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The Mobile Telephones (Re-programming) Bill

[HL]

Bill 177 of 2001-2002

The *Mobile Telephones (Re-programming) Bill* was introduced in the House of Lords on 2 May 2002. It is due for Second Reading in the House of Commons on Monday 22 July.

Theft of mobile phones is thought to have contributed to an increase in the level of street crime. This Bill is part of a package of measures designed to combat the problem by taking away the incentive to steal them. Mobile phones which have been reported stolen can be disabled so that they are of no immediate use, but they can be made usable again by changing their unique device identifiers. The Bill will make it an offence to do that or to possess or supply things for that purpose.

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Summary of main points

The *Mobile Telephones (Re-programming) Bill* fulfils the Government's commitment to introduce legislation to criminalise re-programming of mobile telephones, as part of its package of measures to deal with rising levels of street crime, to which theft of mobile phones is believed to have made a substantial contribution.

The Bill would create a new offence of re-programming a mobile telephone, either by changing or by interfering with its unique device identifier. There would also be new ancillary offences of possessing, supplying or offering to supply anything which could be used for that purpose. A person would not be guilty of the possession offence unless he intended to use or allow the thing to be used unlawfully for that purpose. He would not be guilty of the other ancillary offences unless he knew or believed it to be intended for that unlawful use.

The Bill extends to the United Kingdom.

This paper outlines the background which has given rise to the problem, and some of the other steps which have been taken in response to it. The paper goes on to describe the new offences to be created by the Bill, and the concerns which were debated during the Bill's passage through the House of Lords.

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I Background

A. The rise of the mobile phone

Although earlier technology did produce systems which could be described as mobile telephones, the modern mobile phone is based on technology which was developed in the 1970s. Networked services first became commercially available in the 1980s. They rapidly attracted a small but significant number of subscribers. In the 1990s there were further developments, including the introduction of digital networks. More service providers entered the market, and subscriber numbers increased. In 1990 there were less than one million subscribers, in 1995 around 5 million subscribers and in 2000 about 25 million subscribers. It is now predicted that within a few years around half the population of the UK will be routinely using mobile telecommunications and that this will become the dominant technology for telephony and other applications such as Internet access.¹

The growth in the use of mobile phones has given rise to a number of concerns. Mobile phones have proved to be popular targets for street robbers, especially young offenders. Other aspects of mobile phone use which have given rise to concern include possible effects on health, and on safety when phones are used by motorists. The following Standard Notes produced by the Library may be of interest:

*Driving and Mobile Phones*²

*Mobile Phones and Health*³

*Telecom Masts – Health*⁴

*Telecoms Masts – Planning*⁵

B. The rise in mobile phone theft

A Home Office research study published in December 2001⁶ reported a sharp increase in theft of mobile phones. While the number of phones currently being stolen was not known, the British Crime Survey of 2000 suggested that there had been 470,000 phone thefts in 2000, against those aged 16 or more. School surveys suggested that there had been 200,000 - 550,000 thefts from 11-15 year olds in 2000/2001, and it was estimated that 330,000 offences had been recorded by the police. Phones were stolen in various kinds of theft, including theft from vehicles. About 20% of recorded offences involving phones were in the course of personal robberies or thefts from the person. Most of those involved in phone robbery were young, with the peak age of those accused of phone

¹ See the *Stewart Report, Report of the Independent Expert Group on Mobile Phones*: May 2000: <http://www.iegmp.org.uk/report/index.htm>

² SN/BT/366 Last updated: 16 July 2002

³ SN/SC/1297 Last updated: 28 June 2002

⁴ SN/SC/767 Last updated: 29 January 2002

⁵ SN/SC/1300 Last updated: 22 May 2002

⁶ Research Study 235 *Theft of mobile phones*: <http://www.homeoffice.gov.uk/rds/pdfs/hors235.pdf>

robbery at about 16. More than two thirds of incidents involved offenders working in groups of two or more. Phone robbery was predominantly a male-on-male event. An overwhelming proportion (at least 90%) of offenders were black, and the vast majority of victims were white, with Asians being the next most often targeted.⁷

C. Judicial response: sentencing

Within weeks of the Home Office study being published, the Court of Appeal considered the sentences which had been imposed on three offenders in three cases⁸ which all related to robbery in public places and involved the theft of mobile phones. The Lord Chief Justice, Lord Woolf summarised some of the research results, by which the court was clearly influenced. He said:

They are offences of a particularly worrying nature. They are worrying because of the effect which they have on the public, the effect which they have on the victims in particular, and on the fact that they undermine the criminal justice system. Frequently they involve offences against victims who are either young in age, as is the position with these three applications, or elderly people -- people in both categories who are vulnerable because of their age.

