

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT ELECTRONIC COMMUNICATIONS AND  
WIRELESS TELEGRAPHY (AMENDMENT)  
(EUROPEAN ELECTRONIC COMMUNICATIONS  
CODE AND EU EXIT) REGULATIONS 2020

*Tuesday 10 November 2020*

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**Saturday 14 November 2020**

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**The Committee consisted of the following Members:**

*Chair:* †DR RUPA HUQ

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| † Abrahams, Debbie ( <i>Oldham East and Saddleworth</i> )<br>(Lab) | † Lamont, John ( <i>Berwickshire, Roxburgh and Selkirk</i> )<br>(Con)                                      |
| † Baynes, Simon ( <i>Clwyd South</i> ) (Con)                       | † Nici, Lia ( <i>Great Grimsby</i> ) (Con)   |
| Betts, Mr Clive ( <i>Sheffield South East</i> ) (Lab)              | † Onwurah, Chi ( <i>Newcastle upon Tyne Central</i> ) (Lab)  |
| † Bristow, Paul ( <i>Peterborough</i> ) (Con)                      | † Richards, Nicola ( <i>West Bromwich East</i> ) (Con)   |
| † Caulfield, Maria ( <i>Lewes</i> ) (Con)                          | Thompson, Owen ( <i>Midlothian</i> ) (SNP)   |
| † Clarke-Smith, Brendan ( <i>Bassetlaw</i> ) (Con)                 | † Warman, Matt ( <i>Parliamentary Under-Secretary of<br/>State for Digital, Culture, Media and Sport</i> ) |
| † Davison, Dehenna ( <i>Bishop Auckland</i> ) (Con)                | † Western, Matt ( <i>Warwick and Leamington</i> ) (Lab)  |
| † Foy, Mary Kelly ( <i>City of Durham</i> ) (Lab)                  | Kevin Maddison, <i>Committee Clerk</i>   |
| † Gibson, Peter ( <i>Darlington</i> ) (Con)                        | † <b>attended the Committee</b>  |
| † Jones, Darren ( <i>Bristol North West</i> ) (Lab)                |  |

## Fifth Delegated Legislation Committee

*Tuesday 10 November 2020*

[DR RUPA HUQ *in the Chair*]

### **Draft Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020**

**The Chair:** Before we begin, I would like to remind Members of the social distancing requirements; available spaces are clearly marked. If any Member wishes to speak from the Public Gallery, please move to a microphone.

2.30 pm

**The Parliamentary Under-Secretary of State for Digital, Culture, Media and Sport (Matt Warman):** I beg to move,

That the Committee has considered the draft Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020.

It is a pleasure to serve under your chairmanship, Dr Huq.

I am pleased to introduce this statutory instrument, which was laid before the House on 12 October. The draft regulations are being introduced to transpose the European electronic communications code directive—I have a copy here—into domestic law, as we are committed to under the European Union withdrawal agreement.

The regulations are a crucial milestone towards the delivery of our digital ambitions and will play a significant role in aiding the delivery of our manifesto commitments and ensure a future-proofed telecommunications regime. The changes will facilitate competition and a pro-investment regulatory environment, supporting gigabit capable roll-out across the United Kingdom. UK consumers will benefit from better information to make informed decisions. They will have stronger contract rights and will be able to switch their services more easily than before, which will help to support competition.

The regulations also ensure that the universal services remain affordable for consumers with low incomes or other specific needs.

The measures sit alongside those being implemented by Ofcom under its existing powers. It is implementing new rules on information requirements for contracts, contract duration and termination rules, and broadband switching rules. They include rules banning providers from selling locked devices, such as mobile phones, ensuring a consumer's new provider leads any switch, strong contract exit rights and short summaries of main contract terms to help customers make more informed decisions. Although we recognise that industry will need to make changes as it responds to covid-19, Ofcom will allow providers a further year for these measures to be in place during this exceptional period.

Hon. Members should note that a small number of measures in the directive are not being implemented via the draft regulations. Some measures are being implemented through other legislation and some have already been put in place, including those relating to car radios via the Road Vehicles (Approval) Regulations 2020.

