HOUSE OF COMMONS LIBRARY

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Digital Economy Bill: Lords amendments

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Summary

Lords amendments to the Digital Economy Bill will be considered by the House of Commons on 26 April 2017. There are 289 amendments, and this paper outlines the key changes put forward.

The Digital Economy Bill was published in July 2016 and considered by the Commons in Autumn 2016, completing Commons stages on 28 November 2016. It was introduced into the House of Lords on 29 November, and third reading took place on 5 April 2017.

The Bill contains a large number of amendments. The majority number of these amendments relate to the data sharing proposals in the Bill and have been put forward by the Government. It does however introduce a number of new measures around television, secondary ticketing, mobile phone use in drug dealing, e-book lending, Information Commissioner charges and managing the pension liabilities of BT/Openreach.

An outline of the Bill and its purpose is given in the Library's paper prepared for second reading: Commons Library analysis of the Digital Economy Bill (September 2016).

The key amendments made to the Bill in the Lords are:

- Opposition amendments putting more detail in primary legislation on contents of the future order for the Universal Service Obligation (USO);
- Opposition amendments around mobile phone bill limits and switching;
- Changes to the definition of pornographic material to be covered by the age verification controls and other amendments on the way age verification would work (Government amendments);
- Opposition amendments were added on a code of practice for social media;
- Government amendments were made to the data sharing elements of the Bill (and these are the majority of amendments overall);
- Amendments with regard to a BBC Licence Fee Commission, the provision of children's TV, e-book lending, accessibility of on-demand television, electronic programming guides, conditions around televising events of national interest;
- Government amendments to provide a power to introduce an offence to use bots to purchase tickets for recreational, sporting or cultural events in excess of the maximum allowed;
- Government amendments that would allow the blocking of mobile phones used for drug dealing;
- Government amendments to deal with pension liabilities relating to BT/Openreach structural changes, and around Information Commissioner charges.

Originally, the Bill extended to the whole of the UK with two exceptions: sharing data in relation to civil registration does not apply in Scotland and Northern Ireland, while the provisions for sharing energy supplier data do not apply in Northern Ireland. New data sharing provisions proposed in the amendments relating to water poverty only apply to England and Wales.

A list of Lords amendments to be considered is available along with explanatory notes. Amendments 249 to 252 create a charging power in relation to the Information Commissioner so will be subject to a ways and means resolution.

1. Progress of the Digital Economy Bill

The Digital Economy Bill 2016-17 [Bill no. 87] was published on 6 July 2016 and its First Reading in the House of Commons took place that day. Its Second Reading took place on Tuesday 13 September 2016.

The Committee stage was taken over eleven sittings in October and into November 2017. The Report Stage and Third Reading took place on 28 November 2016.

The Bill was introduced in the House of Lords on 29 November and Second Reading took place on 13 December 2016.

The Committee Stage was taken over four sittings in January and February 2017 and Report Stage was taken over three sittings in February and March 2017.

The Bill had its Third Reading in the House of Lords on 5 April 2017 when final amendments were made. Lords amendments will be considered by the Commons on 26 April 2017.

1.1 Timeline of stages of Digital Economy Bill

Commons stages

1st reading: House of Commons 5 July, 2016

2nd reading: House of Commons 13 September, 2016

Committee Debate: 1st sitting: House of Commons 11 October, 2016

Committee Debate: 2nd sitting: House of Commons 11 October, 2016

Committee Debate: 3rd sitting: House of Commons 13 October, 2016

Committee Debate: 4th sitting: House of Commons 18 October, 2016

Committee Debate: 5th sitting: House of Commons 20 October, 2016

Committee Debate: 6th sitting: House of Commons 20 October, 2016

Committee Debate: 7th sitting: House of Commons 25 October, 2016

Committee Debate: 8th sitting: House of Commons 25 October, 2016

Committee Debate: 9th sitting: House of Commons 27 October, 2016

Committee Debate: 10th sitting: House of Commons 27 October, 2016

Committee Debate: 11th sitting: House of Commons 1 November, 2016

Report stage: House of Commons 28 November, 2016

3rd reading: House of Commons 28 November, 2016

Commons Library briefings:

Commons Library analysis of the Digital Economy Bill

(CBP-7699), 9 Sep 2016

Committee Stage Report on the Digital Economy Bill,

(CBP-7799), 24 Nov 2016

Lords stages

2nd reading: House of Lords 13 December, 2016

Committee: 1st sitting: House of Lords 31 January, 2017

Committee: 2nd sitting: House of Lords 2 February, 2017

Committee: 3rd sitting: House of Lords 6 February, 2017

Committee: 4th sitting: House of Lords 8 February, 2017

Report: 1st sitting: House of Lords 22 February, 2017

Report: 2nd sitting: House of Lords 20 March, 2017

Report: 3rd sitting: House of Lords 29 March, 2017

3rd reading (Hansard): House of Lords 5 April, 2017

Lords Library briefing:

Digital Economy Bill: Briefing for Lords Stages

(LLN-2016-0067), 8 Dec 2016

Bill as amended

Lords amendments to the Digital Economy Bill – amendments relate to Digital Economy Bill (as introduced to the Lords, HL Bill 80)

