



Prisons (Interference with Wireless Telegraphy) Bill HL Bill 121 of 2017–19

Summary

The [Prisons \(Interference with Wireless Telegraphy\) Bill](#) is a private member's bill which would authorise public communication providers to disrupt the use of unlawful mobile phones in prisons. The provisions replicate those from the Government's Prisons and Courts Bill (introduced in the 2016–17 session), which fell at the dissolution of Parliament for the 2017 general election.¹ It would amend the Prisons (Interference with Wireless Telegraphy) Act 2012—which enabled prison governors to interfere with wireless telegraphy to disrupt mobile phone use in prisons—by allowing public communication providers to also interfere in an independent capacity.

The bill was initially introduced in the House of Commons on 19 July 2017 by Ester McVey (Conservative MP for Tatton). However, when Ms McVey became a government minister in November 2017, Maria Caulfield (Conservative MP for Lewes) took over sponsorship of the bill. The bill received its second reading on 1 December 2017 and completed its stages with cross-party support in the Commons on 6 July 2018. On 9 July 2018, the bill received its first reading in the House of Lords under the sponsorship of Baroness Pidding (Conservative). It is due to receive its second reading in the Lords on 26 October 2018.

Provisions of the Bill

Clause 1 of the bill would amend section 1 of the Prisons (Interference with Wireless Telegraphy) Act 2012 (PIWTA) to allow the Secretary of State to authorise public communication providers (PCPs) to interfere with wireless telegraphy in prisons. The clause would make further consequential changes to PIWTA 2012 to enable governors, directors and PCPs to interfere with wireless telegraphy in prisons without committing an offence under the Wireless Telegraphy Act 2006.

Clause 2 would provide for the bill's territorial extent (England, Wales and Scotland), commencement and short title. However, the explanatory notes to the bill state that it would only apply in England and Wales.² In addition, clause 2(4) would allow for the bill's provisions to be extended to any of the Channel Islands or the Isle of Man in the future.

The bill's schedule would make further amendments to the PIWTA 2012. This includes measures relating to safeguards, directions given to authorised PCPs and the retention and disclosure of information.

House of Commons Stages

Second Reading

The bill received its second reading in the House of Commons on 1 December 2017. Introducing the bill, Maria Caulfield (Conservative MP for Lewes), stated that its purpose was to “make our prisons safer and more secure”.³ Commenting further, Ms Caulfield highlighted the issues the bill aimed to address—the harm caused by illicit mobile phones—and stated:

It is clear that the current ban on mobile phones in prisons is not working, and that the 2012 Act needs to be expanded to combat the increasing problem. The bill will build on the Act by allowing the Secretary of State to directly authorise public communication providers and mobile phone operators to interfere with wireless telegraphy in prisons, as is set out in clause 1.⁴

Ms Caulfield also highlighted that the bill was “not intended to facilitate any one technical solution”, arguing that this added an element of “future proofing”, as it provided freedom for a range of solutions to be developed as technology progresses.⁵

Referring to concerns raised when the provisions of the bill were considered as part of the Prisons and Courts Bill, Ms Caulfield addressed each point individually.⁶ Focusing on concerns that prisoners who retained contact with family members were less likely to reoffend and that some prisoners used mobile phones to maintain this contact, Ms Caulfield highlighted ongoing work by the Ministry of Justice to ensure that prisoners have access to legitimate telephone services.⁷ Addressing the second concern raised, that interference activity in prisons could have a detrimental effect on properties close to prisons, Ms Caulfield stated:

To counter that, under this bill, before any system is deployed, Her Majesty’s Prison and Probation Service will 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.⁸

Speaking for the Government, Sam Gyimah, then Parliamentary Under Secretary of State at the Ministry of Justice, stated that the Government “strongly support[ed]” the bill as “the illegal supply and use of mobile phones present real and serious risks not just to the stability of our prisons, but to the safety of the public”.⁹

Responding for Labour, Imran Hussain, Shadow Minister of Justice, also gave his support to the bill. However, Mr Hussain argued that the bill should not be viewed as a “silver bullet” to solve the issues of smuggling in prisons, stating “it will not solve the contraband problem”.¹⁰

Public Bill Committee, Report Stage and Third Reading

Public bill committee took place on 9 May 2018 and no amendments were considered. Commenting on the bill, Ms Caulfield stated:

