

Product Security and Telecommunications Infrastructure Bill

AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

Before Clause 1

LORD FOX
LORD CLEMENT-JONES

Insert the following new Clause—

“General principles relating to product security

- (1) The provisions in Part 1 of this Act should be read alongside the general principles relating to product security as outlined in subsection (2).
- (2) The principles are—
 - (a) in regard to the security of internet-connectable products and products capable of connecting to such products, manufacturers, importers and distributors have a duty of care towards their customers to secure their privacy and safety;
 - (b) customers are entitled to have a reasonable expectation that manufacturers, importers, and distributors make sure their consumer connectable products meet minimum cyber security requirements before they are placed on the UK market;
 - (c) manufacturers, importers, and distributors should be able to demonstrate an understanding of emerging security threats and a proactive, ongoing support programme to mitigate these risks and ensure that their products are safe by design.
- (3) In making regulations under Part 1 of this Act the Secretary of State must have regard to the principles outlined in subsection (2).”

Member’s explanatory statement

This amendment would introduce a set of principles relating to product security into the bill.

Clause 1

LORD CLEMENT-JONES
LORD FOX

Page 1, line 11, at end insert –

“(c) children where they are not primary users of products but are subjects of product use.”

Member’s explanatory statement

This amendment would mean the bill specifically refers to children, who might not be direct users of products but their security could be put at risk where they are subjects of other people’s use.

After Clause 57

LORD CLEMENT-JONES
LORD FOX

Insert the following new Clause –

“Rights in occupation

- (1) The electronic communications code is amended as follows.
- (2) In paragraph 21 (test to be applied by the court), in sub-paragraph (4), at the end insert “the terms of any existing agreement, and any other method of statutory renewal available.””

Member’s explanatory statement

This amendment seeks to ensure that any new agreements which are made with reference to Clause 57 of the Bill and using paragraph 20 of the Electronic Communications Code must have regard to the terms of the existing agreement to ensure continuity and fairness.

After Clause 60

BARONESS MERRON
LORD BASSAM OF BRIGHTON
LORD CLEMENT-JONES

Insert the following new Clause –

“Requirement for operators to notify emergency service sites prior to upgrading or sharing apparatus

- (1) The electronic communications code is amended as follows.
- (2) In paragraph 17, in sub-paragraph (1), for the words “sub-paragraphs (2) and (3)” substitute “sub-paragraphs (2), (3) and (4A)”.
- (3) After sub-paragraph (4) insert –
 - “(4A) The third condition is that, where a site is provided by an emergency service, before the beginning of the period of 21 days, ending with the day on which the main operator begins to upgrade the electronic communications apparatus or (as the case may be) share its use, the main operator provides written notice to the site provider.””

Member's explanatory statement

This new Clause would require operators with agreements under the code that are not subsisting agreements to provide written notice to site providers that are an emergency service in advance of apparatus being upgraded or shared. This would allow relevant emergency services to plan around service outages or other forms of disruption.

Clause 61

BARONESS MERRON
LORD BASSAM OF BRIGHTON

Page 46, line 14, at end insert –

“(4A) Where the assumptions in subsection (4) cause the market value of a landlord's agreement to decline, the rent payable under a new tenancy granted by order of the court under this Part may not decline by more than 40%.”

Member's explanatory statement

This amendment would guide the court on the appropriate level of rent reduction under new tenancies, to ensure consistency with the Government's stated commitment that losses would be limited to 40%.

Clause 62

BARONESS MCINTOSH OF PICKERING

Baroness McIntosh of Pickering gives notice of her intention to oppose the Question that Clause 62 stand part of the Bill.

Member's explanatory statement

This would remove Clause 62 of the Bill, giving operators the ability to calculate rent based on 'land value' rather than 'market value' when renewing tenancies to host digital infrastructure on private land in Northern Ireland.

Clause 67

LORD CLEMENT-JONES
LORD FOX

Page 57, line 40, leave out subsection (3)

Member's explanatory statement

This amendment would prevent the retrospective application of interim orders specifying the payment of consideration on the basis of 'no scheme' valuation requiring backdated payment.

Page 57, line 40, leave out subsection (3) and insert –

“(3) After sub-paragraph (2) insert –

“(2A) The operator or the site provider may apply to the court for an order modifying the terms of the agreement relating to the existing code right until the application for an order under paragraph 32(1)(b) or 33(5) has been finally determined.””

