friend is making important points, particularly about the regional disparities and inequalities. Is she aware of any differences in who is using the internet? There might be differences in relation to children being able to study at home and people being able to work at home, which is critical for self-employment and for small businesses that might be starting up.

Chi Onwurah: My hon. Friend makes an excellent point, and her past experience in the IT sector leads her to understand and see the divides that exist—for example, people on lower incomes are less likely to use the internet and have access to broadband. There is also a real rural divide, with our rural telecoms infrastructure not enabling the kind of economic success stories of small businesses that she mentions. Unfortunately, the Bill does not address that. Indeed, many of the operators, such as TalkTalk, Mobile UK and Hyperoptic, have said that we need to upgrade our infrastructure, but the Bill does not address that.

In the last six months the Prime Minister has held three different positions on what kind of telecoms infrastructure we need: when he was standing to lead

his party, he promised to deliver "full-fibre connectivity" to all households by 2025; the Government manifesto talked of "gigabit-capable connectivity" by 2025; and the Queen's Speech dropped the 2025 reference altogether, promising instead to accelerate the roll-out. Will the Minister clarify exactly what the Government's target is for broadband connectivity? Whatever the target is, and whatever the lofty ambitions are, I am afraid that the Bill will not achieve them.

The Bill is designed to enable people who live in flats and apartment blocks to receive gigabit-capable connections where their landlord repeatedly fails to respond to telecom operators' requests for permission to install their infrastructure. The network builders say they face significant challenges in connecting people living in flats and apartment blocks when they do not receive a response from the building owner to requests for access. According to Openreach, 76% of multi-dwelling units miss out on initial efforts to deploy fibre because of challenges in gaining access.

The Bill provides a bespoke process for telecoms operators to gain access to MDUs in order to deploy, upgrade or maintain fixed-line broadband connections in cases where a tenant has requested an electronic communications service but the landlord has repeatedly failed to respond to an operator's request for access. For a telecoms company to install equipment such as cables on public or private land, formal permission through an access agreement with the landowner/occupier is required. Under such an agreement, the landowner grants the communication provider a licence to install, access and maintain equipment on their land. The Bill takes into account the fact that landlords are not always responsive or eager to meet their tenants' needs.

The measures in the Bill are welcome and the Opposition will not be voting against it. In the context of the lost decade, however, we are truly dismayed by the Bill's limited scope. It proposes only minor measures to ease infrastructure build-out by giving operators more powers to access apartment blocks when tenants request service. The sector has welcomed the Bill but without any great enthusiasm, saying that the difference it will make will be marginal. The trade body for the tech industry, techUK, says it does not go far enough, stating that

"from new builds to street works",

many issues

"have not been tackled by the Government's Bill."

We have tabled several amendments to improve the Bill, but before I speak to amendment 9, I will briefly mention additional flaws that the Opposition have not sought to fix through amendments. There is the matter of consistency with other regulations. The internet is now an essential utility for modern life and, as such, telecoms operators should possess the same powers as those who provide other utilities, but the Bill does not go far enough on that. We appreciate that the Government acknowledge the necessity of broadening the rights of telecoms providers, but they have not actually done so in the Bill. They have given no statutory rights of access to telecoms companies and placed no obligations on landlords to facilitate access.

Do the Government recognise that the internet is an essential utility, and do they believe that telecoms should be brought into line with other utilities, for which forced entry is permitted on the grounds of ensuring that there is no threat to life or safety? Obviously, that might not be the case with telecoms, but I want to understand the comparison that the Government make between the telecoms utility and other utilities.

The amendment is intended to ensure that operators can apply for a part 4A order only if they intend to supply gigabit-capable broadband. Of course, we need to understand what gigabit-capable broadband is, but I am sure that the Minister will relieve us of that uncertainty. As I said, we have suffered 10 wasted years under Conservative Governments of various types, a unifying theme of which has been a misunderstanding of technology interspersed with a misuse of it.

Given that the Prime Minister has expressed three different positions in six months, what is the aim of the Bill? Does it aim to provide gigabit broadband? On Second Reading the Minister said that the legislation will be a "hammer blow" to crack our woeful broadband nut. I can only assume therefore that the legislation does not serve simply to give operators opportunities to lock in my constituents to slow broadband. The Minister said that it must deliver gigabit-capable broadband, so I cannot imagine that he will have any objections to enshrining that in the legislation by supporting the amendment.

I also seek clarification on whether anything in the Bill confines it to fixed-line operators. Will the Minister confirm whether, under the terms set out in the Bill, it would be possible for a mobile operator to install a mobile base station, for example, for the purposes of delivering gigabit-capable broadband, either to one building or another? How does the Bill ensure, in the case of wireless or mobile broadband, that services are limited to a particular building only?

The amendment would make it clear that the Government are proceeding with their commitment to deliver on gigabit-capable broadband and that the Bill cannot be used to deliver slower broadband, so it will contribute to our broadband infrastructure.

The Parliamentary Under-Secretary of State for Digital, Culture, Media and Sport (Matt Warman): It is a pleasure to serve under your chairmanship, Mr Davies. I welcome the hon. Lady's acceptance that the Bill is an important part of the Government's programme to deliver gigabit-capable broadband as quickly and as far across the country as possible. She is right that we have not got the numbers that some of our European competitors have, although we are now up to 3 million premises with full-fibre broadband in this country—the latest figure is 11%, rather than the 8% that she quoted. None the less, the Government are significantly more ambitious than that, so today we are delivering this narrowly focused Bill that will quickly address a pressing issue that the industry faces. As she also said, the industry has broadly welcomed it.

I will address the main parts of the Bill in the stand part debate later. As the hon. Lady has said, the Bill will introduce, when demanded by occupants of a building, a right for communications providers to access a building to provide a service that is fit for the 21st century when landlords have been unresponsive. It is, as she has said, a pressing issue for the industry that has affected too many tenants already and in part has affected too many tenants because the existing process is overly cumbersome. The Bill introduces a process that is far more speedy and cost-effective for operators.

Seema Malhotra: One issue that is not clear to me in the Bill or the explanatory notes is whether there is a time limit within which the operator might need to respond to a request from a tenant. There is more about the operator giving notices to the landlord—the grantor—but what about a deadline by which an operator might need to respond to a request from a tenant?

Matt Warman: There is no set deadline imposed on a private commercial organisation because individual operators are not all regulated in the same way. For instance, Openreach is regulated differently. It is a commercial decision for them, and the Government will do all that they can through processes such as this to try to encourage a speedy response. It is for Ofcom to regulate responses, as it does in the complaints procedure. As the legislation comes into force, Ofcom will consider whether response times to complaints might be thought of in the same way.

Seema Malhotra: Currently, in the way that the implementation of the Bill is envisaged, if an operator chooses not to respond or takes many months, is there anything in place to sanction or challenge that?

Matt Warman: The answer is that at the moment that is one of the problems. The Bill introduces the process by which we might look at whether the responsiveness to requests is something that Ofcom might look at. However, the hon. Lady is right to ask. We want to see a speedy roll-out, and the response from operators is an important part of a speedy roll-out. We are very much on the same page. We would not want to see operators ignoring the requests of potential customers, and I hope that neither would the operators, because in many cases they have a potential commercial opportunity.

Let me address the two specific questions asked by the hon. Member for Newcastle upon Tyne Central. As discussed on Second Reading, we see broadband as an important utility but, as she acknowledged in that debate, it is not the same as other utilities. It is obvious that as time goes on more and more essential services will depend on connectivity. As that situation evolves, we will need to keep it under review. However, she is accurate when she says that the threat posed by a lack of water is different from that posed by a lack of broadband. We should treat them differently; it is horses for courses.

