

## Digital Economy Bill:

### Further explanation of government amendments tabled on 10 October 2016

*Note: amendment numbers below refer to numbers as tabled by the government and may not correspond with numbers on the notice of amendments issued by the House authorities.*

#### Electronic communications code

Amendment Number (as tabled)	Clause(s) Amended	Purpose
1	Clause 5	Schedule 2 to the Bill provides transitional provision to allow a smooth transition from the existing electronic communications code to the new code. The new code is not retrospective and existing agreements between communications providers and landowners will continue. To ensure smooth transition, the power to make further transitional provision needs slight alteration to allow inclusion of a <i>saving</i> provision for a transitional period.
12, 13, 14	Schedule 1	Technical amendments to make clear that already installed electronic communication apparatus may be kept on land, and to ensure consistency of drafting of the rights.
21, 22	Schedule 1	Paragraph 36 of Schedule 1 sets out when a person has a right to require the removal of electronic communication apparatus from their land. These technical amendments makes it clear that this provision relates to agreements under the new code. Separate transitional provision exists for pre-existing arrangements under the old code.
<b>24, 25,</b>  (and consequential amendments 15, 26, 27, 28, 29, 30, 32, 33, 34, 35)	Schedule 1	<p>These amendments concern the rights of landowners of land which is neighbouring to land hosting electronic communication apparatus.</p> <p>Where a person's access to their land is obstructed by electronic communications apparatus placed on neighbouring land, and the person has not agreed to his access being so obstructed, <b>amendment 24</b> will allow the removal of the apparatus.</p> <p><b>Amendment 25</b> enables a person to require an operator to disclose whether it owns apparatus or</p>

		<p>has code rights relevant to the neighbouring land. This is necessary to allow the person to enforce their rights created by amendment 21.</p> <p><b>Amendments 15, 26 to 30 and 32 to 35</b> are all consequential to government amendments 10 and 11. They ensure that rights extend to neighbours.</p>
<p><b>36,</b> (and consequential amendments 17 and 31)</p>	Schedule 1	<p>Paragraph 38 of Schedule 1 explains how a person can enforce the removal of electronic communications apparatus from land, firstly by giving the operator notice and then by making an application to a court. Amendment 36 prevents the court ordering the removal of apparatus if there is an outstanding application to the court to keep the apparatus installed.</p> <p><b>Amendments 17 and 31</b> is consequential.</p>
<p><b>37,</b> (and consequential amendments 16, 18, 23, 40, 41, 43, 45)</p>	Schedule 1	<p><b>Amendment 37</b> inserts provision into the code for the right to require removal of electronic communications apparatus to apply (in addition to those with an interest in land) to a third party whose right to require removal of apparatus arises from an alternative legal basis, including other statutes.</p> <p>Following further technical review and discussion with stakeholders, this amendment is necessary to ensure that apparatus can be removed, when required by other legislation or otherwise, in all appropriate circumstances.</p> <p><b>Amendments 16, 18, 23, 40, 41, 43 and 45</b> are consequential.</p>
<p><b>38</b> (and consequential amendments 19, 20, 39, 42, 44)</p>	Schedule 1	<p><b>Amendment 38</b> adds in new paragraph 38C to specify when it is possible to make an application for land to be restored to its condition before the code right was exercised. This restoration specifically does not involve the removal of apparatus which is catered for elsewhere.</p> <p><b>Amendments 19, 20, 39, 42 and 44</b> are consequential to 38. They ensure consistency in the rights for requiring restoration of land and recuperation of resulting costs from the operator.</p>

46	Schedule 2	<p>Schedule 2 concerns transitional arrangements to ensure a smooth transition from the “existing code” to the “new code”.</p> <p><b>Amendment 46</b> ensures that the definition of a “subsisting agreement” includes both an agreement to execute works to install apparatus as well as an agreement to confer a right to obstruct access.</p>
47	Schedule 2	<p><b>Amendment 47</b> inserts a clarificatory sub-paragraph that a person who was bound by a right according to a subsisting agreement in the existing code will continue to be treated as bound by that agreement, in the new code.</p>
48, 49, 50	Schedule 2	<p>These technical amendments to transitional provisions clarify that references in the new code to a “code right”, in relation to subsisting agreements, mean the corresponding rights to do the things “for the statutory purposes” referred to in paragraphs 2 and 3 of the existing code.</p>
51	Schedule 2	<p>Part 5 of the new code makes provision on the termination and modification of agreements. Paragraph 6 of Schedule 2 provides transitional provision for Part 5.</p> <p>Following discussion with stakeholders, this amendment clarifies in what circumstances subsisting agreements will be subject to the security of tenure provisions of Part 5 of the code and when they will be subject to the Landlord and Tenant Act 1954, and thus avoids conflict between those separate statutory regimes.</p>
53 (and consequential amendment 52)	Schedule 2	<p>This amendment simplifies the process for identifying whether the court procedures of the existing code or new code applies to disputes in circumstances where the transitional provisions apply. If an application has been made to the court before the new code comes into force, the procedures under the existing code apply, but any resultant order takes effect as an order made under the new code.</p>
54	Schedule 2	<p>This amends the process under the transitional provisions for requiring the removal of apparatus. The effect is to provide a simplified process. If a</p>

		<p>person gives a notice under paragraph 21 of the existing code requiring the removal of apparatus, the procedures of paragraph 21 of the existing code are continued, notwithstanding repeal of the existing code. An operator who seeks new rights to keep the apparatus installed is however treated as seeking rights not only under the existing code but also under the provisions of the transitional provisions and the new code.</p>
55, 56	Schedule 3	<p>On introduction the Bill contained some of the necessary consequential amendments to other legislation. In the light of our further preparatory work, these amendments supplement those and replace Schedule 3 with a more comprehensive set of consequential amendments to assist industry as it prepares for the new legislation.</p>

## Spectrum

2 to 6	Clause 8	<p>The Bill provides for a penalty scheme for contravention of restrictions or conditions subject to which a dynamic spectrum access service has been registered. Such a penalty must not exceed 10% of the relevant amount of gross revenue but for a continuing contravention a daily penalty may be applied in certain circumstances of up to £20,000 per day.</p> <p>These amendment makes clear that a penalty based on the relevant amount of gross revenue only applies where the daily penalty does not apply.</p>
7	Clause 10	<p>Clause 10 of the Bill ensures that Ofcom can apply penalties for a wider range of contravention of licences. The clause already contains consequential provision. This technical amendment makes further consequential provision to allow an appeal to the Competition Appeal Tribunal against a penalty, except (as now) where the breach relates to a relevant multiplex contravention.</p>
8 to 11	Clause 14	<p>Clause 14 of the Bill concerns the time limits for bringing a prosecution for certain summary</p>

		<p>offences under the Wireless Telegraphy Act 2006 ("the 2006 Act"). The Bill provides that these time limits have effect despite provision in other legislation (the Magistrates' Courts Act 1980 and equivalent provision in Scotland and Northern Ireland).</p> <p>These technical amendments ensure that the time limits in section 41(7) of the 2006 Act (procedure for prosecutions) also have effect despite these provisions in other legislation. They also make provision, in relation to Scotland, about when proceedings are deemed to have commenced for the purposes of the time limits in section 41(7) and new subsection (3B) of section 107.</p>
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**Department for Culture, Media and Sport**  
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