The bill is designed to ensure that legislation keeps pace with developments and provides the means to combat the serious problems posed by illicit mobile phones in prisons. Illicit mobile

phone use is linked to the supply of drugs and other contraband, serious organised crime and evasion of public protection monitoring, bringing further harm to victims of crime.¹¹

Ms Caulfield also focused again on the concern that measures under the bill could have a detrimental effect on properties close to prisons. She argued that as any authorised PCP would have to comply with directions given to them by the Secretary of State, those instructions should include circumstances in which the use of equipment must be modified or stopped. Ms Caulfield claimed that this would help ensure that there would “not be disproportionate interference with wireless telegraphy outside the relevant institutions”.¹²

The Government, represented by Rory Stewart, Minister of State for the Ministry of Justice, reiterated its support for the bill:

Tapping the almost 10,000 mobile phones that were seized in a single year and interfering with their ability to communicate is not a silver bullet, but it should help to make prisons a safer and more orderly place in which we can begin to address some of the underlying drivers of violence and crime.¹³

Speaking for Labour, Imran Hussain, Shadow Minister of Justice, also gave continued support for the bill, but again highlighted concerns made during second reading that the bill would not “resolve the issues in our prison system”.¹⁴

Due to no amendments being made in public bill committee and no amendments scheduled for report stage, the bill went straight to third reading where it was passed without division. During third reading, Ms Caulfield and the government minister, Rory Stewart, thanked the House for the cross-party support the bill had received and reiterated the purpose of the bill. The Government also gave assurances that major phone providers were willing to work with the Government in-line with the legislation.¹⁵ Speaking on behalf of the Opposition, Gloria de Piero, Shadow Minister for Justice, stated that the bill was “a welcome step forward”.¹⁶ However, she also argued that issues of organised violence and drugs “are not helped by the Government’s treatment of our prisons system”. She stated that “although the bill goes some way to addressing organised violence and drugs in prisons, it cannot be seen as a panacea to end the problems in our prisons”.¹⁷

Use of Mobile Phones in Prisons: Background

Current Legislation

Under the Prison Act 1952, it is an offence for anyone to convey into or out of a prison, or possess while in prison, any device capable of transmitting or receiving images, sounds or information by electronic communication.¹⁸ As a result, the possession of a mobile phone and any component part—such as a SIM card or charger—is an offence. It is also an offence under the Act to take a photograph or make a sound-recording inside a prison, as well as to transmit any image or any sound from inside a prison by electronic communications. Both offences can result in a maximum penalty of two years’ imprisonment, a fine, or both.¹⁹ In addition, possession of a mobile phone is a disciplinary offence under the Prison Rules 1999.²⁰

In 2011, the Coalition Government supported a private member’s bill aimed at tackling the issue of mobile phone use in prisons, which later received royal assent. The Prisons (Interference with

Wireless Telegraphy) Act 2012 allowed 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 devices in prisons without their actions amounting to an offence under the Wireless Telegraphy Act 2006. This bill would extend these powers by allowing public communication providers to also interfere in an independent capacity.

More recently, the Serious Crime Act 2015 enabled prison staff and the police to apply for a Telecommunications Restrictions Order (TRO), which required mobile phone networks to stop the use of a phone remotely. This enabled mobile phones to be disabled remotely, without the need to physically find the handset.²¹

Commentary

The provisions in this bill replicate those from clause 21 of the Prisons and Courts Bill, which fell at the dissolution of Parliament for the 2017 general election. As a result, the opinions of groups—such as the Howard League for Penal Reform, Liberty and the Prison Reform Trust—in relation to the bill can be found in their briefings on the Prisons and Courts Bill, and are summarised below.

Commenting on the relevant provisions, the Howard League for Penal Reform stated that while it did not disagree with the proposed change, it was “concerned that it will have a limited impact on reducing mobile phone use in prisons”.²² Instead, the group argued that mobile phone possession would reduce if prisoners had access to private and affordable landlines. The Prison Reform Trust made a similar argument, stating that while it welcomed “the introduction of sensible and proportionate measures to prevent the damaging and illicit trade in mobile phones in prisons”, attention should also focus on demand.²³ The group also argued that the current high demand for mobile phones was due to the availability and cost of making phone calls through authorised means. Explaining this, it reported that most prisoners were required to make calls from shared phones which were located on prison landings, where access was limited due to high demand and the length of time prisoners spent in their cells. In relation to cost, it stated that a ten-minute call to a landline would equal nearly a quarter of a prisoner’s weekly income, with the same call to a mobile costing almost half. Therefore, the group believed that improving access to phones and reducing costs would help limit the demand for illegal mobile phones.

