



House of Commons
10 October 2016 5:19 pm
PUBLIC BILL COMMITTEE

DIGITAL ECONOMY BILL

Matt Hancock

Clause 5, page 3, line 23, leave out “or transitory” and insert “, transitory or saving” 1

Member’s explanatory statement

The amendment adds power to make saving provision in connection with the coming into force of the new electronic communications code.

Matt Hancock

Clause 8, page 8, line 16, leave out “imposed” and insert “specified”. 2

Member’s explanatory statement

This amendment reflects the fact that a notification under new section 53E of the Wireless Telegraphy Act 2006 will specify a penalty rather than imposing it.

Matt Hancock

Clause 8, page 8, line 19, at end insert— 3

- “() The amount of any other penalty specified under this section is to be such amount, not exceeding 10% of the relevant amount of gross revenue, as OFCOM think—
- (a) appropriate, and
 - (b) proportionate to the contravention in respect of which it is imposed.”

Member’s explanatory statement

This amendment ensures that the penalty based on the relevant amount of gross revenue applies only where the daily default penalty specified under new section 53F(4) of the Wireless Telegraphy Act 2006 does not apply.

Matt Hancock

Clause 8, page 9, line 21, leave out subsection (1). 4

Member’s explanatory statement

This amendment is consequential on amendment 3.

Matt Hancock

Clause 8, page 9, line 25, leave out “this section” and insert “section 53F”. 5

Member’s explanatory statement

This amendment is consequential on amendments 3 and 4.

Digital Economy Bill, continued

Matt Hancock

6

Clause 8, page 12, line 21, after “penalty” insert “specified”.

Member’s explanatory statement

This amendment brings new section 53L(5) of the Wireless Telegraphy Act 2006 into line with new section 53F(5) of that Act.

Matt Hancock

7

Clause 10, page 16, line 7, at end insert—

“() In Schedule 8 to that Act (decisions not subject to appeal), at the end of paragraph 44 insert “for a relevant multiplex contravention”.

Member’s explanatory statement

This allows an appeal to the Competition Appeal Tribunal against a penalty imposed by OFCOM under section 42 of the Wireless Telegraphy Act 2006 for a breach of a wireless telegraphy licence, except where the breach relates only to broadcast content (in which case, as at present, an appeal to the Tribunal will not be possible).

Matthew Hancock

8

Clause 14, page 17, line 10, leave out “and (8)”

Member’s explanatory statement

This is consequential on amendment 11.

Matthew Hancock

9

Clause 14, page 17, line 18, leave out “Subsections (3A) and (3B)” and insert “Section 41(7) and subsection (3B) above”

Member’s explanatory statement

Subsection (3C), inserted in section 107 of the Wireless Telegraphy Act 2006 by the clause, lists enactments displaced by the time limits mentioned in subsections (3A) and (3B). Subsection (3A) merely refers to section 41(7), and the amendment substitutes a direct reference to that provision for the reference to subsection (3A).

Matthew Hancock

10

Clause 14, page 17, line 26, at end insert—

“(3D) In relation to proceedings in Scotland, subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995 (date when proceedings deemed to be commenced for the purposes of that section) applies also for the purposes of section 41(7) and subsection (3B) above.”

Member’s explanatory statement

The amendment adds provision about when proceedings in Scotland are deemed to be commenced for the purposes of the time limits in section 41(7) and new subsection (3B) of section 107 of the Wireless Telegraphy Act 2006.

Matthew Hancock

11

Clause 14, page 17, line 31, at end insert—

“() for subsection (8) substitute—

Digital Economy Bill, continued

“(8) For further provision about prosecutions see section 107.””

Member’s explanatory statement

Existing section 41(8) of the Wireless Telegraphy Act 2006 applies to section 41(7) and is superseded by section 107(3C) inserted by the clause (see amendment 9). Amendment 10 also inserts provision applying to section 41(7) into section 107. Amendment 11 therefore substitutes a subsection referring the reader to section 107.

Matt Hancock

12

Schedule 1, page 82, line 29, leave out “and keep”

Member’s explanatory statement

The code will deal with cases where apparatus has already been installed on land. Amendments 12, 13 and 14 therefore provide for installing apparatus and keeping apparatus on land to be treated separately, and for rights described in sub-paragraphs (c), (ca) and (d) to be described consistently with this.

Matt Hancock

13

Schedule 1, page 82, line 30, at end insert—

“(aa) to keep installed electronic communications apparatus which is on, under or over the land,”

Member’s explanatory statement

The code will deal with cases where apparatus has already been installed on land. Amendments 12, 13 and 14 therefore provide for installing apparatus and keeping apparatus on land to be treated separately, and for rights described in sub-paragraphs (c), (ca) and (d) to be described consistently with this.

Matt Hancock

14

Schedule 1, page 83, line 2, leave out from “installation” to end of line 4 and insert “of electronic communications apparatus on, under or over the land or elsewhere;

(ca) to carry out any works on the land for or in connection with the maintenance, adjustment, alteration, repair, upgrading or operation of electronic communications apparatus which is on, under or over the land or elsewhere,”

Member’s explanatory statement

The code will deal with cases where apparatus has already been installed on land. Amendments 12, 13 and 14 therefore provide for installing apparatus and keeping apparatus on land to be treated separately, and for rights described in sub-paragraphs (c), (ca) and (d) to be described consistently with this.