9.45 am

Chi Onwurah: Not for some teenagers.

Matt Warman: Yes, I am not sure how I would cope myself, but the principle is the same.

We sympathise with the spirit of the amendment. There is currently little evidence that anyone seeks to install services that are not gigabit capable; if one goes into an MDU, it is almost always fibre that is being installed. However, as the hon. Lady said on Second Reading, being technology-neutral is important and might enable the speedier roll-out of a service. If a group of residents or a telecoms operator sought to install a service that was not gigabit capable, although that is extremely unlikely, I do not think the Government should seek to withhold better broadband from a block of flats, for instance, simply because that is the only option available. Nor do I think, to be fair to the hon. Lady, that that is her intention. We should maintain technology neutrality and the commitment to speed and a possible service sooner rather than later, rather than have the Bill restrict it, when it is in most instances a hypothetical problem—we are not aware of a situation in which a slower service would have been suggested or provided by an operator.

On the hon. Lady's point about mobile base stations, again the Bill is technology-neutral, but it is important to note that placing a base station on the top of one building usually benefits the buildings around it, as she knows, rather than that building itself. The triggering of the request that the Bill covers would not necessarily be valid because it would be a different building. It does not imply rights to install equipment on a connected piece of land rather than on the building itself. That is an issue we discussed at some length earlier. Both points indicate that although the measure is technology-neutral, it is more likely that it will not apply to either 5G or to base stations.

Chi Onwurah: I appreciate the points that the Minister is making, and the tone with which he is making them. Gigabit-capable broadband is technology-neutral. That is the only justification for having the full-fibre broadband that the Prime Minister initially promised. I therefore still do not understand why the Government are reluctant to put that in the Bill. As the Minister says, although there is no evidence of a desire to roll out a network that is less than gigabit capable now, once we have competition for a gigabit-capable network, some operators might seek to capture buildings and deliver broadband that, although better than what we have in some of our areas—the broadband in some areas is very poor—is not actually gigabit capable.

Matt Warman: I genuinely sympathise with what the hon. Lady is seeking to do, but her amendment also constrains a Bill that benefits from taking the approach that it does. Technically what she proposes would amend only one part, but amendment 9 would not amend the circumstances under which the part 4A order can be made because they are set out in paragraph 27B. There is a logical inconsistency in what she proposes, but the principle is very much the same as what the Government are seeking.

The hon. Lady would also inadvertently be delaying the roll-out of a service that would be a significant improvement even if it were not gigabit capable, and she undermines the principle of aspects of technology neutrality. Our intention has always been for the whole code to be technology-neutral. There would be no direct benefit from her amendment, although we very much share her ambitions. We want the Bill to benefit tenants whatever the service they request and, with that in mind, although the Government sympathise with her ambitions—

Seema Malhotra: I would like some clarification on a couple of points. What might the minimum speed be and would it be out of scope for a part 4A order to be used to upgrade broadband from copper networks to fibre, for example, if broadband were not fast enough for whatever reason? Do these plans sit alongside, or are they separate from, plans to implement the universal service obligation for a decent service broadband speed of 10 megabits per second, which is clearly much less than 1,000 megabits per second?

Matt Warman: I thank the hon. Lady for intervening just as I was finishing my remarks. There is no legislative flaw on the speed of a service that a commercial operator might seek to install, but the market is obviously going upwards rather than downwards. We have seen no evidence that anyone is seeking to install copper, for instance. The direction of travel in the market is clear across the country. When the USO comes into force, it will sit above this legislation. On her question about the scope of the Bill, I can confirm that those matters would be out of scope.

The Government want all networks to be gigabit capable, and through the work that we and Ofcom are doing, everything is moving in that direction, in terms of both market forces and the Government's legislative programme. Although I sympathise with the spirit of what the hon. Member for Newcastle upon Tyne Central is seeking to do, I ask her to withdraw the amendment.

Chi Onwurah: I am grateful to the Minister both for his response and for his sympathy with what we are trying to do, despite his inexplicable reluctance to actually do it.

Part of the Minister's critique of the amendment is that it is not comprehensive in amending other aspects of the legislation. He is actually critiquing his own Government's approach, because the problem is that we do not have a comprehensive strategy—or any kind of strategy or plan—to deliver the gigabit-capable broadband of which he and the Prime Minister have spoken. I remain concerned that the legislation may well be used to deliver broadband that does not meet the expectations or the just deserts of British citizens, whether or not they live in apartment blocks.

I look forward to the Minister setting out at some point a plan that enshrines gigabit broadband in our lives, just as the Prime Minister enshrines it in his speeches. I do not believe that it is worth pressing the amendment to a vote. I note that the Minister's commitment to gigabit broadband is on the record, as is his expectation that the legislation will be used to deliver it. That will have to suffice for today. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Chi Onwurah: I beg to move amendment 7, in clause 1, page 2, line 1, after "lessee in occupation" insert

", or a person who is a legal occupant of the property and who is in a contractual relationship with the lessee or freeholder,".

This amendment is intended to expand the definition of persons who can request an operator to provide an electronic telecommunications service to include rental tenants and other legal occupants who may not own the lease to the property they occupy.

The Chair: With this it will be convenient to discuss amendment 4, in clause 1, page 2, line 2, after "premises", insert

"or an operator requests to provide an electronic communications service to the target premises,".

This amendment would provide for situations where the request for access is initiated by the operator.

Chi Onwurah: These amendments seek to improve the legislation to enable others to make requests. As I understand it—I hope the Minister will clarify this—only freeholders and leaseholders can use the legislation as it stands.

Mr Chairman, I will not try your patience by expounding at length on the dire state of both home ownership and leasehold, or "fleecehold", as many of my constituents call it. Home ownership rates among young people are a third lower than in the noughties, and for far too many, the leasehold system is broken. There are now 4.5 million households in the private rented sector, a jump of 63% in a decade, and we also know that tenants can easily find themselves in precarious and insecure circumstances through no fault of their own, or even with nowhere to live via a section 21 notice. All of this makes tenants dependent on the whim, or the pleasure, of their landlord. The upshot is that a large proportion of our population is condemned to renting for life, but with few rights and less certainty. We in this Committee can do something about that, at least when it comes to broadband.

Amendment 7 is intended to expand the definition of persons who can request an operator to provide an electronic telecommunications service to include rental tenants and other legal occupants who may not own the lease to the property they occupy. As the Bill stands—the Minister will correct me if I am wrong, I hope—only the freeholder or the leaseholder can make that request, so what of the poor tenant who is desperate for gigabit broadband to enable them to work from home or grow their business? What if their landlord is difficult to reach or indifferent to their predicament? Should the person actually living in the building not have some rights here?

Furthermore—while we are considering who can make these requests—why are businesses left in the cold, particularly those in business parks, where there has often been great unmet demand for broadband? I hope the Minister will provide clarity as to whether business tenants and traders based in properties can use this legislation to upgrade their infrastructure and grow their business.

Amendment 4 is more of a probing amendment, designed to understand whether the Government know what they are doing when it comes to broadband deployment. Before I entered Parliament, I spent a significant number of years rolling out broadband networks in the UK, France, the US, Nigeria, Singapore and Australia, so I know that building out a telecom network requires a plan; it would be nice if the Government understood that keeping networks secure requires a plan, too, but we will come on to that later. In any case, building out a telecom network requires a plan with a business case, predicted revenues, and—well, I am sure the Minister gets the picture.

