



BRIEFING PAPER

Number 8160, 22 June 2018

Prisons (Interference with Wireless Telegraphy) Bill 2017-19

By Jacqueline Beard

Contents:

1. Current position
2. Government policy
3. The Bill
4. Commentary
5. Progress of the Bill



Contents

Summary	3
1. Current position	4
2. Government policy	5
3. The Bill	6
4. Commentary	7
5. Progress of the Bill	9

Summary

The [Prisons \(Interference with Wireless Telegraphy\) Bill 2017-19](#) is a Private Member's Bill, sponsored by Maria Caulfield (Conservative). It would create a new power for the Secretary of State to authorise public communications providers (for example mobile phone network operators) to interfere with wireless telegraphy to disrupt unlawful mobile phone use in prisons.

The provisions of this bill replicate those contained in the [Prisons and Courts Bill 2016-17](#). That Bill fell at the dissolution of Parliament for the 2017 general election. The Government, referring to pressures on legislative time, has said that though there will be new bills to cover some aspects of the bill that was lost, the prisons aspects will not be included. Therefore, the Government is supporting this Private Member's Bill to seek to ensure that these provisions, concerning the disruption of unlawful mobile phone use in prisons, are passed into legislation.

The [Explanatory Notes](#) to the Bill have been prepared by the Ministry of Justice with the consent of Maria Caulfield.

1. Current position

Prisoners are not generally allowed access to mobile phones. Prisons operate a controlled system using a PIN number and access to the internet is strictly controlled. Mobile phones can be used for many undesirable purposes, for example to organise crime outside the prison, to arrange for drugs to be delivered or to harass victims. However, prisoners may also want them as a cheaper, convenient way of keeping in touch with family and friends.

It is an offence for a person to convey a mobile telephone into or out of prison or to possess a mobile telephone inside a prison without authorisation.¹ It is a disciplinary offence under the Prison Rules 1999 for prisoners to possess an unauthorised item, including an unauthorised mobile phone.²

In 2011, the Coalition Government supported a Private Member's Bill which became the [Prisons \(Interference with Wireless Telegraphy\) Act 2012](#).³ This allows the Justice Secretary in England and Wales and Scottish Ministers to authorise prison governors to interfere with wireless telegraphy in order to prevent or detect the use of mobile phones and other electronic communications devices in prison. If such interference were not so authorised, it would be an offence under the Wireless Telegraphy Act 2006.

The Serious Crime Act 2015 provided for prison staff or the police to apply to the courts for a Telecommunications Restrictions Order, to require mobile phone networks to stop the use of a phone remotely.⁴ Regulations under the Act came into force on 3 August 2016.⁵ The Ministry of Justice has said that between then and March 2017 more than 150 mobile phones were cut off using these powers.⁶

Nevertheless many illicit mobile phones find their way into prisons. In 2015, nearly 17,000 mobile phones and SIM cards were found in prisons in England and Wales.⁷ This was an increase from around 10,000 in 2014 and from around 7,500 in 2013.⁸ Since October 2015, data has been collected differently so that direct comparisons are not possible. In 2016, there was a total of 8,813 reported incidents of mobile phone finds and 4,067 reported incidents of SIM card finds.⁹

¹ Sections 40C and 40D [Prison Act 1952](#)

² Rule 51, [Prison Rules 1999](#) SI 1999/728 as amended

³ Background is in Library Briefing Paper 6414, [The Prisons \(Interference with Wireless Telegraphy\) Bill](#), 13 September 2012

⁴ Section 80

⁵ Telecommunications Restriction Orders (Custodial Institutions) (England and Wales) Regulations 2016/830; see also MoJ Press Release, [Illegal mobile phones in prisons to be cut off](#), 3 August 2016

⁶ [PQ 65116 \[on Prisons: Mobile Phones\]](#), 2 March 2017

⁷ [PQ 64325 \[on Prisons Mobile Phones\]](#), 27 February 2017

⁸ [PQ 20343 \[on Prisons: Mobile Phones\]](#), 16 December 2015

⁹ [PQ 64325 \[on Prisons Mobile Phones\]](#), 27 February 2017

2. Government policy

The White Paper [Prison Safety and Reform](#) acknowledged the seriousness of the problem of unlawful mobile phone use in prisons:

206. Illicit mobile phones in prisons are one of the biggest threats facing our prisons. Although we appreciated that they are often used to maintain family ties, prisoners' use of illicit phones has also been linked to the supply of drugs and other contraband, as well as serious and organised crime, both in prison and in the community. Illicit phone use can also evade our public protection monitoring, bringing further harm to the victims of crime. (...)