Matt Hancock

15

Schedule 1, page 86, line 26, leave out “The reference in sub-paragraph (2)” and insert “A reference in this code”

Member’s explanatory statement

This applies the extended meaning of “means of access to or from land” across the code. It is consequential on amendment 24.

Digital Economy Bill, continued

Matt Hancock

Schedule 1, page 95, line 2, after “36” insert “or as mentioned in paragraph 38A(1)” **16**

Member’s explanatory statement

This is consequential on amendment 37.

Matt Hancock

Schedule 1, page 95, line 10, leave out “or” and insert “and” **17**

Member’s explanatory statement

This is consequential on amendment 36.

Matt Hancock

Schedule 1, page 102, line 1, leave out “with an interest in land” **18**

Member’s explanatory statement

This is consequential on amendment 37.

Matt Hancock

Schedule 1, page 102, line 3, at end insert “or the restoration of land,” **19**

Member’s explanatory statement

This is consequential on amendment 38.

Matt Hancock

Schedule 1, page 102, line 6, after “removal” insert “of apparatus or restoration of land” **20**

Member’s explanatory statement

This is consequential on amendment 38.

Matt Hancock

Schedule 1, page 102, line 14, after “never” insert “since the coming into force of this code” **21**

Member’s explanatory statement

This provides for a condition for having a right to require removal of apparatus to be met if the only right there has been to keep the apparatus on the land was a right that came to an end under the code that Schedule 1 to the Bill replaces, or that ceased under that code to be binding on the landowner.

Matt Hancock

Schedule 1, page 102, line 24, at end insert “, or
() where the right was granted by a lease to which Part 5 of this code does not apply.” **22**

Member’s explanatory statement

Part 5 of the code (termination of agreements creating code rights) does not apply to certain leases governed by landlord and tenant law. The amendment provides for the ending of code rights under such a lease and under Part 5 to be treated in the same way for the purposes of rights to require

Digital Economy Bill, continued

removal of apparatus.

Matt Hancock

23

Schedule 1, page 103, line 17, at end insert—

“() This paragraph does not affect rights to require the removal of apparatus under another enactment (see paragraph 38A).”

Member’s explanatory statement

This is consequential on amendment 37.

Matt Hancock

24

Schedule 1, page 103, line 17, at end insert—

“When does a landowner or occupier of neighbouring land have the right to require removal of electronic communications apparatus?”

- 36A (1) A landowner or occupier of any land (“neighbouring land”) has the right to require the removal of electronic communications apparatus on, under or over other land if both of the following conditions are met.
- (2) The first condition is that the exercise by an operator in relation to the apparatus of a right mentioned in paragraph 13(1) interferes with or obstructs a means of access to or from the neighbouring land.
- (3) The second condition is that the landowner or occupier of the neighbouring land is not bound by a code right within paragraph 3(f) entitling an operator to cause the interference or obstruction.
- (4) A landowner of neighbouring land who is not the occupier of the land does not meet the second condition if—
- (a) the land is occupied by a person who—
 - (i) conferred a code right (which is in force) entitling an operator to cause the interference or obstruction, or
 - (ii) is otherwise bound by such a right, and
 - (b) that code right was not conferred in breach of a covenant enforceable by the landowner.
- (5) In the application of sub-paragraph (4)(b) to Scotland the reference to a covenant enforceable by the landowner is to be read as a reference to a contractual term which is so enforceable.”

Member’s explanatory statement

New paragraph 36A makes provision for a landowner or occupier of neighbouring land to have a right to require removal of apparatus that obstructs or interferes with a means of access to that land.

Matt Hancock

25

Schedule 1, page 103, line 27, at end insert—

“(1A) A landowner or occupier of neighbouring land may by notice require an operator to disclose whether—

- (a) the operator owns electronic communications apparatus on, under or over land that forms (or, but for the apparatus, would form) a means of

Digital Economy Bill, continued

access to the neighbouring land, or uses such apparatus for the purposes of the operator's network, or

- (b) the operator has the benefit of a code right entitling the operator to keep electronic communications apparatus on, under or over land that forms (or, but for the apparatus, would form) a means of access to the neighbouring land."

Member's explanatory statement

This is consequential on amendment 24. Paragraph 37(1A) provides for a landowner or occupier of neighbouring land to have the rights in paragraph 37 to require an operator to disclose whether it owns apparatus or has code rights relevant to the neighbouring land.

Matt Hancock

Schedule 1, page 103, line 33, after "(1)" insert "or (1A)"

26

Member's explanatory statement

This is consequential on amendment 25.

Matt Hancock

Schedule 1, page 103, line 34, after "landowner" insert "or occupier"

27

Member's explanatory statement

This is consequential on amendment 25.

Matt Hancock

Schedule 1, page 103, line 37, after "landowner" insert "or occupier"

28

Member's explanatory statement

This is consequential on amendment 25.

Matt Hancock

Schedule 1, page 103, line 38, after "landowner" insert "or occupier"

29

Member's explanatory statement

This is consequential on amendment 25.

Matt Hancock

Schedule 1, page 103, line 47, after "landowner" insert "or occupier"

30

Member's explanatory statement

This is consequential on amendment 25.

Matt Hancock

Schedule 1, page 104, line 2, leave out from beginning to "requiring" in line 9 and insert—

31

"(1) The right of a landowner or occupier to require the removal of electronic communications apparatus on, under or over land, under paragraph 36 or 36A, is exercisable only in accordance with this paragraph.

