



# Library Note

## Digital Economy Bill (HL Bill 80 of 2016–17)

The Digital Economy Bill is scheduled to receive its second reading in the House of Lords on 13 December 2016. The Bill aims to enable access to fast digital communication services for citizens and businesses; to enable investment in digital communications infrastructure; to shape the emerging digital world to the benefit of children, consumers and businesses; and to support the digital transformation of government, enabling the delivery of better public services, world leading research and better statistics. This House of Lords Library briefing gives an overview of the Bill's provisions. It focuses on measures concerning the introduction of a broadband universal service obligation; protection for children from online pornography; public sector data sharing; the BBC and public service broadcasters. It outlines the policy background in those areas, and a summary of some of the key amendments made to the Bill during committee and report stages in the House of Commons.

The Bill was introduced in the House of Commons on 5 July 2016, and completed its final stages on 28 November 2016. The Bill consists of seven parts:

- Part 1 introduces a broadband universal service obligation, entitling consumers to a minimum speed; provides Ofcom with powers to set general conditions that require communication providers to adhere to specified processes in order to facilitate customers changing communications providers on request; and gives Ofcom powers to require communications providers to pay compensation to consumers in certain circumstances.
- Part 2 repeals the existing Electronic Communications Code and inserts a new code; it also provides Ofcom with powers to regulate “dynamic spectrum access”.
- Part 3 introduces age verification for online pornography with penalties for non-compliance. It enables the regulator to notify payment service providers and ancillary services of those in breach of the provisions, and provides the regulator with the power to direct internet service providers to block access by persons in the UK to prohibited material.
- Part 4 updates intellectual property rules for digital industries.
- Part 5 makes provision for data sharing between public bodies for certain purposes and in certain circumstances. Datasets may be shared to support public service delivery and in relation to public sector debt and fraud, and to produce research and official statistics. There are also specific provisions for sharing data related to civil registration.
- Part 6 introduces a new statutory code for direct marketing; makes Ofcom responsible for the regulation of all BBC activities; and transfers to the BBC from the Secretary of State the ability to make concessions on TV licences relating to age.
- Part 7 makes provision for the commencement of the Bill's provisions and sets out the territorial extent and application in the UK of each of the measures.

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## I. Overview

### I.1 Summary of Provisions

The Digital Economy Bill completed its final stages in the House of Commons on 28 November 2016, and was introduced in the House of Lords on 29 November 2016. It is scheduled to receive its second reading on 13 December 2016. The Bill, as introduced in the House of Lords, consists of seven parts. This section briefly outlines the Bill's key provisions, as summarised by the Explanatory Notes which have been prepared by the Department for Culture, Media and Sport. Please note that this briefing does not provide a comprehensive examination of every part of the Bill, and does not provide a commentary on every amendment made. The House of Commons Library has provided analysis of the policy background to the Bill in its paper, [Digital Economy Bill \[Bill No 45 of 2016–17\]](#),<sup>1</sup> and a summary of the Bill's committee stage in the House of Commons in its briefing, [Digital Economy Bill: Committee Stage Report](#).<sup>2</sup>

#### Part 1: Access to Digital Services (clauses 1 to 3)

The Communications Act 2003 requires the Secretary of State to set out by order what communication services must be made available or supplied throughout the UK under the scope of the Universal Services Obligation (USO).<sup>3</sup> Part 1 would make the necessary changes to clarify that the order can include requirements for the supply of broadband services. It would also give the Secretary of State the power to require Ofcom to review the broadband USO, to “ensure that in future it continues to reflect connectivity needs”, including whether the minimum speeds need updating.

In addition, this part would provide Ofcom with powers to set general conditions that would require communication providers to adhere to processes set out by Ofcom to facilitate customers changing communications providers on request, as well as powers to require communications providers to pay compensation to consumers when they fail to meet a specified standard or obligation.<sup>4</sup>

#### Part 2: Digital Infrastructure (clauses 4 to 14)

Part 2 would repeal the Electronic Communications Code in schedule 2 to the Telecommunications Act 1984 and insert a new code as a schedule to the Communications Act 2003.<sup>5</sup> The new code would include:

- Key concepts of the code, including the code rights, which are: to install and keep electronic communications apparatus; inspect, maintain, alter, repair, upgrade or operate electronic communications; carry out works in connection with the electronic communications apparatus; enter the land to inspect, repair, alter, upgrade the

<sup>1</sup> House of Commons Library, [Digital Economy Bill \[Bill No 45 of 2016–17\]](#), 9 September 2016.

<sup>2</sup> House of Commons Library, [Digital Economy Bill: Committee Stage Report](#), 24 November 2016.

<sup>3</sup> [Explanatory Notes](#), p 21; and House of Commons Library, [Digital Economy Bill \[Bill No 45 of 2016–17\]](#), 9 September 2016, p 6.

<sup>4</sup> [Explanatory Notes](#), p 21.

<sup>5</sup> The existing code facilitates the installation and maintenance of electronic communications networks by giving network operators certain rights. Under the Code, telecommunication operators are permitted to construct infrastructure on public land and have rights to install equipment on private land. Further information on the existing Electronic Communications Code can be found in the House of Commons Library briefing, [Digital Economy Bill \[Bill No 45 of 2016–17\]](#) (9 September 2016).

apparatus; connect to a power supply; and cut back any tree or vegetation that interferes with the apparatus.

- Provision about who can exercise the code rights, and who is bound by them. Only the occupier of land may confer a code right on an operator.<sup>6</sup> The code rights bind not only the occupier but also any other person: with interests in the land who has agreed to be bound by the code rights; who are successors in title to any person who is bound; and any person whose interest is created after the right is conferred.
- An automatic right in certain circumstances for network operators to upgrade and share apparatus, and for operators to assign code rights to another operator.<sup>7</sup>
- Powers for the courts to impose an agreement between an operator and a landowner in the case of a dispute, and the granting of compulsory access to the land.<sup>8</sup>
- Changes to the valuation of rent that a communications provider pays to a landowner to access and maintain equipment on private land in instances when the court is imposing an agreement.<sup>9</sup> The new system would be based on compulsory purchase principles ('no-scheme') as it is for other utilities such as electricity.<sup>10</sup>
- Provision for the termination and modification of agreements between landowners and operators.

Part 2 would also amend the Wireless Telegraphy Act 2006 to allow Ofcom to regulate "dynamic spectrum access".<sup>11</sup> Dynamic spectrum access services are provided by means of geolocation databases that allow identification of frequencies available for use by radio equipment, known as white space devices, in spectrum bands authorised by Ofcom. It would allow Ofcom to register and regulate such database providers, and impose financial penalties for contravention of the terms of a spectrum licence.<sup>12</sup> This part would also require Ofcom to have "regard" to a statement of the Government's strategic priorities when carrying out its spectrum management duties.

### **Part 3: Online Pornography (clauses 15 to 26)**

Part 3 would require a person to have age verification controls in place if they wish to make online pornography available to users in the UK on a commercial basis.<sup>13</sup> It provides for guidance to be issued by the age certification regulator on the verification arrangements that should be in place, and would enable the Secretary of State to designate a person (or persons) as the regulator.

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<sup>6</sup> [Explanatory Notes](#), p 48.

<sup>7</sup> *ibid*, p 49.

<sup>8</sup> *ibid*, p 50.

<sup>9</sup> *ibid*.

<sup>10</sup> This would mean that the value of the land would be assessed based on its value to the landowner and not its value to the network operator.

<sup>11</sup> [Explanatory Notes](#), pp 8 and 22. Spectrum is an electromagnetic frequency range that can be used for wireless communication. It is a national asset owned by the Government, which is licensed by Ofcom for various civil uses such as TV and radio. Dynamic spectrum access is where new technologies, known as white spaces devices, share spectrum bands with existing users and access unused parts of allocated spectrum ([Explanatory Notes](#), p 8).

<sup>12</sup> [Explanatory Notes](#), p 24.

<sup>13</sup> *ibid*, p 26.

