

Product Security and Telecommunications Infrastructure Bill

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

[Amendments marked ★ are new or have been altered]

Amendment
No.

Clause 1

LORD CLEMENT-JONES
LORD FOX

- 1 Page 1, line 17, at end insert –
- “(2A) Regulations under this section must, among other things, include security requirements that –
- (a) prohibit the setting of universal default passwords and the ability to set weak or easily guessable passwords;
 - (b) require the production and maintenance by manufacturers of regular publicly-available reports of security vulnerabilities;
 - (c) ensure the provision of information to the consumer, before the contract for the sale or supply of a relevant connectable product is made, detailing the minimum length of time for which the consumer will receive software or other relevant updates for that product;
 - (d) introduce appropriate minimum periods for the provision of security updates and support, taking into account factors including the reasonable expectations of consumers, the type and purpose of the connectable products concerned and any other relevant considerations.
- (2B) Regulations under this section must include provision that all security requirements specified in accordance with this Act are included as essential requirements in statutory conformity assessments and marking procedures under the Radio Equipment Regulations 2017 (S.I. 2017/1206), and in any other such assessments and procedures applicable to relevant connectable products.”

Member’s explanatory statement

This amendment expressly sets out on the face of the Bill security requirements, which this bill seeks to establish through future regulations, providing specific legal guidance regarding the individual security requirements and obligations on relevant parties.

Clause 3

LORD KAMALL

- 2 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

- 3 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

- 4 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.

- 5 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

- 6 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.

- 7 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.

- 8 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.

- 9 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.

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

Member’s explanatory statement

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

- 11 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.

- 12 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

LORD FOX

- 13 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

After Clause 49 - continued

- (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

- 14 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

- 15 Leave out Clause 57

Member’s explanatory statement

This amendment removes Clause 57.

Clause 58

LORD KAMALL

- 16 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.

- 17 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

- 18 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 –

After Clause 60 - continued

- “(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).
- (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.

After Clause 60 - continued

- (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.

Clause 61

THE EARL OF LYTTON
LORD BLUNKETT

19★ 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 consideration payable under a new tenancy granted by order of the court under this Part may not decline by more than 50% relative to the previous consideration for the period of five years beginning with the day on which the new tenancy is agreed.
- (4B) Where subsection (4A) applies, the consideration must be reduced in even increments over the course of five years, from the level of the previous consideration to the level of the new court consideration.”

BARONESS MCINTOSH OF PICKERING
THE EARL OF LYTTON

20 Leave out Clause 61

Member’s explanatory statement

This amendment removes provisions made in the Bill which give operators the ability to calculate rent based on ‘land value’ rather than ‘market value’ when renewing tenancies to host digital infrastructure on private land.

Clause 62

BARONESS MCINTOSH OF PICKERING

21 Leave out Clause 62

Member’s explanatory statement

This amendment removes provisions made in the Bill which give operators the ability to calculate rent based on ‘land value’ rather than ‘market value’ when renewing tenancies to host digital infrastructure on private land.

After Clause 62

THE EARL OF LYTTON
LORD BLUNKETT

22★ Insert the following new Clause –

“Phase-in period for “no scheme” reductions

In paragraph 24 of the electronic communications code (how is consideration to be determined under paragraph 23?), after sub-paragraph (3) insert –

“(3A) Where a court imposes an agreement on renewal, the consideration is to be reduced in even increments over the course of five years, from the level of the previous consideration to the level of the new court consideration.””

Member’s explanatory statement

This amendment would ensure that, in circumstances when a new consideration is imposed by the court, the reduction in consideration would be gradually ‘phased in’ over the course of 5 years, rather than impacting the site provider immediately.

After Clause 65

LORD KAMALL

23 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.”
- (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”.

After Clause 65 - continued

- (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.

After Clause 67

THE EARL OF LYTTON

24★ Insert the following new Clause –

“Interim rents in relation to tenancies in England and Wales

After section 24B of the Landlord and Tenant Act 1954 (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
- (b) the primary purpose of the current tenancy is to confer code rights,

the following interim rent arrangements apply –

- (c) the interim rent determined on an application under section 24A(1) is 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

BARONESS MCINTOSH OF PICKERING

25★ 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.

- 26★ 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.

- 27★ 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.

After Clause 74

BARONESS MERRON
LORD BASSAM OF BRIGHTON
LORD FOX

- 28 Insert the following new Clause –

“Independent review of the electronic communications code

- (1) Within the period of three months beginning with the day on which this Act is passed, the Secretary of State must appoint an independent person to undertake a review of the effect of –
 - (a) the electronic communications code, and
 - (b) the Telecommunications Infrastructure (Leasehold Property) Act 2021, on the deployment of 1 gigabit per second broadband and other forms of telecommunications infrastructure.
- (2) The review under subsection (1) must, in addition to any other matters the Secretary of State deems appropriate, include consideration of –
 - (a) the extent to which revisions to the electronic communications code have secured progress towards His Majesty's Government's targets relating to telecommunications infrastructure,
 - (b) the balance of rights and responsibilities of landowners and telecommunications operators, and
 - (c) the impact of this Act on the level of competition in the telecommunications sector.
- (3) The independent person may make recommendations to the Secretary of State on matters including (but not limited to) –
 - (a) potential further revisions to the electronic communications code,
 - (b) potential amendments to –
 - (i) legislation, or
 - (ii) guidance,
 relating to the valuation of land used to host telecommunications infrastructure, and

After Clause 74 - continued

- (c) the potential benefits of imposing a requirement for telecommunications operators to report annually to OFCOM on their investment in new infrastructure.
- (4) Upon receipt of the report from the independent person, the Secretary of State must—
 - (a) publish the report,
 - (b) prepare a response to the report, and
 - (c) lay a copy of the report and response before Parliament.”

Member’s explanatory statement

This amendment would require the Secretary of State to appoint an independent person to conduct a review of recent changes to telecommunications infrastructure legislation and policy. This review would consider what further changes may be required to ensure regulation in this field delivers new infrastructure in a way that also preserves competition in the sector.

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10 October 2022