As the Bill stands, the operators can plan to pass a building, but they cannot plan on getting any revenue from that building, because they cannot make the request to access the buildings that they pass. If the landlords do not respond, the operators cannot use this legislation unless and until a leaseholder or freeholder makes the request.

Seema Malhotra: My hon. Friend is making an important point, on which I would like to support her. The situation has been very different on the ground, and from the experience I have had with leaseholders in blocks, it is sometimes very difficult to get individuals to come forward. When they talk privately with each other, they say that they do want something to happen, and they

[Seema Malhotra]

want an operator to take the lead. In order to provide some flexibility to achieve the outcome we want to see, does she agree that it would be worth considering the right of operators to make the requests?

10 am

Chi Onwurah: My hon. Friend is right. I seek to understand whether the Government have considered that, and what their plans are to reflect it. As my hon. Friend says, it may be that tenants and leaseholders do want broadband access. We all have busy lives and are not full-time network engineers. They are not necessarily going to focus on that, whereas a mobile operator has the resources and expertise to make such a request. Tenants may feel that they do not want to annoy their landlord further in case they find themselves subject to an eviction notice or something similar. Mobile operators are in a better position to take on the power of the landlord in making that request. Operators acknowledged that potential logjam in the consultation on the Bill. Virgin stated that they would recommend that the Bill remove the requirement for tenant requests to trigger the process and that they typically

"will not attempt to seek a wayleave from a landlord unless…convinced of the prospect of selling services to the tenants within the MDU."

Virgin also stated that demonstrating a tenant's interest added another layer of administration to an already costly and bureaucratic process.

The Internet Service Providers' Association, a trade body, also recommended an amendment to allow operators to use this mechanism where they are met with an "unresponsive" landlord, regardless of a tenant's requests. ISPA would further recommend that all landlords be compelled to engage meaningfully with the code, regardless of any tenant request.

Why have the Government apparently ignored or rejected the industry's requests? There may be a number of reasons. Perhaps the Government do not trust telecoms operators to make credible requests, perhaps they are afraid that big operators—given their deep pockets and big legal departments—will capture all the buildings. Perhaps they simply want to reduce the legislation's scope so that it is less effective than it would otherwise be. Amendment 7 seeks clarification from the Minister of why the circumstances in which requests are initiated are so limited, and why the Minister has not given operators the opportunity to also make the request.

Matt Warman: Once again, I absolutely understand the spirit in which the hon. Lady raises the amendment, and I admire her gymnastic ability to bring all the points about leasehold into a telecommunications Bill. It is admirable. She is right to address her point specifically on business parks, and will know that the Bill does include the power for the Secretary of State to expand the types of land covered by the Bill, when there is evidence, to business parks, for instance. We do not have all the necessary evidence to do that. The issue of speedily fixing the problem for MDUs while also having the opportunity to fix the problem for business parks in the future is in the spirit of the Bill. I hope that she understands that it makes sense. She knows that there are almost half a million MDUs in this country. It is important to address that problem as soon as we can.

She will know that the Bill is ultimately about a relationship between a telecommunications provider and an unresponsive landlord. The provision can be triggered by a tenant of a building. That is an important factor. However, she will also be aware that the Bill contains the important concept of the "required grantor". Proposed new paragraph 27B(1)(c) of schedule 3A to the Communications Act 2003, with which I know we are all intimately familiar, confers on the operator a code right in respect of connected land, or allows a person to be bound by such a code right exercised by the operator. In practice, that means that anyone with an interest in the land will have to be contacted. Therefore, when it comes to the operation of the Bill, there will be an opportunity for communications providers in practice to work with anyone in a building to seek to trigger what they would hope to go on through improved provision of broadband. Ultimately, however, the relationship is between the communications provider and the landlord, or the unresponsive landlord.

I think the hon. Lady seeks to expand the number of people who can have an impact on the process. Obviously, the consent of a freeholder, for instance, would still be required even though the property was sub-let. I hope she understands that, while we envisage everyone being able to trigger the process, the legal mechanism under which it operates ultimately is between the communications provider and the landlord—or the unresponsive landlord or the tribunal.

Chi Onwurah: I thank the Minister for giving way. I should say that I am familiar with the electronic communications code, having worked for years with it on my desk at Ofcom. It certainly is not a piece of regulation that I would expect tenants of buildings to be familiar with. Will the Minister clarify whether he is saying that the tenant can make the request, or that the tenant can work with the leaseholder, the freeholder and the telecoms operator to make the request? Can the tenant make the request?

Matt Warman: Ultimately, it is for the telecommunications provider to make the request, having been contacted by people with an interest in the building. However, it is important that it does that in the context of the person who is the leaseholder or the freeholder in any particular building. Obviously, there is nothing to stop an individual getting in touch with a potential telecommunications provider and saying they would be interested in taking up a service, but the formal relationship ultimately has to be with the person who has the leasehold or the freehold. It has to be between the communications provider and, in due course, the landlord, responsive or otherwise. I hope that clarifies some of what the hon. Lady asked about.

I appreciate that amendment 4 is probing, and I understand what the hon. Lady seeks to do. In the usual course of business, any communications provider would seek to expand its network because it knew there was demand. To enable a provider to seek to expand its network without doing any work with a potential tenant that may, in due course, trigger the code would expand that process significantly.

We have tried to take a balanced approach to accessing land to deploy or maintain networks, and it is essential that we try to keep that balance. We believe that allowing

operators to access property without the landlord's agreement is justifiable only in limited circumstances—where a customer has expressly requested a service, or where the operator has taken the steps outlined in the Bill to evidence that it has tried repeatedly to contact the landlord. It seems to me that that combination is the fair and balanced approach, and that if we allowed operators to do that without the consent, in effect, of either an absentee landlord or the people in a building, we would go further than we would reasonably want to. Actually, I think in some ways that would go further than what the hon. Lady suggested, but that would be the consequence of amendment 4.

We remain mindful of striking a careful balance between the rights of both landowners and telecoms operators. The need for a request to come from a tenant is an important element of that careful balance. Ultimately, a tenant, under whatever type of leasehold or contract can make that request. With that balance in mind, I hope that the hon. Lady is content to withdraw both amendment 7 and amendment 4.

Chi Onwurah: I thank the Minister for his response, which has given some more clarity, but I am afraid he has not clarified what the situation will be.

Amendment 4 highlights the lack of a coherent telecoms industrial strategy and a plan for the delivery of gigabit broadband to the country. Opening it up to mobile operators could have unforeseen consequences, which the Government apparently have not had the foresight to investigate fully. While limiting it in this way could be detrimental, I see no alternative but not to press amendment 4, because the Government have apparently not investigated the best way of opening this up to mobile operators.

In relation to amendment 7 the Minister talked about leaseholders, freeholders, tenants and customers, but I remain unclear whether tenants—those who are not the leaseholder or freeholder but are occupying the building or the land—who make a request for service from a broadband provider are within the scope of this legislation.

Matt Warman: They can make the request but, within the scope of the Bill, there is also a requirement for consent from the freeholder, for instance.

Chi Onwurah: I thank the Minister for that. Will he point to where in the Bill it says that a tenant can make the request? I am sorry to put him on the spot, but the Bill seems to refer to leaseholders and freeholders, and I do not see tenants there. That is the reason for amendment 7. On that basis, and in order to provide clarity, I would like to press the amendment to a vote.

Matt Warman: My understanding is that, within the context of this Bill, a tenant would absolutely be within the legal definition. I am not pretending that I am wholly answering the hon. Lady's question, because there is still a requirement for the freeholder, for instance, to be a part of the process.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 10.