(2) The landowner or occupier may give a notice to the operator whose apparatus it is"

Digital Economy Bill, continued

Member's explanatory statement

The amendment clarifies that a landowner or occupier can require removal of electronic communications apparatus only in accordance with the procedure set out in paragraph 38.

Matt Hancock

Schedule 1, page 104, line 23, after "landowner" insert "or occupier"

32

Member's explanatory statement

This is consequential on amendment 24.

Matt Hancock

Schedule 1, page 104, line 33, after "landowner" insert "or occupier"

33

Member's explanatory statement

This is consequential on amendment 24.

Matt Hancock

Schedule 1, page 104, line 40, after "landowner" insert "or occupier"

34

Member's explanatory statement

This is consequential on amendment 24.

Matt Hancock

Schedule 1, page 104, line 41, after "landowner" insert "or occupier"

35

Member's explanatory statement

This is consequential on amendment 24.

Matt Hancock

Schedule 1, page 104, line 42, at end insert—

36

"() On an application under sub-paragraph (6) or (7) the court may not make an order in relation to apparatus if an application under paragraph 19(3) has been made in relation to the apparatus and has not been determined."

Member's explanatory statement

This provides that the court cannot order removal of apparatus under Part 6 of the code if there is an outstanding application under paragraph 19 (to keep the apparatus installed) that has not been determined.

Matt Hancock

Schedule 1, page 104, line 42, at end insert—

37

"How are other rights to require removal of apparatus enforced?"

38A (1) The right of a person (a "third party") under an enactment other than this code, or otherwise than under an enactment, to require the removal of electronic communications apparatus on, under or over land is exercisable only in accordance with this paragraph.

(2) The third party may give a notice to the operator whose apparatus it is, requiring the operator—

Digital Economy Bill, *continued*

- (a) to remove the apparatus, and
 - (b) to restore the land to its condition before the apparatus was placed on, under or over the land.
- (3) The notice must—
- (a) comply with paragraph 85 (notices given by persons other than operators), and
 - (b) specify the period within which the operator must complete the works.
- (4) The period specified under sub-paragraph (3) must be a reasonable one.
- (5) Within the period of 28 days beginning with the day on which notice under sub-paragraph (2) is given, the operator may give the third party notice (“counter-notice”)—
- (a) stating that the third party is not entitled to require the removal of the apparatus, or
 - (b) specifying the steps which the operator proposes to take for the purpose of securing a right as against the third party to keep the apparatus on the land.
- (6) If the operator does not give counter-notice within that period, the third party is entitled to enforce the removal of the apparatus.
- (7) If the operator gives the third party counter-notice within that period, the third party may enforce the removal of the apparatus only in pursuance of an order of the court that the third party is entitled to enforce the removal of the apparatus.
- (8) If the counter-notice specifies steps under paragraph (5)(b), the court may make an order under sub-paragraph (7) only if it is satisfied—
- (a) that the operator is not intending to take those steps or is being unreasonably dilatory in taking them; or
 - (b) that taking those steps has not secured, or will not secure, for the operator as against the third party any right to keep the apparatus installed on, under or over the land or to re-install it if it is removed.
- (9) Where the third party is entitled to enforce the removal of the apparatus, under sub-paragraph (6) or under an order under sub-paragraph (7), the third party may make an application to the court for—
- (a) an order under paragraph 39(1) (order requiring operator to remove apparatus etc), or
 - (b) an order under paragraph 39(2) (order enabling third party to sell apparatus etc).
- (10) If the court makes an order under paragraph 39(1), but the operator does not comply with the agreement imposed on the operator and the third party by virtue of paragraph 39(5), the third party may make an application to the court for an order under paragraph 39(2).
- (11) An order made on an application under this paragraph need not include provision within paragraph 39(1)(b) or (2)(d) unless the court thinks it appropriate.
- (12) Sub-paragraph (9) is without prejudice to any other method available to the third party for enforcing the removal of the apparatus.

Digital Economy Bill, continued

How does paragraph 38A apply if a person is entitled to require apparatus to be altered in consequence of street works?

- 38B (1) This paragraph applies where the third party's right in relation to which paragraph 38A applies is a right to require the alteration of the apparatus in consequence of the stopping up, closure, change or diversion of a street or road or the extinguishment or alteration of a public right of way.
- (2) The removal of the apparatus in pursuance of paragraph 38A constitutes compliance with a requirement to make any other alteration.
- (3) A counter-notice under paragraph 38A(5) may state (in addition to, or instead of, any of the matters mentioned in paragraph 38A(5)(b)) that the operator requires the third party to reimburse the operator in respect of any expenses incurred by the operator in or in connection with the making of any alteration in compliance with the requirements of the third party.
- (4) An order made under paragraph 38A on an application by the third party in respect of a counter-notice containing a statement under sub-paragraph (3) must, unless the court otherwise thinks fit, require the third party to reimburse the operator in respect of the expenses referred to in the statement.
- (5) Paragraph 39(2)(b) to (e) do not apply.
- (6) In this paragraph—
“road” means a road in Scotland;
“street” means a street in England and Wales or Northern Ireland.”

Member's explanatory statement

New paragraphs 38A and 38B provide for a right to require removal of electronic communications apparatus to be available to not only to a person with an interest in land (see paragraph 36(1)) but also to a “third party” whose right to require removal of apparatus arises pursuant to an enactment, or on some other legal basis.