In giving this judgment we are not seeking to set new guidelines. If we were intending to do so, we would have sought the advice of the Sentencing Advisory Panel before giving this judgment. Instead, we are seeking to draw together the principles which are already clearly established by the reported decisions of this court. Before coming to the facts of the individual applications, we wish to set out certain information which has been obtained by research conducted on behalf of the Home Office. It is published as Study 235, dated December 2001, entitled "Mobile Phone Theft". The research contains certain findings as to the level of mobile phone thefts and robberies and identifies a marked increase in the incidents of such offences. According to the research, the position today is that on average 70 per cent of United Kingdom adults own or use a mobile phone. Ownership among younger people is even higher. A source of information on which the study relied was that contained in the British Crime Survey which estimated that there are about 470,000 phone thefts against those aged 16 or over (including attempts) in the year 2000, originating from a number of different offences, including robbery. A school survey asked 15,000 11 to 15 year olds whether they had had a phone stolen in the last year. Grossed-up figures suggested that there were 550 phone thefts against this group between mid-2000 and mid-2001. Twelve per cent of those asked said that they had been victimised at least once. The risk of phone theft for those in the ages between 11 and 16 is five times higher than that for adults. The results show a substantial growth involving the theft of telephones. Figures from six police forces suggest that the number of recorded phone thefts has at least doubled between 1998/99 and 2000/01. There was an increase in the proportion of robberies involving

⁷ *ibid.* see Summary of robbery trends p 16 et seq

⁸ *R v Q, R v L and R v S* [2002] EWCA Crim 127

telephones from about 8 per cent in 1998/99 (an estimated 5,500 phone robberies), to about 28 per cent in 2000/01 (an estimated 26,300 phone robberies). No doubt part of the increase was due to the greater phone ownership during that period.

The information available points in the direction of telephones having played a part in the rise in robberies. Those under 18 constitute nearly half (48 per cent) of all victims, with a peak age at 15 and 16.

Faced with that background the courts have no alternative but to adopt a robust sentencing policy towards those who commit these offences. Those who do so must understand that they will be punished severely. Custodial sentences will be the only option available to the courts when these offences are committed, unless there are exceptional circumstances. That will apply irrespective of the age of the offender and irrespective of whether the offender has previous convictions. However, both those factors are very important when a judge comes to decide on the length of sentence.

In his submissions on behalf of the Attorney General, Mr Pownall said that the bracket of sentencing which the authorities reveal for offenders of the sort we have been describing is 18 months to five years. We will look shortly at some of the authorities to which we were referred. We agree with what Mr Pownall said, subject to this. If the offences are committed by an offender who has a number of previous convictions and if there is a substantial degree of violence, or if there is a particularly large number of offences committed, the five year upper limit may not be appropriate.

Mr Pownall also indicated that the authorities suggest that the upper limit is three years where no weapon is used. Again we agree, subject to the qualifications which we have already expressed in relation to the five year figure.

A factor which, in our judgment, is of importance is whether a team of offenders is involved. The fact that there are a number of offenders will make the offence more intimidating. From an examination of the authorities to which we were referred, we conclude that prior to 1995 they tend to indicate a level of sentencing which is not sufficiently severe. There has been an increase in the incidents of robbery of the sort to which we have referred. The need to deter those who commit offences of this nature has increased because of their prevalence.

Having said that, we urge the manufacturers and those who supply the means by which mobile telephones are used to make strenuous efforts to make the object of these offences more difficult to achieve. We recognise that efforts are already being made, but we hope that even greater efforts could be made which would reduce the attractiveness to dishonest people of offences of this nature.

The court increased two of the sentences, both of which were found to have been unduly lenient.