This part sets out the enforcement steps that would be available to the regulator if a person has breached the requirement to have age verification controls in place, and makes provision for financial penalties.<sup>14</sup> It would also enable the regulator to notify payment service providers and ancillary services of those in breach of the provisions, and who are making prohibited material available online. It would further provide the regulator with the power to direct internet services providers to block access by persons in the UK to material which breaches the provisions of the Bill.<sup>15</sup>

#### **Part 4: Intellectual Property (clauses 27 to 29)**

Part 4 would make changes in three areas of intellectual property (IP) law. It would:

- Amend the maximum sentence for online copyright infringement from two years to ten years. It would also change the offence provisions to introduce an additional mens rea so that a person must either intend to make monetary gain, or know or have reason to believe that their actions will cause loss to the owner of the right.
- Amend the Registered Design Act 1949 to give registered design proprietors the ability to mark their products with either a specific registered design number or the web address of a webpage which clearly associates the product with the relevant registration number.
- Repeal section 73 of the Copyright, Designs and Patent Act 1998, which provides that the copyright in the broadcast of public service broadcaster channels (and the copyright in any work included in the broadcast) is not infringed where the broadcast is retransmitted by cable.<sup>16</sup>

#### **Part 5: Digital Economy (clauses 30 to 69)**

Part 5 would provide a “legal framework to enable data sharing for a public benefit”. It would allow:

- Public authorities, specified by regulation, to share personal information for “tightly constrained reasons”, where its purpose is to “improve the welfare” of the individual or households, with specific objectives set out in the regulations. For instance, the provisions would allow information to be shared between gas and electricity suppliers and public authorities in relation to customers living in fuel poverty.
- Electronic verification between public authorities and the General Register Office, removing “reliance” on paper birth, marriage, civil partnership and death certificates.
- Public authorities to pilot arrangements enabling information to be shared between specified persons for the purposes of taking action in connection with a debt owed to a specified person or the Crown, and to “improve efficiency and create a more informed view of a customer’s individual circumstances and their ability to pay”.
- Public authorities to pilot arrangements to enable the sharing of information between specified persons to spot conflicting information across different public services that could suggest patterns of fraud.

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<sup>14</sup> [Explanatory Notes](#), p 26.

<sup>15</sup> *ibid*, p 27.

<sup>16</sup> *ibid*.

- The Office for National Statistics to access administrative data from across government and business.
- The use of de-identified data to support accredited researchers to access and link data in secure facilities to carry out research for public benefit.

Each of the measures in part 5 would have a corresponding statutory code of practice, each of which would be consistent with the Information Commissioner's [Data Sharing Code of Practice](#). On 19 October 2016, the Government published [draft codes of practice](#).

### **Part 6: Miscellaneous (clauses 70 to 87)**

Part 6 contains several miscellaneous provisions concerning Ofcom and direct marketing, including:

- Measures that would amend the Communications Act 2003 to allow provisions to be made in the BBC's Charter and Framework Agreement so that Ofcom can regulate all the BBC's services, in its new role as the external regulator of the BBC.<sup>17</sup>
- A transfer from the Secretary of State to the BBC the function of making provision for a TV licence fee concession by reference to age. The concession would be determined independently by the BBC following consultation.<sup>18</sup>
- Provision to amend the definition of 'specially restricted material' in the Communications Act 2003 to ensure that age verification is required by video-on-demand (VoD) services offering certificate 18 pornography.<sup>19</sup>
- Provision to place the Information Commissioner's [Direct Marketing Guidance](#) on a statutory footing.<sup>20</sup>

## **1.2 Second Reading**

The Bill had its second reading in the House of Commons on 13 September 2016. The Secretary of State for Culture, Media and Sport, Karen Bradley, opened the debate and set out the policy background to the Bill:

We live in a digital economy. Almost £600 billion of online sales were made in the UK in 2014. That is the largest per capita online sales figure in the world, of all the major economies, at just over £1,500 per head [...] Supporting the digital economy was core to our manifesto, and that is why this Bill is a central plank of the Government's legislative programme in this session.<sup>21</sup>

Ms Bradley set out the key parts of the Bill, identifying the provisions on broadband speed and mobile coverage, protection for children from online pornography, statutory direct marketing

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<sup>17</sup> [Explanatory Notes](#), p 43.

<sup>18</sup> *ibid.*

<sup>19</sup> *ibid.*, p 14. VoD services under UK jurisdiction are excluded from the age verification for online pornography requirement under Part 3 of the Bill because these services are already regulated by Ofcom under the provisions of the Communications Act 2003. The Explanatory Notes state that this provision is to ensure that there is consistency between the two regulatory regimes.

<sup>20</sup> *ibid.*, p 15.

<sup>21</sup> [HC Hansard, 13 September 2016, col 771](#).

guidance, intellectual property protection, investment in digital infrastructure, public sector data sharing and reforms to the BBC.<sup>22</sup> She concluded that the Bill was “good news for all” and will “grow the economy and [...] grasp the future”.

Speaking for the Opposition, Chi Onwurah, then Shadow Minister for Culture, Media and Sport, welcomed a number of the measures, including those that would implement the Universal Services Obligation (USO) for broadband services.<sup>23</sup> However, she stated that there were a number of areas where her Party had “significant concerns”, in particular the changes to the provision of TV licence fee concessions for the over-75s, and the funding levels of the BBC.<sup>24</sup> Ms Onwurah also expressed concerns about the data sharing elements of the Bill, and urged the Government to “instigate a debate and to set out the right transparent framework” for public sector data sharing.<sup>25</sup> Speaking for the Scottish National Party (SNP), Calum Kerr, SNP Westminster Group Leader (Digital), concurred that there were several provisions that were to be welcomed, but that a number of areas required greater clarification at committee stage and needed “more ambition”.<sup>26</sup> He identified measures such as the data sharing provisions and mobile and broadband coverage as areas for concern.

A number of MPs spoke in support of the provisions on online age verification, although there were concerns that the measures may not be effective enough in stopping access to inappropriate content, and some, such as Maria Miller (Conservative MP for Basingstoke) and Sarah Champion (Labour MP for Rotherham), questioned whether more general measures for tackling social media abuse were required.<sup>27</sup>

## 2. Access to Digital Services

### 2.1 Background

#### Universal Service Obligation: Broadband

The Conservative Party’s 2015 general election manifesto set out a commitment to roll out universal broadband to “ensure everyone is part of the digital economy”.<sup>28</sup>

‘Superfast’ broadband is a term used by the Government to describe broadband capable of delivering download speeds of at least 24 Mbps, which cannot be delivered through previous generation broadband technology.<sup>29</sup> The UK’s superfast broadband networks are largely provided through Virgin Media’s cable network and through BT Openreach’s ‘Fibre to Premises’ (FTTP) solutions. In 2013, the Coalition Government set an ambition that by the end of 2017, 95 percent of premises would be able to connect to superfast broadband.<sup>30</sup> To support the roll-out of superfast broadband to those areas where it would not be commercially viable for the private sector, the Government, local authorities and devolved administrations have committed nearly £1.7 billion in improving broadband.<sup>31</sup> According to the Government, superfast broadband is currently available to over 90 percent of premises in the UK, compared

<sup>22</sup> [HC Hansard, 13 September 2016, col 777.](#)

<sup>23</sup> [ibid, col 778.](#)

<sup>24</sup> [ibid, col 780.](#)

<sup>25</sup> [ibid, cols 780–1.](#)

<sup>26</sup> [ibid, col 786.](#)

<sup>27</sup> [ibid, cols 803–5.](#)

<sup>28</sup> Conservative Party, [Conservative Party Manifesto 2015](#), April 2015, p 14.

<sup>29</sup> [Explanatory Notes](#), p 5.

<sup>30</sup> Department for Culture, Media and Sport, [‘Broadband Delivery UK’](#), 21 December 2015.

<sup>31</sup> [Explanatory Notes](#), p 5.

with fewer than half in 2010.<sup>32</sup> The Government states that by the end of 2017, superfast broadband will be available to 95 percent of premises, and Broadband Delivery UK (BDUK) estimates that “efficiency savings, coupled with clawback and further commercial roll-out”, could extend superfast broadband coverage to 97 percent of UK homes and businesses by 2020.<sup>33</sup>

In November 2015, the then Prime Minister, David Cameron, announced that the Government was planning to create a broadband Universal Service Obligation (USO) with the intention of giving people the legal right to request a broadband connection with speeds of 10 Mbps by 2020.<sup>34</sup> On 23 March 2016, the Government published the report, [A New Broadband Universal Service Obligation](#), which consulted on the proposal.<sup>35</sup> On 17 May 2016, the Government published its [response to the consultation](#) confirming its plans to legislate.<sup>36</sup> On 11 October 2016, the Government published a [statement of intent](#), setting out the principles that would guide the design of the broadband USO. The document reiterated the Government’s commitment to the provision of access to universally available broadband, and confirmed that the Digital Economy Bill would establish in law the right for every household and business to request an affordable broadband connection of at least 10Mbps, “no matter where they live, up to a reasonable cost threshold”.<sup>37</sup> In the Autumn Statement 2016, the Government announced that it would spend an additional £1 billion to support the development of ‘full-fibre’ connections and 5G networks.<sup>38</sup>

The Government has commissioned Ofcom to provide technical analysis and recommendations on the design of the broadband USO, and on 7 April 2016 Ofcom published [Designing the Broadband Universal Service Obligation](#), which invited views from industry and others on how the detailed operation of the broadband USO would work.<sup>39</sup> On 16 August 2016, Ofcom published a summary of responses.<sup>40</sup> Ofcom found that the majority of responses could be categorised broadly into two different “visions” of how broadband coverage could be extended:<sup>41</sup>

- A vision for a more highly specified universal service for all, with the cost of such interventions a more secondary consideration. Respondents supporting this view envisaged a technical specification with a minimum download speed higher than 10 Mbps. For example, several respondents felt service speeds should be in line with the EU Digital Agenda targets of 30Mbps or above. They also suggested specifying further elements of minimum performance, including upload speeds and the minimum acceptable delay in connecting to services (latency). This option was favoured mostly by

<sup>32</sup> Department for Culture, Media and Sport, [A New Broadband Universal Service Obligation: Statement of Intent](#), 11 October 2016, p 2.