Explanatory Memorandum to the Lords Amendments

2. Telecoms

2.1 Universal Service Obligation

The Government's policy is to provide funding to support the roll-out of superfast broadband to those areas of the UK where commercial roll-out is not economically viable. This is mostly, but not entirely, in rural areas. As of June 2016, 90% of UK premises (almost 26 million) were covered by superfast broadband.[1] The Government has confirmed it is on course to meet a target of 95% of premises by the end of 2017.[2] Improving the speed and availability of broadband was a manifesto commitment of the Conservatives in 2015.[3]

The Government has stated that it will introduce a broadband Universal Service Obligation (USO) to act as a "safety net" allowing those with poor connections the legal right to request a fast connection (expected to be 10 Mbps).[4] The Bill contained enabling powers for a USO to be specified in secondary legislation. Amendments have sought to more tightly define the contents of that secondary legislation (or order). Ofcom published technical advice to the Government in December 2016, including recommendations about the design of the USO, including costs, technology and funding.

The USO was the subject of debate at committee stage and report in the Lords, where there was interest in making the USO more specific in primary legislation. **Amendment 1** places requirements on the USO order, notably download speeds of 30 Mbps and a target for broadband connections to be provided by fibre to the premises (FTTP) technology:

> (2B) The universal service order must specify that the target for broadband connections and services to be provided before 2020 must have—
>
> (a) speeds of 2 gigabits or more;
>
> (b) fibre to the premises (FTTP) as a minimum standard;
>
> (c) appropriate measures to ensure that internet speed levels are not affected by high contention ratios;
>
> (d) appropriate measures to ensure service providers run low latency networks.
>
> (2BA) The universal service order must specify as soon as reasonably practicable that, by 2020, the following will be available in every household in the United Kingdom—
>
> (a) download speeds of 30 megabits per second;
>
> (b) upload speeds of 6 megabits per second;
>
> (c) fast response times;
>
> (d) committed information rates of 10 megabits per second;
>
> (e) an unlimited usage cap.

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1 Ofcom, Connected Nations 2016, 16 December 2016
2 DCMS, UK Digital Strategy, March 2017
3 Conservative Party Manifesto 2015, p15
4 DCMS, 'Government plans to make sure no-one is left behind on broadband access', 7 November 2015

There are further clauses requiring standards to met in rural areas, and that SMEs are prioritised. Finally, the amendment extends the USO to the mobile network coverage. Introducing the amendments at report stage, Lord Mendelsohn (Lab) stated that advice had been sought from Ofcom and the amendment draws on their technical advice to Government on the USO[5] around speeds:

> These amendments are about making the universal service obligation meet the Government's objectives and should rightly appear on the face of the Bill. We provide for further definition to be placed as was originally planned in regulations after this Bill, but they provide the correct framework to set them out properly. Placing these limited areas on the Bill ensures that the universal service obligation provides an operable legislative framework and mixes the right amount of direction, constraint and enabling. In short, these amendments set a floor for the USO; they create the means to ensure that progress can be properly monitored and reported, and they provide an aspiration to ensure that the universal service obligation helps to set a direction and does not become a limiting factor.

The Government did not agree with the amendment, raising concerns that it could conflict with EU law and places 'inappropriate detail' in the Bill and may well be unachievable. The amendment was agreed to on division.[6]

For background on broadband policy, coverage and the USO, see the Library briefing paper Superfast broadband coverage in the UK (CBP-6643, 9 March 2017).

2.2 Bill limits for mobiles

At report stage Lord Clement-Jones (Lib Dem) introduced **amendment 2** that allowed for a financial cap to be placed on mobile phone bills and for the process of switching mobile phone providers to be developed via Ofcom rules. This was also discussed at Committee stage and in the Commons stages.[7] The Minister, Baroness Buscombe, argued that voluntary measures were in place to support bill limits, and that Ofcom consultations on switching would help progress the issue, with prescriptive requirements in legislation potentially unhelpful. The amendment was agreed to on division.[8]

2.3 Electronic Communications Code

Amendments 265 to 281 deal with changes to the Electronic Communications Code. These are Government amendments brought in during the Lords stages. Further detail of the changes is given in the Explanatory Memorandum to the Lords amendments.

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5 Ofcom, *Achieving decent broadband connectivity for everyone Technical advice to UK Government on broadband universal service*, 16 December 2016

6 HL Deb 22 February 2017 c345

7 See for example in Committee Stage Report on the Digital Economy Bill, 24 November 2016, p17

8 HL Deb 22 February 2017 c356

2.4 Ofcom Strategy

A Government **amendment (244**) allows for the Government to set out a statement of strategic priorities in relation to telecoms, radio spectrum and postal services to which the regulator, Ofcom, has to pay regard. The Explanatory Memorandum states that this applies to other regulators (Ofgem and Ofwat) and the Governments view "is that in order not to compromise Ofcom's independence and reputation, that a clear and transparent mechanism is needed to set strategic direction."[9] The amendment was agreed without division.[10] As a result, **amendment 3** removes clause 9 of the original bill which also dealt with strategic priorities.