Member's explanatory statement

This amendment would prevent interim orders being used simply to agree a reduced rent, but would permit operators to request the modification of an agreement where the terms of the existing agreement are preventing an upgrade or modification, helping to facilitate rollout.

Page 58, line 9, at end insert “or for a period of 12 months from the point at which the decision is taken, whichever is shorter.”

Member's explanatory statement

This amendment would mean, in instances where interim orders specifying the payment of consideration on the basis of ‘no scheme’ valuation were applied retrospectively, resulting backdated payments would only be payable for a maximum period of 12 months.

Page 58, line 9, at end insert –

“(2C) The cumulation of the payments specified by the order must not total more than a maximum value of £1,000.”

Member's explanatory statement

This amendment would mean, in instances where interim orders specifying the payment of consideration on the basis of ‘no scheme’ valuation were applied retrospectively, resulting backdated payments would only be payable up to a maximum of £1,000.

Page 58, line 10, leave out subsection (4) and insert –

“(4) Omit sub-paragraph (3).”

Member's explanatory statement

This amendment is consequential on the amendment to Clause 67, page 57, line 40 in the name of Lord Clement-Jones.

Page 58, line 14, leave out “(2A)(b)” and insert “(2A)”

Member's explanatory statement

This amendment is consequential on the amendment to Clause 67, page 57, line 40 in the name of Lord Clement-Jones.

After Clause 67

LORD CLEMENT-JONES
LORD FOX

Insert the following new Clause –

“Interim rents in relation to tenancies in England and Wales

- (1) The Landlord and Tenant Act 1954 is amended as follows.
- (2) After section 24B (date from which interim rent is payable) insert –

“24BA Date from which interim rent is payable under Electronic Communications Code agreements

Where –

- (a) the current tenancy is a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, and

After Clause 67 - continued

- (b) the primary purpose of the current tenancy is to confer code rights,
- the following interim rent arrangements will apply –
- (c) the interim rent determined on an application under section 24A(1) shall be payable from the appropriate date;
- (d) if an application under section 24A(1) is made in a case where the landlord has given a notice under section 25, the appropriate date is the date at which a notice has been served and a court order obtained;
- (e) if an application under section 24A(1) is made in a case where the tenant has made a request for a new tenancy under section 26, the appropriate date is the earliest date that could have been specified in the tenant’s request as the date from which the new tenancy is to begin.””

Member’s explanatory statement

This amendment would ensure that interim rent payment could not be backdated prior to a court order being obtained for agreements made under the Electronic Communications Code.

Clause 68

LORD CLEMENT-JONES
LORD FOX

Page 58, line 38, leave out from “must” to “use” in line 39 and insert “attempt to make”

Member’s explanatory statement

This amendment would mandate the use of Alternative Dispute Resolution schemes to resolve disagreements before either party could ask for a consideration to be imposed by the court.

BARONESS MCINTOSH OF PICKERING

Page 58, line 38, leave out from “must” to “one” in line 39 and insert “use”

Member’s explanatory statement

This amendment is to ensure that operators engage in the alternative dispute resolution process by making it mandatory.

Page 59, line 14, leave out from “must” to “one” in line 15 and insert “use”

Member’s explanatory statement

This amendment is to ensure that operators engage in the alternative dispute resolution process by making it mandatory.

Page 59, line 36, leave out from “must” to “one” in line 37 and insert “use”

Member’s explanatory statement

This amendment is to ensure that operators engage in the alternative dispute resolution process by making it mandatory.

LORD CLEMENT-JONES
LORD FOX

Page 60, line 3, at end insert—

“(c) any evidence that OFCOM’s code of practice has been breached”

Member’s explanatory statement

This amendment would ensure that any breach of OFCOM’s code of practice is taken into account in Alternative Dispute Resolution judgements between operators and landlords.

After Clause 68

LORD CLEMENT-JONES
LORD FOX

Insert the following new Clause—

“Obligation for operators and occupiers to adhere to OFCOM code of practice

- (1) The electronic communications code is amended as follows.
- (2) After paragraph 103 (duty for OFCOM to prepare code of practice) insert—
“Obligation for operators and persons who occupy or have an interest in land to adhere to OFCOM code of practice
- 103A (1) Operators and persons who occupy or have an interest in land are obliged to adhere to the OFCOM code of practice.
- (2) The penalty for non-compliance with obligations is to a maximum value of £1,000,000.
- (3) OFCOM must have regard to prior non-compliance when assessing the scale of any penalty imposed.””