<sup>33</sup> *ibid.* Broadband Delivery UK (BDUK) is part of the Department for Culture, Media and Sport, and is responsible for implementing the Government’s policy on superfast broadband roll-out. (Department for Culture, Media and Sport, [‘Guidance: Broadband Deliver UK’](#), 21 December 2015).

<sup>34</sup> *ibid.*, pp 5–6; and Department for Culture, Media and Sport, [Digital Economy Factsheet: Broadband Universal Service Obligation](#), July 2016.

<sup>35</sup> Department for Culture, Media and Sport, [A New Broadband Universal Service Obligation](#), 23 March 2016.

<sup>36</sup> Department for Culture, Media and Sport, [Broadband Universal Service Obligation Consultation: Government Response and Summary of Responses](#), 17 May 2016, p 2.

<sup>37</sup> Department for Culture, Media and Sport, [A New Broadband Universal Service Obligation: Statement of Intent](#), 11 October 2016, pp 2–3.

<sup>38</sup> HM Treasury, [Autumn Statement 2016](#), November 2016, Cm 9362 of session 2016–17, p 28.

<sup>39</sup> Ofcom, [Designing the Broadband Universal Service Obligation](#), 7 April 2016.

<sup>40</sup> Ofcom, [Designing the Broadband Universal Service Obligation: Summary of Responses to the Call for Inputs](#), 16 August 2016.

<sup>41</sup> *ibid.*, pp 4–6.



public sector respondents and consumer groups, along with the majority of individual respondents.

- A belief that people and businesses need a safety net to complement existing public—and private sector—led broadband deployments. These respondents did not necessarily consider that a USO was the best means of achieving this outcome. However, if a USO was to be introduced, it was argued, it should act as more of a ‘safety net’. They believed the policy goal should be to prevent social and digital exclusion by giving access to online services where commercial or public sector deployments would otherwise not reach, given the economics of building suitable networks. This view was mostly favoured by industry respondents. Industry respondents raised particular concerns about market distortion, particularly the risk of the USO increasing retail prices and reducing the incentives for further commercial infrastructure investment by duplicating existing networks.

Ofcom will complete its report by the end of 2016. The Government will consult on a draft order once Ofcom completes its analysis.

### Switching and Compensation

Telecommunications is a competitive market with a number of different providers offering services including mobile phone contracts, fixed line voice services and broadband. The Government has stated that it “believes that consumers need to be well informed about services available to them, be able to easily switch provider and be compensated if things go wrong”.<sup>42</sup> In its [Strategic Review of Digital Communications](#), published in February 2016, Ofcom identified a number of barriers preventing customers from making informed choices in order to benefit from competition in the market.<sup>43</sup> These include the availability of information about service quality, for example mobile coverage and broadband speeds, and the difficulty of switching providers. The review set out its plans to “empower consumers to make informed choices” and overcome barriers to market participation, which included plans to make switching easier.<sup>44</sup> Since June 2015, Ofcom has implemented gaining provider-led switching (GPL) across the Openreach network; customers wishing to change their fixed voice and/or broadband service provider only need to contact their new provider, and no longer need to contact their existing provider to obtain an authorisation code that they must then give their new provider.<sup>45</sup> The Government set out its support for this model in the document, [Switching Principles Action Plan](#), and has stated that the Digital Economy Bill would introduce measures to “achieve these reforms in a timely manner”.<sup>46</sup>

## 2.2 Committee Stage

At committee stage, a series of amendments were tabled by the SNP and the Opposition which would have required that reports on the operation of the USO be presented to Parliament.

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<sup>42</sup> [Explanatory Notes](#), p 6.

<sup>43</sup> Ofcom, [Making Communications Work for Everyone: Initial Conclusions from the Strategic Review of Digital Communications](#), February 2016.

<sup>44</sup> *ibid*, p 97.

<sup>45</sup> [Explanatory Notes](#), p 6.

<sup>46</sup> *ibid*.

Speaking to Labour's amendments, the Shadow Minister for Culture, Media and Sport, Louise Haigh, explained that:

[...] amendment 82 and new clause 9 [...] would place a requirement on the Secretary of State to lay an annual report before Parliament on progress of the USO and to commission an independent review of the progress of BDUK respectively.<sup>47</sup>

Ms Haigh stated that the purpose of the amendments was for "Parliament to be kept abreast of progress", both on the USO and on the continued roll-out by BDUK, to ensure that Parliament "takes a proper oversight role in assessing the performance and whether it is on target".<sup>48</sup> She argued that it was important that Parliament had the opportunity to review the progress of BDUK in order to consider whether they should be given further direction or powers in relation to accessing land or infrastructure, and whether the minimum speed specified under the USO should be increased:

[...] as we all know, the minimum speed and quality of access that we all require are travelling in one direction only and at an exponential rate. It is difficult to imagine that 10 megabits will still be considered acceptable in 2020, let alone 2025, given that superfast is now defined as 24 megabits. The European Commission is hoping to set a new target for broadband and mobile coverage, which will aim to ensure that all European households can get a minimum internet download speed of 100 megabits per second by 2025.<sup>49</sup>

In response to the Opposition's amendments, the Minister of State at the Department for Culture, Media and Sport, Matt Hancock, acknowledged that "reports and reviews are important".<sup>50</sup> However, he argued that "the [House of Commons Culture, Media and Sport] select committee is there to ensure that Parliament has its say", and highlighted that as Ofcom carried out its consultations, it would "of course report on progress".

The Committee divided on amendment 82, which was defeated by ten votes to eight.<sup>51</sup>

## 2.3 Report Stage

### Broadband Connection Voucher Scheme

The SNP tabled at report stage new clause 27, which would have provided individuals with the option of a broadband voucher scheme as an alternative to the broadband USO. Speaking to the clause, Calum Kerr, SNP Westminster Group Leader (Digital), expressed concerns about the measures in the Bill in relation to the broadband USO:

I have huge reservations about the approach being taken [...] Although I disagree fundamentally with the 10-meg starting point, what really concerns me is the use of a universal service obligation. Pursuing this route pushes the Government into having to follow a very prescriptive process that will lead to a provider, or perhaps of couple of providers, being selected [...] The broadband investment fund announced in a previous Budget had some money put into it, and hundreds of millions of pounds were committed to 5G trials and fibre backbone. All that is welcome, if slightly unambitious,

<sup>47</sup> [Public Bill Committee, \*Digital Economy Bill\*, 18 October 2016, session 2016–17, 4th sitting, col 131.](#)

<sup>48</sup> [ibid, col 132.](#)

<sup>49</sup> [ibid.](#)

<sup>50</sup> [ibid, col 138.](#)

<sup>51</sup> [ibid, col 141.](#)

but we have not seen anything specifically for rural areas. We are talking about a fibre and gigabit future in urban areas while telling rural areas that they should settle for 10 megs and a USO. That is not closing the digital divide—it is turning it into a gaping chasm of inequality. A badly implemented USO will not fix the issue but might, through legislation, cement this digital divide.<sup>52</sup>

Mr Kerr argued that new clause 27, and the introduction of a voucher scheme, would address this issue because it would turn a “universal service obligation into a universal service opportunity”. He urged the Government to “embrace the option of a voucher alternative to empower our rural communities”, and enable them to “put in fibre-to-the-home, providing a much faster solution”.<sup>53</sup>

However, responding for the Government, Matt Hancock stressed that the USO contained in the Bill would “get high-speed broadband everywhere”.<sup>54</sup> He stated that a broadband voucher scheme would not require legislation, and highlighted that the 2016 Autumn Statement, presented on 23 November 2016, had announced that the Government were intending to consult on such a scheme. Mr Hancock argued that the clause was therefore “unnecessary”.

