

PRISONS (INTERFERENCE WITH WIRELESS TELEGRAPHY) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Prisons (Interference with Wireless Telegraphy) Bill as brought from the House of Commons on 9 July 2018 (HL Bill 121).

- These Explanatory Notes have been prepared by the Ministry of Justice, with the consent of Baroness Pidding in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

1. The purpose of the Bill is to strengthen safety and security in prisons through authorising public communications providers to disrupt the use of unlawful mobile phones in prisons.

Policy background

2. In November 2016, the Government published plans for reforms to the prison system, including measures in this Bill.¹ The Prison Safety and Reform White Paper outlined the Government's plans for reforms, to be delivered through a mix of operational changes in prisons underpinned by legislative changes where required. In that publication, the then Secretary of State outlined the "current challenge" facing the prison system and policy rationale for reform.
3. Prisons are facing new security challenges. In 2016, approximately 13,000 mobile phones and 7,000 SIM cards were found in prisons – an increase from around 7,000 in 2013.
4. The power of the Secretary of State to authorise governors to interfere with wireless telegraphy to disrupt unlawful mobile phone use in prisons is established in the Prisons (Interference with Wireless Telegraphy) Act 2012 ("PIWTA 2012"). Clause 1 amends this provision to create a new power for the Secretary of State to authorise public communications providers (PCPs) to effect this interference in an independent capacity. The Wireless Telegraphy Act 2006 makes it a criminal offence to install or use wireless telegraphy apparatus without a licence (section 8) or to use apparatus to deliberately interfere with wireless telegraphy (section 68), but such interference is lawful for the purpose of detecting or preventing the use of illegal mobile phones in prisons when it is carried out by someone authorised under the PIWTA 2012. Ofcom regulates this activity in the UK under powers set out in the Communications Act 2003 and the Schedule to the Bill uses a definition of a PCP based on section 151 of that Act.

Legal background

5. Under section 40C of the Prison Act 1952, it is an offence for a person to convey a mobile telephone into or out of prison. Under section 40D, it is an offence for a person to possess a mobile telephone inside a prison without authorisation. Pursuant to Rule 51(12) of the Prison Rules 1999, it is a disciplinary offence for a prisoner to have in their possession any unauthorised article, which includes an unauthorised mobile telephone. The Prisons (Interference with Wireless Telegraphy) Act 2012 allows the Secretary of State, or Scottish Ministers, to grant an authorisation to prison governors/directors, permitting them to interfere with wireless telegraphy for the purpose of preventing, detecting or investigating the use of mobile telephones within a prison.

Territorial extent and application

6. Clause 2(3) sets out the extent of the provisions in the Bill. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect. The provisions of the Bill extend to England, Wales and Scotland (reflecting the extent of the Prisons (Interference with Wireless Telegraphy) Act 2012 ("PIWTA 2012")) but apply to England and Wales only.

¹ *Prison Safety and Reform White Paper* Cm 9350: <https://www.gov.uk/government/publications/prison-safety-and-reform>

7. See Annex A for a summary of the position regarding territorial extent and application in the United Kingdom

Commentary on provisions of Bill

Clause 1: Interference with wireless telegraphy in prisons etc.

8. This clause allows the Secretary of State to authorise public communication providers (“PCPs”) to interfere with wireless telegraphy in prisons in England and Wales, in addition to the existing authority that can be given to governors.
9. Section 1 of the PIWTA 2012 is amended to allow authorisation of PCPs by the insertion of new subsections (2A) to (2C), and there are further consequential changes to section 1 so that governors, directors and PCPs can deliberately interfere with wireless telegraphy in prisons without committing an offence under the Wireless Telegraphy Act 2006.

Clause 2: Final provisions

10. This clause confirms the short title of the Bill and makes provision for its coming into force. Clause 2(3) provides that like the Act it amends, the PIWTA 2012, the Bill extends to England, Wales and Scotland, but as noted at paragraph 7 above it only applies to England and Wales.
11. Clause 2(4) provides for the Bill’s provisions to be extended in future to any of the Channel Islands or the Isle of Man.

Schedule

Schedule: Interference with wireless telegraphy in prisons etc.

12. The Schedule sets out further changes to the PIWTA 2012. Section 2 of the PIWTA 2012 describes the safeguards that apply when interference with wireless telegraphy is being authorised under the Act and includes a requirement for the Secretary of State to give directions in writing to any person so authorised. The directions cover information that must be provided to Ofcom, and the frequency with which such information must be provided. New subsection (3A) confirms that a PCP that is authorised to interfere with wireless telegraphy must act in accordance with any directions given by the Secretary of State.
13. New subsection (4A) sets out how the directions given to an authorised PCP will differ from those given to an authorised governor. The main difference is that while directions given to an authorised governor include information that he or she must provide to Ofcom, directions for an authorised PCP will specify what information it must provide to the governor of the prison where the interference is taking place and it will be the responsibility of the governor to pass any required information to Ofcom under new subsection (4B). The rationale is that although the authorisation allows the PCP to act independently to interfere with wireless telegraphy in a particular prison, 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.
14. Section 3 of the PIWTA 2012 sets out provisions covering retention and disclosure of information obtained as a result of interference with wireless telegraphy. As now, responsibility for decisions about retention and disclosure of such information will continue to rest with the governor of the relevant institution. The proposed changes to section 1 mean that in future such information could be obtained through authorisation of a PCP and in such cases, new section 1(2C) provides that the authorisation can apply to one or more relevant institutions. To avoid any uncertainty about which governor is responsible for deciding about retention and disclosure, new subsection 3(10) sets out which is the relevant institution when information has been obtained as a result of the authorisation of a PCP.

