



Department for Culture Media & Sport

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Gary Streeter MP
Graham Stringer MP
Chairs of the House of Commons Public Bill Committee
on the Digital Economy Bill
House of Commons
London
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CMS 292046
10 October 2016

Dear Gary and Graham

Digital Economy Bill - Government amendments on digital infrastructure and other supporting documents.

I am writing to notify you of the amendments that I am tabling today to the Digital Economy Bill concerning digital infrastructure as well as to provide some further information to assist the committee before we debate online pornography.

The amendments tabled today relate to the electronic communications code and spectrum. They are all technical to improve the drafting of the Bill and to correct minor omissions.

Electronic communications code:

The Bill contains a new electronic communications code with the purpose of simplifying and reducing the costs of building mobile and broadband infrastructure so that it is more economically viable to extend the reach of networks. The majority of the amendments tabled today relate to this code and its accompanying Schedules.

The electronic communications code is an extremely complex piece of legislation. Networks of masts, cables, wires, servers, routers, interconnected through cabinets and exchanges are found on, under, and over land across the UK to make modern day communications possible. Literally thousands of different pieces of legislation produced since 1984 refer to parts of the code, not to mention the legal contracts and documentation concerning land rights. Whenever roads are constructed, railways and tramways are built or modified, buildings are demolished and built, the electronic communications code is often engaged.



The work to reform the code has been ongoing since September 2011 when the government asked the Law Commission to embark on a review. The new code has been carefully constructed in partnership with stakeholders and experts. We believe that the new code is clear and straightforward but inevitably behind it is a web of legal technicality to ensure it interconnects with the existing legal landscape. Since the Bill was introduced my officials have been continuing their dialogue with stakeholders. In particular, discussions with the Central Association of Agricultural Valuers, mobile network operators and others such as Arqiva, who provide a great amount of infrastructure, have led us to conclude that a number of technicalities need to be addressed.

Through these amendments we aim to clarify and ensure:

- that the new code has provision for appropriate procedures for removing electronic communications when the person entitled to remove the apparatus is empowered to do so under another enactment.
- that where a person's access to their land is obstructed by electronic communications apparatus placed on other land (and who has not agreed to access being so obstructed) is able to require its removal from other land.
- that subsisting agreements continue to apply as we transition to the new code and to ensure definitions relating to them are clear and consistent.
- that we place consequential amendments to other public Acts on the face of the Bill.
- that other minor drafting points are clarified.

Regulation of Spectrum:

The Bill provides a new scheme to enable better regulation of dynamic spectrum access services. Registered services may be liable for penalties for the breach of restrictions or conditions. A technical amendment is required to ensure that the limits on the amount of the penalty that can be imposed are clear.

Clause 10 of the Bill widens the circumstances in which Ofcom may impose a penalty for contravention of a wireless telegraphy licence. The clause already contains consequential provision but we need to make a further technical amendment to allow an appeal to the Competition Appeal Tribunal against such a penalty (except, as now, where the breach relates only to broadcast content).

Clause 14 concerns time limits for prosecutions under the Wireless Telegraphy Act 2006. We are making technical amendments to specifically provide that section 136(3) of the Criminal Procedure (Scotland) Act 1995 (date when proceedings deemed to be commenced for the purposes of that section) applies, and to tidy up the drafting.

I am enclosing an annex with further details on all amendments tabled.

Online pornography

The measures in the Bill to protect children from online pornography were also widely discussed at second reading. Our aim is to establish a new law requiring age verification for commercial pornographic websites and applications containing still and moving images, and a new regulatory framework to underpin it.

The legislation sets out a requirement to prevent users under the age of 18 accessing online pornography.

Age verification is part of the child online protection activity in which the government and key stakeholders are involved. The diagram enclosed provides an illustration of the impact age verification will have alongside existing measures to prevent access to online pornographic material.

The age verification technology now available means we can be confident that controls will work in practice. The technology available is rightly focused on verification of age rather than identification of the individual. The Digital Policy Alliance are holding a demonstration of age verification mechanisms today. Interested MPs have been invited to attend.

In response to the government's consultation, arguments were made over the difficulties of enforcement, particularly taking action against non-UK companies. Others raised the potential for determined porn users - young or old -to circumnavigate any controls put in place. We recognise that this is a challenging area, with no easy solutions, however, the measures set out in the Bill present an important opportunity to disrupt the operation of sites that persist in failing to use age verification and so to vastly reduce the opportunities for users under the age of 18 to access online pornography in the UK.

The Department has exchanged letters of intent with the British Board of Film Classification (BBFC), to take on a regulatory role within the proposed framework, subject to the particulars of the proposed designation being laid in both Houses of Parliament. BBFC bring a wealth of experience in this area and both DCMS and the BBFC are committed to working openly and transparently to establish an effective regulatory framework for the age verification of pornographic content online.

We are still at the beginning of the process and are moving immediately, working with the BBFC, to establish processes by which the BBFC will identify and notify non-compliant sites, and also to enable payment providers and other service providers to require compliance from sites which use their services. An open approach has been taken throughout this process and we will be working with stakeholders across the regulatory framework to ensure they are fully engaged, and that the providers of pornographic material are aware of and able to comply with the required standards for age verification controls.

As we said in our consultation response, alongside this we will continue to consider the appropriate timing for introducing civil sanctions for non-compliant providers and to decide who the regulator will be for the enforcement aspects. The enclosed table provides an indicative view of the regulatory framework as set out in the Bill, subject to the detailed discussion that will now take place.

Several colleagues at second reading suggested that blocking at Internet Service Provider (ISP) level should be part of the enforcement process. The government welcomes the clear support for our objectives and understands the ambition to go further. It is our view, however, that our proposals represent a proportionate response to this issue especially given the level of interest that surrounds any proposal to regulate the internet. Blocking of infringing sites would place the focus on access providers rather than content providers. It is not a simple solution and would not be consistent with how other harmful and/or illegal content is dealt with, where the UK has robust, highly effective non-statutory systems in place, to ensure that swift and decisive action is taken to prevent harmful content being accessed.

This is a new system and the current approach provides the necessary level of flexibility to react to a fast moving environment, whilst leaving the providers of pornographic material in no doubt about the need to comply. As I said at second reading, we will continue to listen to the views of the House to ensure that we get the details right.

I look forward to debating these measures and will write again when I table further amendments on the latter parts of the Bill next week. I am copying this letter to members of the Committee, the clerk to the Committee, and I am placing a copy in the House library.

A handwritten signature in blue ink that reads "Matt Hancock". The signature is fluid and cursive, with a large, stylized flourish at the end.

Rt Hon Matthew Hancock MP
Minister of State for Digital and Culture