

**Digital Economy Bill:
Summary of government amendments for Lords Report tabled on 13 March
2017**

Note: The amendments referred to below will appear on amendment paper HL Bill 102-I(Rev)(f), printed on 13 March 2017. The amendment numbers below are in the format "Clause/Schedule – page number – line number" as they will not be otherwise numbered until the second marshalled list of amendments is produced.

Amendment Number	Clause / Schedule Amended	Purpose
Part 3 - Online pornography		
16-18-38 16-19-17 22-23-44 22-24-6 22-24-11* 22-24-28 22-24-33 22-24-43* After C.22 23-25-6 23-25-12 23-26-17 23-26-29 23-26-31 25-27-7 27-28-19 27-28-22 27-28-23	16, 22, 23, 25, 27 and new clause	<p><u>Definition of "prohibited material"</u></p> <p>While the primary function of the age verification regulator is to ensure that online pornography is behind adequate age verification systems, the regulator may also take action should they identify prohibited material. Prohibited material is currently defined so as to include pornographic material that has not been or would not be certified.</p> <p>These amendments substitute the term "prohibited material" with "extreme pornographic material" which is defined with regard to the definition of extreme pornography in the Criminal Justice and Immigration Act 2008.</p> <p>Consequential amendments are also made to the definition of "pornographic material" to ensure that the age verification requirement applies to all pornographic material (except material that is "extreme pornographic material" as above).</p>
Part 5 - Digital government		
39-37-2 42-41-39 48-47-2 56-55-14 66-66-23 71-69-29 72-70-18 73-76-18 74-78-39	39, 42, 48, 56, 66, 71, 72, 73, 74	<p><u>Privacy impact assessments</u></p> <p>These amendments require those disclosing data under the data sharing powers to have regard to relevant Information Commissioner codes of practice on privacy issued under the Data Protection Act 1998. This includes guidance on the use on the use of privacy impact assessments and privacy notices.</p>
60-59-6 60-59-7 63-62-42 64-63-39	60, 63, 64, 65	<p><u>Whistleblowers</u></p> <p>At Lords Committee stage government amendments were agreed which prevent</p>

65-64-43		<p>whistleblowers and journalists being unintentionally criminalised by the Bill.</p> <p>These amendments make further minor changes to the research powers to make the offences there apply as intended.</p>
62-61-1 63-62-46 64-63-43 65-65-3	62, 63, 64, 65	<p><u>Research: unlawful disclosure</u></p> <p>Researchers and their peer reviewers are likely in practice to obtain personal information disclosed under clause 60(1) through secure accredited data handling facilities. A technical fault has been identified that would prohibit these data handling facilities from disclosing that personal information to accredited peer reviewers.</p> <p>These technical amendments ensure that any person who in practice would be required to disclose personal information to peer reviewers is able to do so, without committing the subsection (2) offence in clauses 62 to 65.</p>
Part 6 - Miscellaneous		
Before C.75-1 Before C.75-2 97-100-24 In the Title	97 and new clauses	<p><u>Guarantee of pension liabilities under Telecommunications Act 1984</u></p> <p>The British Telecommunications Pension Scheme is a defined benefit private pension scheme. Closed to new members in 2001, it now has around 310 – 320,000 members of whom 30-40,000 are still making contributions. A further 70,000 or so are deferred members and around 200,000 are pensioners. When British Telecom was privatised, the Telecommunications Act 1984 created a Crown guarantee for the BT pension scheme. The guarantee has never been called upon.</p> <p>Ofcom recently reported on the role of BT in the market (initial conclusions were published on 25 February 2016, it subsequently consulted on the specific issue of the separation from BT of Openreach on 29 July – 4 October 2016 reporting on 29 November). Their conclusion was that they were minded to order legal separation of BT Openreach with its own staff as part of an overarching BT Plc.</p>

		<p>These amendments create a regulation making power for the Secretary of State to State to enable the existing Crown Guarantee on BT pensions to extend to employees in a separated Openreach.</p>
<p>After C.87-1 97-100-37</p>	<p>New clause and 97</p>	<p><u>Listed Events: power to amend qualifying conditions</u></p> <p>The listed events regime restricts the acquisition by television programme providers of exclusive rights to the whole or any part of television coverage of listed events and the broadcasting on an exclusive basis of such coverage without the previous consent of Ofcom. Essentially, it reserves to free-to-air channels the opportunity to acquire rights to televise major sporting events.</p> <p>The services or channels which qualify to carry listed events are determined by objective criteria, as required by EU law, that allow for open competition and equal treatment between broadcasters. The current qualifying conditions require that a television service must be available for reception for free by at least 95% of the UK population. With advancing technology, more people are turning to alternative online sources of television content with the result that it may be arguable that a point may be reached that no service is received by 95% of the UK population.</p> <p>These amendments create a power for the Secretary of State to amend the qualifying criteria for the listed events regime to allow the 95% threshold to be lowered if necessary. The ability to lower the threshold is limited under EU law as it requires the qualifying services to be available to a “substantial majority” of the population.</p>
<p>Before C.88</p>	<p>New clause</p>	<p><u>Ofcom strategic priorities and advance information</u></p> <p>The power for the Secretary of State to set strategic policy statements now applies to a number of regulators. The Water Services Regulatory Authority (“Ofwat”) has this provided for in section 24 of the Water Act 2014. The Office of Gas and Electricity Markets (“Ofgem”) has this provided for in s.131 of the Energy Act 2013. There is no equivalent provision for Ofcom. The government’s view is that in order not to</p>