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15. Section 4 of the PIWTA 2012 defines various terms used in the Act and a definition of a “public communications provider” has been inserted at section 4. The definition derives from section 151 of the Communications Act 2003 and, through that Act, defines a “public communications provider” as:

(a) a provider of a public electronic communications network; or

(b) a provider of a public electronic communications service; where

“public electronic communications network” means an electronic communications network provided wholly or mainly for the purpose of making electronic communications services available to members of the public; and

“public electronic communications service” means any electronic communications service that is provided so as to be available for use by members of the public.

Commencement

16. Clause 2(2) states that the provisions in the Bill will be brought into force by means of regulations made by the Secretary of State.

Financial implications of the Bill

17. No costs arise directly as a result of passing this Bill, which provides the power to authorise a public communications provider to interfere with wireless telegraphy directly. However, if a PCP is so authorised, there would likely be costs associated with them carrying out interference. The extent and type of interference would need to be agreed and subject to negotiation and contractual agreement, including cost, in the normal way.

Parliamentary approval for financial costs or for charges imposed

18. The additional expenditure arising from the Bill is subject to a Money Resolution. The House of Commons agreed to a Money Resolution to authorise the payment out of money provided by Parliament of any increase attributable to the Act in the sums payable under the Prisons (Interference with Wireless Telegraphy) Act 2012 out of money so provided, on Tuesday 1 May 2018.

Compatibility with the European Convention on Human Rights

19. This is a Private Member’s Bill and the Government is not required to give a statement of compatibility with the European Convention on Human Rights in accordance with section 19(1)(a) of the Human Rights Act 1998. The Ministry of Justice has, nevertheless, considered the question of compatibility and has concluded that while Article 8 ECHR (the right to respect for private and family life) may be engaged the Bill is nevertheless compatible with the European Convention on Human Rights.

20. Possible interference with prisoners’ Article 8 rights stems from the pre-existing prohibitions on mobile phone possession, and does not arise as a result of these amendments. It is an essential part of a prisoner’s right to respect for family life that prison authorities assist him or her in

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maintaining contact with their close family (*X v United Kingdom*²). However, detainees are able to maintain effective family ties through other means such as personal visits, letters and through phone calls conducted through alternative, authorised methods.

21. There is some risk that the third party communications of persons outside of the prison could be disrupted. However, the Department assesses that this risk is low and considers that overall, the risk is a manageable one. Every effort will be made to ensure that the identified risk is minimised. Multiple safeguards exist to ensure that this risk is adequately mitigated. These include: a requirement for the Secretary of State to be satisfied that any equipment to be used is fit for purpose, a system of oversight and monitoring by OFCOM, and finally the fact that the Secretary of State must give directions to the public communications provider to ensure that disproportionate interference outside the prison is avoided.
22. Authorised interference can include the collection of traffic data, and the authorisation permits the retention, use and disclosure of that data. Safeguards are in place to ensure that the risk of any collection of data relating to persons outside of prison is minimised; and if any such data were collected it would not be retained or used. In relation to any prisoner data collected, the provisions in PIWTA 2012 contain stringent restrictions on the retention and disclosure of information obtained via the authorised interference with wireless telegraphy, which will apply equally to authorisations for PCPs.
23. The Department believes that any interference with Article 8 rights would therefore be in accordance with the law, given this statutory underpinning and the safeguards provided for in sections 2 and 3 of PIWTA 2012, as amended by the Schedule to the Bill. Any interference would be in pursuit of the legitimate aim of preventing crime and disorder and ensuring good order in the secure estate, including the effective enforcement of existing criminal offences around the conveyance into prison and possession of unauthorised mobile telephones. Finally, any interference would be a proportionate means of achieving that aim.

Related documents

24. The following document is relevant to the Bill and can be read at the stated location:

- Prison Safety and Reform White Paper:
<https://www.gov.uk/government/publications/prison-safety-and-reform>

² (1982) App. No.9054/80

Annex A – Territorial extent and application in the United Kingdom

Subject matter and legislative competence of devolved legislatures

The Bill extends to England, Wales and Scotland by virtue of Clause 2(3), but only applies to England and Wales.

In the view of the Government of the United Kingdom, it would not be within the legislative competence of the Scottish Parliament to make corresponding provision because the effect of modifying the 2012 Act would be to modify the effect of the Wireless Telegraphy Act 2006, which is a reserved matter.

The position with regard to Northern Ireland is different and the corresponding provision would be within the legislative competence of the Northern Ireland Assembly, because the purpose of the amendments to the 2012 Act is prison management and prison security, which are transferred matters.

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