According to the Annual Report of the Youth Justice Board, published on 9 July 2002, the Court of Appeal judgments have had an effect on the sentences imposed on young offenders by the courts:

The number of young people in custody sentenced and remanded increased in the last year, from 2,753 in April 2001 to 3,034 in April 2002. The increase follows mainly from Lord Woolf's judgment on mobile phone robbery in January 2002 plus recent street crime initiatives and the implementation of section 130 of the Criminal Justice & Police Act 2001 on secure remands.⁹

At the launch of the Report, the Chairman of the Board, Lord Warner, is reported to have said –

... court directions given earlier this year by Lord Woolf, the Lord Chief Justice, had led to a steep rise in young offenders being placed in custody. As a result, efforts to tackle the "root causes" of youth crime had suffered a setback.

In January, Lord Woolf told courts that mobile phone thieves who used violence could expect to go to jail for a minimum of five years "irrespective of the age of the offender". Lord Warner, who is in charge of the Government's policies to combat young offending, said this had reversed a drop in young people in custody.

"After January we see a rather steep rise," he said at the publication of the Youth Justice Board's annual review. "That is around the time the Lord Chief Justice delivered himself of a few thoughts on what he thought should happen to mobile phone robbers. We saw a very significant rise in the custody population."¹⁰

D. Deactivation of stolen handsets

When the rate of increase in mobile phone theft first came to public attention, it was reported that network operators were refusing to introduce measures to discourage mobile phone thefts.

The government and industry experts are infuriated by Vodafone UK and BT Cellnet's refusal to implement the systems - based on the code *#06# - that block stolen handsets when the other major networks - Orange, One2One and Virgin Mobile - have all done so.

"We want to see all mobile phone operators using this technology," said a Home Office spokesman.

⁹ Youth Justice Board Annual Review 2000-2001, Building on Success, p.17: full text at <http://www.youth-justice-board.gov.uk/who/AnnualReview2001.pdf>

¹⁰ "Crime fight hindered by Woolf", *Daily Telegraph*, July 10, 2002,

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At present all networks cancel the Sim cards which store account details when consumers report that their phones have been stolen. The handsets can still be used because thieves long ago learned to replace the Sim cards with new ones, which cost just a few pounds.

But each handset has a serial number - known as the international equipment identification or EMEI number - which a phone owner can check by dialling *#06#. The number is sent to a network each time the phone connects to it.

Orange, Virgin and One2One blacklist these numbers when customers tell them their phones have been stolen, ensuring that the handsets cannot be used on their networks even if the Sim card is changed.

BT Cellnet and Vodafone lack the technology to bar these numbers and claim there is little point in acquiring it; BT Cellnet says it is a misconception that a blacklist would cut crime and argue that they would cut off innocent users because up to 10% of IMEI numbers are duplicated.

The major handset manufacturers disagree. Nokia says it is extremely hard to change the IMEI numbers on its phones and any duplication is rare, and usually occurs on phones shipped to different parts of the world. Sony Ericsson claims it never issues duplicate IMEI numbers.

The issue is complicated by thieves reprogramming or "chipping" phones to change their IMEI numbers. The Home Office has asked the industry to discuss whether this should be outlawed.

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within a few years, handsets that only work when they recognise the user's fingerprint or iris should be available. One firm has developed a chip that will permanently disable handsets even if Sim cards and IMEI numbers are changed¹¹.

Days later, 26,000 mobile phones, said to be worth £4.2 million were stolen from freight premises near Heathrow Airport. But –

The cards had no identifying Sim cards inside, but each had a 15 digit international serial number which has to be transmitted to the network before a connection is made. These numbers have now been deactivated, which means the phones are useless - unless the criminals use very sophisticated techniques to reprogram them, which cannot be done easily according to Nokia, the world's biggest manufacturer of mobiles.¹²

On 8 February 2002 Vodafone and mm02 announced their intention to introduce systems for barring stolen mobile phone handsets. A Home Office news release announced that the Government would take further action to reduce mobile phone robbery and would legislate as soon as parliamentary time allowed, to outlaw the reprogramming of mobile phones.¹³

¹¹ "The key to the mobile phone epidemic", *The Guardian*, 2 Feb 2002

¹² The right call: Smart thinking on mobile phone theft", *The Guardian*, 13 Feb 2002

¹³ Home Office news release 8 Feb 2002 *Ministerial statement in response to Vodafone and mm02 announcement on mobile phones*

E. Government response

1. Cross-government action group

A cross-government action group was convened on 20 March 2002.

