

Political Intelligence

The Digital Economy Bill

The Digital Economy Bill

1 Summary

Given headline billing in the Queen's Speech, the [Digital Economy Bill](#), introduced last week, aims to enable access to fast digital communication services, shape the emerging digital world, and support the digital transformation of Government. The Bill represents Government's commitment to becoming a world leader on the digital economy and legislates on a wide range of issues including the USO, age verification, and Ofcom, and there is still potential for the Bill to go further as a catch all Bill for digital policy, not anticipated to become law until spring 2017.

This Bill sets out this Government's visions of the future of the UK digital landscape and represents an exciting opportunity for your business to shape the future of digital policy and get your issue on the agenda. In light of the unique post-Brexit political landscape, it has never been more important for tech companies to get involved with Government, and make sure that the best interests of the industry are reflected in any future legislation.

1.1 Digital Government

The Bill provides the legal framework to enable data sharing and will be a key enabler for the government transformation plan, enabling access to huge data sets in order to solve complex problems and improve public service delivery. The Bill:

- Provides a single gateway to enable public authorities, specified by regulation, to share personal information where its purpose is to improve the welfare of the individual in question.
- Provides a data gateway for civil registration information in England and Wales.
- Provides the ONS with access to administrative data from across government and businesses.
- Provides for 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.

1.2 Access to Digital Services

The Bill amends the Communications Act to give Ofcom powers to determine the actual detail and specification in relation to a broadband USO, switching and compensation in line with the recent consultations and call for evidence. The actual detail of implementation will be left to secondary legislation and orders:



- Amends the USO universal service order so that “broadband connections and services must be provided to any extent”, includes guidance about matters relating to speed or other characteristics that must be provided and guidance on any other matters relating to connections or services. As expected the Secretary of State has powers to direct Ofcom to review the order.
- Amends the Communications Act to specify requirements in relation to arrangements that can enable an end user to change communications provider on request.
- Codifies a new power in the Communications Act to require communications providers to pay compensation for failing to meet a specified standard or obligation.

1.3 Digital Infrastructure

Reforms made to the Electronic Communications Code will be brought in via changes to the Communications Act. This will also give the Secretary of State powers by regulations to make consequential provisions to the code, including statutory instruments which can amend primary legislation if approved by a resolution of each House of Parliament. The updated ECC includes:

- Reform of the underpinning rights that communications providers have to acquire land.
- Provision of new rights to upgrade and share infrastructure.
- An existing temporary relaxation of the rules for installing communications apparatus to be made permanent in order to further facilitate broadband infrastructure rollout.

1.4 Online Pornography

The Bill delivers the commitment made in the Conservative Party Manifesto and requires age verification on pornographic material available on the internet. However, the Bill does not provide for the blocking of non-compliant websites by internet service providers, on the basis that this would not be consistent with the treatment of other harmful or illegal content such as online terrorist material. The Bill:

- Does not designate an age-verification regulator, instead gives responsibility to the Secretary of State to designate the regulator.
- States that the age-verification regulator may impose a financial penalty of up to £250,000 or 5% of turnover for companies which do not age-verify pornographic material.
- States that the regulator may give notice of the fact it has imposed a financial penalty to any payment-services provider or ancillary service provider.
- Gives the regulator discretion to set and monitor standards for age verification controls. The Government’s position is that a simple ‘checkbox’ which requires users to confirm they are over 18, or even just to enter a date of birth, does not constitute a satisfactory solution.
- Ensures the enforcement regime is sufficiently flexible to adopt other approaches to ensure that commercial providers of online pornography comply with the law.



1.5 Intellectual Property

The Bill contains a number of intellectual property measures to support the creative industries, and is part of the Conservative Party Manifesto commitment to protect IP. The Bill will:

- Increase the maximum sentence for online copyright infringement to ten years, achieving parity with the physical offence, and also to re-draft the offence to address wider concerns about the offence provisions themselves.
- Amend the Registered Designs Act 1949 to provide design owners with the option of marking a product with the address of a website which links the product with the relevant registered design numbers as an alternative way of providing constructive notice.

1.6 Ofcom

The Bill amends and gives new powers to Ofcom around the collection of information, amends the appeal process, requires the Information Commissioner to issue a statutory code of practice on direct marketing, and makes Ofcom more independent. The Bill:

- Will provide Ofcom with a broader information collection power that the government envisages could be used to obtain address-level data on broadband line speeds, in formats suitable for third party intermediaries to use to present comparisons.
- Will also give Ofcom the power to publish comparative data that it already collected and which the government believes could aid the consumer in determining which provider is offering a higher quality product.
- Introduces a judicial review standard that will ensure that appellants can still challenge Ofcom's decisions, but litigants will no longer be able to seek complete reappraisals of Ofcom's fair decision making.
- Requires the Information Commissioner to issue a statutory code of practice on direct marketing.
- Will allow Ofcom to cover all its non-fee raising activities from spectrum management receipts and then only return the net proceeds to government. This will not increase costs or fees but will create an accounting mechanism that allows Ofcom to be fully independent