

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT TELECOMMUNICATIONS RESTRICTION
ORDERS (CUSTODIAL INSTITUTIONS) (ENGLAND
AND WALES) REGULATIONS 2016

Tuesday 12 July 2016

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The Committee consisted of the following Members:

Chair: ALBERT OWEN

† Allen, Heidi (*South Cambridgeshire*) (Con)
 † Burns, Sir Simon (*Chelmsford*) (Con)
 † Burrowes, Mr David (*Enfield, Southgate*) (Con)
 Creasy, Stella (*Walthamstow*) (Lab/Co-op)
 † Elphicke, Charlie (*Lord Commissioner of Her Majesty's Treasury*)
 † Ghani, Nusrat (*Wealden*) (Con)
 † Harris, Carolyn (*Swansea East*) (Lab)
 † Hayes, Mr John (*Minister for Security*)
 Holloway, Mr Adam (*Gravesham*) (Con)

† Hunt, Tristram (*Stoke-on-Trent Central*) (Lab)
 † Lefroy, Jeremy (*Stafford*) (Con)
 Robinson, Mr Geoffrey (*Coventry North West*) (Lab)
 Shuker, Mr Gavin (*Luton South*) (Lab/Co-op)
 † Smith, Jeff (*Manchester, Withington*) (Lab)
 † Stephenson, Andrew (*Pendle*) (Con)
 † Vickers, Martin (*Cleethorpes*) (Con)

Glenn McKee, *Committee Clerk*

† **attended the Committee**

Second Delegated Legislation Committee

Tuesday 12 July 2016

[ALBERT OWEN *in the Chair*]

Draft Telecommunications Restriction Orders (Custodial Institutions) (England and Wales) Regulations 2016

8.55 am

The Minister for Security (Mr John Hayes): I beg to move,

That the Committee has considered the draft Telecommunications Restriction Orders (Custodial Institutions) (England and Wales) Regulations 2016.

It is a pleasure to serve under your chairmanship again, Mr Owen, following the time we spent together on the Investigatory Powers Bill.

The regulations were laid before the House on 24 May, and I am satisfied that they are fully compatible with our obligations under the European convention on human rights. It is important to say just one or two things about the context. You will know, Mr Owen, that the ownership and use of mobile phones in prison is already illegal. Unfortunately, notwithstanding that, the evidence suggests that some prisoners continue to use mobile phones while behind bars and, more than that, they continue to be engaged in criminal enterprises, including offending, by means of modern communications.

There have been a number of recent convictions where prisoners have used mobile phones to commit a wide range of very serious crimes, such as importing automatic firearms and drugs. Indeed, in 2015 a prisoner received a 19-year sentence for using a mobile phone to orchestrate the supply of class A drugs. Mobile phones are also used for planning and plotting violent crimes. There are examples of their being used for intimidation and harassment. In essence, it is clear to the Government, as I think it will be to the Committee, that we need to take further steps.

As I said, the possession and use of a mobile phone in prison is already a criminal offence. The National Offender Management Service already uses a range of measures to prevent mobile phones from getting into prisons and to seize them when they do. To give hon. Members some feeling for the scale of the problem, in 2013 NOMS recovered more than 7,400 handsets and SIM cards from its estate. In 2014 the number of devices seized increased by 30% to 9,745. That is the equivalent of one seizure for every hour of the year, which it is fair to say is a truly remarkable figure.

We need to do more to ensure that we can prevent the use of mobile phones by prisoners without taking possession of the phone. A new, cost-effective approach is also needed to augment and strengthen the existing measures.

Sir Simon Burns (Chelmsford) (Con): My right hon. Friend is making a compelling case for the need for the regulations, and he is absolutely right that they must be

effective. Can he share with the Committee how he plans to measure their effectiveness once implemented, so that they do what they are designed to achieve?

Mr Hayes: I asked the same question. My right hon. Friend is an immensely experienced parliamentarian with an eagle eye for these things. He will know that it is all very well to pass regulations, but unless we know that they will work, that does not mean a lot. Of course, there is the contextual point, and no doubt the hon. Member for Swansea East, in what I think is her first encounter of this kind, will want to ask questions on this as well. The problem is that if I am right about the context—the figures suggest that I am—and the problem is growing and the number rising, how do we chart what difference these measures make against that backdrop?

