

Prisons (Interference with Wireless Telegraphy) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Ministry of Justice, with the consent of Lord Laming, the member in charge of the Bill, are published separately as HL Bill 47 – EN.

Prisons (Interference with Wireless Telegraphy) Bill

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TO

Make provision about interference with wireless telegraphy in prisons and similar institutions.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Interference with wireless telegraphy in prisons etc.

- (1) The appropriate national authority may authorise the person in charge of a relevant institution to interfere with wireless telegraphy.
- (2) An interference with wireless telegraphy authorised under subsection (1) may be carried out only for the purpose of—
 - (a) preventing the use within the institution of an item specified in subsection (3), or
 - (b) detecting or investigating the use within the institution of such an item.
- (3) The specified items are—
 - (a) a device capable of transmitting or receiving images, sounds or information by electronic communications (including a mobile telephone);
 - (b) a component part of such a device;
 - (c) an article designed or adapted for use with such a device (including any disk, film or other separate article on which images, sounds or information may be recorded).
- (4) The interference with wireless telegraphy that may be authorised by virtue of subsection (2)(b) is for the collection of traffic data in relation to an electronic communication and (subject to the provisions of this Act) such an authorisation permits the retention, use and disclosure of that data.
- (5) Conduct to which this subsection applies is lawful for all purposes.
- (6) The conduct to which subsection (5) applies is—
 - (a) interference with wireless telegraphy that—
 - (i) is authorised under subsection (1), and

- (ii) is carried out in accordance with subsection (2) and any direction given under section 2,
 - (b) the retention, use or disclosure of any traffic data, collected as a result of such an interference with wireless telegraphy, which is carried out in accordance with this Act. 5
- (7) Section 8(1) of the Wireless Telegraphy Act 2006 (requirement for a licence to establish or use a wireless telegraphy station or to instal or use wireless telegraphy apparatus) does not apply in relation to anything done for the purposes of carrying out an interference with wireless telegraphy authorised under this section. 10
- (8) An authorisation under this section must be in writing.

2 Safeguards

- (1) Before the appropriate national authority authorises an interference with wireless telegraphy under section 1 it must be satisfied any equipment that will be used as a result of the authorisation is fit for the purpose. 15
- (2) Where the appropriate national authority authorises an interference with wireless telegraphy under section 1 it must inform the Office of Communications.
- (3) A person in charge of a relevant institution who is authorised to interfere with wireless telegraphy under section 1 must act in accordance with directions given under this section. 20
- (4) Where the appropriate national authority authorises an interference with wireless telegraphy under section 1, it must give directions to the person so authorised –
 - (a) specifying descriptions of information to be provided to the Office of Communications; 25
 - (b) specifying intervals at, or occurrences on, which such information is to be so provided;
 - (c) as to the circumstances in which the use of equipment for the purposes of an interference with wireless telegraphy authorised under section 1 must be modified or discontinued (and, in particular, directions aimed at ensuring that the authorised interference will not result in disproportionate interference with wireless telegraphy outside the relevant institution). 30
- (5) The appropriate national authority may give such other directions to a person mentioned in subsection (4) as it considers necessary or desirable for the purposes of this Act. 35
- (6) A direction under this section must be in writing.

3 Retention and disclosure of information obtained under section 1

- (1) Information obtained by virtue of section 1 must be destroyed no later than 3 months after it was obtained unless the person in charge of the relevant institution has authorised its retention. 40
- (2) The person in charge of a relevant institution may not give an authorisation under subsection (1) unless satisfied –

- (a) that the retention of the information is necessary on one or more of the grounds specified in subsection (8), and
 - (b) that the retention is proportionate to what is sought to be achieved by it.
- (3) Where information is retained under subsection (1) the person in charge of the relevant institution must review, at intervals of not more than 3 months, whether its retention remains in accordance with that subsection. 5
- (4) If, on a review under subsection (3), the person in charge of the relevant institution is not satisfied that the retention of information remains in accordance with subsection (1), that person must arrange for the information to be destroyed. 10
- (5) Information obtained by virtue of section 1(2)(b) may be disclosed to—
 - (a) an officer of the relevant institution;
 - (b) an employee authorised for the purposes of this section by the person in charge of the institution;
 - (c) the Secretary of State; 15
 - (d) if the relevant institution is in Scotland, the Scottish Ministers.
- (6) Information obtained by virtue of section 1(2)(b) may not be disclosed to any other person unless the person in charge of the relevant institution has authorised its disclosure.
- (7) An authorisation under subsection (6) may be given only where the person in charge of the relevant institution is satisfied that— 20
 - (a) the disclosure is necessary on one or more of the grounds specified in subsection (8), and
 - (b) the disclosure is proportionate to what is sought to be achieved by it.
- (8) The specified grounds are— 25
 - (a) the interests of national security,
 - (b) the prevention, detection, investigation or prosecution of crime,
 - (c) the interests of public safety,
 - (d) securing or maintaining security or good order and discipline in the relevant institution, 30
 - (e) the protection of health or morals.
- (9) An authorisation under this section must be in writing.