The new clause was pressed to a vote and was defeated by 277 votes to 221.<sup>55</sup>

### Mobile Network Coverage and Contracts

A series of amendments were tabled at report stage which related to mobile contracts and mobile phone coverage. These included:

- New clause 7 which would have required mobile phone service providers to give all consumers the opportunity to make a request to place a financial cap on their monthly bill. Speaking to the new clause, Kevin Brennan, Shadow Minister for Culture, Media and Sport, stated that mobile tariffs were “complex”, and that “consumers of all kinds can find they use much more data than they expected”.<sup>56</sup>
- New clause 20, tabled by the SNP, and new clause 25, tabled by Grant Shapps (Conservative MP for Welwyn Hatfield) which would have placed obligations on mobile phone service providers to allow an end user to terminate their contract upon their being unable to obtain a mobile signal at their main residence or place of employment.
- New clause 14, tabled by Plaid Cymru, which would have required the Secretary of State to commission an impact assessment of enabling macro-not-spot roaming in the UK.<sup>57</sup>

Responding for the Government, Matt Hancock stated that he “understood the frustrations of people whose mobile experience did not live up to their expectations”.<sup>58</sup> However, in regards to roaming, he expressed concerns that it would do “more harm than good” and undermine the “incentive for operators to invest in new infrastructure”. He stated that the Government wanted to address the issue of mobile phone coverage by “achieving universal mobile phone

<sup>52</sup> [HC Hansard, 28 November 2016, cols 1298–9.](#)

<sup>53</sup> [ibid, col 1299.](#)

<sup>54</sup> [ibid, col 1299.](#)

<sup>55</sup> [ibid, cols 1311–14.](#)

<sup>56</sup> [ibid, col 1288.](#)

<sup>57</sup> Macro-not-spots are large areas of non-coverage.

<sup>58</sup> [ibid, col 1280.](#)

coverage”. He stated that a “forthcoming green paper on consumers and markets in mind” would address the “issues of concern” to ensure that consumers get “a good deal from their mobile phone contracts”.<sup>59</sup>

The new clauses were not pressed to a division.

### 3. Online Pornography

#### 3.1 Background

The Conservative Party’s 2015 general election manifesto committed the Government to implement measures to restrict access to harmful sexualised content online, by requiring age verification for access to all sites containing pornographic material.<sup>60</sup> In February 2016, the Government published the paper, [Child Safety Online: Age Verification for Pornography](#), which consulted on proposals to implement the commitment. The consultation set out the Government’s intention to prevent underage access to pornographic material.<sup>61</sup> In the UK, the British Board of Film Classification (BBFC), which classifies content and applies age ratings, has two categories which are defined as pornography, or ‘sex works’, ie “works whose primary purpose is sexual arousal or stimulation”.<sup>62</sup> These are 18-rated pornography, and R18-rated pornography.<sup>63</sup> For the purposes of the consultation, the Government proposed that both categories of pornography be included as being unsuitable for children. The document set out the Government’s proposals to establish a new requirement in law for commercial providers to have in place robust age verification controls for online pornographic content in the UK, and to legislate to establish a new regulatory framework, underpinned by civil sanctions.<sup>64</sup>

The Government’s analysis of responses to the consultation was published in July 2016. It found that 44 percent of respondents supported age verification and 48 percent did not. The analysis reported that:

- A number of children’s charities, support and advice groups, the BBFC, internet service providers (ISPs), and payment service firms and credit card companies supported the Government’s proposals.
- Pornography providers who responded supported the protection of children online, and (with caveats) the introduction of age verification controls.

Some respondents raised concerns in the following areas:

- The difficulties of enforcement, particularly taking action against non-UK companies.

<sup>59</sup> [HC Hansard, 28 November 2016, col 1281](#).

<sup>60</sup> Conservative Party, [Conservative Party Manifesto 2015](#), April 2015, p 35; and [Explanatory Notes](#), p 9.

<sup>61</sup> Department for Culture, Media and Sport, [Child Safety Online: Age Verification for Pornography](#), February 2016, p 17.

<sup>62</sup> *ibid*, p 18.

<sup>63</sup> The R18 category developed prior to the development of videos or DVDs, primarily to clarify what content should only be shown in a licensed sex cinema. The introduction of mandatory video classification in 1984 (through the Video Recordings Act 1984) mirrored the R18 sex cinema system by setting up an R18 video category for more explicit videos to be supplied only in licensed sex shops. The rationale was that children and those likely to be offended by such material would not easily come across it (Department for Culture, Media and Sport, [Child Safety Online: Age Verification for Pornography](#), February 2016, pp 18–19).

<sup>64</sup> Department for Culture, Media and Sport, [Child Safety Online: Age Verification for Pornography](#), February 2016, pp 17–18.

- The potential for determined customers young or old to circumnavigate any controls put in place.
- Freedom of speech arguments over denying or restricting access to pornographic content which is legal for adults to view.<sup>65</sup>

In his response to the consultation, the Information Commissioner said that any system of age verification must appropriately respect individuals' privacy.<sup>66</sup> The Commissioner also raised concerns about the potential misuse of information (eg on passports and driving licences), which might be collected as a result.

In response to the consultation, the Government said that doing nothing was not an option; age verification, while “not a panacea”, would be introduced through the Digital Economy Bill.<sup>67</sup> On 10 October 2016, the Government published [letters of intent](#) exchanged between the Department for Culture, Media and Sport and the BBFC. The BBFC is expected to take on a regulatory role subject to the successful passage of the Bill.<sup>68</sup> It is expected to be the regulator for the majority of the functions of the regulator, including issuing notices to ISPs to prevent access to material. However, it is not intended to take on the role of issuing financial penalties and enforcement notices to non-compliant websites.

## 3.2 Committee Stage

### Internet Service Providers

Louise Haigh, on behalf of the Opposition, tabled a series of amendments at committee stage which related to the obligations of ISPs.

Amendments 77, 90 and 91 would have broadened the Bill's definition of “ancillary service provider” to specifically include ISPs. They would have:

[...] put ISPs in the same bracket as payment service providers, which will be required to withdraw their services if other [enforcement] measures have been exhausted. In the case of ISPs, they would be required to block offending sites.<sup>69</sup>

Louise Haigh also tabled new clause 11, which would have given the Secretary of State the power to introduce regulations enabling a court to grant a blocking injunction. The injunction would have required an ISP to prevent access to a site not complying with the age verification requirements.<sup>70</sup> It would only be used where the other enforcement powers (such as fines) in the Bill had not been effective. Ms Haigh stated that the new clause was needed because:

As it currently stands, the Bill provides fairly feeble powers to an enforcer to give notice to a payment service or ancillary service provider that a site has contravened clause 15(1).<sup>71</sup>

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<sup>65</sup> Department for Culture, Media and Sport, [Child Safety Online: Age Verification for Pornography: Consultation Response](#), July 2016, p 4.

<sup>66</sup> Information Commissioner's Office, [Response to the Department for Culture, Media and Sport's Consultation on Child Safety Online: Age Verification for Pornography](#), April 2016.

<sup>67</sup> Department for Culture, Media and Sport, [Child Safety Online: Age Verification for Pornography: Consultation Response](#), July 2016, p 6.

<sup>68</sup> [Explanatory Notes](#), p 9.

<sup>69</sup> [Public Bill Committee, Digital Economy Bill, 20 October 2016, session 2016–17, 6th sitting, col 205.](#)

<sup>70</sup> [ibid, cols 203–4.](#)

<sup>71</sup> [ibid, col 206.](#)

On the issue of ancillary service providers and ISPs, responding for the Government, Matt Hancock stated that it would be for the regulator to consider on a case-by-case basis who would be categorised as an ancillary provider, and suggested that it would be “surprising” if ISPs were not designated as ancillary service providers.<sup>72</sup>

On new clause 11, Mr Hancock said that the Government was “yet to be persuaded that blocking infringement sites would be proportionate”.<sup>73</sup> In response, Louise Haigh stated that she could not “understand” the Government’s position, and confirmed that the Opposition would be returning to the issue.<sup>74</sup>

### **Approval of Age-verification Providers**

Louise Haigh also moved new clause 18, which would have obliged the regulator to ensure that all age verification providers were approved by the regulator, and would have required providers to perform a data protection impact assessment:

The new clause is designed to address some of the concerns about the practicality of age-verification checks, ensuring that only minimal data are required, and kept secure; that individuals’ privacies and liberties are protected; and that there is absolutely no possibility of data being commercialised by pornographer.<sup>75</sup>

In response, Matt Hancock stated that the Government was one of the “leading lights in developing identity-verification software”, and referred to the existing UK data protection framework and the fact that “significant fines” could be imposed for data protection breaches.<sup>76</sup> Mr Hancock also said that requirements for the regulator to publish a code of practice (under new clause 18) would be unnecessary because provisions in the Bill already required the regulator to publish guidance setting out the types of arrangements that it would be treating as compliance.<sup>77</sup>

Louise Haigh stated that the Opposition would be returning to the issue at report stage.<sup>78</sup>

## **3.3 Report Stage**

### **Blocking Non-compliant Websites**

On 20 November 2016, the Government announced that it would be tabling amendments to the Bill at report stage to give the age verification regulator (the BBFC) the power to direct ISPs to prevent access to any site that did not have age verification in place. It said:

The amendment will allow the age verification regulator, BBFC, to issue a notice to ISPs, and those that cover mobile network operators, to prevent access to websites that have no or inadequate age-verification for pornographic material.