The answer, I think, is that we need to put in place—I am happy to commit to this now—a review of the effect of the regulations that involves prisoners themselves, through prison governors. We should involve the National Crime Agency, which of course will be associated with this, and the police, and I think that we should have the engagement of the prisoner community itself. By a variety of means we should conduct a review. On the basis of that review, we should consider the effectiveness of the regulations, and clearly that would mean that if we felt that they had not had an effect or we needed to do more, we would do more. I am more than happy to commit to that now, in the course of this Committee. As I have said, I have no doubt that the hon. Lady will want to question me further on that.

Carolyn Harris (Swansea East) (Lab): Presumably the Minister will be able to tell the Committee how far the range will extend when these blockers are installed in prisons. Will that affect local communities around prisons?

Mr Hayes: That in itself is an interesting point. The hon. Lady is absolutely right that that is one of the challenges technologically. We have been engaged with mobile phone operators on this, and I held a roundtable event at the Ministry of Justice with my right hon. Friend the Minister for Prisons very recently. One of the challenges is finding a technological solution that does not have unintended consequences of the kind the hon. Lady describes. Part of that review was to look at the changing character of technology, which of course is by its nature dynamic, to ensure—[*Interruption.*]

The Chair: Order. We will have one person speaking at a time.

Mr Hayes: I will come back to my hon. Friend the Member for Enfield, Southgate, who I think might be indicating that he is going to intervene, but first I want to finish answering the question from the hon. Lady, as my hon. Friend would expect me to do as a matter of courtesy, chivalry and parliamentary practice.

The review will also need to engage the service providers, who will have to give us a view on whether the measures that they are being asked to put in place—for that is what this order does; it asks them to put measures in place—are fit for purpose, and whether technological changes necessitate a fresh approach. The hon. Lady is absolutely right that that must be part of the review, and I committed to that in my answer to my right hon. Friend the Member for Chelmsford.

Mr David Burrowes (Enfield, Southgate) (Con): I serve as a criminal defence solicitor and see clients who will be affected by these regulations, which I welcome. I am particularly concerned about the prevalence of drugs in institutions. I want to focus on the types of institutions that will be subject to the regulations. Can the Minister confirm whether they will extend to other institutions where there are detainees, such as mental health hospitals? In those institutions people are also under an order and subject to detention, and mobile phones are particularly prevalent, so there will be an impact. Can the Minister also confirm that this will not extend to the immigration detention estate?

Mr Hayes: I asked those questions too when preparing for this short debate. In the course of my remarks, I will happily make clear the answers to those pertinent inquiries. The issue is of course most acute in the prison estate itself. The alarming thing—I think it is fair to be absolutely open with the Committee—is how apparently easy it is to smuggle those kinds of goods into prison. Of course, a SIM card is a tiny thing. There are even examples of devices being thrown over prison walls, and smuggling a very large number of very small SIM cards into and out of prisons has become something of a specialism for certain people. I am baring my soul to the Committee, but that is the way a Minister should behave among colleagues, because it is important that they know what I have asked of my officials.

My other question was whether it is possible to find a straightforward way of doing this merely by prison staff searching prisoners, dealing with visitors more effectively, checking cells and so on. However, given the sort of numbers I have mentioned, the logistics of that would of course make it extremely difficult. The business of switching SIM cards between phones, and indeed switching phones between prisoners, means that no prisoner is using the same SIM card on any consecutive days. Essentially, the trading of phones between prisoners, the movement of SIM cards and the business of bringing them into and out of the prison are such that simply putting in place a series of protocols, measures or disciplines in the prison would be insufficient to deal with this. We need to find a technological solution that is more comprehensive in its effect, which is precisely what these regulations do.

I turn now to the draft regulations, as I do not want to detain the Committee unduly, even though we are having this interesting and useful discussion. The draft regulations allow NOMS and other law enforcement bodies to apply to the county court for a telecommunications restriction order. If the court is satisfied, on the balance of probabilities, that the handsets and SIM cards specified in the application are in use and inside a prison, they will make a telecommunications restriction order. The terms of the order will require the mobile network operators to take whatever action the order specifies to prevent or restrict the use of those handsets and SIM cards. In practice, the operators will blacklist the handsets, which will prevent the handset from connecting to the mobile network, irrespective of the SIM card inside that handset, and disconnect the SIM cards that are identified in the application from the mobile network.