Matt Hancock

38

Schedule 1, page 104, line 42, at end insert—

“When can a separate application for restoration of land be made?”

- 38C (1) This paragraph applies if—
- (a) the condition of the land has been affected by the exercise of a code right, and
- (b) restoration of the land to its condition before the code right was exercised does not involve the removal of electronic communications apparatus from any land.
- (2) The occupier of the land, the owner of the freehold estate in the land or the lessee of the land (“the relevant person”) has the right to require the operator to restore the land if the relevant person is not for the time being bound by the code right. This is subject to sub-paragraph (3).
- (3) The relevant person does not have that right if—
- (a) the land is occupied by a person who—
- (i) conferred a code right (which is in force) entitling the operator to affect the condition of the land in the same way as the right mentioned in sub-paragraph (1), or

Digital Economy Bill, continued

- (ii) is otherwise bound by such a right, and
 - (b) that code right was not conferred in breach of a covenant enforceable by the relevant person.
- (4) In the application of sub-paragraph (3)(b) to Scotland the reference to a covenant enforceable by the relevant person is to be read as a reference to a contractual term which is so enforceable.
- (5) A person who has the right conferred by this paragraph may give a notice to the operator requiring the operator to restore the land to its condition before the code right was exercised.
- (6) The notice must—
- (a) comply with paragraph 85 (notices given by persons other than operators), and
 - (b) specify the period within which the operator must complete the works.
- (7) The period specified under sub-paragraph (6) must be a reasonable one.
- (8) Sub-paragraph (9) applies if, within the period of 28 days beginning with the day on which the notice was given, the landowner and the operator do not reach agreement on any of the following matters—
- (a) that the operator will restore the land to its condition before the code right was exercised;
 - (b) the time at which or period within which the land will be restored.
- (9) The landowner may make an application to the court for—
- (a) an order under paragraph 39(1A) (order requiring operator to restore land), or
 - (b) an order under paragraph 39(2A) (order enabling landowner to recover cost of restoring land).
- (10) If the court makes an order under paragraph 39(1A), but the operator does not comply with the agreement imposed on the operator and the landowner by virtue of paragraph 39(5), the landowner may make an application to the court for an order under paragraph 39(2A).
- (11) In the application of sub-paragraph (2) to Scotland the reference to a person who is the owner of the freehold estate in the land is to be read as a reference to a person who is the owner of the land.”

Member’s explanatory statement

New paragraph 38C makes provision about restoration of land where restoration does not involve the removal of apparatus.

Matt Hancock

39

Schedule 1, page 105, line 2, at end insert—

“(1A) An order under this sub-paragraph is an order that the operator must, within the period specified in the order, restore the land to its condition before the code right was exercised.”

Member’s explanatory statement

This is consequential on amendment 38.

Digital Economy Bill, *continued*

Matt Hancock

40

Schedule 1, page 105, line 3, after “landowner” insert “, occupier or third party”

Member’s explanatory statement

This is consequential on amendments 24 and 37.

Matt Hancock

41

Schedule 1, page 105, line 15, after “landowner” insert “, occupier or third party”

Member’s explanatory statement

This is consequential on amendments 24 and 37.

Matt Hancock

42

Schedule 1, page 105, line 15, at end insert—

“(1A) An order under this sub-paragraph is an order that the landowner may recover from the operator the costs of restoring the land to its condition before the code right was exercised.”

Member’s explanatory statement

This is consequential on amendment 38.

Matt Hancock

43

Schedule 1, page 105, line 16, after “paragraph” insert “on an application under paragraph 38”

Member’s explanatory statement

This is consequential on amendments 24 and 37.

Matt Hancock

44

Schedule 1, page 105, line 15, after “(1)” insert “or (1A)”

Member’s explanatory statement

This is consequential on amendment 38.

Matt Hancock

45

Schedule 1, page 105, line 25, after “landowner” insert “, occupier or third party”

Member’s explanatory statement

This is consequential on amendments 24 and 37.

Matt Hancock

46

Schedule 2, page 138, line 17, leave out “under paragraph 2(1)” and insert “for the purposes of paragraph 2 or 3”

Member’s explanatory statement

This provides that the subsisting agreements covered by the transitional provisions in Schedule 2 include agreements under paragraph 3(1) of the existing code (agreement to confer a right to obstruct access) as well as paragraph 2(1).

Digital Economy Bill, continued

Matt Hancock

47

Schedule 2, page 138, line 28, at end insert—

“(2) A person who is bound by a right by virtue of paragraph 2(4) of the existing code in consequence of a subsisting agreement is, after the new code comes into force, treated as bound pursuant to Part 2 of the new code.”

Member’s explanatory statement

This provides that a person who was bound by a right pursuant to a subsisting agreement (see paragraph 2(4) of the existing code) continues to be treated as bound by that agreement, under the provisions of Part 2 of the new code (see paragraph 10 of the new code).

Matt Hancock

48

Schedule 2, page 138, line 31, after “are” insert “— (a)”

Member’s explanatory statement

Amendments 48, 49 and 50 are consequential on amendment 46 and provide for references in the new code to a “code right” in relation to a subsisting agreement to have the corresponding meaning depending on whether the agreement was for the purposes of paragraphs 2(1) or (3(1) of the existing code.