9 DCMS, Digital Economy Bill: Explanatory Notes on Lords Amendments, 13 April 2017, para 111

10 HL Deb 29 March 2017 c653

3. Online pornography and age verification

Background

Clause 15(1) of the Bill, as brought from the Commons (HL Bill 80), would require a person to have age verification controls in place if they wanted to make online pornography available to users in the UK on a commercial basis.

Clause 23 would give the age verification regulator the power to direct ISPs to prevent access to material that it considered to be in breach of clause 15(1) or was "prohibited material" as defined in clause 22.

Clause 22 would define "prohibited material" as material produced for the purposes of sexual arousal and that the BBFC would determine as not suitable for a classification certificate. As the Government pointed out, this definition "would bring parity with the offline world - material that would not be classified by the BBFC, including material that is in breach of criminal law."[11]

However some critics have claimed that the clauses would result in the censorship of "non-conventional" sex acts.[12] The Government acknowledged these concerns when the Bill was considered at Committee stage in the Lords:

> The Government's intention is to protect children from harmful content. We have listened to the arguments that in doing so, the drafting of the Bill may have unintentionally extended the powers of the regulator too far. We all share a common goal of keeping children safe and the Government will ensure that, in achieving this aim, we have a proportionate and fair impact on others who enjoy the freedoms and equalities that are important to everyone. So I can commit that we will give this further consideration in order to reach a conclusion that this House agrees is a satisfactory way of meeting our aims of protecting children from harmful pornographic content. I will be very happy to discuss this with interested Peers before Report…[13]

Lords amendments

A set of Government amendments on online pornography and age verification were agreed at Report Stage. Further "tidying up" amendments were agreed at Third Reading.

Government amendment 28 would insert a new clause to set out the meaning of "extreme pornographic material". This would replace the Bill's references to "prohibited material".

The definition of extreme pornographic material would be based on that given in section 63 of the *Criminal Justice and Immigration Act 2008.* This makes it an offence in England, Wales and Northern Ireland for a person to be in possession of an extreme pornographic image. An

11 House of Lords Public Bill Committee 2 February 2017 c1289
12 "UK to censor online videos of 'non-conventional' sex acts", *Guardian*, 23 November 2016
13 House of Lords Public Bill Committee 2 February 2017 c1289

image is pornographic if it is reasonable to assume that it was "produced solely or principally for the purpose of sexual arousal." An image is "extreme" if it is grossly offensive, disgusting or otherwise obscene, and explicitly and realistically depicts any of the following:

- an act which threatens a person's life;
- an act which results, or is likely to result, in serious injury to a person's anus, breasts or genitals;
- an act which involves sexual interference with a human corpse; or
- a person performing an act of intercourse or oral sex with an animal (whether dead or alive).

For further detail see:

- Library Briefing Paper, Extreme pornography (January 2016)
- Crown Prosecution Service (CPS) guidance on the offence of possessing extreme pornography (July 2016)

When introducing the Government's amendments on pornography at Report Stage, Lord Ashton of Hyde said:

> (…) Perhaps the most sensitive challenge is how we approach material that would not be classified by the BBFC in the offline world. We have heard concerns from some quarters that the current definition of "prohibited material" may be going too far in the type of material that the regulator is able to sanction above and beyond the age verification requirements. We heard in Committee that this,
>
> "would give the regulator extended powers of censorship beyond that originally envisaged in the Bill",
>
> that it would potentially set,
>
> "new limits on consenting adults accessing pornography that is not harmful to themselves or others",
>
> and that,
>
> "this is not the place to resolve these wider debates on adult consensual pornography".—[Official Report, 2/2/17; cols. 1355-56.]
>
> We agree. Our policy intent is child protection, not censorship. Our amendment redefines the scope, taking an approach based on the definition of an "extreme pornographic image" in the Criminal Justice and Immigration Act 2008. This captures grotesque sexual violence, including rape. We have thought long and hard about where we should draw the line. We have adopted two principles. First, as this measure is about protecting children, we do not want to create a new threshold for what adults can or cannot see. This is not the place for that debate. Secondly, we want to ensure that we do not allow the regulator to step on the toes of others involved in policing this territory.
>
> The definition of an "extreme pornographic image" in the Criminal Justice and Immigration Act provides a good marker. I know that there are also concerns about sexual violence against women and other acts that do not meet the "extreme pornography" definition. We absolutely do not intend to create a

> regime that unintentionally legitimises all types of sexually explicit content as long as age verification controls are in place. We are most definitely not saying that material not allowed under other legislation is allowed if age verification is in place…content behind age verification controls can still be subject to criminal sanctions provided by existing legislation: for example, the Obscene Publications Act. But we concede that there is unfinished business here…[14]

A number of members of the House of Lords expressed concern about the Government's amendments. For example, Baroness Butler-Sloss said she was worried about the impact of "serious violent porn" not being covered in the legislation in the same way that extreme pornography would be: "This is an opportunity for those disposed to violence, particularly in the home against spouses and partners, to see it online before they try it out in their own home".[15] Baroness Howe of Idlicote said that the Government's amendments would give "violent and abusive material a large boost of respectability, as we do not allow supply of the same material via DVDs or UK-based video on demand".[16]

For the Government, Lord Ashton of Hyde said:

> (…) We have listened carefully to the criticisms that, in defining prohibited material in Part 3 as anything that would not be classified, we were going too far. Some noble Lords may not agree with that, but freedom of choice should be curtailed only after a lot of thought. We have agreed, in our internet safety strategy, to provide the opportunity to think about these things… Of course, Brexit is going to take a lot of time, but there is still room for the domestic agenda. I think we can be certain that protecting women against violence, and other things like that, are going to be high on it, but I am giving no promises…[17]

Other amendments

Government amendment 6 to clause 15 would give the Secretary of State the power to make regulations on the circumstances in which persons would be treated as making pornographic material available on a commercial basis. Lord Ashton of Hyde explained:

> (…) The intention of the regulations is primarily to capture those who make money or benefit from making pornography available online, including making it available free of charge. It is not the intention to capture those sites, for example, that mostly contain non-pornographic content. However, it is the intention to cover those who, for example, market themselves as making available pornographic material and who may benefit from it.
>
> Questions have rightly been asked about pornography on social media and our approach has been to not rule out specific platforms. In the regulations we are suggesting the scope should not include sites where an overwhelming majority of users are clearly not accessing to view pornography or where an overwhelming majority of the content is not pornographic in nature. We do not want to let anyone off the hook and where pornographic material is available but not within scope, it may be

14 HL Deb 20 March 2017 cc12-3
15 HL Deb 20 March 2017 c14
16 HL Deb 20 March 2017 c16
17 HL Deb 20 March 2017 c40

> that the site will be enabling and facilitating the availability of commercial pornography and subject to an ancillary service provider notification. It will depend on the facts of any given case. Many social media sites already act responsibly. We will also look at the issue further as part of the cross-government work on the internet safety strategy that my department is leading…[18]

Government amendment 14 to clause 18 would ensure that the first designation of the age verification regulator would be subject to the affirmative procedure.

Government amendments 26 and 37 would strengthen the requirements on the age verification regulator in relation to the guidance it would issue. **Amendment 37** would insert a new clause after clause 23. When speaking to the amendment, Lord Ashton of Hyde said:

> (…) The age verification regulator must publish guidance about the types of arrangements for making pornographic material available that the regulator will treat as being compliant and guidance about the circumstances in which it will treat services provided in the course of a business as enabling or facilitating the making available of pornographic material or prohibited material. Government believe that internet sites, including social media, can be classified by the regulator as an ancillary service provider, where they are enabling or facilitating the making available of pornographic or prohibited material. This would mean they could be notified of pornographers to whom they provide a service. This guidance will now be subject to an affirmative parliamentary procedure the first time that it is made, providing further opportunity for scrutiny…[19]

Government amendment 39 would add a new clause after clause 24 providing for the Secretary of State to issue guidance that the age verification regulator would have to take into account. The guidance would provide "direction to the regulator in a number of areas, including the important power of internet service provider level blocking".[20]

Government amendment 36 would add a new clause after clause 23.[21] The age verification regulator would not be able to give a notice to an ISP (under clause 23(1)) where this would be likely to be detrimental to:

> a) national security;
>
> b) the prevention or detection of serious crime, within the meaning given in section 263(1) of the Investigatory Powers Act 2016;
>
> c) the prevention or detection of an offence listed in Schedule 3 to the Sexual Offences Act 2003

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18 HL Deb 20 March 2017 cc41-2
19 HL Deb 20 March 2017 c42
20 HL Deb 20 March 2017 c42
21 This amendment was agreed in Public Bill Committee on 2 February 2017 c1363

The offences in schedule 3 to the *Sexual Offences Act 2003* include possessing prohibited images of children (under s62 of the *Coroners and Justice Act 2009*).[22] Lord Ashton of Hyde said:

> (…) We have heard the calls to provide the age verification regulator with powers to block criminal images involving children, as defined by the Coroners and Justice Act 2009. However, at the forefront of cross-government thinking on this was the need not to cut across the excellent work of the Internet Watch Foundation on child sexual abuse content, complicating the landscape and making it harder to effectively and efficiently protect children. It has never been the case that this regime would seek to regulate that child sexual abuse material. Fundamentally, we are dealing with different harms, with different responses, and it is right that they are treated separately.
>
> With child sexual abuse material, the Government seek to ensure that it is eradicated at source: that content is not just blocked but actively taken down from the internet. Providing for the age verification regulator to simply block this material in the course of its work risks this. The BBFC and the IWF are in agreement that they do not wish the BBFC to take on the role of policing child sexual abuse material, or content likely to fall within this classification. The Internet Watch Foundation does a vital and difficult job and we should not seek to complicate that by conflating with age verification…[23]

Opposition amendments

Amendment 40, moved by Baroness Jones of Whitchurch (Labour), was agreed on division by 203 votes to 176. This would require the Secretary of State to publish a code of practice about the responsibilities of social media platform providers to protect young people from online abuse and bullying.

Amendment 41, moved by Baroness Jones of Whitchurch was agreed on division by 179 votes to 159. This would require the Secretary of State to produce a report on the impact and effectiveness of the provisions on pornography and age verification (within 18 months of the provisions coming into force).

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22 For detail on the offence see Crown Prosecution Service guidance on prohibited images of children

23 HL Deb 20 March 2017 c13

4. Digital government and data sharing

Part 5 of the Bill deals with data sharing in, by, and with the public sector, for a variety of purposes, such as improving research and statistics, preventing fraud and helping people who are in fuel poverty.