Some practical steps that could be taken to improve the way that offenders are dealt with were discussed at the meeting. These include fast-tracking robbery suspects through greater use of video identity parades, a greater use of Intensive Supervision and Surveillance Programmes (ISSPs) for juvenile offenders, increasing the availability of secure accommodation for juvenile offenders, and working to improve witness support schemes to tackle the problem of witness intimidation.

- Police will step up their operations against robbery by targeting hotspots, making more arrests and ensuring that evidence is brought to bear swiftly and systematically to enable early charges to be laid.
- The Crown Prosecution Service will step up the priority accorded to robbery case preparation, in terms of fast-tracking cases, deploying top quality lawyers, and working closely with the police.
- Courts will give priority to robbery cases, if necessary introducing extra sittings to deal with the increased workload.¹⁴

2. New measures announced

After the group was set up, plans for video identity parades, new funds for crime reduction partnerships, and specialist street crime courts were announced. Later in April¹⁵ the Prime Minister expressed confidence that street crime would be under control by September.

a. Video identification parades

On 4 April, Home Office Minister Keith Bradley announced that video identification parades would be rolled out to 10 robbery hotspots to help police identify suspects more swiftly and speed up the criminal justice system. A new PACE¹⁶ Code to allow routine use of video identification parades had come into force on April 1st and the system would be placed in all 10 forces by mid April.¹⁷

¹⁴ Home Office news release STAT 011/20200March 2002 *Government acts on street crime*

¹⁵ HC Deb 24 April 2002 Col 326

¹⁶ *Police and Criminal Evidence Act 1984*

¹⁷ Home Office news release 091/2002: 4 Apr 2002 *Crime-busting video id fast-tracked to robbery hotspots*

b. Funding

On 10 April the Home Office announced that crime-fighting partnerships in England and Wales would share in a new £20 million fund to cut crime.¹⁸

c. Specialist courts

On 11 April the Lord Chancellor announced that 26 Crown Court centres and 41 Magistrates' Courts in the ten areas with the highest street crime would fast-track street crime cases. They are designated 'street crime courts'. The offences to be given priority include robbery, possession or use of firearms, snatch theft and carjacking.¹⁹

d. Prime Minister's target

In Prime Minister's Questions on 25 April, the Prime Minister said

on street crime [-] in fact, in the past few weeks, as a result of the Metropolitan police's safer streets initiative, street crime has fallen, not risen. As a result of the additional measures being taken, we are confident that by the end of September we will have brought that problem under control, although it will of course be difficult.²⁰

On the following day, it was suggested that the September target might have been chosen because of the news that phone companies would have technology in place to disable stolen sets by the summer:

Tony Blair's pledge to get street crime "under control" by September was attacked as a gimmick last night as it emerged that mobile-phone companies were already planning radical moves to combat the problem. Tories attacked the Prime Minister after the Metropolitan Police revealed that phone firms had indicated they would have technology to disable handsets in place by this summer.

With mobile thefts accounting for much of the recent rise in street robberies, critics claimed Mr Blair knew that new technology would lead to a drop in the figures by September.

Similar measures in Amsterdam led to a 42 per cent fall in street crime in just six weeks.

¹⁸ *Community cash to crack down on crime*: Home Office news release 092/2002: 10 Apr 2002

¹⁹ *Lord Chancellor takes action on street crime*: LCD press notice 126/02: 11 April 2002

²⁰ HC Deb 24 April 2002 Col 326

The controversy came as Downing Street sought to water down the Prime Minister's commitment, made on Wednesday in the Commons, to tackle the problem within a set deadline.

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Mike Todd, the Deputy Commissioner, told the Metropolitan Police Authority (MPA) yesterday that he had received indications from the phone firms that a technical solution to disabling handsets would be reached this summer. A spokeswoman for Vodafone confirmed that the company intended to introduce by July a new system for disabling mobile handsets and keeping a record of their unique identity numbers.