Matt Hancock

49

Schedule 2, page 138, line 31, leave out “the agreement” and insert “an agreement for the purposes of paragraph 2 of the existing code”

Member’s explanatory statement

Amendments 48, 49 and 50 are consequential on amendment 46 and provide for references in the new code to a “code right” in relation to a subsisting agreement to have the corresponding meaning depending on whether the agreement was for the purposes of paragraphs 2(1) or (3(1) of the existing code.

Matt Hancock

50

Schedule 2, page 138, line 33, at end insert—

“(b) in relation to land to which an agreement for the purposes of paragraph 3 of the existing code relates, a right to do the things mentioned in that paragraph.”

Member’s explanatory statement

Amendments 48, 49 and 50 are consequential on amendment 46 and provide for references in the new code to a “code right” in relation to a subsisting agreement to have the corresponding meaning depending on whether the agreement was for the purposes of paragraphs 2(1) or (3(1) of the existing code.

Matt Hancock

51

Schedule 2, page 139, line 11, leave out sub-paragraph (1) and insert—

“5A (1) This paragraph applies in relation to a subsisting agreement, in place of paragraph 28(2) to (4) of the new code.

(2) Part 5 of the new code (termination and modification of agreements) does not apply to a subsisting agreement that is a lease of land in England and Wales, if—

(a) it is a lease to which Part 2 of the Landlord and Tenant Act 1954 applies, and

Digital Economy Bill, *continued*

- (b) there is no agreement under section 38A of that Act (agreements to exclude provisions of Part 2) in relation the tenancy.
 - (3) Part 5 of the new code does not apply to a subsisting agreement that is a lease of land in England and Wales, if—
 - (a) the primary purpose of the lease is not to grant code rights (the rights referred to in paragraph 3 of this Schedule), and
 - (b) there is an agreement under section 38A of the 1954 Act in relation the tenancy.
 - (4) Part 5 of the new code does not apply to a subsisting agreement that is a lease of land in Northern Ireland, if it is a lease to which the Business Tenancies (Northern Ireland) Order 1996 (SI 1996/725 (NI 5)) applies.
- 6 (1) Subject to paragraph 5A, Part 5 of the new code applies to a subsisting agreement with the following modifications.”

Member’s explanatory statement

The amendment provides for the interaction of landlord and tenant law and Part 5 of the new code (termination and modification of agreements) in the case of subsisting agreements (see paragraph 1(4) of Schedule 2).

Matt Hancock

52

Schedule 2, page 140, line 17, leave out “the following provisions of this paragraph” and insert “sub-paragraph (3)”

Member’s explanatory statement

This is consequential on amendment 53.

Matt Hancock

53

Schedule 2, page 140, line 21, leave out sub-paragraphs (4) to (10)

Member’s explanatory statement

This relates to applications under paragraph 5(1) of the existing code (power of court to dispense with need for required agreement). The effect of the amendment is that, 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.

Matt Hancock

54

Schedule 2, page 142, line 7, leave out paragraphs 19 to 22 and insert—

- “19A(1) This paragraph applies where before the repeal of the existing code comes into force a person has given notice under paragraph 21(2) of that code requiring the removal of apparatus.
- (2) The repeal does not affect the operation of paragraph 21 in relation to anything done or that may be done under that paragraph following the giving of the notice.
- (3) For the purposes of applying that paragraph after the repeal comes into force, steps specified in a counter-notice under sub-paragraph (4)(b) of that paragraph as steps which the operator proposes to take under the existing code are to be read as including any corresponding steps that the operator could take under the new code or by virtue of this Schedule.”

Digital Economy Bill, continued

Member's explanatory statement

The amendment replaces transitional provisions for requiring the removal of apparatus. It provides for paragraph 21 of the existing code to continue to apply if a notice under that paragraph has been given, but treats an operator seeking rights to keep the apparatus installed as seeking rights also under the new code or transitional provisions.

Matt Hancock

55

Page 143, line 27, leave out Schedule 3

Member's explanatory statement

Schedule 3 is replaced by new Schedule 56

Matt Hancock

56

To move the following Schedule—

“SCHEDULE

ELECTRONIC COMMUNICATIONS CODE: CONSEQUENTIAL AMENDMENTS

PART 1

GENERAL PROVISION

Interpretation

1 In this Part—

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

“enactment” includes—

- (a) an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978,
- (b) an enactment comprised in, or in an instrument made under, a Measure or Act of the National Assembly for Wales,
- (c) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
- (d) an enactment comprised in, or in an instrument made under, Northern Ireland legislation;

“the existing code” means Schedule 2 to the Telecommunications Act 1984;

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

References to the code or provisions of the code

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

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

Digital Economy Bill, *continued*

- (b) a reference to a provision of the existing code listed in column 1 of the table is to be read as a reference to the provision of the new code in the corresponding entry in column 2.
- (2) This paragraph does not affect the amendments made by Part 2 of this Schedule or the power to make amendments by regulations under section 6.
- (3) This paragraph does not affect section 17(2) of the Interpretation Act 1978 (effect of repeal and re-enactment) in relation to any reference to a provision of the existing code not listed in the table.

Table

<i>Existing code</i>	<i>New code</i>
Paragraph 9	Part 8
Paragraph 21	Part 6
Paragraph 23	Part 10
Paragraph 29	Paragraph 17

References to a conduit system

- 3 In any enactment passed or made before the commencement date, unless the context requires otherwise—
 - (a) a reference to a conduit system, where it is defined by reference to the existing code, is to be read as a reference to an infrastructure system as defined by paragraph 7(1) of the new code, and;
 - (b) a reference to provision of such a system is to be read in accordance with paragraph 7(2) of the new code (reference to provision includes establishing or maintaining).