This part of the bill was heavily amended in the Lords, with nearly 200 amendments – all by, or with the support of, the Government.

4.1 Changes to powers

The House of Lords Delegated Powers and Regulatory Reform Committee made a significant number of recommendations on the bill in its report, Digital Economy Bill: Parts 5–7, and the Government brought forward a large number of amendments at Report Stage in response.[24]

Putting lists of 'specified persons' on the face of the bill

This part of the bill creates new various gateways that allow "specified persons" to share information for certain purposes.

Following recommendations by the Delegated Powers and Regulatory Reform Committee, one large set of Lords Government amendments would:

- Put lists of the specified persons and public authorities – who are able to disclose and use information under these powers relating to public service delivery, fuel poverty, water poverty, debt and fraud – on the face of the Bill in new Schedules;
- Allow these Schedules to be amended by regulations which are subject to the affirmative procedure in both Houses.[25]

Tighter criteria on who may be involved in sharing and the purposes for which they are sharing

Following recommendations from the Delegated Powers and Regulatory Reform Committee, a set of Government amendments agreed at Report Stage would restrict the bodies that can be involved in information sharing and the purposes for which they can do this:

- **Amendment 48** would mean that a specified person involved in sharing for public service delivery objectives, must have their own specifically defined objectives. **Amendment 56** would require that such objectives must support the delivery of their functions.
- **Amendment 61** would require that a body be involved in the administration of fuel poverty measures, if it is to be added to the list of bodies permitted to make use of the fuel poverty power.

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24 HL Deb 20 March 2017

25 Amendments 49 to 55, 57, 58 , 60 113, 146, 283 - 286 and consequential amendments

Amendments 59 and **64** would require that sharing be in connection with fuel poverty support measures.

- **Amendment 114** would set out tighter requirements, relating to the identification, management and recovery of debt owed to a public authority, which a body must meet before it can be added to the list of bodies permitted to make use of the debt power.
- **Amendment 147** would set out tighter requirements, relating to a body's ability to identify, reduce the risk of, or tackle fraud against a public authority, which must be met before a body can be added to the list of bodies permitted to make use of the fraud power.

Codes of Practice put in secondary legislation

This part of the bill requires a number of codes of practice, and a statement of principles, to be developed and used. The Delegated Powers and Regulatory Reform Committee recommended that these should be set out in secondary legislation. The first version of each code would be agreed under the affirmative procedure and revisions under the negative procedure. The Government accepted these recommendations and brought forward amendments at Report Stage.[26]

Removal of certain Henry VIII powers

The Delegated Powers and Regulatory Reform Committee recommended that three Henry VIII powers be removed from the bill, or that the Government provide a convincing justification of why the powers were needed. The Government then made **amendments (90, 133 and 166**) to remove the powers.

Limitations on powers to amend bill after review

The bill requires a review the operation the debt and fraud powers in the bill three years after they come into force. If, as a result of the review, the relevant Minister decides that the corresponding Chapter should be amended or repealed, the bill allows the relevant Minister to make changes by regulations.

Following recommendations from the Delegated Powers and Regulatory Reform Committee, **amendments 129** and **162** would narrow the scope of the potential changes by requiring that they only be made for the purposes of improving the effectiveness of the operation of the powers. They may also not be used to remove any safeguards relating to the use or disclosure of information.

4.2 Water poverty

Lords amendments 65 and **66** would insert two new clauses into the Bill, which would extend information-sharing provisions to water companies ('water and sewerage undertakers') to help improve the take-up of various schemes offered by the water sector for households in low-income and other vulnerable circumstances. [27] The clauses

[26] Lords Amendments 87, 88, 105, 126, 127, 159, 160, 206, 207, 231, 232, 228 and 229

[27] Lords Amendments 67, 69, 70, 71, 72, 75, 76, 77, 78, 81, 82, 85, 86, 93, 94, 98, 99 and 103

largely mirror the existing clauses for gas and electricity companies. They extend only to England and Wales[28] and were introduced at Committee Stage in the Lords.

The Government explained that these clauses are intended to help identify people in water poverty, so that they could be supported:

> During the passage of the Bill, we have had representations that more could be done to help citizens in water poverty. The powers in these new water and sewerage clauses have a clear objective: to help improve the take-up of various schemes offered by the water sector that provide assistance to householders in low-income and other vulnerable circumstances. Research by the Consumer Council for Water shows that take-up of such social tariffs is improving, but remains low. This is in spite of considerable effort by the sector to improve awareness of the support available—for example, through its presence in jobcentres, food banks and advice centres as well as through advertising in socially deprived areas. The present system is heavily reliant on eligible households putting themselves forward for help. As a result, large numbers of people are missing out on support, which could include a cap on their bill or a discount on their bill of between 15% and 90%.
>
> These new measures will enable water companies to reach out directly to customers who are likely to be eligible for assistance schemes. This will make it easier for customers in low-income and vulnerable circumstances to access the support to which they are entitled and will improve the accuracy, efficiency and effectiveness of the targeting and delivery of social tariffs. Support for the introduction of such measures has been wide ranging, from the consumer body CCWater, Ofwat—the economic regulator for the sector—and the sector itself.[29]

For further information on this issue, see the Library Briefing paper on Water bills: affordability and support for household customers which discusses social tariffs and take up at section 3.3.

