EXPLANATORY MEMORANDUM TO

THE DRUG DEALING TELECOMMUNICATIONS RESTRICTION ORDERS REGULATIONS 2017

2017 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The Drug Dealing Telecommunications Restriction Orders Regulations 2017 ('the Regulations) provide the civil courts with the power to make a drug dealing telecommunications restriction order (DDTRO) and sets out the process and procedure for doing so. DDTROs require a communications provider to close down particular phone lines (or take whatever action the order specifies) to prevent or restrict the use of communication devices in connection with drug dealing offences.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Department intends to bring the Regulations into force on the day after the day on which they are made because the Regulations respond to an urgent high priority operational need of the Police. Further to this, as the people impacted by the Regulations are carrying out a criminal activity the Department does not wish to afford them any time to prepare for the implementation of the Regulations. For the same reasons the Department has secured a common commencement waiver from the Economy and Industrial Strategy (Reducing Regulation) sub-Committee.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 Section 80A of the Serious Crime Act 2015, as inserted by section 107 of the Digital Economy Act 2017, provides the Secretary of State with the power to make Regulations which enable courts in England and Wales, Scotland and Northern Ireland to issue DDTROs.

4.2 This is the first use of the power and is being done in accordance with Parliamentary commitments to introduce measures to tackle county lines drug dealing.

4.3 Section 80 of the Serious Crime Act 2015 already allows provision to be made for Telecommunication Restriction Orders in respect of prisoners in England and Wales and Scotland, and the Telecommunications Restriction Orders (Custodial Institutions)

(England and Wales) Regulations 2016 (S.I. 2016/830) provide for this power in England and Wales.

5. Extent and Territorial Application

5.1 The extent of this instrument is all of the United Kingdom.

5.2 The territorial application of this instrument is all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister for Crime, Safeguarding and Vulnerability, Sarah Newton, has made the following statement regarding Human Rights:

"In my view the provisions of The Drug Dealing Telecommunications Restriction Orders Regulations 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The DDTRO responds to an operational requirement of the applicant authority: the Police and National Crime Agency (NCA) to support them in tackling the issue of county lines drug dealing and its related violence and criminal exploitation. 'County lines' is the police term used to describe the approach taken by gangs originating in large urban areas, who travel to locations elsewhere, such as suburban, county or coastal towns, to establish new or take over existing drug markets and sell predominately Class A drugs. The county lines threat is widespread and growing and children and vulnerable adults are targeted and criminally exploited by county lines gangs to support their drugs market operating model.

7.2 County lines gangs actively seek out, recruit and criminally exploit children, vulnerable young people and adults through deception, intimidation, violence, debt bondage and/or grooming. Criminally exploited individuals are used to move drugs and cash to and from the urban area and to carry out street level drug deals in the receiving area.

7.3 The most recent NCA national assessment on county lines was published in November 2016 and it identified mobile phone lines as central to the county lines drug dealing model. County lines gangs use mobile phones to promote and orchestrate the sale of drugs 24 hours a day. These "deal lines" are known to facilitate hundreds of deals a day.

7.4 The deal line handset is typically held well away from local street level drug dealing activity, it will normally be a line with limited personal data associated with it. All these factors make it hard for the police to gain possession of the deal line handset and achieve criminal prosecutions against an individual for the activity on the line. Where it is possible to link an individual to a county lines deal line, and there is sufficient evidence, the police are likely to pursue the criminal prosecution option. However, as the threat currently stands there are a significant number of anonymous phone lines, known to be used for dealing drugs and the police have no powers available to close these down.

7.5 The Regulations allow the Police or the NCA to apply directly to the civil courts for an order. Once an order is granted by the court, the relevant communications provider will be served with a DDTRO which will require a communications provider to close

down particular phone lines (or take whatever action the order specifies) to prevent or restrict the use of communication devices in connection with drug dealing offences.

7.6 An order may relate to multiple phone lines and it will specify the action to be taken against each.

7.7 A mobile phone which has been disconnected by communication providers as a result of a DDTRO cannot be used to make or receive calls and it is effectively put beyond normal use. However the device retains the technical ability to connect to the emergency services, should that need arise, this is an important safeguard.

Resolution of errors

7.8 The Regulations provide important safeguards to minimise the impact on an affected person if their mobile phone is disconnected in error. The applicant authority believes the risk of error in identifying drug dealing lines is very low.

7.9 Regulation 3(3) allows the court to provide the applicant authority for a DDTRO with a quick remedy to any errors so that the DDTRO can be disapplied, without the need to return to court, if the applicant authority discovers a device is not being used in connection with drug dealing offences. This gives the applicant authority the opportunity to address any errors they may notice both before or after the order has been complied with.