PART 2

AMENDMENTS OF PARTICULAR ENACTMENTS

Landlord and Tenant Act 1954 (c. 56)

- 4 In section 43 of the Landlord and Tenant Act 1954 (tenancies to which provisions on security of tenure for business etc tenants do not apply) after subsection (3) insert—
 - “(4) This Part does not apply to a tenancy—
 - (a) the primary purpose of which is to grant code rights within the meaning of Schedule 3A to the Communications Act 2003 (the electronic communications code), and
 - (b) which is granted after that Schedule comes into force.”

Opencast Coal Act 1958 (c. 69)

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

Digital Economy Bill, continued

- (2) In subsection (2) for “paragraph 23 of the electronic communications code” substitute “Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)”.
- (3) In section (4) for “Paragraph 1(2) of the electronic communications code” substitute “Paragraph 103(2) of the electronic communications code”.

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

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

Pipe-lines Act 1962 (c. 58)

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

Harbours Act 1964 (c. 40)

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

Fair Trading Act 1973 (c. 41)

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

Highways Act 1980 (c. 66)

- 10 The Highways Act 1980 is amended as follows.
- 11 In section 177(12) (restriction of construction over highways: application of paragraph 23 of code) for “paragraph 23 of the electronic communications code” substitute “Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)”.
- 12 (1) Section 334 (savings relating to electronic communications apparatus) is amended as follows.
 - (2) In subsection (8) for “Paragraph 23 of the electronic communications code” substitute “Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)”.
 - (3) In subsection (9) for “the said paragraph 23” substitute “Part 10 of the electronic communications code”.
 - (4) In subsection (11)—
 - (a) for “Sub-paragraph (8) of paragraph 23” substitute “Paragraph 68”;
 - (b) for “that paragraph” substitute “Part 10 of the code”.

Digital Economy Bill, *continued*

- (5) In subsection (12) for “1(2)” “substitute “103(2)”.
- (6) In subsection (13) for “Paragraph 21 of the electronic communications code (restriction on removal of electronic communications apparatus)” substitute “Part 6 of the electronic communications code (rights to require removal of electronic communications apparatus)”.

Roads (Scotland) Act 1984 (c. 54)

- 13 The Roads (Scotland) Act 1984 is amended as follows.
- 14 (1) Section 50 (planting of trees etc by roads authority) is amended as follows.
 - (2) In subsection (3) for “Paragraph 23 of the electronic communications code” substitute “Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)”.
 - (3) In subsection (4)—
 - (a) for “sub-paragraph (8) of paragraph 23” substitute “Paragraph 68”
 - (b) for “that paragraph” substitute “Part 10 of the code”.
- 15 (1) Section 75 (bridges over and tunnels under navigable waterways) is amended as follows.
 - (2) In subsection (9) for “Paragraph 23 of the electronic communications code” substitute “Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)”.
 - (3) In subsection (10)—
 - (a) for “sub-paragraph (8) of paragraph 23” substitute “paragraph 68”
 - (b) for “that paragraph” substitute “Part 10 of the code”.
- 16 (1) Section 132 (saving for operators of telecommunications code systems) is amended as follows.
 - (2) In the heading for “telecommunications code systems” substitute “electronic communications code networks”.
 - (3) In subsection (4) for “paragraph 1(2) of the electronic communications code” substitute “paragraph 103(2) of Schedule 3A to the Communications Act 2003 (the electronic communications code)”.
 - (4) In subsection (5) for “Paragraph 21 of the electronic communications code (restriction on removal of electronic communications apparatus)” substitute “Part 6 of the electronic communications code (rights to require removal of electronic communications apparatus)”.

Housing Act 1985 (c. 68)

- 17 Section 298 of the Housing Act 1985 (telecommunications apparatus) is amended as follows.
- 18 For the heading substitute “Electronic communications apparatus”.
- 19 In subsection (2) for “paragraph 21 of the electronic communications code” substitute “Part 6 of Schedule 3A to the Communications Act 2003 (the electronic communications code)”.
- 20 In subsection (3) for “paragraph 23” substitute “Part 10”.

Digital Economy Bill, continued

Food and Environment Protection Act 1985 (c. 48)

- 21 The Food and Environment Protection Act 1985 is amended as follows.
- 22 In section 8A (electronic communications apparatus: operations in tidal waters etc) for the words from “paragraph 11” to “1984” substitute “Part 9 of Schedule 3A of the Communications Act 2003 (the electronic communications code)”.
- 23 In section 9(8) (defence to operating without licence under Part 2)—
- (a) for “paragraph 23 of the electronic communications code” substitute “Part 10 of Schedule 3A of the Communications Act 2003 (the electronic communications code)”;
 - (b) omit the words from “In this subsection” to the end.

Airports Act 1986 (c. 31)

- 24 The Airports Act 1986 is amended as follows.
- 25 (1) Section 62 (electronic communications apparatus) is amended as follows.
- (2) In subsection (1) for “Paragraph 23 of the electronic communications code” substitute “Part 10 of Schedule 3A of the Communications Act 2003 (the electronic communications code)”.
 - (3) In subsection (4) for “Paragraph 23” substitute “Part 10”.
 - (4) In subsection (5)—
 - (a) for “Sub-paragraph (8) of paragraph 23” substitute “Paragraph 68”;
 - (b) for “that paragraph” substitute “Part 10 of the code”.
 - (5) In subsection (6) for “1(2)” substitute “103(2)”
 - (6) In subsection (7) for “Paragraph 21 of the electronic communications code (restriction on removal of apparatus)” substitute “Part 6 of the electronic communications code (rights to require removal of apparatus)”.