The blacklisting of handsets and disconnection of SIM cards found to be operating without authority inside prisons will therefore allow us to take much more

decisive, comprehensive and effective action against the use of mobiles that are doing the damage I described earlier.

The emphasis on asking the providers to engage in this process will rightly prompt members of the Committee to ask what view the providers take. I assure the Committee that this order has been brought to the House after extensive discussions with providers to ensure that they are satisfied that the measures contained herein will do the job that they are supposed to.

Carolyn Harris: For obvious reasons, I have had this discussion with several prison governors, and some see it as a much larger problem than others. For example, a women's prison I visited recently said that there was no problem with mobile phones. In fact, only one had been confiscated in the last year. Will the cost of this be borne right across the Prison Service? Will prisons be expected to cut other budgets in order to pay for this technology?

Mr Hayes: The hon. Lady makes a valid point. Let me be clear about the priority here, which is those institutions where we know there is a profound, serious, compelling problem. I have mentioned some figures, but I cannot give the latest data, given that it is not yet publicly available. I assure the hon. Lady that this is a growing problem. We know that, year on year, the use of mobile phones is growing—despite all the good practice of prison governors, by the way; this is by no means an indictment of their management. We know, too, as I have already described, that phones are being used to facilitate a large number of very serious crimes. The hon. Lady is right that that will vary to some extent from place to place. Of course, the nature of the order is that a TRO will be applied for only when we know there is good reason to do so. In that sense, it is specific to the problems she sets out. If an order is necessary it will be brought forward, and the judge must be satisfied that it is proportionate and, on the balance of probabilities, the right thing to do. There is due process associated with this: it is not a question simply of applying the regulations without consideration of where they are needed and why.

On the funding issue she raised, NOMS has secured funding centrally to operate the measure, so there will be additional money.

On the issue that my hon. Friend the Member for Enfield, Southgate raised, the regulations apply only to custodial institutions. I take my hon. Friend's point that there may be a good case to look more widely, if we can find evidence that mobile phones are being used for malevolent purposes elsewhere. As I said to the hon. Lady, this is about application based on need. Nevertheless, I would not want to ignore the implications of my hon. Friend's remarks, and I will go away and look at that. It is not contained in this order, but he makes a valid point. If we find, on analysis, that there is a need to look at the issue more closely, we certainly will.

Mr Burrowes: I actually want a proportionate approach. I certainly do not want the measure to be extended to the immigration removal centre for those who are not convicted prisoners, and I am concerned that there would be an extension. It needs to be dealt with proportionately. Having said that, in my local hospital, there is a forensic wing for convicted prisoners who

[Mr Burrowes]

are subject to a hospital order, and that could be a good case in which access to mobile phones should be prevented.

Mr Hayes: I am little surprised by what my hon. Friend said. He makes a reasonable point. All of this could be tested against the actuality of the problem. The regulations are not blanket provisions; they are provisions based on need. My hon. Friend makes a valid point, and I am happy to build that into our further consideration.

I have set out the importance of the regulations, but it is right, too, that there are safeguards. We need to be able to disapply the order if mistakes are made and if anyone is affected in error. That is another point on which I am sure the hon. Member for Swansea East wants to be assured. We want to ensure that if someone is wrongly affected by a telecommunications restriction order, it can be disappplied quickly and they can be reconnected to the network. I want to put in place an additional safeguard to ensure that there is independent and transparent scrutiny of the measures, so I have provided that the use of the regulations will be overseen by the proposed Investigatory Powers Commissioner when the Investigatory Powers Bill receives Royal Assent.

With that introductory explanation of why we are doing what we are doing, I happily commend the regulations to the Committee.

9.11 am

Carolyn Harris: It is a pleasure to serve under your chairmanship, Mr Owen. If hon. Members will forgive me, this may be a very short-lived appointment so I am going to make the most of it and actually speak out.

Mobile phones are brought into prisons primarily to carry out illegal activity. At a recent inspection of Her Majesty's Prison Lindholme in Doncaster, 67 mobile phones, 145 SIM cards and a kilo of psychoactive substances were confiscated in just one month. Mobile phones in prison are a major concern and facilitate the introduction of illegal contraband, such as Spice, into the prison system. I recently visited several prisons, where I spoke to staff who informed me that the prevalence of contraband for smoking hung so heavy in the air on some wings that they could actually taste the atmosphere. They added that the use of mobile phones was primarily the cause of the stuff getting into the prison system.