The regulator will have flexibility with a range of options and which one they use will depend on the circumstances of any given case. However, once they have been instructed to act, ISPs will prevent access to the whole pornography site.<sup>79</sup>

<sup>72</sup> [Public Bill Committee, \*Digital Economy Bill\*, 20 October 2016, session 2016–17, sixth sitting, col 208.](#)

<sup>73</sup> [ibid, col 209.](#)

<sup>74</sup> [ibid, col 210.](#)

<sup>75</sup> [ibid, cols 228–9.](#)

<sup>76</sup> [ibid, col 233.](#)

<sup>77</sup> [ibid, col 235.](#)

<sup>78</sup> [ibid, col 236.](#)

As a result, the Government moved the following new clauses at report stage:

- New clause 28 would enable the age-verification regulator to require ISPs to prevent persons in the UK from being able to access material on websites that had no or inadequate age certification for pornographic material or prohibited material.
- New clause 29 would amend the definition of ‘specially restricted material’ in relation to on-demand services under the provisions of the Communications Act 2003 to include pornographic video works which have received an 18 certificate, or other pornographic material which would have received an 18 certificate had it been submitted for classification.

Speaking to the two new clauses, Matt Hancock stated that new clause 28 would give children the “same sorts of safeguards online as they have offline”, and new clause 29 would ensure that “children are protected from pornographic content from wherever it is derived”.<sup>80</sup>

Responding on behalf of the Opposition, Kevin Brennan highlighted that concerns had been raised by commentators that the measures “went beyond a backstop power”,<sup>81</sup> and would result in the censorship of “non-conventional” sex acts.<sup>82</sup> Mr Brennan raised concerns that there was no opportunity at committee stage to “pore over such proposals”.<sup>83</sup> He concluded that:

Notwithstanding our support for blocking, we think a lot more scrutiny will be required when there is more time available in the other place to discuss these Government new clauses.<sup>84</sup>

Other MPs also expressed concerns about the measures. Calum Kerr, speaking on behalf of the SNP, argued that further scrutiny of the implications of the clauses was required.<sup>85</sup> He stated that it was important that the powers were used as a “last resort”, and that Parliament should “seek to avoid unintended consequences for ISPs and websites”. John Whittingdale (Conservative MP for Maldon), former Secretary of State for Culture, Media and Sport, stated that he was “not persuaded of the necessity” of introducing ISP blocking, arguing that it represented “a considerable infringement of the civil liberties of individuals who want to access material”.<sup>86</sup>

However, Claire Perry (Conservative MP for Devizes), who tabled at report stage new clause 1—which would have given the regulator power to require ISPs to block websites which did not offer age-verification—argued that:

[...] the new clause is not about censorship or the restriction of legal access for adults; it is about proving that those who are consuming the material are indeed over 18. The

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<sup>79</sup> Department for Culture, Media and Sport, ‘[New Blocking Powers to Protect Children Online](#)’, 20 November 2016.

<sup>80</sup> [HC Hansard, 28 November 2016, cols 1274–5.](#)

<sup>81</sup> [ibid, col 1284.](#)

<sup>82</sup> For example: Damien Gayle, ‘[UK to Censor Online Videos of ‘Non-conventional’ Sex Acts](#)’, *Guardian*, 23 November 2016.

<sup>83</sup> [HC Hansard, 28 November 2016, col 1284.](#)

<sup>84</sup> [ibid, col 1285.](#)

<sup>85</sup> [ibid, col 1296.](#)

<sup>86</sup> [ibid, col 1301.](#)

new clause simply puts in place the sort of Government regulation and advice, and corporate socially responsible behaviour that has been seen in many other industries.<sup>87</sup>

New clause 28 (now clause 23) and new clause 29 (now clause 80) were added to the Bill without division.<sup>88</sup>

### **Approval of Age-verification Providers**

At report stage, the Opposition returned to the issue of requiring age-verification providers to be approved. Speaking to Labour's new clause 32, which would have required the age-verification regulator to ensure all age-verification providers had been approved, and would have obliged those providers to perform a data protection impact assessment, Kevin Brennan stated that:

The new clause is designed to address concerns about the practicality of age verification checks. It would ensure that only minimal data were required, that those data were kept secure and that individuals' liberty and privacy were protected [...] The principles of privacy, anonymity and proportionality should underpin the age verification tool, but as far as I am aware, they have not as yet featured in any draft guidance, codes of practice or documents accompanying the Bill.<sup>89</sup>

In response, Matt Hancock reiterated that the measure was not necessary because provisions in the Bill required the regulator to publish guidance on the types of arrangements it would treat as being in compliance.<sup>90</sup>

The new clause was not pressed to a division.

### **Social Media**

A series of amendments were tabled at report which concerned the issue of online abuse on social media sites.

Labour tabled and moved new clause 10, which would have required the Secretary of State to include in guidance to maintained schools a requirement that pupils should learn as part of sex education the risks and dangers of internet pornography and the legal age requirement to access it. Speaking to the new clause, Kevin Brennan, Shadow Minister for Culture, Media and Sport, explained that:

If we solely rely on age verification as the main way to tackle this problem, that is going to be inadequate. Age verification cannot teach children consent or about healthy relationships, or help them to navigate the expectations placed on them and reinforced online; that can only be done through well-devised and taught sex and relationship education, which incorporates discussions about online pornography, so that children can question what they see online in a safe environment.

[...]

<sup>87</sup> [HC Hansard, 28 November 2016, col 1294.](#)

<sup>88</sup> [ibid, col 1304.](#)

<sup>89</sup> [ibid, col 1287.](#)

<sup>90</sup> [ibid, col 1277.](#)



With an 800 percent increase in the number of children contacting the NSPCC about online abuse, it is clear this is becoming a real problem for today's schoolchildren. They clearly need more support and more advice, and someone to turn to. Statutory online education would work in tandem with a code of conduct for social media providers to prevent online abuse.<sup>91</sup>

Hywel Williams (Plaid Cymru MP for Arfon) also spoke to his amendment which would have introduced a statutory code of practice to improve the performance of social media platforms when dealing with incidents of online abuse that cross the criminal threshold. It would have placed an obligation on the Minister to issue a code of practice, which would cover the processes and quality of the services provided. Mr Williams argued that the provisions were required because “technology is ever adapting”, and therefore “it is right and proper that legislation protecting vulnerable people from predatory and unacceptable behaviour online should be updated to reflect the dynamic nature of the online world”.<sup>92</sup>

In response to the amendments, Matt Hancock stated that new clause 10 was not necessary because e-safety had been included in the new computing curriculum that was introduced in September 2014, and that a statutory code of practice as proposed would be difficult to implement because “there is not a one-size-fits-all solution”.<sup>93</sup> When questioned about what measures social media sites were already taking, Mr Hancock explained that:

We are working on codes of practice in a series of different areas. About 10 days ago, as my right hon friend will have seen, Twitter—one of the main players in this space—brought forward work towards a code of practice on online abuse. There is more to do in this area, but it is better that we have codes of practice that the organisations themselves can buy into and that can change with the times as the usage of social media changes. My goodness, we all know how social media changes over time—not always in a good way—so we need to make sure that we keep pace with that. I worry that putting something static into legislation would get into the way of such efforts. However, I agree with my right hon friend that it is incumbent on social media companies to play their part in establishing and rigorously enforcing norms and social responsibility in this area if we decide not to go down, or not yet to go down, the legislative route.<sup>94</sup>

New clause 10 only was pressed to a division and was defeated by 278 votes to 181.<sup>95</sup>

## 4. Digital Government and Data Sharing

### 4.1 Background

#### Consultation on Legislative Proposals

In November 2012, the Coalition Government published the [Government Digital Strategy](#), setting out the objective of delivering government services as “digital by default”.<sup>96</sup> The Government concluded that the “public increasingly expected to access services quickly and conveniently”.

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<sup>91</sup> [HC Hansard, 28 November 2016, cols 1285–6.](#)

<sup>92</sup> [ibid, col 1303.](#)

<sup>93</sup> [ibid, col 1276.](#)

<sup>94</sup> [ibid.](#)

<sup>95</sup> [ibid, cols 1306–9.](#)

<sup>96</sup> Cabinet Office, [Government Digital Strategy](#), November 2012, p 5.