Landlord and Tenant Act 1987 (c. 31)

- 26 In section 4(2) of the Landlord and Tenant Act 1987 (disposals which are not relevant disposals for purposes of tenants’ right of first refusal) after paragraph (da) insert—
- “(db) the conferral of a code right under Schedule 3A to the Communications Act 2003 (the electronic communications code);”.

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

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

Electricity Act 1989 (c. 29)

- 28 In paragraph 1(6) of Schedule 16 to the Electricity Act 1989 (application of paragraph 23) for “Paragraph 23 of Schedule 2 to the Telecommunications Act

Digital Economy Bill, *continued*

1984” substitute “Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)”.

Town and Country Planning Act 1990 (c. 8)

- 29 (1) Section 256 of the Town and Country Planning Act 1990 (electronic communications apparatus: orders by the Secretary of State) is amended as follows.
- (2) In subsection (5) for “Paragraph 1(2) of the electronic communications code” substitute “Paragraph 103(2) of Schedule 3A to the Communications Act 2003 (the electronic communications code)”.
- (3) In subsection (6) for “Paragraph 21 of the electronic communications code (restriction on removal of electronic communications apparatus)” substitute “Part 6 of the electronic communications code (rights to require removal of electronic communications apparatus)”.

Water Industry Act 1991 (c. 56)

- 30 In paragraph 4 of Schedule 13 to the Water Industry Act 1991—
- (a) for “paragraph 23” substitute “Part 10”;
- (b) for “Schedule 2 to the Telecommunications Act 1984” substitute “Schedule 3A to the Communications Act 2003”;
- (c) in the heading, for “telecommunication systems” substitute “electronic communications networks”.

Water Resources Act 1991 (c. 57)

- 31 In Schedule 22 to the Water Resources Act 1991 (protection of particular undertakings)—
- (a) in paragraph 5 for “Paragraph 23 of Schedule 2 to the Telecommunications Act 1984” substitute “Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)”;
- (b) for the italic heading before paragraph 5 substitute “Protection for electronic communications networks”.

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

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

Cardiff Bay Barrage Act 1993 (c. 42)

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

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

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

Digital Economy Bill, continued

- (2) In paragraph 2(2) for “Paragraph 1(2) of the electronic communications code” substitute “Paragraph 103(2) of Schedule 3A to the Communications Act 2003 (the electronic communications code)”.
- (3) In paragraph 2(3) for “Paragraph 21 of the electronic communications code (restrictions on removal of apparatus)” substitute “Part 6 of the electronic communications code (rights to require removal of apparatus)”.
- (4) In paragraph 3 for “Paragraph 23” substitute “Part 10”.

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

- 35
- (1) Article 12 of the Airports (Northern Ireland) Order 1994 (provisions as to electronic communications apparatus) is amended as follows.
 - (2) In paragraph (1) for “Paragraph 23 of the electronic communications code” substitute “Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)”.
 - (3) In paragraph (3A) for “Paragraph 23” substitute “Part 10”.
 - (4) In paragraph (4)—
 - (a) for “Sub-paragraph (8) of paragraph 23” substitute “Paragraph 68”;
 - (b) for “that paragraph” substitute “Part 10 of the code”.
 - (5) In paragraph (5) for “1(2)” substitute “103(2)”.
 - (6) In paragraph (6) for “Paragraph 21 of the electronic communications code (restriction on removal of apparatus)” substitute “Part 6 of the electronic communications code (rights to require removal of apparatus)”.
 - (7) Omit paragraph (7).

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

- 36
- In section 5 of the Landlord and Tenant (Covenants) Act 1995 (tenant released from covenants on assignment of tenancy), after subsection (4) insert—
- “(5) This section is subject to paragraph 15(4) of Schedule 3A to the Communications Act 2003 (which places conditions on the release of an operator from liability under an agreement granting code rights under the electronic communications code).”

Gas Act 1995 (c. 45)

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

Channel Tunnel Rail Link Act 1996 (c. 61)

- 38
- (1) Part 4 of Schedule 15 to the Channel Tunnel Rail Link Act 1996 (protection of telecommunications operators) is amended as follows.
 - (2) For the heading substitute “Protection of electronic communications code operators”.

Digital Economy Bill, *continued*

- (3) In paragraph 2(1) for “Paragraph 21 of the electronic communications code” substitute “Part 6 of Schedule 3A to the Communications Act 2003 (the electronic communications code)”.
- (4) In paragraph 2(2) for “Paragraph 23” substitute “Part 10”.
- (5) In paragraph 3 for “paragraph 9” substitute “Part 8”.
- (6) In paragraph 4(1) for “paragraph 23” substitute “Part 10”.

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

- 39 (1) Schedule 3 to the Gas (Northern Ireland) Order 1996 (other powers etc of licence holders) is amended as follows.
- (2) In paragraph 1(1) omit the following definitions—
 - (a) “public telecommunications operator”;
 - (b) “telecommunication apparatus” and “electronic communications network”;
 - (c) “telecommunications code”.
- (3) In paragraph 3(2) for “paragraph 23 of the electronic communications code” substitute “Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)”.

