

DIGITAL ECONOMY BILL

Supplementary memorandum concerning the delegated powers in the Bill for the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This supplementary memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee by the Department for Culture, Media and Sport, with input from the Home Office.
2. It addresses amendments to the Digital Economy Bill which were tabled on 23 January 2017, identifying those which confer powers of a legislative nature and explaining in each case why the power has been taken and the nature of, and the reason for, the procedure selected.

B. ANALYSIS OF DELEGATED POWERS BY CLAUSE

New clause: Power to make regulations imposing accessibility requirements for on-demand programme services

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

Context and purpose

3. This clause inserts new sections 368BC, 368BD and 368CA into the Communications Act 2003.
4. New section 368BC confers a power on the Secretary of State by regulations to impose requirements on providers of on-demand programme services for the purpose of ensuring that their services are accessible to people with disabilities affecting their sight or hearing or both. Those requirements may include requirements for such programmes to be accompanied by subtitling or audio-description, or to be presented in, or translated into, sign language.

5. New section 368BD makes provision for the appropriate regulatory authority to enforce accessibility requirements imposed by those regulations.
6. New section 368CA places a duty on the appropriate regulatory authority to draw up, and from time to time review and revise, a code giving guidance as to the steps to be taken by providers of on-demand programme services to meet those accessibility requirements (as well as giving guidance as to other steps to ensure that on-demand programme services are made progressively more accessible to people with disabilities affecting their sight or hearing or both). It therefore supports the accessibility requirements imposed by regulations under section 368BC, rather than imposing separate legal requirements. The Government therefore does not consider that the duty to draw up a code is a delegated power of a legislative nature.

Justification

7. It is considered appropriate for the requirements to be set out in regulations rather than on the face of the Bill because of the complexity of the intended requirements and the variety of services to which they will apply. Those services differ in terms of their format, method of delivery, type of content and languages involved. Different targets will be appropriate for different categories of service, with exemptions and exceptions applying in certain cases.
8. The requirements may also include provision for the accuracy or adequacy of the services specified and allow for the emergence of common technical standards across service platforms. Detailed consultation with the regulator (Ofcom), and engagement with providers of on-demand programme services and other stakeholders will be required to ensure that the requirements to be specified are appropriate, ambitious and yet not unduly burdensome.

Justification for procedure selected

9. Before making regulations under section 368BC, the Secretary of State must consult the appropriate regulatory authority (and Ofcom, where they are not the appropriate regulatory authority). This ensures that there is expert input

on technical issues relating to the accessibility requirements and on the degree of burden that the accessibility requirements would place on providers of on-demand programme services.

10. The regulations are to be subject to negative resolution, in common with the general position under the Communications Act 2003 (section 402). This is considered to provide an appropriate level of Parliamentary scrutiny in light of their detailed and technical content.

New clause: Power to make regulations conferring power on a court to make a drug dealing telecommunications restriction order

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative resolution

Context and purpose

11. This clause inserts new section 80A into the Serious Crime Act 2015, conferring a power on the Secretary of State (in relation to the whole of the UK) to make regulations conferring power on a court to make a “drug dealing telecommunications restriction order”. This is an order requiring a communications provider to take whatever action the order specifies for the purpose of preventing or restricting the use of communication devices (including mobile phones) in connection with drug dealing offences. The power is similar to that introduced by section 80 of the Serious Crime Act 2015 in respect of mobile phones in prisons.
12. The clause sets out matters about which the regulations *must* make provision at subsections (5) to (8), and matters about which they *may* make provision at subsection (9). It also includes definitions of certain terms, such as “drug dealing offence” (subsection (4)) and “communications provider” (subsection (12)).

13. The introduction of drug dealing telecommunications restriction orders is necessary to deal with the prevailing issue of 'county lines'. This refers to the approach taken by gangs originating in large urban areas, which travel to locations elsewhere, such as county or coastal towns, to sell Class A drugs (predominately crack cocaine and heroin). The county lines gangs use Pay As You Go (PAYG) mobile phone numbers to promote and orchestrate the sale of drugs. These numbers, known as 'deal lines', are marketed to drug users as a way of buying drugs and are therefore essential to the county lines operating model.
14. The gangs typically exploit vulnerable young people and adults as part of the model, using them as couriers to move drugs and cash. These exploited individuals are often subject to coercion, deception, intimidation, violence, debt bondage and/or grooming.
15. The National Crime Agency ("the NCA") published an updated assessment on the extent and prevalence of gangs using the 'county lines' operating model on 17 November 2016. The assessment noted that there is more widespread evidence of 'county lines' than ever before. Gangs are now reported to be supplying drugs to county lines markets 24 hours a day, in contrast to reporting in 2014, which indicated that activity was almost exclusive to the day time market. The NCA estimates that gangs make an average of £2,000 a day (and often up to £3,000) from drug supply into a single market. It has identified over 100 mobile phone lines used as 'deal lines' as part of the county lines drugs supply model and the numbers are growing.
16. At present, the only way police can shut down a phone line involved in illegal drug activity is by physically taking possession of the phone. However, the anonymous nature of the PAYG 'deal lines', the fact that the phones are held away from street-level drug dealing and the complexity and scale of running covert operations means that these phones are not normally seized by the police during the arrest of street-level dealers and therefore the line remains open for business.

17. Consequently, in order to disrupt this model, the Government considers it necessary to make bespoke provision via regulations to enable a court to order the communications provider to disconnect phones, SIM cards and phone numbers in order to prevent their use in connection with drug dealing offences.

Justification

18. As with section 80 of the Serious Crime Act 2015, the Government considers that it is appropriate for detailed provision to be made by regulations. Some of this will necessarily be technical in nature, and as technology evolves, and new equipment becomes available, it may, for instance, be necessary to update the detection to disconnection process. Technology has a limited lifespan and therefore, by including technical details about the process in regulations as opposed to on the face of the Bill, the Government is better placed to amend these if required.
19. The clause clearly sets out the purpose of the power, namely to confer power on the civil courts to require communications providers to take whatever action is specified for the purpose of preventing or restricting the use of communication devices such as mobile phones in connection with drug dealing offences (subsections (1), (2) (3) and (4)). Moreover, certain core elements of the scheme are set out on the face of the clause. These include matters relating to the hearing of applications for an order (subsection (7) and to restrictions on disclosure of information submitted in connection with applications where necessary in the public interest (subsection (8)), and ensures that these matters therefore receive Parliamentary scrutiny during passage of the Bill. The clause also ensures that provision is made about appeals (subsection (6)) as an important safeguard.

Justification for procedure selected

20. Given that the scheme itself is to be set out in secondary legislation, and in order to ensure that the rights of those affected are fully considered, the Government considers that it is appropriate for the regulations to be subject to

the affirmative procedure thereby ensuring that the details of the scheme must be debated and approved by both Houses.

Department for Culture, Media and Sport

23 January 2017