Division No. 1]

AYES

Hill, Mike	Nicolson, John
McGinn, Conor	Onwurah, Chi
Malhotra, Seema	
Nichols, Charlotte	West, Catherine

NOES

Brereton, Jack	Lamont, John
Davison, Dehenna	Robinson, Mary
Drummond, Mrs Flick	Solloway, Amanda
Huddleston, Nigel	Wakeford, Christian
Hughes, Eddie	Warman, Matt

Question accordingly negatived.

10.15 am

Chi Onwurah: I beg to move amendment 8, in clause 1, page 2, line 14, at end insert—

"(f) the proportion of the operator's network which uses vendors defined by the National Cyber Security Centre as high risk vendors does not exceed 35%."

This amendment would prevent operators which heavily use high risk vendors from being granted Part 4A orders.

I want to move to an issue that has dominated our discussions on telecoms infrastructure for the past 18 months and is not reflected in the Bill at all: the role of high-risk vendors such as Huawei in the UK's full-fibre, 5G and gigabit-capable future. The Foreign Secretary recently said that he wanted to

"legislate at the earliest opportunity to introduce a new, comprehensive telecoms security regime to be overseen by the regulator, Ofcom, and Government."

He also said that the Government would

"legislate at the earliest opportunity to limit and control the presence of high-risk vendors in the UK network, and to allow us to respond as technology changes."—[*Official Report*, 28 January 2020; Vol. 670, c. 709-711.]

Just this weekend the Minister's senior colleagues on the Back Benches continued to express dismay at the rejection of our technological sovereignty.

I therefore want to give the Minister an opportunity to do what the Foreign Secretary called for—I hope that the Minister agrees that a Bill on telecoms infrastructure might be considered the earliest opportunity to legislate—by taking the first step in achieving the aim of limiting the role of high-risk vendors in our telecommunications networks. The amendment would limit the use of high-risk vendors so that

"the proportion of the operator's network which uses vendors defined by the National Cyber Security Centre as high risk vendors does not exceed 35%."

The National Cyber Security Centre stated in a recent report that for mobile operators security does not pay, and that market incentives had to be changed to deliver on security. It also made it clear that having high-risk vendors in the network was a risk, which seems obvious, but that the risk could be mitigated if the Government took certain steps, such as limiting the vendors to 35% of the network. The Government have yet to make clear the 35% of which network, when it should happen by and what enforcement powers would apply to the operators that do not meet the requirements. Although the Bill focuses on fixed-line operators, I am sure that

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the Minister and the Committee are aware that with the convergence of fixed-line and mobile operators, the core networks and aspects of the access network can be shared.

The amendment would prevent operators that heavily use high-risk vendors from being granted rights under code powers. It would therefore send out a clear signal that the Government are serious about following the recommendations of the National Cyber Security Centre, and as a consequence would lead to some monitoring of what is already in place and some reporting of that in order to meet the requirements.

Mr Davies, I am sure you agree—and I hope the Committee agrees—that nothing is more important than our national security. I am equally sure that you will not allow me to set out all the issues raised by the challenges of national security and our mobile networks. I will test your patience by saying that I have been highlighting for years the fact that there is a hole the size of a mobile network in the Government's cyber-security strategy.

The NCSC says that the market is broken. Well, the Minister will not be able to fix it today, but I do expect him to answer some questions. Will he at least give some practical detail regarding how the recommendations of the National Cyber Security Centre will be implemented? Also, can he confirm that operators that heavily use high-risk vendors will not benefit from code powers, including those enabled by the legislation?

Matt Warman: I once again admire the hon. Lady's ability to get national security matters into the discussion, as she herself to some extent implied, although her doing so was a lot less gymnastic than her peroration on leasehold. Although today is the first opportunity that we have had to talk about telecommunications since the announcement, there will be a far broader important debate on national security and high-risk vendors. That legislation will, of course, overarch many pieces of legislation, including this Bill.

We have listened carefully to the broad debate, both on high-risk vendors and on the amendment. I know that Members are interested in this matter, following the Government's decision. In that decision, it was made clear that there will be new controls across the board on high-risk vendors, who will be excluded from all safety-related and safety-critical networks in critical national infrastructure, excluded from the security-critical core network functions, limited to a minority presence of up to 35% in the other parts of the network, and subjected to tight restrictions, including exclusions from sensitive geographic locations.

The Government made the decision on high-risk vendors after considering all the necessary information and analysis from the NCSC, industry and our international partners. It was an evidence-based decision, taken on a comprehensive security assessment, and noting the realities of the telecoms market. Members will be given a full opportunity to contribute to the important debate on high-risk vendors when the relevant legislation is brought before Parliament. However, as I think the hon. Member for Newcastle upon Tyne Central knows, to do so for this piece of legislation risks introducing a degree of incoherence in what is an important debate. We will do it in a coherent, sensible way in due course, and I hope that Members are reassured that the Government remain committed to working with Parliament as a whole to protect our future telecoms network, important though this Committee is.

Seema Malhotra: This is indeed a very important area. I slightly disagree with the Minister on whether referring to high-risk vendors is to extend the debate on today's legislation. However, in terms of the implementation of the legislation, and operators and leaseholders going through the process, assuming that those operators obtain permission from the granters, will it be Ofcom that works to ensure that they abide by today's legislation and the future high-risk vendor legislation?

Matt Warman: The hon. Member asks me to pre-empt what will be an important piece of legislation. What I can say is that we will ensure that nothing in today's legislation could be used to circumvent that broader and more important piece of legislation, because obviously we have to ensure that 35% means 35% in whatever context.

I hope that Members understand that this is a hugely important issue. The Government are intent on doing things in a coherent and sensible way, so that we deal with matters of national security in the appropriate place rather than in a patchwork of measures with bespoke things in such places as this legislation. I therefore hope that the hon. Member for Newcastle upon Tyne Central will withdraw her amendment.

Chi Onwurah: I thank the Minister for his response. I understand that he is in a difficult position. He talked of a coherent response from the Government, but it is the lack of any coherence in our telecoms infrastructure that has placed us in this position. My deep and real concern is when the Minister says "in due course". We know that this form of language avoids any precision as to whether something will happen in the next few weeks, months or years. Telecoms infrastructure providers are taking decisions on their equipment suppliers as we speak. Customers and businesses, but also the public more broadly, are concerned about the security of their broadband networks. The Government have said that there will be a plan to ensure that security, but the only detail we have is that it will come forth "in due course". Will he give a little more precision?

Matt Warman: The hon. Lady asks for coherence, but when I offer it to her she says that she does not like it. It is important to say that guidance from the NCSC is already out there, and the Government are seeking to put that on a statutory footing as soon as possible. The idea that information is not already out there is unfair, not least on the NCSC, which has worked incredibly hard on this. It is now the Government's role to have a parliamentary debate and put that on the statute book.

Chi Onwurah: I thank the Minister for that response. He is right that I am seeking coherence in a plan, rather than coherence in rejecting changes to the legislation. The important point is that the NCSC guidance mainly takes the form of excellent blogs written by the technical

director, which are very helpful in many ways but do not go into detail about, for example, what the 35% means in practice, how it will be measured, how it will be enforced, who will regulate it and at what point these enforcement measures will start.

