Draft Regulations laid before Parliament under section 80(6) of the Serious Crime Act 2015, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2016 No.

TELECOMMUNICATIONS

PRISONS, ENGLAND AND WALES

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

Made - - - -	***
Coming into force - -	***

The Secretary of State makes these Regulations in exercise of the powers conferred by section 80 of the Serious Crime Act 2015(**a**).

In accordance with section 80(6) of that Act, a draft of these Regulations has been laid before and approved by resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Telecommunications Restriction Orders (Custodial Institutions) (England and Wales) Regulations 2016 and come into force on the day after the day on which they are made.

(2) These Regulations extend to England and Wales only.

Interpretation

2.—(1) In these Regulations—

"affected person" has the meaning given by paragraphs (2) to (4);

"authorisation" has the same meaning as in section 40D of the Prison Act 1952(**b**);

"working day" means a day other than—

(a) Saturday or Sunday,

(b) Christmas Day or Good Friday, or

(c) a day that is a bank holiday under the Banking and Financial Dealings Act 1971(**c**) in England and Wales.

(**a**) 2015 c.9.
(**b**) 1952 c.52. Section 40D was inserted by section 23 of the Offender Management Act 2007 (c.21) and amended by section 45 of the Crime and Security Act 2010 (c.17).
(**c**) 1971 c.80.

(2) In relation to an application for a telecommunications restriction order(**a**), "affected person"—

(a) means a person who would be likely to be affected by the order (if made), and

(b) includes a person who claims to have an authorisation to possess a communication device(**b**) to which the application relates.

(3) In relation to telecommunications restriction order that has been made, "affected person"—

(a) means a person who has been or is likely to be affected by the order, and

(b) includes a person who claims to have an authorisation to possess a communication device to which the order relates.

(4) But, subject to paragraphs (2)(b) and (3)(b), "affected person" does not include an individual detained in a custodial institution(**c**).

Power to make telecommunications restriction order

3.—(1) The county court may make a telecommunications restriction order if the court—

(a) is satisfied that a communication device identified in the order is inside a custodial institution, and

(b) has no reason to think that the device is in the possession of a person who has authorisation to possess it.

(2) A telecommunications restriction order has effect—

(a) until the date, or the end of the period, that the order specifies (if any);

(b) if no date or period is specified, until further order.

(3) A telecommunications restriction order may provide for the order, or any specified requirements of it, not to apply in relation to any communication device that the applicant discovers to be—

(a) not inside a custodial institution, or

(b) in the possession of a person who has authorisation to possess it.

(4) A telecommunications restriction order must specify a date on or before which the requirements of the order are to be complied with.

(5) Unless the parties agree otherwise, the date specified under paragraph (4) must be the fifth working day after the date of the order.

Parties to the application

4.—(1) A telecommunications restriction order may be made only on the application of—

(a) the Secretary of State,

(b) the Director General of the National Crime Agency,

(c) the Commissioners of Her Majesty's Revenue and Customs, or

(d) a chief officer of police.

(**a**) "Telecommunications restriction order" has the same meaning as in section 80 of the Serious Crime Act (c.9), that is: an order requiring a communications provider to take whatever action the order specifies for the purpose of preventing or restricting the use of communication devices by persons detained in custodial institutions. "Communications provider" is defined in that section as a person providing a service that consists in the provision of access to, and of facilities for making use of, any telecommunication system (whether or not one provided by that person). "Telecommunication system" is defined in that section as any system (including the apparatus comprised in it) that exists (whether wholly or partly in the United Kingdom or elsewhere) for the purpose of facilitating the transmission of communications by any means involving the use of electrical or electro-magnetic energy.

(**b**) "Communication device" has the same meaning as in section 80 of the Serious Crime Act (c.9), that is: an item specified in section 1(3) of the Prisons (Interference with Wireless Telegraphy) Act 2012 (c.20) (mobile telephones etc).

(**c**) "Custodial institution" has the same meaning as in section 80 of the Serious Crime Act (c.9), that is (so far as relevant to England and Wales): a prison, young offender institution, secure training centre or secure college.

(2) The other parties to the proceedings on an application for a telecommunications restriction order are—

(a) the communications provider to which the order would relate;

(b) any affected person who applies to be a party.

Notice and information to be given by applicant

5.—(1) The person applying for a telecommunications restriction order must—

(a) give notice of the application to the communications provider;

(b) take reasonable steps to give notice of the application to any affected person of whom the applicant is aware;

(c) inform the communications provider that it may submit written representations and evidence;

(d) inform any affected person notified under sub-paragraph (b) that the person may become a party to the proceedings and submit written representations and evidence.

(2) Where—

(a) a telecommunications restriction order contains provision made by virtue of regulation 3(3), and

(b) the applicant discovers that a communication device in relation to which the order, or any particular requirement of it, would apply (but for that provision) is not inside a custodial institution, or is in the possession of a person who has authorisation to possess it,

the applicant must notify the communications provider of the discovery and inform the provider in writing that, accordingly, the order or provision does not apply in relation to that device.