4.3 Regard to Information Commissioner's codes of practice

The Information Commissioner called for explicit reference to her codes of practice on privacy impact assessments and privacy notices, transparency and control to be put on the face of the Bill. [30]

The Government brought forward amendments at Report Stage to do this.[31] These would require persons using most of the powers conferred by Part 5 of the Bill to have regard to these codes of practice.[32]

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28 Under amendments 259 and 264
29 HL Deb 6 February 2017 c1517
30 HL Deb 20 February 2017 c105
31 Amendments 89, 106, 128, 161, 208, 216, 217, 230 and 234
32 This requirement would not apply to Chapter 5 because that Chapter focuses on the sharing of non-personal data.

4.4 Whistleblowing and journalists

A set of **amendments (79, 122, 155 and 187**) would ensure that "protected disclosures" made by whistleblowers and disclosures for journalistic purposes in the public interest would not be subject to certain criminal sanctions that are contained in this part of the bill. This change was made by the Government after concerns were raised that the bill could criminalise disclosures made by whistleblowers and journalists making disclosures in the public interest.[33]

4.5 Disclosure of information by Welsh and Scottish revenue authorities

Chapter 5 to Part 5 of the Bill makes provision for public authorities to share information with third parties for the purpose of research in the public interest. The Bill makes specific provision for personal information disclosed for this purpose by HM Revenue & Customs (HMRC), so that recipients may not disclose it unless HMRC has given general or specific consent for the specific disclosure.[34] In Committee the Government tabled two new clauses, with several supporting amendments, so that equivalent provision is made for personal information disclosed by the two revenue authorities responsible for administering devolved taxes in Wales (the Welsh Revenue Authority) and in Scotland (Revenue Scotland).[35] These amendments proved uncontentious and were agreed without a division.[36]

Chapter 6 to Part 5 of the Bill makes provision for HMRC to share "non-identifying information", provided the disclosure is in the public interest. At Report the Government introduced two new clauses to provide equivalent powers for the Welsh Revenue Authority, and Revenue Scotland, "following discussions with the Welsh Government and the Scottish Government [and] as requested by them."[37]

4.6 HMRC disclosure to the Employer Liability Tracing Office

The Employer Liability Tracing Office (ELTO) is a non-profit making company which maintains a database of insurance policies to enable employees to trace the insurer of their former employer in order to obtain compensation for workplace injuries.[38]

At report **amendment 215** was made to allow HMRC to share the name and address of an employer and associated reference numbers with ELTO, for the purpose of improving the quality of the ELTO

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33 HL Deb 6 February 2017 c1553 -
34 Clause 60 of HL Bill 80. see Explanatory Notes [HL Bill 80] 29 November 2016 para 206
35 HL Deb 6 February 2017 c1554 - amendments 213 & 214 with 199, 200 and 191
36 HL Deb 6 February 2017 cc1580-2
37 HL Deb 20 March 2017 c101 – amendments 28FW & 28FX; agreed without a vote (*op.cit.* cc127-8).
38 The ELTO's site has details of its operations

databases. This issue had been raised in Committee by Lord Hunt,[39] who then tabled a new clause to this effect at Report, which was supported by the Government.[40]

4.7 Extending protections for information shared for research purposes

Amendments 181 and **192** would extend protection for information shared for research purposes, where personal information which has been 'de-identified' but where a person's identity could potentially still be deduced. They would also ensure that personal information can be disclosed for the purposes of peer review.[41]

39 HL Deb 6 February 2017 cc1516-7
40 HL Deb 20 March 2017 cc128-9 – amendment 28FY, agreed without a vote.
41 Amendments 181 and 192 with consequential amendments

5. Broadcasting

5.1 On-demand programmes

Amendment 241 would enable the Secretary of State to make regulations requiring those providing on-demand television programmes to provide subtitles, audio description and sign language interpretation. The amendment was moved in Committee by Lord Borwick (Conservative) and supported by the Government.[42]

5.2 BBC funding

Amendment 237 would require the Secretary of State to set up a BBC Licence Fee Commission to make a recommendation on the level of licence fee required to fund the BBC for the purposes set out in the Royal Charter and Agreement.

Amendment 238 would require the Secretary of State to conduct a public consultation on "appropriate levels of BBC funding".

Amendment 239 would require the Secretary of State to consider the recommendation of the Licence Fee Commission, as well as the results of the public consultation, when determining the settlement for BBC funding from April 2022. If the Secretary of State decided to reject the Commission's recommendation, she would have to publish the reasons for doing so.

These three amendments were moved by Lord Best (Crossbench) at Report Stage but were not supported by the Government. They were agreed on division (by 268 votes to 201).

5.3 Children's programmes

Amendment 240 would give Ofcom the power to issue criteria addressing the provision of children's programming by broadcasters. The amendment was moved by Baroness Benjamin (Liberal Democrat) at Report Stage and supported by the Government.[43]

5.4 Public sector broadcasting

Amendment 242 would amend the *Communications Act 2003* so that public sector broadcasting (PSB) on-demand services would be added to those services entitled to prominence on the electronic programme guide (EPG). The amendment was moved by Lord Wood of Anfield (Labour) at Report Stage but were not supported by the Government. They were agreed on division (by 217 votes to 188).