I accept that "as soon as possible" is slightly more enthusiastic than "in due course", and I recognise the difficult position that the Minister is in. While noting my real concerns that to deliver on our gigabit-capable infrastructure we need greater clarity on the role of high-risk vendors as soon as possible, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Chi Onwurah: I beg to move amendment 5, in clause 1, page 3, line 23, at end insert—

"(9) The Secretary of State must by regulations define—

(a) what constitutes a request notice for the purposes of paragraph 27B (1) (d)

(b) what constitutes a response for the purposes of paragraph 27B (1) (e)."

This amendment would require the Government to define what constitutes a legitimate request and a legitimate response, as asked for both by landlords and telecoms companies.

We are coming close to the end of our amendments—I know that the Committee is saddened by that prospect. After almost 10 years in this place, this is one of the few occasions we have had to discuss in detail our telecoms infrastructure. It is not possible to say too much on this subject. However, with your indulgence and guidance, Mr Davies, I will confine myself to two more amendments.

Amendment 5 seeks clarity from the Government on the legislation's general references to "a legitimate request" and "a legitimate response". During the consultation phase and after it, landlords and telecoms companies asked for greater clarity about what would constitute a legitimate request and a legitimate response, particularly from a landlord. For example, if a landlord responds to a request with an out-of-office reply, saying "I'll be back in six months", does that constitute a legitimate response? Would that mean that the operator could not move on to request the access powers enshrined in this legislation?

Will the Minister set out here, or in the legislation, what constitutes a request notice for the purposes of proposed new paragraph 27B(1) and what constitutes a response for the purposes of proposed new paragraph 27B(1)(e)?

10.30 am

Matt Warman: I do not wish to sound less conciliatory than previously, but those matters are already defined in the Bill. I will briefly go through them, but the definitions that the hon. Lady seeks are already in the Bill, which renders the amendment unnecessary.

First, new paragraph 27B(1)(d) makes it clear that a request notice is a notice in accordance with paragraph 20(2) of the electronic communications code. That sub-paragraph is clear that it constitutes a notice in writing from the operator to a person setting out the code, rights and terms of agreement sought by the operator. The notice states that the operator is seeking the person's agreement to those terms. In addition, the hon. Lady will know that Ofcom already produces template paragraph 20 request notices to ease the burden. I am confident that the request notice is already defined.

Secondly, the hon. Lady asks about the response. That answer lies in new paragraph 27B(4), which makes provision for how the required grantor—the landlord, as we might say in common parlance—responds to the operator. That provision states clearly two ways in which a landlord can respond: he or she either

"agrees or refuses, in writing"

or

"otherwise acknowledges the request notice in writing."

That makes it straightforward and transparent for landlords. The amendment risks upsetting that balance by unnecessarily introducing additional regulations.

I am confident that those terms are already defined and I consider that it would be unhelpful for us to make additional requirements.

Chi Onwurah: I thank the Minister for his clarification regarding the request. I acknowledge that there is detail on requests, as requests have been required previously, as the Minister said. With regard to the response, the term "otherwise acknowledges" is quite broad. Given that the next step is to go to a tribunal, which will incur costs, it would be helpful to have greater clarity on that term.

Matt Warman: The important point is that there has to be a formal response "in writing". By definition, in responding a landlord ceases to be unresponsive. This legislation aims to deal with unresponsive landlords.

Seema Malhotra: It would be an interesting exercise to go through all the different ways in which one could respond, but we would then be here for the afternoon session. The purpose of the Bill is to speed up the process for residents to secure superfast broadband. New paragraph 27B(4)(a) reads

"agrees or refuses, in writing, to confer or otherwise be bound by the code"

and so on. A response will surely be either an agreement or a refusal, or a point of clarification. The "otherwise acknowledges" could be as simple as an email saying, "I have received your notice." For the purpose of speeding things up rather than providing new ways in which blocks could be put in place, it is important that the Minister provides further explanation of what is intended to be covered by "otherwise acknowledges" and how it helps, given the clarity of 27B(4)(a).

Matt Warman: I come back to my central point, which is that the Bill addresses the problem of landlords who do not respond. Ultimately, it does not confer a right to install equipment against the will of a landlord. Once a landlord engages with the process, they are not considered unresponsive and are not covered by the Bill. Obviously, a landlord has the right to prevent access—either through prevarication or by withholding permission—in almost all circumstances, whether for telecommunications infrastructure or for anything else.

I completely understand what the hon. Member for Newcastle upon Tyne Central is seeking to do, but ultimately the things that she wants defined are already defined on the face of the Bill, and they will clearly not benefit from being separately defined again. It is important that we are consistent with the electronic communications

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code and, although I sympathise with the hon. Lady's desire to see broadband rolled out wherever it can be, I ask her to withdraw the amendment.

Chi Onwurah: I thank the Minister for his response. He said that the Bill does not confer a right to install equipment against a landlord's will, and I am concerned that that effectively means that tenants do not have a right to superfast or gigabit-capable broadband, which I would argue is an increasingly important part of modern life. We joked earlier about the difference between access to water and access to broadband, but for many people broadband is an absolutely essential part of their working and social lives, and a forward-looking Government would ensure that citizens have a right to gigabit-capable broadband. Although the universal service obligation confers some rights, it does not deal with recalcitrant or unwilling landlords.

Seema Malhotra: Does my hon. Friend agree that there could be a compromise or third way on this? The terms of new paragraph 27B(4)(b)—

"otherwise acknowledges the request notice in writing"—

are superfluous if a landlord is seeking to push action further down the road. If that is an incentive for landlords to engage less positively with those seeking to build networks, would the Minister at least consider reviewing—if not deleting—sub-paragraph (4)(b)? If responses from landlords fall considerably under that option, rather than agreeing or refusing with the reasons that one would expect in a positive dialogue, will the Minister consider whether that option should stay in the Bill?

Matt Warman *rose—*

The Chair: As a matter of procedure, the Minister may wish to respond to the intervention by way of intervention, which I would welcome.

Chi Onwurah: Thank you for that guidance, Mr Davies. I want to emphasise that my hon. Friend makes an excellent point. I am sure that the Minister will agree that the Committee should look for a compromise that allows this important legislation to pass. Landlords may be eccentric and unwilling in their responses, and people's gigabit-capable broadband should not depend on that. If the Minister is interested in intervening, I will happily give way.

Matt Warman: I am delighted to intervene spontaneously. Essentially we are having a conversation about whether there is a universal right to internet access, and whether that should be something that people can request by one means or another. That concept has been widely explored in many ways. It is surely not right to introduce a universal right of access for people who happen to live in blocks of flats via a small route intended to speed up one process. If we wanted to do that, we would surely seek to do it in a coherent and wide-ranging way, rather than in an incoherent way that I am sure the hon. Lady would criticise at great length.

Chi Onwurah: That is an interesting response from the Minister, because having coherent legislation—I think the Opposition called it a "digital bill of rights"—was exactly what we sought, in order to protect citizens and offer them the kinds of digital rights that are required in the digital age. We have not had such a response from the Government; we have incoherent and ad hoc legislation. That was one part of the argument being made.

My hon. Friend the Member for Feltham and Heston mentioned another part of the argument. Landlords are individuals, and we have all had experience—I certainly have—of landlords who were eccentric or who responded in ways that were unresponsive. Perhaps it would be a positive step to consider how the legislation works in practice. If unresponsive landlords are an issue, will the Minister at least commit to reviewing the situation?

The Chair: Obviously the Minister is free to intervene, but we will have to move on. Do you want to withdraw the amendment or press it to a vote?

Chi Onwurah: Given the debate that we have had, and given that we have registered our concerns on the record, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Chi Onwurah: I beg to move amendment 6, in clause 1, page 5, line 12, at end insert—

"(8) Any operator exercising Part 4A code rights is obliged to ensure that alternative operators can easily install the hardware needed to provide their own electronic communications service.