We are further considering how to take forward a limited number of measures applicable to 'over the top' services, including instant messenger and email communications. We have given Ofcom powers to gather further information on those services in the draft regulations.

The draft regulations introduce measures to drive investment in future-proofed networks and communications services through sustainable competition; support of efficient and effective use of radio spectrum; and the provision of a higher level of consumer protection. Although we are required to implement the changes, they are legislative changes that we would want to make in any case. The UK played a crucial role in the negotiations and indeed shaped the wider regulatory framework for telecoms that the directive builds on.

There are a number of provisions that promote competition and are pro-investment. Ofcom will be able to impose conditions to ensure connectivity and choice for consumers where it is challenging for competition to emerge in an area that already has a network. The SI also provides Ofcom with the power to ensure that another provider can access a dominant provider's physical infrastructure assets—the ducts and poles that house the network—to ensure choice and competition, irrespective of the market scope.

We will enable Ofcom to impose longer-term, pro-investment regulation, such as implementing longer market review periods, which are focused on promoting higher capacity networks. We will support the availability of build plan information to industry and the Government better to inform any roll-out plans. We will enable co-operation between network providers, which should support those primarily rural deployments.

The measures are essential if we are to create the right environment to encourage investment, and ensure that Ofcom has the necessary powers to promote competition and protect consumers. The draft regulations include measures that will enhance consumer protections. Alongside Ofcom, the Government are implementing measures to help ensure that UK consumers will benefit from better information, stronger contract rights and the ability to switch services much more easily than before.

The draft regulations will also support the efficient and effective use of radio spectrum—the airwaves over which communication signals are transmitted—which will promote competition and the timely roll-out of 5G services and the widespread availability of mobile connectivity.

The draft regulations also contain measures relating to the universal service obligation which ensure that a wide range of telecoms services remain affordable for consumers with low incomes or other specific needs. That gives consumers a safety net to ensure full participation in society and the economy.

The SI also provides powers for the Secretary of State to establish a mobile universal service obligation in the future, if that is deemed necessary, and ensures that people who use legacy USO services such as pay phones,

telephone directories, fax machines and particular methods of billing will continue to be able to do so. Additionally, the SI introduces measures that update the regime for social tariffs for telephony and broadband, should they be required. They will ensure that consumers with low incomes or other specific social needs are able to access universal services at affordable prices, where the market does not provide those commercially, or on a voluntary basis.

The importance of electronic communications has been underlined during the covid-19 pandemic. Telecoms is now more critical than ever for the country, with a large proportion of the population working from home. Combined with future expectations about new technologies and services, including 5G, building future-proofed networks will be essential to our future economy.

The changes that we are introducing today represent a significant step forward in helping to achieve our digital ambitions for the country.

2.36 pm

**Chi Onwurah** (Newcastle upon Tyne Central) (Lab): It is a real pleasure to serve under your chairship, Dr Huq.

I thank the Minister for his opening remarks on this very important SI relating to our critically important telecoms sector. The UK telecoms industry contributes £32 billion to the economy, directly provides nearly a quarter of million jobs and has an impact on all of our lives, as we have really experienced during the pandemic. It is so important that we get regulation right for a sector that contributes so much to our economy, as well as to our work and social lives. I have to declare an interest, Dr Huq; before becoming an MP, I worked as head of telecoms technology at Ofcom, the communications regulator, where I literally spent six years with the Communications Act 2003 on my desk, as I worked on competition and investment in broadband networks. I could spend a lot of time discussing the provisions of the SI, but I will not detain the Committee longer than is necessary.

The framework that I worked with was a function of four EU directives, namely the framework, access, authorisation and universal service directives, all of which have been in effect in EU nations since 2002. Today's SI implements aspects of the European electronic communications code, which I shall refer to as the EECC. That combined and revised the former four directives in line with the UK's obligations under the withdrawal agreement, negotiated and signed by the Government.

As the Minister said, the EECC aims to promote infrastructure deployment and take-up of very high capacity networks through emphasising the necessity

'to give appropriate incentives for investment in new very high capacity networks that support innovation in content-rich internet services and strengthen the international competitiveness of the Union'.