7.10 The phone owner if impacted by a DDTRO can inform the applicant authority of the error and ask them to investigate. If the applicant authority agrees a mistake has been made the order can be disapplied without the need to return to court.

7.11 Regulation 5(2) provides that (a) if the DDTRO contains such a provision and (b) the relevant item is not actually being used in connection with drug dealing offences, then the notice under Regulation 5(3) must be given.

7.12 Regulation 10 makes provision for the variation or discharge of an order on the application of the applicant authority or an affected person. In practice this would serve as a means of challenging an order without a full appeal hearing. An application under regulation 10 would be heard by the same level of court who awarded the order in the first instance, in England and Wales, Scotland and Northern Ireland.

7.13 Regulation 8(1) (a) & (b) sets out that the applicant authority and an affected person can appeal the decision of the court under the Regulations.

7.14 In England and Wales an appeal would be heard by a level of court higher than the court who awarded the order. Permission is required to appeal and the appeal will be by way of review.

7.15 In Scotland an appeal would be heard in the Sheriff Appeal Court (Civil) by an Appeal Sheriff in accordance with the Sheriff Appeal Court Rules (Civil).

7.16 In Northern Ireland an appeal would be heard in the Queen's Bench Division of the High Court in accordance with the Rules of the Court of Judicature (NI).

Consolidation

7.17 This instrument does not amend existing legislation.

8. Consultation outcome

8.1 Given the criminal activity which the Regulations have been designed to address and the resulting operational sensitivities, there was no public consultation.

8.2 The Regulations were developed in collaboration and consultation with a number of key stakeholders including the Police, communications providers, Ofcom, Ministry of Justice, Her Majesty's Courts and Tribunals Service, members of the Judiciary and the relevant Devolved Administration departments.

8.3 The Regulations respond to an operational need of the Police and the NCA to support them in tackling county lines criminality. The Home Office worked in collaboration with the NCA, the National Policing Lead for Gangs, Metropolitan Police Service, Police Service of Northern Ireland, Police Scotland and a number of other police forces within England and Wales to ensure the statutory instrument met their operational needs.

8.4 Detailed consultation with the communication providers i.e. Mobile Network Operators (MNOs) took place over a 12 month period, prior to and during the drafting of the statutory instrument. This involved regular meetings with representatives from all MNOs and some Mobile Virtual Network Operators. Officials consulted with the service providers on the court order process, what actions the providers would be compelled to take once a DDTRO has been made, the technical feasibility of the proposals, and the timeframe for operational compliance.

8.5 As the Regulations impose regulatory measures on communication providers, the Home Office notified a draft of the Regulations to the European Commission under the Technical Standards Directive (Directive (EU) 2015/1535) and requested an 'urgent adoption procedure', as provided for in Article 6(7) of that Directive (EU). The Commission had no comments on the draft and accepted the urgent adoption request, meaning there is no need to observe a three month stand still period before bringing the instrument into force.

9. Guidance

9.1 In England and Wales, six county courts have been designated to process DDTROs under the Part 8 of the Civil Procedure Rules.

9.2 In Scotland, sheriff courts will process the DDTROs in accordance with such procedural rules as may be determined by the Scottish Civil Justice Council.

9.3 In Northern Ireland, county courts will process the DDTROs in accordance with the County Court Rules (Northern Ireland) which may include specific DDTRO court rules or practice directions.

9.4 The Police and MNOs have agreed to develop a shared memorandum of understanding to aid and inform compliance. This will be reviewed and updated in light of initial applications and emerging best practice.

10. Impact

10.1 The Regulations impose regulatory measures on communications providers. The main impact on business arising from the Regulations will be when the communications providers incur costs by taking whatever action is required to comply with the DDTRO. The Regulations provide for the court to award reasonable costs incurred by the communications provider in complying with the order and as such any cost that

the communications provider incurs will be temporary. The Regulatory Policy Committee (RPC) validated the impact on business as 'having a zero net impact on businesses.'

10.2 The statutory instrument does not create any additional burdens for charities or voluntary bodies nor will it have any adverse impact on small businesses or competition.

10.3 The impact on the public sector will fall primarily on the Police, NCA and Her Majesty's Courts and Tribunal Service. Resources will be made available to ensure effective implementation of the Regulations.

10.4 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The Regulations include a review clause at regulation 12. This clause imposes an obligation on the Secretary of State to review the Regulations within five years of commencement. The review will consider if the Regulations achieved their intended aims, and to what extent. The review will additionally consider if the objectives of the Regulations remain appropriate, or if there are better ways of achieving the same aims and, if there are, whether improvements can be made to reduce the regulatory impact on communications providers. The post-implementation review will be published in 2022.

13. Contact

13.1 Fiona Visser at the Home Office Telephone: 0207 035 5017 or email: Fiona.Visser@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.