(9) The definition of "easily" in sub-paragraph (8) is to be provided by Ofcom."

This amendment is intended to ensure that tenants are not "locked in" to using services provided by a single operator.

This is a key amendment, and the fact that it is necessary highlights why the past 10 years have been such a wasted opportunity for telecoms infrastructure. The Opposition are ready to help the Government implement a long-term telecoms industrial strategy. It is a long-held basic tenet of telecoms deployment that infrastructure competition drives investment, innovation and choice. That is the reason why, under Labour, first-generation infrastructure was rolled out to half of all households within 10 years. Under this Government, by contrast, full-fibre broadband has reached only 11% of households, according to the Minister. I believe that the figure is 8% but, either way, it is barely one in 10 households. That is over the same time frame of a decade. With the advice of Ofcom, the previous Labour Government realised that we had to enable infrastructure competition. That was what unbundled local loop was—bringing infrastructure competition to first-generation broadband deployment. You may find it strange, Mr Davies, for a Labour Member of Parliament to be giving instructions to a Conservative Government in competitive market economics.

The Chair: No.

10.45 am

Chi Onwurah: Well, I am glad you do not find it strange, because it reflects what I am afraid experience has taught me—that the present generation of Conservatives appears to be willing to sacrifice competition to vested interests. Under the Bill one operator could capture a building, roll out infrastructure to that apartment block and fleece the tenants there for ever—having had the first mover advantage in a block, and/or having installed infrastructure so that other competitors cannot install

further infrastructure. Examples of that might be using very small ducts, or taking up all the equipment space in a basement.

The amendment would ensure that tenants could not be locked into a particular operator, by requiring that it should be possible for the infrastructure to be shared easily. It would give Ofcom the duty to define what "easily" means. Having worked for Ofcom, as I have said, I know that that can be done quite easily.

Other countries require shared access to building infrastructure. Has the Minister looked at that? Both France and the Netherlands have a much higher proportion of apartment blocks than we do in the UK. As I am sure Members of the Committee are aware from visiting those countries, proportionately many more people live in apartment blocks, and their approach to broadband regulation has ensured that there is better access for competition through a requirement for infrastructure sharing. Could not the Government take stock of those pre-existing solutions, just across the channel, to respond to some of our competition concerns?

Ofcom is taking steps to promote infrastructure competition in what is known as ducts and poles. At this point I should probably declare another interest, in that I was responsible for Ofcom's 2009 survey of the availability of duct and pole infrastructure. I hoped that it might be taken up a little more quickly than this. Companies laying high-speed fibre cables for broadband and mobile networks may benefit from greater access to Openreach's telegraph poles and underground tunnels under decisions announced last year by Ofcom, so I would like the Minister to confirm whether similar ease of access can be a part of the Bill. The opportunity to let rival companies access the new buildings when a company such as Openreach provides access represents a real opportunity to increase competition in the market and avoid operator lock-in for what is an essential utility, as the Minister has said. Will the Minister confirm, therefore, that in the spirit of recent Ofcom initiatives we can also extend the scope of the Bill?

Matt Warman: I can return to my conciliatory tone, in the sense that in this case we are interested, through both Ofcom and the Department, to see what can be done on infrastructure sharing. The hon. Lady is right that it is potentially a hugely important initiative, and I enjoyed her account of her 2009 duct and pole work; but she is also right to say that the work is still ongoing, because it is a hard thing to do and it is important that we take a coherent approach to it. In that spirit, I am afraid I would argue that we should be coherent in our approach to infrastructure sharing across the piece, rather than simply introducing a separate regime for people living in multiple dwelling units.

The Bill aims to support leaseholders to access the services they request from the providers they want. It already ensures that leaseholders are not per se locked in to services provided by a single provider; nothing in the Bill prevents a leaseholder with an existing gigabit-capable connection from one service requesting an alternative network to come in and request code rights as well. The Government cannot and should not compel independent commercial companies to alter the way they choose to deliver their services unless there is evidence that a problem exists. That problem is one that we are looking at more broadly.

Far from improving competition in access to gigabit services, the amendment may actually have the unintended consequence of doing the opposite. As the hon. Member knows, much of the cost of connecting premises is in the initial installation. The amendment could therefore seriously undermine the case for operators to make that initial installation, as they risk being undercut by second or third movers who would not have to bear the same costs. Forcing network builders to deploy in a way that allows competitors easy access is likely to benefit only the largest players in the market.

While I sympathise with the aim of the amendment, I do not think the hon. Member seeks to entrench the position of any one large operator further. Part 3 of the code already provides for operators to be able to upgrade electronic communication apparatus and to share use of such apparatus with another operator, should they wish.

The hon. Member might alternatively be seeking to test our thinking about the terms of what an agreement to be imposed might look like. It is worth saying that the process of that agreement is dictated in paragraph 27E(6) of the code, which makes it clear that before we make regulations in relation to the terms that she has discussed, which will be under the affirmative resolution procedure, we must consult interested parties, including operators. The Bill already envisages that the views of interested parties such as other operators will be invited before the details of a regulation are made.

I hope that the hon. Lady understands that we are looking at this more broadly, that we are seeking to do it in the coherent way that I know she is so keen on and that we are going to look at making sure that that is fair and compatible with our other approach. It would surely not be right potentially to restrict the advantage of investment in a particular MDU in a way that could actually discourage that investment in the first place and leave people stranded without the broadband that the whole Bill is intended to produce. With that in mind, while I sympathise with what the hon. Lady is seeking to do, I hope she understands that what she is proposing does not actually do what she seeks to do and could hold back some of the progress that we seek to make with the Bill. I ask that she withdraw the amendment.

Chi Onwurah: I want to continue in the conciliatory tone that the Minister has returned to, so I start by saying that I welcome his clarification that nothing in the Bill prevents a tenant who already has a broadband service from making a request for another broadband service and so invoking the code rights that the Bill gives. I know that that will be welcomed by tenants who have an unacceptable service or receive bad customer service, of which there are unfortunately far too many.

I welcome that clarification, but I cannot be so welcoming of the rest of the Minister's speech, which raises many issues of competition and economics within the telecoms network sector, with which I am very familiar. When he says that the amendment would not do what I am looking to do, I am afraid that we will have to agree to differ on that. I find it strange that I should say this to him, but the key difference is that Opposition Members do not believe that there is a contradiction between investment and competition, which was the implication of his comment that the amendment, by opening up access to competitors, might chill investment. All the

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evidence shows—I again refer him to Labour's example of unbundling local loop—that competition drives investment; it does not chill investment.

I think the Minister was trying to say that a small operator looking to put infrastructure into a 100-apartment block would do so only if it knew that it had exclusive access to that building for a number of years, to recoup its investment, which means that he acknowledges that tenants of that block would likely be locked into using that operator. However, smaller operators could benefit from having easy access to infrastructure installed by larger operators.

On that basis, the Minister's comments do not reassure me. I gently say to him and the Government that saying that we cannot take measures now because at some point in the future we will have a coherent framework is partially what got us into this position of incoherent ad hoc responses to legislation that is obviously obsolete. While we cannot solve all problems with this legislation, we can at least help to solve problems for tenants and leaseholders in apartment blocks by ensuring greater opportunities for competition. As such, I will press my amendment to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 10.