The EECC's general objective in article 3 states that the national regulatory authority, in our case Ofcom, should 'promote connectivity and access to, and take-up of, very high capacity networks, including fixed, mobile and wireless networks, by all citizens and businesses of the Union.'

Ofcom's principle duty, as I am sure the Minister is aware, is to

'further the interests of citizens and consumers, where appropriate by promoting competition.'

As I said, I had the 2003 Act on my desk, and consulted it regularly to understand what Parliament was aiming for when it set out that Act. What assessment has the Minister made of how the new duty with regard to investment will work alongside Ofcom's existing duties? For example, how does investment and the citizen interest interact? I know that when Ofcom is looking at potential conflicts of interest, shall we say, between investment in networks and citizens' rights and duties, it will want to refer to this debate as well as to the SI to understand what Parliament was driving at. Has the Minister assessed how the new duty will interplay with existing duties?

The EECC also aims to promote competition and to develop further the digital single market. During my six years at Ofcom, it was established that it is infrastructure competition, in which I am a great believer, as opposed to services competition that really drives investment, innovation and choice.

**Matt Warman** *indicated assent.*

**Chi Onwurah:** I see that the Minister is nodding, so that implies that he agrees that infrastructure competition is the aim.

The powers introduced by the EECC are designed to shift the market from reliance on access to the incumbent providers' infrastructure, in our case Openreach, to an environment that can better support investment from both incumbents and new entrants to the market. To achieve that, article 67 sets out a recommendation for Ofcom to carry out market analysis, including provision to increase the maximum review cycle from three years, as it was when I worked there, to five years. Am I right in thinking that the intention is that that will promote competition by providing more time for network operators to earn returns on their investment, thus boosting investment and therefore competition? Is that effectively the only strategy to promote competition? Is that based on the belief that investment alone will lead to a greater and more competitive market? I am not sure that is the case. What guidance will be offered on how the returns on that investment should be regulated?

I am concerned that the emphasis on promoting investment incentivised by high returns may damage consumer interest, because it is the consumers who will be paying those returns, and citizens in the case of services from Government and so on. Can the Minister assure me that that will not be the case? That comes back to how the duty to promote investment will play with the duty to promote the interests of the consumers and citizens. Can he effectively say that the interests of the consumers and citizens will always take priority and be paramount, and that we do not seek to promote investment simply by ensuring excessive returns, so that companies invest in networks as opposed to other investments that may have higher returns, for example in financial services? I hope that we can hear about what consumer groups have said on that point.

I am pleased to see that end-to-end provisions of the code seek to protect consumers with wide-ranging consumer rights. As the Minister said, articles 98 to 116 provide protections against cybercrime, enhance user rights when switching internet access services, ensure minimum standards across member states, establish a universal

[*Chi Onwurah*]

service, which ensures the availability of broadband and voice communications, and ensure that all users have free access to the universal European 112 emergency services number.

Given that we have left the EU, and indeed the transition period ends on 31 December, am I right in thinking that the price cap for intra-EU calls will no longer be enjoyed by UK consumers, and that as we are no longer in the EU, there will be no price cap on calls to the EU from UK phones?

The terms of the SI do a lot, but as the Minister implied, the measure does not fully implement the EECC requirements. In July, the Government stated that they would ‘deprioritise’ aspects of the EECC, including key consumer and market issues due to the pandemic. Those issues include all obligations relating to number-independent interpersonal communication services—NI-ICS—the requirement for communications service providers not to discriminate against end-users access to telecoms on the basis of their nationality and provisions regarding Ofcom’s independence and powers to issue penalties. The Government have stated that some of these measures are already covered by existing law, but can the Minister confirm to me today that the deprioritisation of such obligations is not in breach of the withdrawal agreement? Does this divergence from European Union law constitute a statement from the Government that they are ruling out future participation in a digital single market? Will these deprioritised services become a priority once the pandemic is over, or are the Government ruling out adopting these measures completely?