Member’s explanatory statement

This amendment would increase the penalty payable for breaches of OFCOM’s code of practice.

Clause 69

LORD CLEMENT-JONES
LORD FOX

Page 60, line 8, at end insert—

“(cb) the time limit for responding to complaints, which should be set at 14 days;
(cc) the transparent publication of complaints;”

Member’s explanatory statement

This amendment would strengthen the complaints handling processes operators are expected to meet under OFCOM’s code of practice.

Page 60, line 8, at end insert—

“(cb) the compensation payable by operators to such persons, up to a value of 100% of the value of the contract;”

Member's explanatory statement

This amendment would increase the compensation payable for complaints that are upheld for failure to meet OFCOM's code of practice.

After Clause 74

BARONESS MERRON
LORD BASSAM OF BRIGHTON

Insert the following new Clause—

“Infrastructure rollout strategy

- (1) Within 12 months beginning with the day on which this Act is passed, the Secretary of State must lay before Parliament a strategy for—
 - (a) accelerating the rollout of telecommunications infrastructure, and
 - (b) ensuring the highest possible number of properties are able to receive a gigabit-capable connection.
- (2) The strategy under subsection (1) must include proposals for—
 - (a) improving the balance of rights and responsibilities of landowners and operators, and
 - (b) improving building access rights for operators, while preserving competition within the sector.
- (3) The strategy under subsection (1) must also consider the case for reforming or extending provisions under the Telecommunications Infrastructure (Leasehold Property) Act 2021, in order to make them more effective.
- (4) In preparing the strategy under subsection (1), the Secretary of State must consult—
 - (a) landowners with an interest in the rollout of telecommunications infrastructure,
 - (b) telecommunications operators,
 - (c) contractors with a record of installing telecommunications infrastructure, and
 - (d) any other persons the Secretary of State deems appropriate.”

Member's explanatory statement

This amendment would require the Government to bring forward a strategy for dealing with a variety of known issues around the rollout of telecommunications infrastructure, including the imbalance of rights between landowners and operators, and the difficulties faced by operators when attempting to access certain types of buildings (e.g. multiple dwelling units). In preparing the strategy, the Secretary of State would have to consult interested parties.

LORD CLEMENT-JONES
LORD FOX

Insert the following new Clause—

“Review: impact of the Act

- (1) Within 18 months of the day on which this Act is passed the Government must commission an independent review of this Part which must take into account—

After Clause 74 - continued

- (a) the impact of the legislation on additional investment into mobile networks and the pace of infrastructure deployment, including the number of new sites created;
 - (b) costs borne by property owners under the legislation, including an assessment of the change in consideration levels, and their distribution between groups (including small businesses, community bodies and public property owners such as hospitals and local authorities);
 - (c) any wider costs and benefits of the legislation, for example resulting from burdens to the judiciary as a result of litigation.
- (2) The review must take into account the impact of the parts of the Digital Economy Act 2017 pertaining to the electronic communications code when making the assessment of the impact of this Act.
- (3) Within 12 weeks of the publication of the independent review, the Government must publish a response to the review’s findings and lay both the review and the response before Parliament.”

Member’s explanatory statement

This amendment would require the Secretary of State to publish a full, independent report of the impact of this legislation, and related legislation in the Digital Economy Act 2017, on the market for, and delivery of, telecoms infrastructure.

Insert the following new Clause—

“Reporting requirements

- (1) The electronic communications code is amended as follows.
- (2) After paragraph 103, insert the following new paragraph—
 - “Reporting requirements
 - 103A On an annual basis, operators are required to report transparently to OFCOM on—
 - (a) overall investment into mobile networks;
 - (b) the rent paid to site providers on all agreements as against the previous year;
 - (c) the total consideration paid to site providers on all agreements as against the previous year;
 - (d) the number of new mobile sites built within the United Kingdom;
 - (e) the number of sites upgraded to facilitate 5G coverage;
 - (f) the number of renewals agreed on mobile sites;
 - (g) the average rent paid per mobile site.”

Member’s explanatory statement

This amendment would require operators to report transparently on their investment in mobile networks, on the number of new sites built, on the number of renewals agreed, and on the average rent paid per site.

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15 June 2022