It would also have in place by the end of the summer an agreement with other networks to share blacklists of phone numbers that had been stolen. Richard Barnes, the Tory crime spokesman and deputy chairman of the MPA, said: "I find it staggering that the Prime Minister was willing to take the credit for a change in technology that would have led to a cut in crime."²¹

F. Other issues

Others have commented that the reported crime figures may be distorted by false reports made for the purpose of fraudulent insurance claims. It has also been suggested that the Bill is unlikely to discourage organised large-scale theft of mobile phones, which is also a major problem, since re-programming can be done abroad. Figures from an unpublished study by the Mobile Phone Industry Crime Action Forum (MPICAF) have been quoted in the media:

Insurance fraud adds to mobile theft figures

A significant percentage of the 700,000 mobile handsets reported stolen last year were never really nicked at all, according to an industry body. The recent surge in mobile phone theft is partly caused by fraudulent insurance claims, according to latest research from the mobile industry.

MPICAF claimed this weekend that at least 20 percent of reported mobile thefts are actually faked. As yet unpublished research from the MPICAF has found that a disturbingly high number of people are falsely claiming their phones have been stolen -- at a time when politicians and the public are increasingly concerned by rising crime figures.

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Around 700,000 were reported stolen last year, according to official figures, and the government is hoping to crack down on the epidemic. However, as a large percentage of handsets are stolen for export overseas, where IMEI blocking is ineffective, this measure will only cut down on "casual" thieves and will do nothing to prevent organised crime from continuing to steal cellphones.²²

²¹ PM's pledge on street crime based on plan to disable stolen mobiles", *The Independent*, 26 April 2002

²² http://www.mobileguru.co.uk/Mobile_News_Info4.html#imei

Almost a quarter of mobile phones reported stolen are, in fact, still in the hands of their owners who lie so they can make bogus insurance claims, according to a government task force.

Unpublished research carried out for the Mobile Phone Industry Crime Action Forum (MPICAF), a body that advises the Government, revealed that more than 20 per cent of all phones reported stolen were in fact insurance scams. The revelation will go some way to deflate growing hyperbole about a claimed epidemic of mobile phone theft.

"Members of MPICAF have been aware for some time that the figures reported for mobile phone theft are being falsely inflated by insurance claims," said Jack Wraith, MPICAF executive secretary.

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the study carried out for MPICAF shows that mobile phone owners take advantage of hysteria surrounding phone thefts to make false claims. In one case, a customer telephoned their network provider from the very mobile phone which they were claiming had been stolen. The caller quickly terminated the conversation when the operator pointed out that the "stolen" mobile phone number was on the switchboard display.

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A separate police investigation into mobile phone theft last year revealed that more Nokia 8210 mobile phones had been reported stolen than the manufacturer had ever made.²³

G. Other jurisdictions

In reply to a question from Lord Dholakia at the House of Lords Second Reading of the *Mobile Telephones (Re-programming) Bill* Lord Rooker said:-

We are not aware of any legislation overseas, but the officials I met this morning from the Department of Trade and Industry stated that they have a plan of action to discuss these matters with overseas governments. Other than our European partners, the key government is the United States of America. If we can get them on board we could be very effective.²⁴

II The Mobile Telephones (Re-programming) Bill [HL]

A. Introduction in the House of Lords

The stages of the Bill (HL Bill 80 of 2001/02) in the House of Lords were:

²³ "Quarter of mobile telephone thefts faked", *Independent on Sunday*, 5 May 2002:

²⁴ HL Deb 16 May 2002 Col 483

Presentation and first reading	2 May 2002 ²⁵
Delegated Powers and Deregulation Select Committee	15 May 2002 ²⁶
Lords Second Reading debate	16 May 2002 ²⁷
Lords Committee stage	20 June 2002 ²⁸
Lords Report stage	4 July 2002 ²⁹
Lords Third Reading and debate on motion that Bill do now pass	11 July 2002 ³⁰
Bill brought from the Lords as Bill 177 2001/02	11 July 2002

The Bill was welcomed in principle by both main opposition parties. It was not amended in the House of Lords, where there were no divisions on it.

It is available at <http://pubs1.tso.parliament.uk/pa/cm200102/cmbills/177/2002177.htm>

Links to the debates in the House of Lords can be found in the Library Bill Index at http://hcl4.hclibrary.parliament.uk/weblink/bill_index/200102/IP.html. Explanatory Notes to the Bill have been published by the Home Office as Bill 177-EN, and are available at <http://pubs1.tso.parliament.uk/pa/cm200102/cmbills/177/en/2002177en.pdf>

B. The new offences

1. Re-programming

Clause 1 would make it an offence either to change a “unique device identifier” or to interfere with the operation of one. Either action would come under the heading of “re-programming” a mobile telephone. The explanatory notes comment that:-

it will be an offence to re-programme the unique International Mobile Equipment Identity (IMEI) number which identifies a mobile telephone handset. It is also possible to interfere with the operation of the IMEI by the addition of a small electronic chip to the handset and this too will be made illegal.