Attempts to smuggle phones into prison are increasingly brazen and sophisticated, taking advantage of the fact that phones are becoming thinner and smaller. In some cases, the supply chain is so well established that phones are replaced easily soon after they are seized. Measures the Government is taking include buying better detection equipment and working with partners to implement new technology to stop mobile phones working in prison.¹⁰

The Government has described action it is taking to reduce the use of illicit mobile phones:

We have invested £2million into detection equipment, including hand-held detectors and portable detection devices. We are also working with mobile network operators to deliver ground-breaking technology, which will stop mobiles smuggled into prisons from working.¹¹

The Government included measures concerning prisons and mobile phones in the [Prisons and Courts Bill 2016-17](#) which fell at the dissolution of Parliament following the calling of the 2017 General Election.

The provisions contained in this Private Member's Bill replicate those that were contained in the Government's Prisons and Courts Bill 2016-17. The Bill has Government support.

¹⁰ Ministry of Justice, [Prison Safety and Reform](#), Cm 9350, November 2016, p47

¹¹ [PQ 109068 \[on Prisons Mobile Phones\]](#), 31 October 2017

3. The Bill

The Bill is Private Members' Bill. It was initially introduced by Esther McVey and had its first reading on 19 July 2017. Esther McVey became a Government Minister in November 2017 and so the Bill is now sponsored by Maria Caulfield. Information about the Bill and its progress can be found on the [bill page on the Parliament website](#).

The Bill's provisions would extend to England, Wales and Scotland. However the Explanatory Notes state that the Bill will only apply to England and Wales, meaning it will not produce a practical effect in Scotland.¹²

Clause 1 of the Bill would insert new subsections 2A to 2C into section 1 of the Prisons (Interference with Wireless Telegraphy) Act 2012.

These new subsections would allow the Secretary of State to authorise public communication providers (PCPs) to interference with wireless telegraphy in prisons in England and Wales. This would be in addition to the existing authority that the Secretary of State can already give to prison governors to interfere with wireless telegraphy.

The **Schedule** would also amend the 2012 Act. It would insert a new subsection 3A into section 2 which would require PCPs authorised to interfere with wireless telegraphy to act in accordance with directions given by the Secretary of State.

The directions given to the PCP by the Secretary of State when authorising interference would be required to specify what information the PCP must provide to the governor of the prison where the interference is taking place. It would then be the responsibility of the governor to pass any required information to Ofcom. The Explanatory Notes explain the reason this approach has been chosen:

The rationale is that although the authorisation allows the PCP to act independently to interfere with wireless telegraphy in a particular prison, the policy is that the person responsible for the institution should continue to be responsible for the dialogue with Ofcom about activity in the institution as is already the case under the PIWTA 2012.¹³

Responsibility for the retention and disclosure of information obtained as a result of interference with wireless telegraphy would rest with the governor of the relevant institution.

¹² See the section on territorial extent and application in the [Explanatory Notes](#), p3 and Annex A

¹³ [Explanatory Notes](#), para 14

4. Commentary

Various groups provided comments on the provisions now contained in this Private Member's Bill when the same provisions were included in the Prisons and Courts Bill 2016-17.

The Prison Reform Trust

The Prison Reform Trust, in its [briefing prepared for second reading](#) of the Prisons and Courts Bill 2016-17, welcomed the measures but also commented on the difficulties prisoners have in accessing telephones:

We welcome the introduction of sensible and proportionate measures to prevent the damaging and illicit trade in mobile phones in prisons. As well as targeting the supply side, however, attention should also focus on limiting demand, by improving the availability of, and prisoners' access to, lawful telephones in prison.

While some more modern prisons have telephones in cells, most prisoners are required to make calls from a shared phone located on the prison landing, where access is limited due to high demand and the length of time prisoners spend locked in their cells. Access to phones is also limited by the prohibitive costs of phone calls, with a ten minute weekday phone call to a family landline costing nearly a quarter of a prisoner's weekly income, and the same call to a mobile would cost nearly half. Improving the access of prisoners to phones, through the increased use of in cell phones and more time out of cell for association, as well as reducing costs, would help limit demand for illegal mobile phones, as well as improving family contact and resettlement outcomes.¹⁴

The Howard League for Penal Reform

The Howard League for Penal Reform's briefing for second reading of the Prisons and Courts Bill 2016-17 raised concerns that the provisions would have limited impact on reducing mobile phone use in prisons, noting the need to tackle the demand for mobile phones by ensuring better access to telephones in prison:

Demand reduction is crucial in tackling the number of mobile phones in prisons. Most prisoners have mobile phones because they provide an affordable and convenient way to keep in touch with their families and friends. Prisoners cannot receive incoming calls and the cost of using prison pay phones is high. Short phone calls to landlines can use up large proportions of prisoners wages. Ensuring prisoners can access reasonably private and affordable pay phones would have a significant impact on demand for mobile phones.¹⁵

Liberty

Liberty, in its briefing for second reading of the Prisons and Courts Bill 2016-17, expressed concerns about proportionality and unintended consequences, and the use of private companies for the service of the state:

¹⁴ Prison Reform Trust, [Prison Reform Trust briefing on the Prisons and Courts Bill](#)

¹⁵ Howard League for Penal Reform, [Briefing on the Prisons and Courts Bill House of Commons, Second Reading](#), March 2017

Whilst we do not take a view on mobile phone use in prisons, devices which create a blanket block on all mobile phone usage in an area risk being disproportionate and bringing unintended consequences, such as interfering with and intercepting the data of those living near prisons. It cannot be proportionate to indiscriminately intercept and store private mobile phone data – including the content of phone calls and text messages – of every person who happens to be within a certain radius, including those who happen to live near or work in a prison. Whilst it is unclear just what technology will be deployed by telecommunications providers under this Clause, in addition to the use of IMSI [International Mobile Subscriber Identity] catchers by Government, we continue to worry about the co-optation of private companies for the service of the state.

Liberty urges Parliamentarians to use the opportunity to hold the Government to account over its use of IMSI catchers in prisons, and require it to think twice about extending similar powers to private companies.¹⁶

Some of these issues were discussed at Committee stage of the Prisons and Courts Bill 2016-17. Yasmin Qureshi (Labour) moved (and subsequently withdrew) an amendment which would have required the Secretary of State to carry out a review of arrangements for prisoners to make telephone calls before the provisions could be brought into force.

The Minister Sam Gyimah responded that the Ministry of Justice had already made changes to make it easier for prisoners in some prisons to use telephones and is looking at further ways to improve accessibility and affordability across the whole prison estate.

As part of our digital prison programme, we have made changes to make it easier for prisoners to use telephones in HMP Wayland. Secure telephone handsets are now available in cells. The deployment started in September 2016 and was completed in December 2016. This has been repeated at HMP Berwyn, and we are in the process of extending it across the estate as part of the programme. We are then able to reduce the phone tariff in these institutions to make calls more affordable and accessible, and the result has been excellent. Notably, call minutes used in Wayland are up 114% from our baseline week in September. Anecdotal evidence also indicates noticeable improvement in behaviour.

As a result of these encouraging developments, we are now looking at further ways to accelerate the improved accessibility and affordability of telephony across the whole estate. We are steadily building a body of evidence that shows the benefits which arise from a nudge that simultaneously discourages the illegal use of mobile phones, while encouraging legitimate calls to families, friends and supporters, by making handsets more accessible and affordable. We will continue to monitor the effectiveness of these measures over the coming months. We intend to retender the national telephony contract this calendar year to reduce call charges to prisoners, while introducing technologies that block and disrupt illicit mobile phones.¹⁷

¹⁶ Liberty, [Liberty's Briefing on the Prisons and Courts Bill for Second reading in the House of Commons](#), March 2017

¹⁷ [PBC Deb 29 March 2017 c17](#)

5. Progress of the Bill

Second reading took place on [1 December 2017](#) and Committee stage on [9 May 2018](#). The Bill received cross-party support.

At second reading Maria Caulfield noted and addressed two concerns that had been raised when the measures had been considered as part of the Prisons and Courts Bill 2016-17: prisoners accessing legitimate telephone services and the possibility of a detrimental effect on properties close to prisons. On the first issue she said that the Ministry of Justice already has a programme of work underway to ensure that prisoners have access to legitimate phone services. On the second issue she said that, before any system is deployed, HM Prison and Probation Service would

...calibrate and test its approach, including any technology and infrastructure measures, with mobile network operators and Ofcom to ensure that only those handsets that are being used in a prison without authorisation will be identified and stopped from working.¹⁸

¹⁸ [HC Deb 1 Dec 2017, c642](#)

About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcenquiries@parliament.uk.

Disclaimer

This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the [conditions of the Open Parliament Licence](#).