In 2013, the Coalition Government initiated a two year programme of “open policy making to find a way of overcoming the legal barriers to the better delivery of public services, better research and better statistics”.<sup>97</sup> In February 2016, this process culminated in the Government’s publication of [Better Use of Data in Government](#), which consulted on proposed legislative reforms.<sup>98</sup> The proposals were categorised into three groups:

- **Improving public services:** measures to allow public agencies to share personal data with other public agencies in specific contexts in order to “improve the welfare of the individual in question”, and to enable access to civil registration data like births, deaths and marriages to allow public authorities to prevent sending letters to people who have deceased and make it easier for citizens to interact with public services.<sup>99</sup>
- **Tackling fraud and debt:** to help citizens manage their debt more effectively and reduce the estimated £24.1 billion of overdue debt owed to government.<sup>100</sup> The proposed legislation “would allow public authorities to pilot projects that identify where individuals have debts with a number of public agencies, and then have a single interaction with them to help manage those debts”. The proposed measures would also help “detect and prevent the losses government currently experiences to fraudulent activity each year”. Public authorities would be able to pilot methods to spot conflicting information across different public services that could “suggest patterns of fraud for further investigation by officials”.
- **Allowing use of data for research purposes and for official statistics:** the Office for National Statistics would be able to access detailed administrative data from across government and businesses to provide “more accurate, frequent and timely statistics and to update how the census is managed, instead of relying on surveys”.<sup>101</sup> In addition it would be permissible for de-identified data to be used “to support accredited researchers to access and link data in secure facilities to carry out research for public benefit”.

The consultation received 282 responses. The majority of responses were supportive of both the proposals and the need to ensure appropriate safeguards, accountability and transparency were put “in place to build trust with citizens on the usage of their data”.<sup>102</sup> In its summary of responses, the Government stated that there was support for its set of “key protective principles” which would underpin the legislative proposals:<sup>103</sup>

- No building of new, large, and permanent databases, or collecting more data on citizens.
- No indiscriminate sharing of data within Government.
- No amending or weakening of the Data Protection Act 1998.

<sup>97</sup> [Explanatory Notes](#), p 10.

<sup>98</sup> Cabinet Office, [Better Use of Data in Government](#), February 2016.

<sup>99</sup> *ibid*, p 2.

<sup>100</sup> *ibid*.

<sup>101</sup> *ibid* pp 2–3.

<sup>102</sup> Cabinet Office, [Better Use of Data in Government Consultation: A Government Summary of Responses](#), June 2016, p 1. Further discussion on the consultation responses can be found in the House of Commons Library briefing, [Digital Economy Bill \[Bill No 45 of 2016–17\]](#), 9 September 2016, pp 31–59.

<sup>103</sup> Cabinet Office, [Better Use of Data in Government Consultation: A Government Summary of Responses](#), June 2016, p 1.

- Safeguards that apply to a public authority's data (such as HMRC) apply to the data once it is disclosed to another public authority (ie restrictions on further disclosure and sanctions for unlawful disclosure).

The Explanatory Notes state that the Bill would provide the “necessary legal framework” to “enable data sharing for a public benefit and will be a key enabler for the Government transformation plan”.<sup>104</sup>

## Existing Data Protection

The overarching legislation governing the handling of personal data in the UK is the Data Protection Act 1998 (DPA), which implements the EU Data Protection Directive (95/46/EC).<sup>105</sup> The Act regulates the “processing” of personal data through restrictions on how such data—including social media data—can be recorded, stored, altered, used or disclosed. Under the DPA, “personal data” means data related to a living individual who can be identified, either directly or indirectly, from the data, or from other information held by the same organisation. The Information Commissioner has issued a statutory [Code of Practice on Data Sharing](#). It gives advice on good practice, but compliance with its recommendations is not mandatory where they go beyond the strict requirements of the Act.

In addition, the EU regulation, the General Data Protection Regulation [Regulation (EU) 2016/679] (GDPR), which was adopted on 27 April 2016 and enters into application on 25 May 2018, will be applicable in the UK while it remains a member of the EU.<sup>106</sup> It places specific legal obligations on data processors; for example, they are required to maintain records of personal data and processing activities.<sup>107</sup> The GDPR also places further obligations on controllers to ensure contracts with processors comply with the GDPR.<sup>108</sup> The Government has stated that the provisions under part 5 are consistent with the GDPR.<sup>109</sup>

According to the Bill's Explanatory Notes the powers to create new information sharing objectives for public services delivery are consistent with the DPA and are limited by the Bill in that they must demonstrate that information is needed to improve a public service.<sup>110</sup>

## 4.2 Committee Stage

### Government Amendments

The Government added to the Bill several sets of identical amendments in relation to data sharing:

- Amendments that would: create a further exception to the bars on further disclosure of information released under part 5 of the Bill, allowing disclosure for the prevention or detection of crime or the prevention of anti-social behaviour; remove provisions stating that a criminal investigation or legal proceedings may be within or outside the United

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<sup>104</sup> [Explanatory Notes](#), p 10.

<sup>105</sup> House of Commons Library, [Digital Economy Bill \[Bill No 45 of 2016–17\]](#), 9 September 2016, pp 31–2.

<sup>106</sup> [Explanatory Notes](#), p 12.

<sup>107</sup> The controller says how and why personal data is processed and the processor acts on the controller's behalf (Information Commissioner's Office, '[Overview of the General Data Protection Regulation \(GDPR\)](#)', accessed on 5 December 2016).

<sup>108</sup> Further information on the GDPR can be found in the Information Commissioner's Office's briefing, '[Overview of the General Data Protection Regulation \(GDPR\)](#)', accessed on 5 December 2016.

<sup>109</sup> [Explanatory Notes](#), p 12.

<sup>110</sup> *ibid*, pp 11–12.

Kingdom;<sup>111</sup> and make the disclosure of personal information an offence only if the person knows that the disclosure contravenes certain provisions in the Bill or is reckless as to whether it does so. These amendments would apply to data sharing in relation to public service delivery, debt owed to the public sector, fraud against the public sector and sharing for research purposes.

- Amendments that would require that codes of practice and a statement of principles be consistent with the data sharing code of practice issued by the Information Commissioner. These amendments would apply in relation to sharing for public service delivery, civil registration, debt owed to the public sector, fraud against the public sector, research purposes and statistics.

## Opposition Amendments

The Opposition also tabled a series of amendments concerning issues such as confidentiality of personal information; codes of conduct; data ownership; and transparency of data sharing. These amendments included:

- An amendment to “restrict the onward disclosure of data” by public authorities to only those purposes required by legislation, rather than those permitted by legislation. Speaking to the amendment, Louise Haigh stated that it was important that “data disclosures of information as sensitive as we have been discussing are appropriately considered” must not “simply be nodded through”.<sup>112</sup> She argued that introducing a “principle of necessity” would mean that organisations had to make a case, “rather than merely tick a box”. Responding for the Government, Parliamentary Secretary at the Cabinet Office, Chris Skidmore, stated that the amendment could potentially place a bar on “existing permissive information sharing gateways for a range of important purposes”.<sup>113</sup> Ms Haigh pressed amendment 101 to a division which was defeated by nine votes to seven.<sup>114</sup>
- A requirement that a twelve week consultation period would take place before the issue or reissue of any code of practice. Chris Skidmore stated that this was unnecessary because the Bill already required the Minister to consult the Information Commissioner.<sup>115</sup>
- Provision to require an independent review of information and data ownership to “establish the direction in which the Government stated policy intent for individuals to have control over their data is heading”.<sup>116</sup> This clause was withdrawn at committee, but Ms Haigh stated that if the Government did not amend the data protection provisions, the Opposition would raise the matter again.<sup>117</sup>
- Prohibition on public authorities disclosing data unless it was detailed by an entry on a public register. Ms Haigh argued that if data sharing arrangements were collected in a

<sup>111</sup> The Government stated that this was for consistency to align with other pieces of legislation, and on the basis that a criminal investigation or legal proceedings covers an investigation overseas in any event.