5.5 Listed events

The listed events regime gives free-to-air channels the opportunity to acquire the rights to televise major sporting events. The current qualifying conditions require that a television service must be available

42 House of Lords Public Bill Committee 8 February 2017 c1769-70
43 HL Deb 29 March 2017 cc635-7

for reception for free by at least 95% of the UK population. Government **amendment 243** would give the Secretary of State the power to lower the qualifying criteria of 95%.[44]

[44] For further background see DCMS, *Digital Economy Bill: Summary of government amendments for Lords Report tabled on 13 March 2017*, p3

6. Other New Clauses

6.1 Lending of e-books by public libraries

Government amendment 46 on the public lending right would mean that the authors of e-books and audiobooks would have the right to receive payment from a government fund for the remote lending of these books from public libraries across the UK. The amendment would also amend the *Copyright, Designs and Patents Act 1988* to enable rights holders to include appropriate terms in respect of e-books and e-audiobooks to reflect the differences between digital and physical books and ensure that e-lending by public libraries mirrors physical lending.

6.2 Secondary ticketing

Background

The online resale of tickets (the secondary ticketing market) applies to recreational, sporting or cultural events in the UK.

A detailed outline of the current regulation of the secondary ticketing market, under the new Consumer Rights Act 2015 (CRA 2015) and other legislation, is provided in a separate Library briefing paper, "Secondary ticketing" (CBP 4715) (dated 6 April 2017).

Following the introduction of the CRA 2015, the Government commissioned an independent report by Professor Michael Waterson to explore the effectiveness of consumer protection measures concerning online secondary ticketing facilities. Published in May 2016, Professor Waterson's report made 9 recommendations to make the ticketing market work better for consumers.

In June 2016, the Competition and Markets Authority (CMA) began a separate compliance review of the secondary ticketing market. This was followed, on 19 December 2016, by the CMA opening an enforcement investigation into suspected breaches of consumer protection law in the online secondary tickets market.

In its response to the Waterson's report, published on 13 March 2017, the Government accepted in full the report's recommendations. It looked to operators in both the primary and secondary ticketing markets to implement the recommendations. Significantly, it said that having reflected on contributions from roundtable discussions, it intended to respond with proposals which Parliament would be invited to consider within the context of the Digital Economy Bill.[45]

The Culture, Media and Sport (CMS) Committee have also held two one-off evidence sessions into ticket abuse. The first evidence session took place on 15 November 2016, the second on 21 March 2017.

All of these initiatives are considered in detail in the aforementioned separate Library briefing paper, "Secondary ticketing" (CBP 4715) dated

[45] HM Government, Government Response to Professor Waterson's Independent Review, March 2017

6 April 2017, which also provides further detail of the consideration of this issue during stages of this Bill.

Digital Economy Bill

At Committee stage in the Commons, Nigel Adams proposed new clause 13 to the Digital Economy Bill that would criminalise the misuse of so-called "bot" technology to unlawfully harvest event tickets. The clause was withdrawn after being debated.[46]

At Committee stage in the Lords two amendments to tighten the regulation of secondary ticketing were considered. Amendment 230, again raised the use of digital purchasing software – so called bots – and consumer detriment, while amendment 231 would give artists and event organisers greater control over who would be authorised to resell their tickets. Specifically, it would add to the CRA 2015 a provision requiring online secondary ticketing platforms to resell tickets only for events where they were the authorised resale agent.[47]

Amendment 230 was withdrawn and amendment 231 was not moved. The Minister made a commitment that the Government would continue to consider the specific issues of bots and whether there was scope for further government intervention in this area.[48]

At Report Stage, **Government amendment 247**, to prohibit the use of bots to bulk purchase tickets, was agreed without division. Speaking to this amendment, Lord Ashton of Hyde explained that the amendment was a response to the Waterson review. It would provide the power for Government to introduce a criminal offence to use bots to purchase tickets for a recreational, sporting or cultural events in excess of the maximum specified. The intended offence would apply only to tickets for events in the UK, although it would cover activity to obtain tickets that occurs outside the UK. The Minister said that the amendment would "clarify the law and put beyond doubt the illegality of this practice and the need to report it."[49] He confirmed that the Government would work with industry to enforce the new offence:

> "An offence is only worth having if criminal acts are reported. We have industry groups in place that are now willing and able to take action in partnership with our law enforcement agencies."[50]

Lord Clement- Jones welcomed the Government's amendment to ban the bulk purchase of tickets. However, he said that it would not solve all the problems entirely by itself; there were questions about enforcement:

> "As the Computer Misuse Act has not been effectively enforced by the police to date, the question is: who will enforce it and what budget will they have to enforce it with?"[51]

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46 HC Deb 1 November 2016 c 429-432PBC
47 HL Deb 8 February 2017 c.1832-1833
48 HL Deb 8 February 2017 c.1835-1836
49 HL Deb. 29 March 2017, c.659-660
50 HL Deb. 29 March 2017, c.660
51 HL Deb. 29 March 2017, c.662

Lord Stevenson of Balmacara also supported the Government's amendment.[52] He said that the issue was about the rights of the promoters to organise the events that they want to and have control of them, and the rights of consumers who sign up to see these events to do so with the security and certainty that they will be able to see what they have paid for at reasonable prices.[53]

Lord Moynihan introduced **amendment 246** (with other amendments)**,** which would amend the CRA 2015 by inserting a duty to provide the ticket reference or booking number when reselling tickets.