The Government's argument is absolutely correct. If we could make mobile phones in prison an impossibility, the effectiveness of contraband smuggling would diminish. I have alluded to the fact that not all prisons are affected by the problem and I am satisfied with the Minister's reasoning on that. However, for prisons that do experience the problem, it is an epidemic and a serious problem.

As we learnt from the recent inspection at Her Majesty's Prison Lindholme, the smuggling of technology is creative, and the result can be quite prolific. This week, the *Daily Mirror* reported that a prisoner in Her Majesty's Prison Wandsworth used a mobile phone to post videos of his cell on Snapchat, and boasted about the availability of drugs and weapons inside. His cellmate was found to be posting selfies online from inside his cell. We have to look at the blockers as essential for some prisons, but

should tailor our reactions accordingly, and I am sure that applying to courts for a restriction order will adequately provide for that.

Over the past few months, one thing I have noted when visiting prisons—especially women's prisons—is that there is a problem with the cost of phone calls. Perhaps the Minister could share those concerns with his colleagues in the Ministry of Justice. Things are especially hard for women who have to keep in touch with their families, or control them with a long arm. They tell me that they have to put as much as £40 a week on the cards because the call charges from prison are so much more expensive than a phone contract would be. Although smuggling of phones was not an issue in the female prison I visited, I fear it may become one because women need to keep in touch with their families.

The majority of mobile phones smuggled into prisons are brought in to organise deliveries of contraband. Their presence is facilitating illegal activities, but it also makes a mockery of the custodial system if prisoners are using mobile phones to advertise their accommodation and activity to the outside world. That must be remedied as a matter of urgency.

A major concern is that technology advances so rapidly, so we need assurances that blockers are reviewed regularly. Everything should be done to ensure that is done annually, rather than over any longer period. By the time network signal blocking devices are installed in prisons, somebody will have found a way around the obstacle. They will undoubtedly find a loophole.

Another area of concern is BlackBerry Messenger, which I understand does not need a wi-fi or phone signal to transfer messages. It works via Bluetooth, so perhaps the next step should be to look into blocking the Bluetooth network. I am led to believe that prisoners have been able to get messages to the outside world using BlackBerry Messenger.

As long as we have assurances that the system will be effective and will be monitored in as fireproof a way as possible, the Opposition will not oppose the orders.

9.16 am

Mr Hayes: I will be brief. I am grateful to the hon. Lady for her contribution, particularly as this is her first performance, if I can put it that way, in a statutory instrument Committee—

Tristram Hunt (Stoke-on-Trent Central) (Lab): Her first intervention.

Mr Hayes: I like to think of these things in theatrical terms, as you know, Mr Owen. I am grateful for the tone and spirit of what she said, as well as for the inquiries she made. Let me be clear: she is right that the issue is not only about crime. It is about crime, as she said, but it is also about the system being made a mockery of. Prisoners are using Twitter and Facebook in a way that makes prison authorities look foolish. It can be worse than that. They can send all kinds of messages over those media of a most unpleasant nature—I mentioned harassment and so on earlier.

The hon. Lady is right that, as I said in answer to my right hon. Friend the Member for Chelmsford, we need to be open-minded about how the system develops and how the technology changes. In the form in which it has

been introduced to the Committee and the House, the instrument is a means by which we can cut off handsets and SIMs, but I take the hon. Lady's point that we will need to review that over time, which is precisely why I committed to do what my right hon. Friend asked me to do.

I shall now give some detail on that commitment. My officials will not like this, but that is not a problem because the Ministers make the decisions. I suggest that we complete the review by the end of 2017, and that I, or whoever is Minister then, write to the House with the details of that review. The review should encompass all that I described, including the National Crime Agency, the police, the prison authorities—NOMS will clearly

be closely involved—and the telecommunications operators, who Members from both sides of the House suggested will need to be involved. It will be based on an analysis of whether we need to go further both technologically and in terms of the prison estate, as my hon. Friend the Member for Enfield, Southgate said.

Let us commit to that on the basis of what has been discussed in this brief debate. So that right hon. and hon. Members can go about their daily business, I draw my remarks to a close.

Question put and agreed to.

9.19 am

Committee rose.