<sup>112</sup> [Public Bill Committee, Digital Economy Bill, 25 October 2016, session 2016–17, 8th sitting, col 325.](#)

<sup>113</sup> [ibid col 326.](#)

<sup>114</sup> [ibid, col 327.](#)

<sup>115</sup> [ibid, cols 328–30.](#)

<sup>116</sup> [Public Bill Committee, Digital Economy Bill, 1 November 2016, session 2016–17, 11th sitting, col 451.](#)

<sup>117</sup> [ibid, cols 450–2.](#)

single place, the public could “see and trust how their data was being used”.<sup>118</sup>

Mr Skidmore stated that the Government already kept registers of data sharing and the public could review these under Freedom of Information law.<sup>119</sup> Ms Haigh withdrew the amendment but confirmed that the Opposition would be redrafting the wording and would be returning to the issue at report.<sup>120</sup>

- A requirement for civil registration officials or other authorities to specify the reason for requiring the information to be disclosed, and to ensure that information was not shared beyond those purposes. In response to the amendment, Mr Skidmore stated that the registration codes of practice would set out that the purposes would need to be defined and that a business case would need to be made.<sup>121</sup> The amendment was pressed to a division and defeated by nine votes to seven.<sup>122</sup>

### 4.3 Report Stage

#### Public Register of Shared Data and Review into the Collection of Data

At report stage, the Opposition returned to a number of issues that had been debated at committee stage, such as establishing a public register of shared data, and a requirement for the Government to set up an independent review of the collection and use of data. Kevin Brennan, Shadow Minister of Culture, Media and Sport spoke to new clause 11, which would have provided for a public register of shared data, and would have required all disclosure of data between data controllers to be logged in a public register “giving at the very least, a title, a description about a web page so that people can find out more”.<sup>123</sup> Mr Brennan argued that:

If there is transparency through a register, there can be an informed conversation about whether a particular data disclosure will solve the problem that it claims to solve. [...] While part 5 of the Bill will remain a concern—I am sure that our colleagues in the other place will examine it—we believe that the Government should accept new clause 11 and demonstrate that they understand the importance of transparency in data-sharing.<sup>124</sup>

In regards to a review of data collection, Mr Brennan spoke to new clause 12 which would have required the Government to commission an independent review of information and big data, and would have sought to “establish the direction in which the stated policy intent of Government and big business [...] is heading”.<sup>125</sup>

Responding for the Government, Matt Hancock argued that the Government was “committed to the transparency of information shared under part 5”.<sup>126</sup> However, he argued that new clause 11, by setting the requirement in primary legislation, would reduce the “flexibility to learn from and adapt to the consequences of publishing a register”. He further highlighted that

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<sup>118</sup> [Public Bill Committee, Digital Economy Bill, 27 October 2016, session 2016–17, 9th sitting, cols 346–8.](#)

<sup>119</sup> [ibid, cols 350–1.](#)

<sup>120</sup> [ibid, col 354.](#)

<sup>121</sup> [ibid, col 342.](#)

<sup>122</sup> [ibid, col 343.](#)

<sup>123</sup> [HC Hansard, 28 November 2016, col 1330.](#)

<sup>124</sup> [ibid.](#)

<sup>125</sup> [ibid.](#)

<sup>126</sup> [ibid, col 1345.](#)

the Royal Society and the British Academy were already undertaking a review into the ethical and legal frameworks needed in the UK “as data technologies advance”.

The new clauses were not pressed to a division.

### Personal Data Breaches

Labour also moved new clause 5, which would have established a duty for companies to report any breach of cyber-security and inform customers of the breach where possible.<sup>127</sup> Mr Brennan stated that existing provisions and regulations “fall a long way short of the comprehensive regulatory system” that the UK needed. Speaking on behalf of the SNP, Calum Kerr “commend[ed]” Labour on its new clause and argued that he “remained unconvinced that the Government were heading in the right direction”.<sup>128</sup>

In response, Matt Hancock reiterated that all the data shared under powers in the Bill would “continue to be protected under the firm boundaries” of the DPA 1998.<sup>129</sup>

The new clause was not pressed to a division.

## 5. Broadcasting, Ofcom and Direct Marketing

### 5.1 Background

#### BBC

The Bill would introduce two changes affecting the BBC. The first concerns the new role of Ofcom as the BBC’s external regulator, and the second the TV licence fee concession for over-75s.

The context for both is the current review of the BBC’s Royal Charter. The current Charter expires on 31 December 2016.<sup>130</sup> On 12 May 2016, the Government published the white paper, [A BBC for the Future: A Broadcaster of Distinction](#), in which it was announced that Ofcom would be appointed as the external regulator of the BBC, as recommended by the [independent review by Sir David Clementi](#).<sup>131</sup> The detail of what functions Ofcom would be required to carry out will be set out in the Charter and Framework Agreement.

In July 2015, the then Secretary of State, John Whittingdale, made a statement to the House of Commons confirming details of a funding agreement reached between the Government and the BBC.<sup>132</sup> It was announced that the BBC had agreed to take on responsibility for the TV licence concession, which provides for free television licences for those who have reached a qualifying age, currently set at 75 years. The BBC will take on responsibility from 2020. The Bill would transfer the function of making provision for concessions by reference to age to the BBC. The Secretary of State would retain the power to make provision for all other concessions as set out in the Communications Act 2003.<sup>133</sup>

<sup>127</sup> [HC Hansard, 28 November 2016, col 1329](#).

<sup>128</sup> [ibid, cols 1339–40](#).

<sup>129</sup> [ibid, col 1344](#).

<sup>130</sup> Further information and commentary on the BBC Charter’s renewal can be found in the House of Commons Library briefing, [BBC Charter Renewal](#) (25 November 2016).

<sup>131</sup> [Explanatory Notes](#), pp 13–14.

<sup>132</sup> [HC Hansard, 6 July 2015, col 25](#).

<sup>133</sup> [Explanatory Notes](#), p 14.

## Direct Marketing Code

The Information Commissioner's Office (ICO) enforces any breach of the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) (PECR), which set rules relating to unsolicited electronic marketing messages sent by telephone, fax, email or text, as well as any violation of the DPA 1998 which may be relevant, for instance, when a person's name and number are used or shared by a company.<sup>134</sup> Direct marketing without consent from targeted consumers is an offence under the Regulations.

The ICO produces [Direct Marketing Guidance](#) for organisations on the direct marketing rules under the DPA and the Regulations. However, the legislation does not currently impose an obligation on organisations to have regard to the guidance. The Bill's Explanatory Notes state that the Bill would "aid enforcement of the Regulations".<sup>135</sup>

## 5.2 Committee Stage

### TV Licence Fee Concessions

Speaking on behalf of the Opposition, Louise Haigh stated that Labour opposed this provision, and sought to replace it with new clause 38, which would have ensured responsibility for TV licence fee concessions remained with the Government, including the cost of such concessions.<sup>136</sup> She stated that the benefit had been "promised" in the Conservative Party's 2015 general election manifesto, and argued that the Government had "abandon[ed] that pledge" by transferring responsibility to the BBC.<sup>137</sup> Explaining the purpose of new clause 38 she stated:

With new clause 38, we are seeking to guarantee free TV licences to over-75s. That would give the responsibility for the policy and the funding of TV licences back to the Government, where it belongs [...] This is a point of principle for the Opposition. We cannot accept a policy that takes the responsibility for even a tiny part of our social security system and gives it to an organisation with no direct accountability to the electorate.<sup>138</sup>

Calum Kerr expressed the SNP's support for the new clause, arguing that the BBC was being asked to take over "welfare policy".<sup>139</sup> However, Mark Menzies (Conservative MP for Fylde) argued that the Bill contained "no proposal to end the over-75's free TV licence", and that it was "clear that the Government wished it to continue".<sup>140</sup> He suggested that the BBC was "quite happy" to accept responsibility for funding the concession.

Responding for the Government, Matt Hancock said that the transfer of responsibility was part of the funding settlement agreed by both parties.<sup>141</sup> He argued that to reject the clause would be to "vote against financial stability", and "ultimately voting to put the free TV licence at risk".

The new clause was not pressed to a division.

<sup>134</sup> House of Commons Library, [Digital Economy Bill \[Bill No 45 of 2016–17\]](#), 9 September 2016, p 63.

<sup>135</sup> [Explanatory Notes](#), p 15.

<sup>136</sup> [Public Bill Committee, Digital Economy Bill, 27 October 2016, session 2016–17, 10th sitting, col 390.](#)

<sup>137</sup> [ibid.](#)

<sup>138</sup> [ibid, cols 392–3.](#)

<sup>139</sup> [ibid, cols 393–4.](#)

<sup>140</sup> [ibid, col 398.](#)

<sup>141</sup> [ibid, cols 400–2.](#)

Two new clauses were introduced by the Government and were added to the Bill without debate:<sup>142</sup>

- New clause 27 (now clause 79) would require Ofcom to seek to prevent digital television additional services enabling access to seriously harmful content that does not form part of the service, for instance by linking to content streamed from the internet.
- New clause 28 (now clause 78) would give Ofcom power to suspend immediately, and subsequently revoke, the licence of any licensed radio service if material was included that was likely to encourage or incite crime or lead to disorder. It would replace a power applying only to satellite and cable services.

### Opposition New Clauses

The Opposition tabled a series of further new clauses which related to broadcasting.

