

Product Security and Telecommunications Infrastructure Bill

AMENDMENTS TO BE MOVED ON REPORT

Clause 3

LORD KAMALL

Page 3, line 12, leave out “negative” and insert “affirmative”

Member’s explanatory statement

This amendment applies the affirmative resolution procedure to regulations under Clause 3.

Clause 7

LORD FOX
LORD CLEMENT-JONES

Page 5, line 24, at end insert –

“(5A) Any person who is a provider of an internet service that allows or facilitates the making by consumers of distance contracts with traders or other consumers for the sale or supply of a relevant connectable product is to be regarded as a distributor for the purposes of this Act, if not a manufacturer or an importer of the product.”

Member’s explanatory statement

This amendment would amend the language of what defines a ‘distributor’ in the scope of this Bill.

Clause 9

LORD KAMALL

Page 7, line 5, at end insert –

“(8A) Regulations under subsection (7) are subject to the affirmative resolution procedure.”

Member’s explanatory statement

This amendment applies the affirmative resolution procedure to regulations under subsection (7) of Clause 9.

Page 7, line 6, at beginning insert “Other”

Member’s explanatory statement

This amendment is consequential on the other Government amendment to Clause 9.

Clause 27

LORD KAMALL

Page 17, line 9, leave out from “may” to “person” in line 10 and insert “by regulations authorise any”

Member’s explanatory statement

This amendment has the effect that the power of the Secretary of State to delegate enforcement functions is to be exercised by regulations.

Page 17, line 12, leave out “An agreement” and insert “Regulations”

Member’s explanatory statement

This amendment is consequential on the first Government amendment to Clause 27.

Page 17, line 14, leave out from beginning to “not” in line 16 and insert “Regulations under this section do”

Member’s explanatory statement

This amendment is consequential on the first Government amendment to Clause 27.

Page 17, line 17, leave out “agreement relates” and insert “regulations relate”

Member’s explanatory statement

This amendment is consequential on the first Government amendment to Clause 27.

Page 17, line 18, leave out subsection (4)

Member’s explanatory statement

This amendment is consequential on the first Government amendment to Clause 27.

Page 17, line 24, leave out “in accordance with” and insert “by regulations under”

Member’s explanatory statement

This amendment is consequential on the first Government amendment to Clause 27.

Page 17, line 26, at end insert –

“(7) Regulations under this section are subject to the affirmative resolution procedure.”

Member’s explanatory statement

This amendment follows on from the first Government amendment to Clause 27 and applies the affirmative resolution procedure to regulations under that Clause.

After Clause 49

LORD CLEMENT-JONES

Insert the following new Clause –

“Offences under the Computer Misuse Act 1990: defence

Notwithstanding anything contained in the Computer Misuse Act 1990, it is not an offence for a person (“A”) to test the conformity of a relevant connectable product with all or any of the security requirements, without consent of the person entitled to control access to the product (“B”), where –

- (a) A reasonably believes that B would have consented to that testing if B had known about the circumstances of it, including the reasons for performing it,
- (b) A is empowered by an enactment, a rule of law, or an order of a court or tribunal, to carry out the test, or
- (c) the test was necessary for the detection of crime.”

Member’s explanatory statement

This amendment provides for a defence for offences under the Computer Misuse Act 1990 for instances where a person is testing the conformity of a relevant connectable product with security requirements.

Clause 56

LORD KAMALL

Page 39, line 29, leave out “an agreement” and insert “regulations”

Member’s explanatory statement

This amendment is consequential on the first Government amendment to Clause 27.

Clause 57

LORD KAMALL

Leave out Clause 57

Member’s explanatory statement

This amendment removes Clause 57.

Clause 58

LORD KAMALL

Page 41, leave out lines 28 and 29 and insert –

- “(4) In paragraph 9 (conferral of code rights) –
 - (a) the existing wording becomes sub-paragraph (1), and
 - (b) after that sub-paragraph insert – ”

Member’s explanatory statement

This amendment is consequential on the Government amendment to leave out Clause 57.

Page 41, line 30, leave out “In a case” and insert “But in a case”

Member’s explanatory statement

This amendment is consequential on the Government amendment to leave out Clause 57.