Subsection (2) defines “unique device identifier” as:

an electronic equipment identifier which is unique to a mobile wireless communications device

According to the *Explanatory Notes*-

²⁵ HL Deb 2 May 2002 Col.801

²⁶ HL 121 2001-02: the Bill contains only a simple commencement power.

²⁷ HL Deb 16 May 2002 Col. 477-84

²⁸ HL Deb 20 June 2002 Col. 906-13

²⁹ HL Deb 4 July 2002 Col. 362-5

³⁰ HL Deb 11 July 2002 Col.877

The offence is defined in terms which ensure that it will still be relevant to future generations of mobile communications devices which may have different electronic equipment identifiers.

Only the manufacturer, or a person acting with the manufacturer's consent may perform such actions lawfully. The Explanatory Notes³¹ explain that there is no legitimate reason for any other person to do so:

It is not at present an offence to change or interfere with the operation of the IMEI number of a mobile telephone handset. It is clear from international Global System for Mobiles (GSM) standards that the IMEI number should not be changed and that it should be resistant to change. Indeed there is no legitimate reason why anyone other than the manufacturer of a mobile telephone (or its authorised agents) should need to alter an IMEI number.

2. Ancillary offences

Clause 2 deals with offences of possession, supply or offering to supply

anything which may be used for the purpose of changing or interfering with the operation of a unique device identifier

For possession, an offence would be committed where the person intended to use, or allow use of a thing unlawfully for the purpose of reprogramming. Where a person supplies or offers to supply such a thing, an offence would be committed if he knew or believed that the (potential) recipient intended to use or allow it to be used unlawfully for that purpose.

Although the *Explanatory Notes* paraphrase the clause and refer to –

equipment for the purpose of unauthorised re-programming³²

it was made apparent during the House of Lords debates that “anything” could cast the net wider than “equipment” which might not, for instance, catch software.

3. Mode of trial and penalties

All the new offences are to be triable either way with maximum penalties of six months imprisonment and/or the statutory maximum fine (£5,000) on summary conviction and five years imprisonment and/or an unlimited fine on conviction on indictment (clauses 1(4) and 2(6)). These maximum penalties are lower than those for theft (seven years) and handling stolen goods (fourteen years).³³

³¹ para 5

³² para 10

³³ *Theft Act* 1968 sections 7 and 22

C. Issues arising during House of Lords debates

No special concerns were expressed in the House of Lords about the basic re-programming offences under clause 1. There were, however, opposition concerns about whether, on the one hand, the ancillary offences under clause 2 were widely enough drawn to be effective against offenders, and on the other hand, whether they might catch innocent use of things which could also be used for re-programming. There seems to be no reason, in theory, why a prosecution should not be based on possession or supply of any component part of an ordinary IT workstation³⁴, if the prosecution is able to prove the requisite guilty intention, knowledge or belief. Equally, however, it seems unlikely that the prosecution would, in practice, often need to rely on possession of a very ordinary item in any case where they had put together adequate evidence of guilty intention etc.

Lord Dixon-Smith had wanted to put down an amendment³⁵ to make it an offence to have more than four mobile phones in one's possession, on the basis that no-one could legitimately want as many as three: but he had been advised that the terms under which the Bill had been drafted were so tight and specific that the wording would not be acceptable. He suggested that if possession of a cache of mobile phones with the same IMEI number would be taken into account in assessing the strength of a case against the possessor, that amounted to support for making it an automatic offence.

At Second Reading he expressed concern that as re-programming software could be downloaded from the internet, and computers were sold by the dozen every week, he did not know how it was possible to find someone guilty of selling something to a person who intended to use it in an improper way. At Committee, he spoke to his amendment which would have worded the possession offence differently, making it an offence for a person to possess anything which he may use for the purpose of re-programming, whether or not there was unlawful intent, but providing a defence

if the person is able to demonstrate that he is required to have in his custody or control that thing for legitimate purpose.