New clause 14 called on the Government to commission an evaluation of the impact of developments in digital broadcasting on the protection of listed sporting events for public service broadcasters (PSBs). Speaking to the amendment Kevin Brennan argued that the present regime was not “fit” for the digital age.<sup>143</sup> Under current rules, the benefits of the listed events regime are restricted by statute to channels that are first, free, and secondly, received by at least 95 percent of the UK population. Mr Brennan argued that the criteria was becoming increasingly “outdated as the number of homes giving up their TVs for other media devices begins to rise”.<sup>144</sup> The BBC, he explained, preferred the option in which the 95 percent reception criterion would be updated and replaced with a measure testing whether the channel was widely watched. That would require, he stated, a qualifying service to have reached at least 90 percent of the public in the last calendar year. The SNP supported this amendment.<sup>145</sup> However, Matt Hancock stated that he had seen no evidence to suggest that recent developments with more online viewing would put the BBC or other PSBs at “risk in the near term at all”.<sup>146</sup>

New clause 17 related to the requirement under the Communications Act 2003 for Ofcom to maintain a code of practice for the provision of electronic programme guides (EPGs), and the obligation on EPG providers to give listings on PSBs an appropriate degree of prominence, as determined by Ofcom. New clause 17 would have extended the law to on-demand services such as catch-up TV and to the connected TV on-demand menus where such services are found. Speaking to the new clause, Kevin Brennan argued that the present regime had not kept up with a multi-channel environment.<sup>147</sup> However, Mr Hancock argued that it was a matter for Ofcom to issue guidance on “ensuring EPG works”.<sup>148</sup>

Towards the end of committee proceedings, the Opposition also tabled new clause 21, which concerned the code of practice for audio-visual services. Under the Communications Act 2003, broadcasters must ensure that access services—subtitles, audio description or sign language—are available on TV that is watched at a prescribed time and on a prescribed channel.<sup>149</sup> Ofcom

<sup>142</sup> [Public Bill Committee, \*Digital Economy Bill\*, 27 October 2016, session 2016–17, 10th sitting, cols 412–14.](#)

<sup>143</sup> [Public Bill Committee, \*Digital Economy Bill\*, 25 October 2016, session 2016–17, 8th sitting, col 289.](#)

<sup>144</sup> [ibid](#), col 290.

<sup>145</sup> [ibid](#), col 295.

<sup>146</sup> [ibid](#), cols 298–9.

<sup>147</sup> [ibid](#), cols 291–3.

<sup>148</sup> [ibid](#), col 300.

<sup>149</sup> Ofcom, [Code of Practice on Television Access Services](#), 13 May 2015.



issues a code of practice to direct this. New clause 21 would have extended the existing regime for linear TV and applied it to on-demand, to the benefit of those with sensory loss. In response, Mr Hancock said that Ofcom already had powers to encourage on-demand providers to offer such services, and he was resistant to making the code too “prescriptive”.<sup>150</sup> He further stated that:

Ofcom previously said that it had all the necessary powers, but its position has changed. When the regulator changes position, it is reasonable to take that into account and to consult on ensuring that we can get the powers into place. I make no bones about it: the support for access services for video on demand has not been in place before. We made big strides in the previous Parliament. We are committed to doing more to ensure that the support is more widely available.<sup>151</sup>

Louise Haigh withdrew the clause but said the Opposition could return to the issue on report.<sup>152</sup>

### Direct Marketing Code

At committee, Calum Kerr moved new clause 34, which sought to allow the ICO to take action against company directors for breaches not only of the DPA 1998, but also of the 2003 regulations on unsolicited communications. Mr Hancock said that he agreed with the principle of moving liability on to individuals rather than on to companies.<sup>153</sup> However, Mr Hancock stated that as he proposed to table a government amendment to that effect, he would not accept the new clause, and that there would be consultation on the exact details.

On 23 October 2016, the Government announced that it would be amending the PECR through secondary legislation (separate to the Bill) to allow the ICO to fine directors personally if their company breached the PECR.<sup>154</sup>

## 5.3 Report Stage

A number of issues that had been debated at committee stage were the subject of further amendments at report. These included the following:

- New clause 8 sought to enshrine in statute that it should be the responsibility of the Government to set the entitlement for any concession in relation to TV licences, and that it should cover the cost of such concession. Kevin Brennan, speaking on behalf of the Opposition reiterated the argument that the Government was “legislating to do away” with its manifesto pledge to protect the free TV licence fee for over-75s.<sup>155</sup> Matt Hancock stressed that the free TV licence was protected as part of the BBC Charter and licence fee settlement.<sup>156</sup> The new clause was pressed to a division and defeated by 267 votes to 220.<sup>157</sup>

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<sup>150</sup> [Public Bill Committee, Digital Economy Bill, 25 October 2016, session 2016–17, 11th sitting, col 446.](#)

<sup>151</sup> [ibid, col 447.](#)

<sup>152</sup> [ibid, col 448.](#)

<sup>153</sup> [Public Bill Committee, Digital Economy Bill, 27 October 2016, session 2016–17, 10th sitting, col 405.](#)

<sup>154</sup> Department for Culture, Media and Sport, ‘[Government Clamps Down on Nuisance Call Crooks](#)’, 23 October 2016.

<sup>155</sup> [HC Hansard, 28 November 2016, col 1324.](#)

<sup>156</sup> [ibid, col 1341.](#)

<sup>157</sup> [ibid, cols 1354–6.](#)

- New clause 6, moved by Kevin Brennan, would have required Ofcom to issue and review a code of practice on the accessibility of on-demand audio-visual services for people with disabilities affecting hearing and sight. Matt Hancock confirmed that the Government had held discussions with charities, Ofcom and broadcasters about how best to address the issue, and that through “working collaboratively with all interested parties”, he hoped to “reach a resolution in the other place”.<sup>158</sup> The new clause was not pressed to a division.
- New clause 18 sought to “future-proof” the listed events regime, by lowering the actual usage period over a year from 95 percent to 90 percent, and giving the Secretary of State powers to amend it so that the law was “flexible enough to reflect consumption trends and change in new and unpredictable ways”.<sup>159</sup> Speaking to the new clause, Kevin Brennan argued that it would “safeguard” listed events in the future. Matt Hancock reiterated his opinion expressed at committee that he had “seen no evidence to change our view that the current listed events regime is not under threat”.<sup>160</sup>

## 6. Third Reading

Opening the debate at third reading, the Secretary of State for Culture, Media and Sport, Karen Bradley, highlighted a number of provisions in the Bill which she argued would “benefit the whole country”:

The Bill will cement the UK’s status as a world-leading digital economy. It will help people to connect to high-speed broadband, expanding their personal opportunities and stimulating economic activity. It will improve public services, thanks to better information management, and it will protect the vulnerable from some of the hazards of the digital world [...] There are reforms to the electronic communications code and we have greater protections for intellectual property and consumers. We have strengthened protections for children too [...] As well as helping to bring the country online, the Bill enables Government to share information between public bodies, where there is a public benefit. That will help an additional 700,000 fuel-poor households. It means that the public sector will be more considerate when pursuing debts from the vulnerable. There will be fewer burdensome surveys for businesses to complete. No more unwarranted post will be sent to the families of the deceased. We have ensured the provision of both transparency and robust safeguards.<sup>161</sup>

She concluded that the Bill was an “important measure in building a country that works for everyone.”<sup>162</sup>

Speaking on behalf of the Opposition, Kevin Brennan confirmed that it would not be opposing the Bill, and acknowledged that it had a number of “uncontroversial measures” which were welcomed.<sup>163</sup> He highlighted the measures such as the broadband USO and on age verification. However, he stated that because the Bill “tried to cover everything”, it had left “quite a few holes”. For instance, on age verification he stated that it remained “unclear about how it would work in practice”, and expressed hope that “more details emerge as the Bill continues scrutiny

<sup>158</sup> [HC Hansard, 28 November 2016, col 1341.](#)

<sup>159</sup> [ibid, col 1327.](#)

<sup>160</sup> [ibid, col 1342.](#)

<sup>161</sup> [ibid, col 1363.](#)

<sup>162</sup> [ibid.](#)

<sup>163</sup> [ibid, col 1364.](#)

in the other place”.<sup>164</sup> Mr Brennan stated that there were also “legitimate concerns” about the privacy and security of individuals’ personal data, and that the Bill “lacks any mention of the need for online sex and relationships education for young people”.

Mr Brennan concluded that the Bill would “look much better if it properly recognised the importance of the digital economy and took account of the pace of change and development and use of new technology”.<sup>165</sup> He argued that the Bill would be “much more ambitious” if it delivered ultrafast fibre broadband and mobile network coverage to “everyone who needs it”.

The SNP spokesperson, Calum Kerr, also welcomed a number of the measures, while expressing concern that “some of the things that have been hung on it leave a little to be desired”.<sup>166</sup> Mr Kerr expressed support for the reform of the Electronic Communication Code, and the measures on customer compensation and switching. However, he said that he was “disappointed” that the Government had not accepted the broadband voucher scheme. He argued that the Government would have to “explain to their constituents why 10 megabits per second is okay for rural areas while urban areas aim for a gigabit connection—100 times faster”. He concluded that the Bill had “good intentions” but that its “execution will be flawed”.

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<sup>164</sup> [HC Hansard, 28 November 2016, col 1365.](#)

<sup>165</sup> [ibid, col 1364.](#)

<sup>166</sup> [ibid, col 1366.](#)

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