As a result of the adoption of the EECC measures, Ofcom will be granted many new powers, which the Minister referred to, such as network forecasting, promoting gigabit-capable networks, co-operation and competition in hard-to-reach areas, easier switching for consumers and improved regulation of bundled contracts, and oversight of the pro-investment aims that the Government and the EECC have publicised. These measures were confirmed by the Government in July, but they did not tell us what further resources Ofcom would be provided with as it takes on these responsibilities. Has the Minister spoken with Ofcom about additional resources? Will he confirm today that Ofcom will be provided with what it needs to meet those obligations? How will Ofcom be measured against its duty to promote connectivity in gigabit-capable networks? Will that fall under the Minister’s direct oversight or will he leave it to the board? Will we have a report of some kind to Parliament?

In the UK, this SI is only part of the implementation of the EECC. We must also acknowledge Ofcom’s general conditions, which will be amended to reflect the obligations. In its statement of 27 October, Ofcom set out the end-user consumer protections and confirmed the UK’s intention to

“ban mobile providers from selling locked mobile devices”

by December 2021, to extend rules on accessibility for disabled customers by December 2021, to introduce new rules for bundles that include other services or equipment sold with a communication service by December 2021, to ensure better contract information and stronger termination rights by June 2022, and to introduce improved switching processes for broadband by December 2022.

Will the Minister reaffirm that these plans will remain in place following the end of the transition period and will not be rolled back on, as it were?

I finish on a point raised with me by telecoms experts, representatives of the industry and business. This SI and the transposition into UK law are obligatory under the European Union (Withdrawal Agreement) Act 2020, but after 1 January 2021, once the transition period has ended, they will no longer be obligatory and could be overwritten. Will the Minister give a clear commitment that that will not happen? Will the Government set out an updated long-term digital strategy, providing stability and security in the sector?

The importance of working closely with our friends and partners in the European Union cannot overstated, particularly in telecommunications, for communication providers and in the burgeoning social media and application sectors. Our economy, businesses and consumer protections are reliant on our close relationship with the European Union, and our telecoms services benefit from access to European Union markets. While we might not be able to holiday in many places at the moment, we all look forward to the time when we will be making phone calls from France, Denmark or wherever. As we leave the transition period, our future remains uncertain, as the Government’s botched negotiations have left us somewhat in limbo. The Government have presided over 10 wasted years for UK telecoms infrastructure, whereas the previous Government—I will not labour this point—understood the importance of supporting investment and infrastructure competition, which led to the greatest expansion in infrastructure competition, with unbundled local loop.

The intentions behind this SI, and behind the EECC, are good and we will not oppose it, but the Government must take charge and upgrade our telecoms infrastructure, and provide reassurances on our consumer protections. I thank the Minister in advance for his answers. I know that I have asked a lot of questions. If he cannot answer them all today, I hope he will agree to write to me, because I am very interested to know the answers and it is in the interests of scrutinising this legislation that they should be responded to.

2.50 pm

**Darren Jones** (Bristol North West) (Lab): I did not intend to contribute to this debate, but the Minister’s opening remarks have moved me to do so. First, I would like to declare my interests: previously I was a private practice lawyer and an in-house lawyer at BT, lobbying and working on the electronic communications code. I also chair the PICTFOR—Parliamentary Internet, Communications and Technology Forum—all-party parliamentary group, whose membership, as the Minister knows well, includes many companies interested in this legislation.

I would like to make one short contribution. I was interested to hear the Minister say that he has opened the door to a universal service obligation on mobile connectivity, with an intention, I think he said, to introduce further legislation in due course. We know from the pandemic, but also from before that, that many families on low incomes who cannot afford broadband connectivity rely on their mobile connectivity to access online education, shopping, social media and

other types of services. I would be interested to hear from the Minister what intention the Government have to bring forward that legislation for a USO on mobile connectivity.

2.51 pm

**Matt Warman:** I am tempted to take up the offer made by the hon. Member for Newcastle upon Tyne Central and say that I will write to her on everything. I will not do that, but I shall try to rattle through a lot of what she asked.

In short, the regulations crystallise the existing factors, with which she is so familiar, that have to be taken into account when assessing whether a market has competition problems and would require Ofcom intervention. As she knows, that requires Ofcom to consider innovation, competition and future networks when imposing those conditions. Much of this is about crystallising in legislation the good practice that we already see in Ofcom.