Also responding to the Prison and Courts Bill, Liberty highlighted concerns surrounding the technology which could be used under the bill, and the powers which would be given to telecommunications companies to collect and retain data:

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 catchers [surveillance tools which can intercept phones within a given radius] by Government, we continue to worry about the co-optation of private companies for the service of the state.²⁴

Current Government Policy

In November 2016, the Government published the white paper *Prison Safety and Reforms*, which stated that to tackle the most pressing threats to security in prisons, the Government would—amongst other actions—“reduce supply and demand for illicit mobile devices”.²⁵ Focusing on the issues posed by mobile phone use in prison and actions already taken to address it, the Government stated:

We have already taken action to address this threat. We have changed the law to make it illegal to possess a mobile phone in a prison, and to allow prisons lawfully to interfere with mobile phone signals. Thousands of phones are found each year through routine and intelligence-led searching, supported by search dogs and technology. However, prisoners are still able to access and use illicit mobile phones. 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.

In addition, the Government commented on the use of detection equipment and Telecommunications Restriction Orders (TROs):

We are buying better quality detection equipment in bigger quantities, including new X-ray machines and high sensitivity metal detectors. But we need to take further steps to address both the supply of mobile devices and the demand for them. We will build on what we have done already by:

- working with partners to implement new technology to stop illicit mobile phones working in prisons;
- using Telecommunications Restriction Orders to permanently disconnect mobile phones or SIM cards identified as operating within a prison without the need to first take possession of a phone or to identify the user. The first disconnections under this legislation will take place before the end of this year.

More recently, the Government announced a £7 million investment on in-cell telephones for more prisons.²⁶ Commenting on the plans in a speech, the Lord Chancellor and Secretary of State for Justice, David Gauke, stated, “this new investment I have announced today is about creating environments that are decent, clean and safe”.²⁷ He claimed that making phones calls can currently mean long periods of time spent queuing, which can heighten tensions. Reporting on the announcement, the *Guardian* stated that the technology was currently in place in 20 prisons, and it was planned to extend the scheme to another 20 prisons over the next two years.²⁸ The article also stated that under the scheme: all calls would be recorded; users would only be able to call a small number of pre-approved numbers; and prisoners would continue to pay for calls.

Current Issues with the Use of Mobile Phones in Prison

The problems raised regarding the use of illegal mobile phones in prisons are described by the Government in the 2016 white paper, *Prison Safety and Reforms*:

Illicit mobile phones in prisons are one of the biggest threats facing our prisons. Although we

appreciate 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.²⁹

Commenting on the size of the problem, the Government stated that, in 2015, nearly 17,000 mobile phones and SIM cards were found in prisons in England and Wales—an average of 46 a day. They also stated that the problem had grown, comparing the 2015 figure with the figures from 2014 (10,000) and 2013 (7,000). More recently, statistics published by the Ministry of Justice stated that the number of mobile phones and SIM cards found had increased, with 10,643 incidents where mobile phones were found and 4,729 incidents where SIM cards were found in the twelve months to March 2018.³⁰ The bulletin stated that these figures represented an increase of 15 percent and 13 percent respectively compared to the previous twelve month period.

An analysis by the BBC of parliamentary questions, freedom of information requests and prison population figures from 2010 to 2014 and 2017 also provided information on the use of mobile phones in prisons.³¹ Reporting on the findings, the BBC News correspondent, Alex Homer, stated the number of confiscations had increased from 9,600 in 2014 to at least 15,000 in 2017, a 56 percent rise. He also stated that in England and Wales there was an increase from an average of 9 discoveries per 100 prisoners in 2011, to at least 18 per 100 in 2017–18. Mr Homer cited the comments of an anonymous former prison worker to highlight some of the issues caused by the presence of mobile phones in prisons:

They [mobile phones] are a huge problem—they make getting any kind of contraband in very easy. They can sit all night with unlimited access to the internet and make voice calls. The big part of being in jail is you are cut off and denied your liberty. With the spread of mobile phones that's completely irrelevant. [...] People see [videos posted on social media from inside jail] and they are less frightened of jail, they think their mates are having a whale of a time.³²

Mr Homer also pointed to cases where mobile phones had been used by prisoners to orchestrate criminal activity and to openly flout rules by broadcasting themselves live.³³ Ian Acheson, a former prison governor who led an independent government review of prison extremism in 2016, also highlighted concerns about these issues, stating that “uncontrolled access to mobile phones and other technology assists criminality inside prisons, particularly organised crime and the drugs market”.³⁴

Concerns have also been raised that prisoners are using mobile phones to access social media and that this can impact victims. Commenting on this, Diana Fawcett, chief officer at Victim Support, argued that prisoners use of social media through mobile phones means that:

Victims could be left feeling extremely unsafe knowing that the perpetrator may have access to personal information about them, be able to see photos of them or that they could potentially contact them or their family and friends.³⁵

Further Information

- HM Prison and Probation Service, [The Demand For and Use of Illegal Phones in Prison](#), 2018

- ¹ UK Parliament website, '[Prisons and Courts Bill 2016–17](#)', accessed 19 July 2018.
- ² [Explanatory Notes](#), p 2.
- ³ [HC Hansard, 1 December 2017, col 641](#).
- ⁴ *ibid*, col 642.
- ⁵ *ibid*, col 643.
- ⁶ [HC Hansard, 28 March 2018, col 14](#); and [HC Hansard, 29 March 2018, col 18](#).
- ⁷ [HC Hansard, 1 December 2017, cols 642–3](#).
- ⁸ *ibid*, col 643.
- ⁹ *ibid*, col 653.
- ¹⁰ *ibid*, cols 653–4.
- ¹¹ [HC Hansard, 9 May 2018, col 3](#).
- ¹² *ibid*, col 4.
- ¹³ *ibid*, col 6.
- ¹⁴ *ibid*, col 5.
- ¹⁵ [HC Hansard, 6 July 2018, col 647](#).
- ¹⁶ *ibid*, col 615.
- ¹⁷ *ibid*.
- ¹⁸ Prison Act 1952, section 40D (amended by the Offender Management Act 2007).
- ¹⁹ Crown Prosecution Service, '[Prison-related Offences](#)', 3 July 2018.
- ²⁰ Prison Rules 1999, Rule 51.
- ²¹ Home Office and Ministry of Justice, '[Illegal Mobile Phones in Prisons to be Cut Off](#)', 11 August 2016.
- ²² Howard League for Penal Reform, [Briefing on the Prisons and Courts Bill](#), 2017, pp 1 and 4.
- ²³ Prison Reform Trust, [Prison Reform Trust Briefing on the Prisons and Courts Bill](#), 2017, p 3.
- ²⁴ Liberty, [Liberty's Briefing on the Prisons and Courts Bill for Second Reading in the House of Commons](#), March 2017, pp 1–3.
- ²⁵ Ministry of Justice, [Prison Safety and Reform](#), November 2016, Cm 9350, p 10.
- ²⁶ Ministry of Justice, '[Justice Secretary Launches Fresh Crackdown on Crime in Prison](#)', 10 July 2018.
- ²⁷ Ministry of Justice, '[Minister David Gauke's Address to the Centre for Social Justice on How Prisons Can Better Protect the Public from the Effects of Crime](#)', 10 July 2018.
- ²⁸ Jamie Grierson, '[£7 Million to be Spent on Phones in Prison Cells to Stem Flow of Illegal Mobiles](#)', *Guardian*, 10 July 2018.
- ²⁹ Ministry of Justice, [Prison Safety and Reform](#), November 2016, Cm 9350, p 47.
- ³⁰ Ministry of Justice, [HMPPS Annual Digest 2017/18](#), 26 July 2018, p 30.
- ³¹ Alex Homer, '[UK Prisons 'Awash' with Smuggled Phones and SIM Cards](#)', BBC News, 17 May 2018.
- ³² *ibid*.
- ³³ *ibid*.
- ³⁴ Sarah Marsh and Jim Waterson, '[Tweeting Jailbirds: Social Media Use by Prisoners Triples](#)', *Independent*, 9 July 2018.
- ³⁵ *ibid*.

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