Division No. 2]

AYES

Hill, Mike	Nicolson, John
McGinn, Conor	Onwurah, Chi
Malhotra, Seema	
Nichols, Charlotte	West, Catherine

NOES

Brereton, Jack	Lamont, John
Davison, Dehenna	Robinson, Mary
Drummond, Mrs Flick	Solloway, Amanda
Huddleston, Nigel	Wakeford, Christian
Hughes, Eddie	Warman, Matt

Question accordingly negatived.

The Chair: We now come to the question that the clause stand part of the Bill. Members who have not spoken may want to make a short speech, but I am not requesting it.

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

Matt Warman: I will be considerably briefer than I would be in a normal stand part debate, because we covered a lot of ground in discussing the amendments. However, suffice it to say that the purpose of the Bill is to create a bespoke process for telecoms operators to seek access to leased premises, starting with MDUs in cases where a landlord repeatedly fails to respond to an operator's requests for access. As we have discussed, part 4A is the crux of the Bill. To be brief, new paragraph 27A is an introductory provision that explains the ambition of a court making an order imposing an agreement that provides rights under the code between an operator and a landlord. That will be where: first, those rights are required in respect of land that is connected to the lease premises; and secondly, the occupier or another person with an interest in the land has not responded to repeated notices given by the operator seeking agreement to confer or otherwise be bound by those rights.

The Bill sets out the time period between giving and receiving notices, and it is only in the case of unresponsiveness that an operator is able to apply for a part 4A order. Crucially, an effect of new paragraph 27D is that a landlord who responds in writing to any of the operator's notices will come out of the scope of the part 4A process, as we discussed at some length earlier. The Bill makes it clear that access rights may be used only for the purposes of providing an electronic communications service to the target premises.

Therefore, I hope that you will agree, Mr Davies, that this clause, in terms of both its length and the matters contained within it, is central to the Bill and to the policy underpinning it. It provides a much-needed process that will play a large part in ensuring that many tenants are part of this Government's nationwide gigabit broadband upgrade.

11 am

Chi Onwurah: I am disappointed that the Minister has not seen fit to accept any of the amendments that we have put forward.

Matt Warman: I accept the spirit.

Chi Onwurah: The Minister indicates from a sedentary position that he has accepted the spirit, and I welcome his conciliatory tone in that respect. I hope that the clause will achieve its objectives by making it easier for telecoms operators to gain access in order to deploy gigabit infrastructure. I remain convinced that this will not do much to make up for the time lost in deploying gigabit-capable infrastructure and that, in rejecting our amendments, the Minister has lost an opportunity to improve the Bill. However, we accept that the Bill is positive and will support the clause.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clause 2

RELATED AMENDMENTS

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

Matt Warman: Clause 2 is a brief but important clause that introduces the schedule that makes related amendments to two pieces of legislation to complement the Bill. That legislation is the Communications Act 2003 and, contained within it, the electronic communications code and its related jurisdiction rights.

Chi Onwurah: I rise simply to say that we are happy for clause 2 to stand part of the Bill.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Schedule

RELATED AMENDMENTS

Matt Warman: I beg to move amendment 2, in the schedule, page 9, line 17, at end insert—

"(10A) In paragraph 95(1), after paragraph (a) insert—

(aa) in relation to Wales, the First-tier Tribunal, but only in connection with proceedings under Part 4A;".

This amendment is consequential on Amendment 3.

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

Government amendments 3 and 1.

New clause 1—*Report on resources to deal with proceedings arising under Part 4A of the code*—

"The Secretary of State must prepare and publish a report on the adequacy of the resources available to First-tier Tribunal to deal with proceedings arising under Part 4A of the electronic communications code and must lay a copy of the report before Parliament within six months of this Act receiving Royal Assent."

Matt Warman: At its heart, the Bill is about making it faster and cheaper for digital infrastructure providers to seek rights to install their services in leasehold properties. The Bill is also concerned with not permitting consistently unresponsive landlords to stand in the way of receiving the connectivity that households need. The Government have tabled three amendments that respond to helpful suggestions, first made by the senior judiciary of both the first-tier and upper tribunals. Our amendments also respond to the welcome interventions made by hon. Members on Second Reading—I am glad to see some of those Members here today.

Without these amendments, applications would commence in the upper tribunal in England and Wales and the Lands Tribunal for Scotland, and would be dealt with in the county court in Northern Ireland. Commencing cases in the upper tribunal is a reasonable route, because it aligns the new process with the electronic communications code. The process still works in principle, but we should also ensure that it works as well as possible in the real world to deliver the faster, cheaper outcomes that we seek. We continue to be mindful that, with up to an estimated 2,650 cases per year in England and Wales, we need to hear cases at the most appropriate level.

Presently, the upper tribunal hears cases and makes determinations in respect of disputes concerning the interpretation. As such, the Government need to continue to work with that tribunal and its equivalents elsewhere. The need to ensure that the upper tribunal has the capacity to deal with the part 4A applications was raised on Second Reading. The matter has also been the subject of discussion between my officials and their counterparts at the Ministry of Justice, as well as senior members of the judiciary from the relevant chambers of the first-tier and upper tribunals.

The number of part 4A cases is estimated to be significant. The upper tribunal, with just two judges, would not have the bandwidth to deal with that volume of cases, regardless of the fact that the applications are expected to be relatively straightforward. While the process as drafted continues to work in principle, therefore, in practice we agree with the representations that we have heard that placing an additional burden on the upper tribunal would not necessarily provide us with the resources that we need. We are grateful to senior members of the judiciary from the first-tier and upper tribunals with whom my officials met.

In the light of those considerations, the amendments provide for applications for part 4A orders to commence in the first-tier tribunal in England and Wales and the sheriff court in Scotland. I hope that Committee members agree with that important change. In comparison with the small number of judges that I mentioned, 15 salaried judges and an additional 125 fee-paid judges sit in five courts across England, and 142 sheriffs preside over 39 courts in Scotland, so the change significantly increases the resources available and addresses some of the concerns expressed, sensibly, by hon. Members from both sides of the House on Second Reading. I am glad that we have found a sensible way forward that increases the resources available. It is a sensible and pragmatic move that has a significant effect but does not alter the principle of the Bill.

New clause 1 proposes that a report be made to make it clear that we have the necessary resources. As I said, we are confident that applications for part 4A orders will, in due course, be heard on the papers—without the need for an oral hearing—and our intention is for the process to be as low in burden as possible. Of course, we will monitor the resourcing of the first-tier tribunal to ensure that it has the capacity to dispense with those cases. Ultimately, that information can be obtained in a number of ways, such as by tabling parliamentary questions or through the fact that the proceedings are public.

Again, we sympathise with the intentions of the hon. Member for Newcastle upon Tyne Central, but it is clear from the amendments tabled in my name that we are already addressing the substance of what she asks. Ultimately, the information that she seeks is already widely available in equivalent cases and will continue to be in future, so introducing an additional administrative burden would neither provide more information nor be a sensible use of resources. I hope that she will withdraw the new clause in that spirit.

Chi Onwurah: It is a pleasure to respond positively, and not just in spirit but in practice, to the Minister's amendments. They respond to concerns that we raised on Second Reading and those raised by others about increasing resources. The number of judges available to consider those requests and cases leaves much to be desired. Hopefully the Government's amendments will make the limited scope of the Bill more effective, so we are happy to accept them.

New clause 1 responds to that by acknowledging that our judiciary is under severe strain at every stage. The new clause is designed with accountability and transparency in mind, so that we can see the impact of the new legislation on the resources available. The legislation sets out new legal functions. As with all good legislation, we must ensure that the new mechanisms are robust and well-resourced to ensure that the legislation does what it is meant to do, and does not fail when it makes contact with reality.