After Clause 60

LORD KAMALL

Insert the following new Clause—

“Power to fly lines from apparatus kept by another operator

- (1) Paragraph 74 of the electronic communications code (power to fly lines) is amended as follows.
- (2) For sub-paragraph (1) substitute—
 - “(1) This paragraph applies where an operator (“the main operator”) keeps electronic communications apparatus on or over any land for the purposes of the main operator’s network.”
- (3) In sub-paragraph (2)—
 - (a) before “operator” insert “main”, and
 - (b) in paragraph (a), after “apparatus” insert “mentioned in sub- paragraph (1)”.
- (4) After sub-paragraph (2) insert—
 - “(2A) With the agreement of the main operator, another operator has the right, for the statutory purposes, to install and keep lines which—
 - (a) pass over other land adjacent to, or in the vicinity of, the land on or over which the apparatus mentioned in sub- paragraph (1) is kept,
 - (b) are connected to that apparatus, and
 - (c) are not, at any point where they pass over the other land, less than three metres above the ground or within two metres of any building over which they pass.”
- (5) In sub-paragraph (3)—
 - (a) for “Sub-paragraph (2) does” substitute “Sub-paragraphs (2) and (2A) do”, and
 - (b) in paragraph (a), for “sub-paragraph (2)” substitute “either of those sub-paragraphs”.
- (6) After sub-paragraph (3), insert—
 - “(3A) The main operator has the right to upgrade, or carry out works to, the apparatus mentioned in sub-paragraph (1) for the purposes of, or in connection with—
 - (a) the exercise by the main operator of the right conferred by sub-paragraph (2), or
 - (b) the exercise by another operator of the right conferred by sub-paragraph (2A).
 - (3B) With the agreement of the main operator, another operator has the right to upgrade, or carry out works to, the apparatus mentioned in sub-paragraph (1) for the purposes of, or in connection with, the exercise by the other operator of the right conferred by sub-paragraph (2A).

After Clause 60 - continued

- (3C) Sub-paragraphs (3A) and (3B) do not authorise an operator to upgrade, or carry out works to, the apparatus mentioned in sub-paragraph (1) if the upgrade or works would –
- (a) have more than a minimal adverse impact on the appearance of the apparatus,
 - (b) have more than a minimal adverse impact on the land on or over which the apparatus is kept, or
 - (c) cause loss, damage or expense to any person with an interest in the land on or over which the apparatus is kept.
- (3D) An operator may not enter the land on or over which the apparatus mentioned in sub-paragraph (1) is kept for the purpose of exercising a right conferred by this paragraph without the agreement of the occupier of the land.”
- (7) In paragraph 77 (when and by whom a right to object under Part 12 of the code can be exercised), in sub-paragraph (3), for “paragraph 74” substitute “paragraph 74(2) or (2A)”.”

Member’s explanatory statement

This amendment confers rights on an operator to fly lines over a person’s land from another operator’s apparatus, and enables either operator to upgrade or carry out works to such apparatus for the purpose of exercising a right under paragraph 74 of the code.

After Clause 65

LORD KAMALL

Insert the following new Clause –

“Refusal of application for code rights on grounds of national security etc

- (1) The electronic communications code is amended as follows.
- (2) After paragraph 27 insert –

“Refusal of application on grounds of national security etc

- 27ZZA (1) This paragraph applies where an operator applies to the court for an order under paragraph 20, 26 or 27 which would impose an agreement between the operator and another person.
- (2) The court must refuse the application if the Secretary of State gives a certificate to the court certifying that the condition in sub-paragraph (3) is met.
 - (3) The condition is that the Secretary of State is satisfied that the order applied for by the operator would be likely to prejudice national security, defence or law enforcement.
 - (4) If the Secretary of State gives a certificate to the court under sub-paragraph (2) the Secretary of State must give a copy of it to the operator and the other person.
 - (5) In this paragraph, “law enforcement” means the prevention, investigation, detection or prosecution of criminal offences including the safeguarding against and the prevention of threats to public security.”

After Clause 65 - continued

- (3) In paragraph 21 (test to be applied by the court in determining whether to make an order under paragraph 20), in sub-paragraph (1), before “, the court may make an order” insert “and paragraph 27ZZA”.
- (4) In paragraph 26 (power of court to make an order imposing interim code rights), in sub-paragraph (3), at the beginning insert “Subject to paragraph 27ZZA,”.
- (5) In paragraph 27 (power of court to make an order imposing temporary code rights), in sub-paragraph (2), at the beginning insert “Subject to paragraph 27ZZA,”.

Member’s explanatory statement

This amendment provides that a court must refuse an application by an operator for code rights under paragraph 20, 26 or 27 of the code if the Secretary of State gives a certificate that the order applied for would prejudice national security, defence or law enforcement.

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5 October 2022