The hon. Lady is right to say that longer review periods potentially promote greater certainty around the really significant investment in infrastructure that we are seeing and would like to see more of. There is an important balance as to making sure that we do not entrench monopolies, and that we get the right and fair degree of certainty for investors so that they can make a return, but she is right to ask: are consumers at the heart of everything that Government and Ofcom do? Of course they are, and they will continue to be so. It is in consumers' interests to have sustainable companies making pragmatic investment decisions, but ultimately it is the consumer that has to be at the heart of all of this.

The hon. Lady asked briefly about mobile roaming. She is right that when we leave the European Union we will be under different rules. In theory that will leave companies able to make decisions on roaming that they are not currently able to make, but the Government will continue to engage intensively on that. We have no indication from companies—they themselves have said it publicly—that they have any intention of changing the landscape in the near future.

**Chi Onwurah:** I thank the Minister for his approach in responding to my questions. Intra-EU phone calls are about making calls from one European country to another, and not necessarily about roaming. Will he also confirm that he has discussed that point, or will be discussing it, with providers in the UK so that we can retain that benefit if possible?

**Matt Warman:** Yes. The hon. Lady is absolutely right that that is also the case, and we continue to take an interest in exactly that. On that front, there are no indications of immediate changes either.

The hon. Lady mentioned what we call 'over the top' services—number-independent services that translate to calls via WhatsApp, Facebook Messenger and the like. As I said, we are not dealing with the matter immediately, but we are looking at the best way forward for those with Ofcom. Similarly, where issues have been deprioritised during the pandemic, that is not to suggest that they are not important. As I said in my opening remarks, the UK was key to the original negotiations and we would not seek to deprioritise them other than in the exceptional circumstances in which we find ourselves.

The hon. Lady asked about the resources for Ofcom. In close collaboration with Ofcom, we have asked what, if any, further resources it feels it needs; at this stage, the answer is that it is content with what it has. Obviously, we want it to be resourced properly, and we will make sure that it continues to be so.

The hon. Lady also asked about gigabit roll-out and that is something on which the Government work closely with Ofcom. It is ultimately my responsibility and that of Department for Digital, Culture, Media and Sport, and indeed a priority for this Government, to see that roll-out go as far and as fast as it possibly can. To that end, no, we will not be rolling back on any of the provisions in the draft regulations as soon as we end the transition period. We welcome the measures and are proud to have played a significant part in negotiating them with the EU, because we believe that they will drive forward important ambitions for this country and for all our citizens who, as we have heard, increasingly rely on digital connectivity.

**Chi Onwurah:** On Ofcom's resources, and I have declared an interest, I am somewhat surprised that it will take on the additional powers and responsibilities under the SI without any additional resources. We know that at some point, when we get the online harms Bill—again at some point—Ofcom will be involved in the regulation of high risk vendors. A number of additional requirements are being placed upon it, so will the Minister discuss the need for additional resources in the round with other Ministers whose responsibilities come under Ofcom's purview? I am quite convinced that Ofcom does not have the resources it needs to take up all those additional duties.

**Matt Warman:** The hon. Lady makes an entirely reasonable point that Ofcom will be taking on a number of additional duties in the future, and considering its resourcing needs in the round is absolutely vital, but on this relatively narrow point, Ofcom is content with the resources it has.

In response to the hon. Member for Bristol North-West, the draft regulations give us the powers to consider what a mobile USO might look like. We do not immediately intend to take that forward, but it is a statement of the obvious that more and more households, especially with the growth of 5G, will be able to rely on a mobile service rather than anything else. Given that the USO is really important, the draft regulations give us the power to go further but we are not announcing anything as yet, but the hon. Gentleman's Select Committee may wish to take an interest, I suspect.

I commend the regulations to the Committee. They are an important step forward, and I am pleased to hear that the Opposition do not oppose them, because I think there is real consensus across the House on the value of digital connectivity. The Government's ambition is unashamedly extraordinary in going as far as we possibly can with gigabit connectivity. The regulations allow us to continue to drive that forward at the fastest pace we possibly can, and I commend them to the Committee.

*Question put and agreed to.*

2.59 pm

*Committee rose.*