The new clause would require a report on resources to deal with proceedings arising under part 4A of the code be prepared and published within six months of

[Chi Onwurah]

the Act receiving Royal Assent. It aims to ensure that we see the impact on our judiciary. Although the information may be available, I am sure that the Minister is aware that nothing concentrates minds as much as laying a report before Parliament for scrutiny by right hon. and hon. Members. That gives an opportunity to see how the legislation works in practice. I am sure the Minister is proud of the legislation and the impact it will have, so he must welcome the opportunity to speak to that in the House.

We do not have an impact assessment for this legislation. It is a short Bill, but that does not mean that its impact may not be important. When I spoke to operators, they estimated that it might cost around £30,000 to take a request through the tribunal. That is their estimate—I have not seen any Government figures to confirm whether they consider that to be high or low, but that would have been a welcome part of an impact assessment. The sum of £30,000 for a tribunal to access an apartment block with 10 apartments means an additional cost to the operator of £3,000 per customer. That has an impact on the business case for that investment in the first place.

Seema Malhotra: I am not seeking to incur the Minister's displeasure by bringing in wider issues on leaseholding, but when landlords may be taken to court for any matter, they potentially charge their fees back to their leaseholders. Perhaps we should make sure that there is some protection.

Chi Onwurah: My hon. Friend makes an excellent point. Without raising all the concerns surrounding leasehold, it is well known that freeholders may charge the leaseholders for the costs they incur when seeking legal judgments. In addition to the £30,000 that the operator would put on to the cost of the service deployment, therefore, the leaseholders and ultimately the tenants may also find themselves facing the costs incurred by the freeholder going to tribunal.

11.15 am

The Minister has said that he does not feel that the report is necessary, given that the information is already there, but I hope he will acknowledge that the impact of the cost of going to tribunal—something that the report could also reflect—is important. In his response, I hope that the Minister will address that issue, and that he will be convinced to accept that publishing a report will give him the opportunity to show that the legislation is working well and not causing tenants to incur the kinds of costs that we have just discussed.

The Chair: We will adjourn by 11.25 am.

Matt Warman: I take the hint, Mr Davies. I will briefly address a couple of issues raised by the hon. Lady. The cost of an application by an operator will be determined by the court, but we anticipate that the application fee will be under £500. She might have been including the cost of investment, which by definition is an investment that the operator is seeking to make by applying through the code.

Chi Onwurah: To clarify, I am not including the cost of investment. From talking to operators, on top of the cost of applying they will have lawyers' fees and internal costs. Those are the costs that I have been told about—not the cost of the infrastructure, but the cost of going to tribunal for an organisation, as part of its daily operating costs.

Matt Warman: None the less, the legislation cuts a tribunal process from several tens of thousands of pounds to a £500 fee, which is indisputably a significant reduction.

The hon. Lady talked about focusing the minds of Ministers. I would say gently that parliamentary questions, oral questions and indeed Westminster Hall debates also focus minds. I look forward to celebrating the success of the Bill through that means, rather than through the proposal set out in the new clause.

Amendment 2 agreed to.

Amendment made: 3, in the schedule, page 9, line 22, leave out paragraphs 4 and 5 and insert—

"4 The Electronic Communications Code (Jurisdiction) Regulations 2017 are amended as follows.

4A In regulation 2(1) (interpretation), after the definition of "the code" insert—

"'Part 4A proceedings" means proceedings under Part 4A of the code;'.

4B (1) Regulation 3 (conferral of jurisdiction on tribunals) is amended as follows.

(2) The existing text becomes paragraph (1).

(3) In that paragraph—

(a) in the words before sub-paragraph (a), after "Subject to" insert "paragraph (2) and";

(b) for sub-paragraphs (a) and (b) (including the final "and") substitute—

"(aa) in relation to England and Wales, the First-tier Tribunal and the Upper Tribunal, and";

(c) omit the words after sub-paragraph (c).

(4) After that paragraph insert—

"(2) Functions are exercisable by the First-tier Tribunal under paragraph (1)(aa) only—

(a) in connection with relevant proceedings in relation to England that have been transferred to the First-tier Tribunal by the Upper Tribunal, and

(b) in connection with Part 4A proceedings (whether in relation to England or Wales).

(3) Any provision of the code which confers a function on the court is, to the extent that the function is exercisable by a tribunal under this regulation, to be read as if the reference to the court included reference to that tribunal."

4C (1) Regulation 4 (jurisdiction for commencement of proceedings) is amended as follows.

(2) In the heading, for "relevant" substitute "certain".

(3) The existing text becomes paragraph (1).

(4) After that paragraph insert—

"(2) Part 4A proceedings must be commenced—

(a) in relation to England and Wales, in the First-tier Tribunal, or

(b) in relation to Scotland, in the sheriff court."

5 The amendments made by paragraphs 4 to 4C do not limit the provision that may be made by regulations under paragraph 95 of the code." *—(Matt Warman.)*

This amendment provides that proceedings under new Part 4A of the Code must be commenced in the First-tier Tribunal (in relation to England and Wales) or in the sheriff court (in relation to Scotland), instead of in the Upper Tribunal or the Lands Tribunal for Scotland respectively.

Question proposed, That the schedule, as amended, be the schedule to the Bill.

Matt Warman: I shall be brief. The schedule sets out related amendments to other legislation which were introduced by clause 2. It contains the amendments to section 402 of, and schedule 3A to, the Communications Act 2003, also amending the electronic communications code. We have already discussed the consequences of the schedule so, with that, I commend it to the Committee.

Question put and agreed to.

Schedule, as amended, accordingly agreed to.

Clause 3

EXTENT, COMMENCEMENT AND SHORT TITLE

Amendment made: 1, in clause 3, page 7, line 21, leave out—

"amendment made by paragraph 4 of the Schedule extends"

and insert—

"amendments made by paragraphs 4 to 4C of the Schedule extend".—*(Matt Warman.)*

This amendment is consequential on Amendment 3.

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

Matt Warman: The clause makes an important provision in respect of the Bill's territorial extent and commencement. As Members may be aware, telecommunications is a reserved matter in all three of the devolution settlements. The territorial extent of the Bill is to England and Wales, Scotland, and Northern Ireland, but there is one exception: the amendment made by paragraph 4 of the schedule, which extends only to England and Wales, and Scotland because the statutory instrument being amended by paragraph 4 does not extent do Northern Ireland. It is important to have that on the record. I commend the clause to the Committee.

Question put and agreed to.

Clause 3, as amended, accordingly ordered to stand part of the Bill.

The Chair: We now come to—

Matt Warman: On a point of order, Mr Davies. I will briefly do the customary thing of thanking the Bill Committee members who have had such a full and compressed day. I also thank all the officials who have worked so hard on the Bill and you, Mr Davies, for such brilliant chairmanship.

The Chair: Thank you to everyone involved.

Chi Onwurah: Further to that point of order, Mr Davies. I echo the Minister's thanks. I also thank the officials who have helped us in drafting and tabling our amendments.

The Chair: Let us hope that the broadband is as quick as this Committee.

Bill, as amended, to be reported.

11.21 am

Committee rose.

Written evidence reported to the House

TIB01 The Berkeley Group Holding plc

TIB02 Brian M Dodd FNEA, Managing Director, Glawood Limited

TIB03 BT Group

TIB04 Internet Services Providers' Association (ISPA) UK

TIB05 Ben Hamilton

TIB06 Rosemary Herbert, Professional Support Lawyer, Howard Kennedy LLP