Thus there would have been no defence for a person who happened to have such a thing in his possession for a legitimate purpose without being "required" to do so. Lord Dixon-Smith explained that the amendment was intended to make the position clearer because, although circumstantial evidence could create a reasonable supposition of intent, he believed that there were difficulties in relation to judging intent.

In replying for the Government, Lord Filkin said:

³⁴ such as a cable or computer desk or table, see HL Deb 20 June 2002 Col 911

³⁵ HL Deb 20 June 2002 col.908

We accept that the equipment required to re-programme the identification number may also be used for legitimate purposes. However, the requirement in Clause 2 to show intent will mean that the Bill will not criminalise people who legitimately possess equipment which can be used to change an IMEI number. The offence is only committed if there is proof both of possession or of supply of the equipment and of intent to use it to change the number. It is that lock of the two that is central to the offence.

The provision has been drafted in close consultation with the police, the Crime Prosecution Service and the mobile phone industry to ensure that it does not cover the legitimate use or supply of equipment. The noble Lord previously explained that he sees a difficulty with proving intent. But the concept of intent and belief are already used extensively in criminal law without major difficulty. For example, the Theft Acts create the offence of theft where a person dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it. The courts have held that intention can be deduced from the circumstances of a case.

In many cases a defendant will deny that he intended permanently to deprive the owner of the property. But the courts will look to what the defendant did with the property to ascertain his intention. So under Clause 2 of the Bill, in the absence of a confession, the courts would look to see what the defendant knew and to what use he had put the equipment in order to ascertain his intention. In the context of the Bill proof of intent may emerge from evidence gathered by the police in targeted, intelligence-led operations; for example, where a stockpile of handsets with the same IMEI number was found in the custody of an individual who also possessed the relevant equipment. In that circumstance one could envisage that the Crown Prosecution Service would feel that there was a reasonably strong case to answer.³⁶

Lord Campbell-Savours' concern was that the reference to "anything" might be too wide and might catch the innocent possessor of a cable³⁷ capable of being used as an interface. His amendment, at Report stage, would have added a qualification to "anything" so that for an offence to be committed it would have to be –

Anything which may in conjunction with equipment capable of interfering with the operation of [a] unique device identifier be used for such purposes.

He explained that his argument was that –

a cable, in conjunction with a cache of 20, 30 or 40 telephones, might, in the minds of a prosecuting authority, be sufficient to warrant bringing a prosecution. My noble friend will no doubt say that he believes that that is not the case, but I can imagine circumstances in which it might well be the case. I can give my noble friend one example. With advances in science and developing technology, the printed circuitry may be involved in the cable and not necessarily in a PC.

³⁶ HL Deb 20 Jun 2002: Col. 912

³⁷ HL Deb 20 June 2002: Col .909

Such a cable, along with a cache of phones, might well be the basis on which a prosecution is called.³⁸

The amendment was supported by Lord Dixon-Smith and by Lord Dholakia, who added -

The amendment would not take anything away, but would establish greater clarity.³⁹

In replying for the Government, Lord Filkin emphasized that under the clause as drafted, the prosecution would have to produce evidence of an intent towards criminality, so that a retailer selling someone e.g. a cable which could be used for re-programming purposes would not be at risk of committing an offence unless he knew or had good reason to believe that the item was going to be used for that purpose

The offence is not merely retailing the cable, but doing so in the knowledge that it will be used illegally to reprogram IMEI numbers.⁴⁰

He also suggested that the amendment might have the unintended effect of narrowing the offence:

The definition is deliberately drawn widely by using the word, "anything". The amendment could be seen to narrow that offence. It would restrict the offence to the possession of anything that might be used in conjunction with equipment to change an IMEI number. The possession of a cable by itself would not be an offence, even if the intent to use it to change IMEI numbers could be proved. I do not believe for a second that that is what my noble friend intended.

The term "equipment" may also not be wide enough to cover anything that may be used to help change an IMEI number. It is doubtful that software would be covered by "equipment".⁴¹

All the amendments tabled in the House of Lords were withdrawn.

³⁸ HL Deb 4 July 2002 Col 363

³⁹ HL Deb 4 Jul 2002 : Col. 364

⁴⁰ HL Deb 4 July 2002 Col 364

⁴¹ HL Deb 4 July 2002 Col. 365