

*These notes refer to the Mobile Telephones (Re-programming) Bill [HL]
as introduced in the House of Lords on 2 May 2002 [HL Bill XX]*

MOBILE TELEPHONES (RE-PROGRAMMING) BILL [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Mobile Telephones (Re-programming) Bill as introduced in the House of Lords on 2 May 2002. They have been prepared by the Home Office 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.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Mobile Telephones (Re-programming) Bill creates a number of offences relating to the electronic identifiers of mobile wireless communications devices. In particular it will be an offence to reprogramme 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.
4. From September 2002 all the major mobile telephone network providers will be able to bar mobile telephone handsets, when these are reported stolen or lost, by reference to the IMEI number. However, if the IMEI number of the stolen or lost telephone is changed, it will not be possible to implement the barring process and the telephone will be able to continue in use.
5. 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 their authorised agents) should need to alter an IMEI number.
6. It is expected that the creation of these new offences, taken together with the implementation of a handset barring system across all networks, should help remove the incentive for mobile telephone theft. According to research published by the Home Office in January 2002 (*Mobile Phone Theft*, Home Office Research Study

235), mobile telephones are involved in 28% of all robberies, compared to 8% three years previously.

THE BILL

COMMENTARY ON CLAUSES

Clause 1: Re-programming mobile telephones etc.

7. This clause creates the offence of changing or interfering with a unique device identifier. The offence is triable either way. The offence is punishable on conviction on indictment by up to 5 years' imprisonment or a fine or both. The offence is punishable on summary conviction by up to 6 months' imprisonment or a fine not exceeding the statutory maximum (currently £5,000) or both.
8. *Subsection (2)* defines a unique device identifier as an electronic equipment identifier which is unique to a mobile wireless communications device. 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.
9. *Subsection (3)* makes it clear that no offence is committed where the manufacturer, or someone with the manufacturer's written consent, changes or interferes with the operation of a unique device identifier. Other than the manufacturers themselves, only a very limited and strictly controlled number of service centres have express authorisation to change the IMEI number.

Clause 2: Possession or supply of anything for re-programming purposes

10. This clause creates a number of offences ancillary to the offence created by clause 1. These linked offences are having custody or control of the equipment for the purpose of unauthorised reprogramming (*subsection 1*), and supplying (*subsection 2*) or offering to supply (*subsection 3*) the equipment to someone for that purpose.
11. The equipment required to reprogramme the IMEI number may also be used for other legitimate purposes. The clause makes it clear that the offences are committed only if the person intends to use the equipment or allow it to be used for the purposes of making an unauthorised change to the IMEI number, or knows that the person to whom he supplies it or offers to supply it intends to use it or allow it to be used for that purpose.
12. The effect of subsection (5) is that possession by, supply to, or the offer to supply to the manufacturer of a mobile telephone, or someone with his written consent, does not amount to an offence under subsections (1), (2) and (3).
13. Unique device identifier has the same definition as in clause 1. The penalties for each of these offences are the same as for the offence created by clause 1.

Clause 3: Citation etc.

14. This clause gives the short title of the Bill; it also provides for commencement. The Bill extends to the United Kingdom.

PUBLIC SECTOR FINANCIAL EFFECTS AND PUBLIC SECTOR MANPOWER EFFECTS OF THE BILL

15. There will be minimal resource implications for the criminal justice agencies - the police, the Crown Prosecution Service, the courts and the Prison Service - to investigate, enforce, prosecute and process the cases through the courts and to accommodate convicted offenders given a custodial sentence. The number of cases prosecuted under this new offence are likely to be relatively small in number, and the work should be absorbed within the overall existing resources and workload of these agencies. Implementation should not lead to additional staffing requirements.

SUMMARY OF THE REGULATORY APPRAISAL

16. The Regulatory Impact Unit in the Cabinet Office is content that no Regulatory Impact Appraisal is required.

EUROPEAN CONVENTION ON HUMAN RIGHTS

17. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement, before second reading, about the compatibility of the provisions of the Bill with Convention rights (as defined by section 1 of that Act). The Lord Rooker, Minister of State, Home Office, has made the following statement:

In my view the provisions of the Mobile Telephones (Re-programming) Bill are compatible with the Convention rights.

- 18.
19. Although the Bill restricts the use of mobile wireless communications devices, as there is no legitimate reason for changing or interfering with their unique device identifiers, Article 1 of Protocol 1 to the Convention is not engaged.

COMMENCEMENT

20. Clause 3 comes into force on Royal Assent. Clauses 1 and 2 come into force on days that the Secretary of State will specify by order.

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TO

Create offences in respect of unique electronic equipment identifiers of mobile wireless communications devices. Date Of Enactment

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 Re-programming mobile telephone etc.

- (1) A person commits an offence if—
 - (a) he changes a unique device identifier, or
 - (b) he interferes with the operation of a unique device identifier.
- (2) A unique device identifier is an electronic equipment identifier which is unique to a mobile wireless communications device.
- (3) But a person does not commit an offence under this section if—
 - (a) he is the manufacturer of the device, or
 - (b) he does the act mentioned in subsection (1) with the written consent of the manufacturer of the device.
- (4) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both.

2 Possession or supply of anything for re-programming purposes

- (1) A person commits an offence if—
 - (a) he has in his custody or under his control anything which may be used for the purpose of changing or interfering with the operation of a unique device identifier, and
 - (b) he intends to use the thing unlawfully for that purpose or to allow it to be used unlawfully for that purpose.

- (2) A person commits an offence if—
 - (a) he supplies anything which may be used for the purpose of changing or interfering with the operation of a unique device identifier, and
 - (b) he knows or believes that the person to whom the thing is supplied intends to use it unlawfully for that purpose or to allow it to be used unlawfully for that purpose.
- (3) A person commits an offence if—
 - (a) he offers to supply anything which may be used for the purpose of changing or interfering with the operation of a unique device identifier, and
 - (b) he knows or believes that the person to whom the thing is offered intends if it is supplied to him to use it unlawfully for that purpose or to allow it to be used unlawfully for that purpose.
- (4) A unique device identifier is an electronic equipment identifier which is unique to a mobile wireless communications device.
- (5) A thing is used by a person unlawfully for a purpose if in using it for that purpose he commits an offence under section 1.
- (6) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both.

3 Citation etc.

- (1) This Act may be cited as the Mobile Telephones (Re-programming) Act 2002.
- (2) Sections 1 and 2 come into force in accordance with provision made by the Secretary of State by order made by statutory instrument.
- (3) This Act extends to Northern Ireland.