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

- 40 In Article 4(1) of the Business Tenancies (Northern Ireland) Order 1996 (tenancies to which the Order does not apply) after paragraph (k) insert—
 - “(l) a tenancy the primary purpose of which is to grant code rights within the meaning of Schedule 3A to the Communications Act 2003 (the electronic communications code), where the tenancy is granted after that Schedule comes into force.”

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

- 41 (1) Section 212 of the Town and Country Planning (Scotland) Act 1997 (electronic communications apparatus) is amended as follows.
- (2) In subsection (7) for “Paragraph 1(2) of the electronic communications code” substitute “Paragraph 103(2) of Schedule 3A to the Communications Act 2003 (the electronic communications code)”.
- (3) In subsection (8) for “Paragraph 21 of the electronic communications code (restriction on removal of electronic communications apparatus)” substitute “Part 6 of the electronic communications code (rights to require removal of apparatus)”.

Enterprise Act 2002 (c. 40)

- 42 The Enterprise Act 2002 is amended as follows.
- 43 In section 128(5) (mergers: references to supply of services) for the words from “(within” to the end substitute “(within the meaning of paragraph 17 of Schedule 3A to the Communications Act 2003 (the electronic communications code)) for sharing the use of electronic communications apparatus.”

Digital Economy Bill, continued

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

Communications Act 2003 (c. 21)

- 45 The Communications Act 2003 is amended as follows.
- 46 (1) Section 394 (service of notifications and other documents) is amended as follows.
- (2) In subsection (2) omit paragraph (d).
- (3) After subsection (10) insert—
- “(11) In its application to Schedule 3A this section is subject to paragraph 87 of that Schedule.”
- 47 (1) Section 402 (power of Secretary of State to make orders and regulations) is amended as follows.
- (2) In subsection (2) after paragraph (a) insert—
- “(aa) regulations under paragraph 91 of Schedule 3A which amend, repeal or modify the application of primary legislation,”.
- (3) After subsection (2) insert—
- “(2A) A statutory instrument containing (whether alone or with other provisions) regulations under paragraph 91 of Schedule 3A which amend, repeal or modify the application of primary legislation, may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”
- (4) After subsection (3) insert—
- “(4) In this section “primary legislation” means—
- (a) an Act of Parliament,
- (b) a Measure or Act of the National Assembly for Wales,
- (c) an Act of the Scottish Parliament, or
- (d) Northern Ireland legislation.”

- 48 Schedule 3 is repealed.

Land Reform (Scotland) Act 2003 (asp 2)

- 49 (1) Schedule 1 to the Land Reform (Scotland) Act 2003 (path orders) is amended as follows.
- (2) In paragraph 12 for “Paragraph 1(2) of the electronic communications code” substitute “Paragraph 103(2) of Schedule 3A to the Communications Act 2003 (the electronic communications code)”.
- (3) In paragraph 13 for “Paragraph 21 of that code (restriction on removal of apparatus)” substitute “Part 6 of the electronic communications code (rights to require removal of apparatus)”.

Digital Economy Bill, continued

Housing and Regeneration Act 2008 (c. 17)

- 50 The Housing and Regeneration Act 2008 is amended as follows.
- 51 In section 2(3) (objects of the Homes and Communities Agency: interpretation) in paragraph (a) of the definition of “infrastructure” for “telecommunications” substitute “electronic communications”.
- 52 In section 57(1) (interpretation of Part 1) omit the definition of “conduit system” and insert in the appropriate place—
- ““infrastructure system” has the meaning given by paragraph 7(1) of Schedule 3A to the Communications Act 2003 (the electronic communications code), and a reference to providing such a system is to be read in accordance with paragraph 7(2) of the code (reference to provision includes establishing or maintaining).”.
- 53 In the table in section 58 (index of defined expressions in Part 1) omit the entry for “conduit system (and providing such a system)” and insert in the appropriate place—

“Infrastructure system (and providing such a system)	Section 57(1)”.
--	-----------------

Crossrail Act 2008 (c. 18)

- 54 (1) Part 4 of Schedule 17 to the Crossrail Act 2008 (protective provisions) is amended as follows.
- (2) In paragraph 1(2) for the definition of “electronic communications code” substitute—
- ““electronic communications code” means the code set out in Schedule 3A to the Communications Act 2003;”.
- (3) In paragraph 2(1) for “paragraph 23” substitute “Part 10”.
- (4) In paragraph 2(2) for “Paragraphs 21 and 23” substitute “Parts 6 and 10”.
- (5) In paragraph 3 for “paragraph 9” substitute “Part 8”.
- (6) In paragraph 4(1) for “paragraph 23” substitute “Part 10”.

Marine (Scotland) Act 2010 (asp 5)

- 55 The Marine (Scotland) Act 2010 is amended as follows.
- 56 In section 36(1) (electronic communications apparatus) for the words from “paragraph 11” to “apparatus)” substitute “Part 9 of Schedule 3A to the Communications Act 2003 (the electronic communications code) (works in connection with electronic communications apparatus).
- 57 (1) Section 41 (defence to offences: electronic communications: emergency works) is amended as follows.
- (2) In subsection (1) for “paragraph 23 of the electronic communications code” substitute “Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)”.

Digital Economy Bill, continued

(3) Omit subsection (2).”

Member’s explanatory statement

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