		<p>compromise Ofcom’s independence and reputation, that a clear and transparent mechanism is needed to set strategic direction. This is important at a time when the government is seeking to substantially improve the nation’s electronic communications infrastructure.</p> <p>The amendment would provide the Secretary of State with the power to set out a statement of strategic priorities which Ofcom must have regard to on:</p> <ul style="list-style-type: none"> (a) telecommunications, (b) the management of the radio spectrum, and (c) postal services. <p>This must be consulted on (including with Ofcom) and laid before Parliament and subject to a annulment by either House within 40 days.</p> <p>Ofcom will be also required to share with the Secretary of State documents it is about to publish - there is a regulation making power (negative procedure) for the Secretary of State to exclude certain publications.</p> <p>Clause 9 of the Bill comprises a power to set strategic priorities for Ofcom in relation to the management of radio spectrum. If the amendment providing a wider power is agreed, it is the government’s intention to remove clause 9 from the Bill, as unnecessary, at third reading.</p>
After C.91 In the Title	New clause	<p><u>Offence of breaching limits on ticket sales</u></p> <p>A “ticket bot” is a software application that runs automated tasks over the internet. Bots are used to gain competitive advantage in purchasing large numbers of tickets for music, sporting and other events with the aim of then selling the tickets on the secondary market at inflated prices. Although, depending on exact circumstances, this activity may be illegal under the Computer Misuse Act 1990, the Fraud Act 2006 and the Consumer Rights Act 2015, in the government’s view this question needs to be put beyond doubt.</p> <p>This amendment provides a power to create a specific offence of using a ticket bot to purchase</p>

		<p>more tickets than the maximum permitted. This is similar to legislation recently introduced in the USA.</p> <p>The amendment provides a power to a create an offence rather than the actual offence because of the need to comply with the Technical Standards Directive, and to provide scope to keep up with changes in technology and avoid any offence on the face of the Bill becoming obsolete.</p>
<p>After C.92-1 After C.92-2 After C.92-3 After C.92-4 In the Title</p>	<p>New clauses</p>	<p><u>Charges payable to the Information Commissioner</u></p> <p>The data protection statutory duties of the Information Commissioner are funded from the annual <i>notification</i> fees collected from data controllers pursuant to fees regulations made under Part 3 of the Data Protection Act 1998.</p> <p>The requirement for a <i>notification</i> regime originates from article 18 of the Data Protection Directive 95/46/EC. The Directive is to be replaced by EU Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the “GDPR”). The GDPR is a directly applicable harmonisation measure that does not include any equivalent provision to article 18 of the Directive. As a result we need to repeal the provisions of the Data Protection Act creating the notification regime. This means the provisions relating to the fees regulations will also fall.</p> <p>We need to ensure that the new funding regime can come into force at the beginning of the 2018/19 financial year, ahead of the GDPR taking legal effect on 25 May 2018. It will be important to give data controllers’ sufficient notice of these changes to minimise the risk of a shortfall in the ICO’s income; and to leave sufficient time to make fees regulations setting the fees levels.</p> <p>These amendments provide regulation making powers to enable the Secretary of State to put in place funding arrangements for the Information Commissioner’s Office. The scheme will impose a fee on data controllers, not data processors. The new model will take account of regulatory risk by including data volumes as a factor in determining</p>

		<p>the fee level - with high volume organisations paying a larger fee than low volume organisations. There will be the power to exempt certain data controllers, for example nurses who are obliged to keep certain records, but this detail will be in secondary legislation.</p>
<p>97-101-18-1 97-101-18-2</p>	<p>97</p>	<p><u>Commencement</u></p> <p>These amendments enable commencement of measures by area so that the government can ensure that measures are not commenced for Northern Ireland in the event that the Northern Ireland Assembly has not given legislative consent. Consent from the Northern Ireland Assembly is required for the following measures:</p> <ul style="list-style-type: none"> ● Extension of public lending right to e-book loans, as agreed by Lords Report amendment 19 on 20 February 2017; ● Part 5 of the Bill on digital government; ● The Northern Ireland provision in relation to Ofcom, in clause 88; ● Offence of breaching limits on ticket sales, should the government amendment above be agreed. <p>In consequence of the potential need to commence the Bill by area, these amendments also provide the power to make necessary transitional provision.</p> <p>The transitional powers will also be used to define small businesses in the statistics chapter of Part 5 until definitions in the Small Business, Enterprise and Employment Act 2015 come into force.</p>

* amendments marked with an asterisk were tabled on 14 March 2017.

Department for Culture, Media and Sport
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