Costs

6.—(1) The county court may order the person applying for a telecommunications restriction order to pay any other party's costs of the proceedings even if the application is successful.

(2) Where a communications provider is likely to incur (or has incurred) costs in complying with a telecommunications restriction order, the order (or a further order) may include a requirement for the applicant to pay any or all of those costs.

(3) A requirement under paragraph (2) may specify the amount to be paid or may specify how the amount is to be calculated.

Appeals

7. An appeal against a decision of the county court under these Regulations may be made by—

(a) a party to the proceedings in which decision was made, or

(b) an affected person.

Restrictions on disclosure

8.—(1) The court may order that some or all of the information in a document submitted in connection with an application under these Regulations, or an appeal against a decision made under these Regulations, is not to be disclosed, without the permission of the court, to any person other than—

(a) the person who is applying, or who applied, for the telecommunications restriction order, or

(b) a person (if any) who is specified, or of a description specified, in the order.

(2) The court may not impose restrictions on the disclosure of information to a party to the proceedings unless satisfied that it is necessary to do so in the public interest.

(3) Where an application is made for an order under this regulation, no information mentioned in paragraph (1) may be disclosed to any person until the application is disposed of.

Power to discharge or vary a telecommunications restriction order etc

9.—(1) The court may discharge an order made under these Regulations, or extend or otherwise vary it, on the application of—

(a) a party to the proceedings in which the order was made, or

(b) an affected person.

(2) An application for the discharge or variation of an order made under these Regulations must set out the grounds on which it is made.

(3) An application for a variation of an order made under these Regulations must set out the terms of the variation sought.

Hearing of applications etc

10. If a hearing is held to deal with an application under these Regulations or an appeal against a decision made under these Regulations, it must be held in private unless the court orders otherwise.

Review by Secretary of State

11.—(1) The Secretary of State must—

(a) carry out a review of these Regulations, and

(b) publish a report setting out the conclusions of the review.

(2) The report must in particular—

(a) set out the objectives intended to be achieved by these Regulations,

(b) assess the extent to which those objectives are achieved,

(c) assess whether those objectives remain appropriate, and

(d) if so, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision (within the meaning given by section 32(4) of the Small Business, Enterprise and Employment Act 2015(**a**)).

(3) The first report must be published no later than five years after these Regulations come into force.

(4) Subsequent reports must be published at intervals not exceeding five years.

Home Office
Date

Name
Minister of State

(**a**) 2015 c.26.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 80 of the Serious Crime Act 2015 and provide a mechanism whereby the county court may make an order, namely a "telecommunications restriction order", requiring the disconnection of communication devices within prisons and other custodial institutions without authorisation.

Regulation 3 sets out what the court must be satisfied of before making a telecommunications restriction order. It also contains at regulation 3(3) a power for the court to provide that an order, or any specified requirements of it, is not to apply in certain circumstances. This is to cater for the situation whereby a communication device is disconnected in error and obviates the need for an individual to apply to the court for the order to be varied or discharged.

Regulation 4 specifies who may apply for a telecommunications restriction order and sets out who else might be a party to the proceedings.

Regulation 5 imposes requirements on the applicant to give notice and information as specified (including information to the communications provider where a device is disconnected in error).

Regulation 6 makes provision both as to the costs incurred in relation to the application for a telecommunications restriction order and as to the costs involved in complying with a telecommunications restriction order.

Regulation 7 makes provision about appeals.

Regulation 8 provides the court with a power to order non-disclosure of the information to any person, apart from the applicant and any other person(s) specified in the non-disclosure order, without the permission of the court. There is a further power conferred on the court at regulation 8(2) to order the non-disclosure of information to a party to the proceedings where the court is satisfied that it is in the public interest to do so. Regulation 8(3) provides that information provided in connection with an application for a telecommunications restriction order will not be made to any person until the court has first considered an application for non-disclosure of that information under regulation 8(1).

Regulation 9 provides that the court may discharge a telecommunications restriction order (or any other order under the Regulations, for example an order under regulation 8), or extend or otherwise vary it. It makes further provision with respect to who may apply to the court in this regard and ancillary matters. In regulations 8 and 9 "the court" would be the county court or, on appeal, the Court of Appeal.

Regulation 10 displaces the usual presumption that hearings are held in public and provides that, unless the court orders otherwise, any hearing must be held in private.

Regulation 11 contains a requirement for the Secretary of State to carry out a review of these Regulations.

These Regulations will be supplemented by the Civil Procedure Rules 1998 and any relevant Practice Directions.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is annexed to the Explanatory Memorandum which is available alongside the instrument at www.legislation.gov.uk.

© Crown copyright 2016

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£4.25

UK201605205 05/2016 19585

http://www.legislation.gov.uk/id/ukdsi/2016/9780111147030

ISBN 978-0-11-114703-0

9 780111 147030