4 Interpretation

- (1) In this Act—
 - “the appropriate national authority” means— 35
 - (a) in relation to a relevant institution in England or Wales, the Secretary of State;
 - (b) in relation to a relevant institution in Scotland, the Scottish Ministers;
 - “relevant institution” means— 40
 - (a) a prison in England, Wales or Scotland;
 - (b) a young offender institution in England or Wales;
 - (c) a young offenders institution in Scotland;
 - (d) a secure training centre in England or Wales;

- “wireless telegraphy” has the same meaning as in the Wireless Telegraphy Act 2006 and, in relation to wireless telegraphy, “interfere” has the same meaning as in that Act.
- (2) In this Act reference to the person in charge of a relevant institution is—
- (a) in relation to a prison, its governor or, in the case of a contracted-out institution in England, Wales or Scotland, its director; 5
 - (b) in the case of a young offender institution or a secure training centre in England or Wales, its governor or, in the case of a contracted-out institution, its director;
 - (c) in the case of a young offenders institution in Scotland, its governor or, in the case of a contracted-out institution, its director. 10
- (3) For the purposes of subsection (2) an institution is “contracted-out” if—
- (a) in England or Wales, it is a contracted out prison within the meaning of Part 4 of the Criminal Justice Act 1991 (see section 84(4) of that Act);
 - (b) in Scotland, it is a contracted out prison within the meaning of Chapter 2 of Part 8 of the Criminal Justice and Public Order Act 1994 (see section 106(4) of that Act); 15
 - (c) in the case of a secure training centre in England or Wales, it is provided or run in accordance with a contract made under section 7 of the Criminal Justice and Public Order Act 1994. 20
- (4) In this Act “traffic data” means data—
- (a) which is comprised in, attached to or logically associated with a communication (whether by the sender or otherwise) for the purposes of a telecommunication system by means of which the communication is being or may be transmitted, and 25
 - (b) which—
 - (i) identifies, or purports to identify, any person, apparatus or location to or from which the communication is or may be transmitted,
 - (ii) identifies or selects, or purports to identify or select, apparatus through which, or by means of which, the communication is or may be transmitted, 30
 - (iii) comprises signals for the actuation of apparatus used for the purposes of a telecommunication system for effecting (in whole or in part) the transmission of the communication, 35
 - (iv) identifies, or purports to identify, the time at which an event relating to the communication occurs, or
 - (v) identifies data as comprised in, attached to or logically associated with the communication. 40
- The references in this subsection to a telecommunication system by means of which a communication is being or may be transmitted include, in relation to data comprising signals for the actuation of apparatus, any telecommunication system in which that apparatus is comprised.
- (5) Data identifying a computer file or computer program access to which is obtained, or which is run, by means of the communication is not “traffic data” except to the extent that the file or program is identified by reference to the apparatus in which it is stored. 45
- (6) In this section “telecommunication system” has the same meaning as it has for the purposes of the Regulation of Investigatory Powers Act 2000.

5 Final provisions

- (1) This Act extends to England and Wales and Scotland.
- (2) Her Majesty may by Order in Council provide for this Act to extend with modifications to any of the Channel Islands or the Isle of Man.
- (3) Sections 1 to 4 of this Act come into force on such day as the appropriate authority may by order appoint. 5
- (4) In subsection (3) “the appropriate authority” means –
 - (a) so far as this Act extends to England and Wales, the Secretary of State;
 - (b) so far as this Act extends to Scotland, the Scottish Ministers.
- (5) An order made under subsection (3) by the Secretary of State must be made by statutory instrument. 10
- (6) This Act may be cited as the Prisons (Interference with Wireless Telegraphy) Act 2012.

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Brought from the Commons on 22nd October 2012

Ordered to be Printed, 22nd October 2012

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LONDON – THE STATIONERY OFFICE LIMITED
Printed in the United Kingdom by The Stationery Office Limited
£x.xx