Speaking to this amendment, Lord Moynihan explained that although the CRA 2015 ensures that the ticket purchaser receives the seat number, the row number and the block, there is no requirement to give the ticket number (if there is one). A further difficulty arises where the ticket is for a standing area - there is no way of checking that the consumer has a valid ticket. The amendment would ensure that both primary and secondary market ticket sellers provide a unique reference number on the tickets so that event organisers could track sales of tickets.

Lord Moynihan made three points in support of the amendment. First, he acknowledged that the Waterson Report did not support any further significant changes to legislation at this time, but said that his amendment merely tidied- up gaps in the CRA 2015 regime. Secondly, although the CMA is currently investigating suspected breaches of consumer protection law in the online secondary ticket market, it is only looking at the effectiveness of existing legislation. Thirdly, since providing a unique reference number on the tickets is not regulated under the EU Consumer Rights Directive, the Directive does not prevent this practice.[54]

The Government did not support the amendment but it was agreed on division.

6.3 Communication devices used for drug dealing

During Committee stage the Lords agreed a new Government clause (**amendment 248**) on communication devices used for drug dealing. The new clause would give the Secretary of State power to make regulations enabling the courts to make a "drug dealing telecommunications restriction order". Key points to note are as follows:

- The purpose of the order would be to require a communications provider[55] to take whatever action the order specifies for the

52 HL Deb. 29 March 2017, c.664-665
53 HL Deb. 29 March 2017, c.664-665
54 HL Deb. 29 March 2017, c.660-662
55 Meaning a person providing a telecommunications service, which has the meaning given by section 261 of the *Investigatory Powers Act 2016*

purpose of preventing or restricting the use of communication devices[56] in connection with drug dealing offences.[57]

- Such action may include (but is not limited to) action relating to a specified device, or action relating to a specified phone number or something else that may be used with a device.
- A communication device is used in connection with a drug dealing offence if it is used by a person to commit (or facilitate the commission of) a drug dealing offence, or if the person's conduct is likely to facilitate the commission of a drug dealing offence (whether or not an offence is committed).
- Applications for orders may only be made by the National Crime Agency or a police officer of the rank of superintendent or above.

Detailed procedural issues – such as the hearing of applications, the duration of orders, the variation and discharge of orders, and the appeals process – will be set out in Regulations. The Regulations would be subject to the affirmative procedure.

Speaking to the amendment, Baroness Buscombe said that the aim of the proposed orders was to support police in tackling "county lines", which she described as "the police term used to describe gangs in large urban areas who supply drugs, especially class A drugs, to suburban areas and market and coastal towns".[58] She said that "deal lines" run on mobile phones were at the core of this model, and that the orders would disrupt these by providing a power to compel communication providers to disconnect phones used for such activity.

Lord Clement-Jones, who made the only other contribution to the debate on this amendment, said that the Liberal Democrats were "broadly supportive" but also "slightly doubtful about whether these measures will ultimately be effective".[59]

6.4 Information Commissioner charges

Government **amendments 249 to 252** would give the Secretary of State the power to make regulations introducing new charges to fund the regulatory functions of the Information Commissioner. The charges would replace the existing notification fees set out in regulations made under Sections 18 and 26 of the *Data Protection Act 1998*. A DCMS document gives the following background:

> The data protection statutory duties of the Information Commissioner are funded from the annual notification fees collected from data controllers pursuant to fees regulations made under Part 3 of the Data Protection Act 1998.
>
> The requirement for a notification 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

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56 As defined in section 1(3) of the *Prisons (Interference with Wireless Telegraphy) Act 2012*, which includes mobile telephones and SIM cards

57 Defined as an offence under section 4(3) of the *Misuse of Drugs Act 1971* (supply of controlled drugs) or section 5 of the *Psychoactive Substances Act 2016* (supply of psychoactive substances)

58 HL Deb 8 February 2017 c1790

59 HL Deb 8 February 2017 c1791

> 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.
>
> 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.
>
> 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 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.[60]

6.5 Pension Liabilities and the Telecommunications Act 1984

When BT was privatised, the legislation included a 'Crown Guarantee' to protect the pensions of its employees (*Telecommunications Act 1984* s68; BT Pension Scheme website, Crown Guarantee). The Government made amendments (253, 253, 255 and 287) to the current Bill at Report Stage to enable this to be maintained with a legally separate Openreach Ltd. The power includes an ability to define that protection in secondary legislation, once the details of the Openreach separation are available, so that "it may be neither wider nor narrower than "existing protections."[61]

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60 For further background see DCMS, *Digital Economy Bill: Summary of government amendments for Lords Report tabled on 13 March 2017*, pp5-6

61 HL Deb 29 March 2017 c713

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