

Title of Proposal

The Telecommunications Restrictions Orders (Custodial Institutions) (Scotland) Regulations 2017

Purpose and intended effect

Background

The Serious Crime Act received Royal Assent on 11 March 2015. The Act provides Scottish Ministers with a regulation making power to make provisions, conferring power on a court to order a Communications Provider (CP) to take action to prevent or restrict the use of communications devices by persons detained in prisons or young offenders institutions. Such action to include disconnecting unauthorised handsets and SIM cards which are held and used in prisons. *Subsection 3 of Section 80* sets out the matters that must be addressed in any regulations, including provision conferring rights on persons to make representations and provision about appeals. *Subsection (4)* identifies further matters which may be provided for in any regulations, for example provision about the enforcement of orders.

Objective

To disrupt serious and organised crime groups in prisons and reduce the harm caused by illicit mobile phone use in prisons. The Scottish Prison takes a range of approaches to tackle this problem including measures to stop phones getting into prisons and measures to find and seize phones in prisons (since 2013 more than 1500 SIM cards and phones have been seized in prisons in Scotland). These Regulations provide a further mechanism to deal with this challenge.

Rationale for Government intervention

Under section 41(ZA) of the Prisons (Scotland) Act 1989 it is an offence to possess a personal communication device such as a mobile phone, or a component part in prison without authorisation. Unauthorised mobile phones in prisons enable organised criminals to carry on offending from prison and can facilitate a range of other activity such as radicalisation, harassment or drug dealing. In addition the use of mobile phones to access social media sites and post pictures from prisons is distressing for victims and their families.

Consultation

Consultation has taken place with Police Scotland, Scottish Courts and Tribunal Service, the Judicial Institute, Ministry of Justice, Her Majesty's Revenue and Customs. A draft of the Regulations was also provided to the European Commission in compliance with EU Directive 2015/1535/EU. The standstill period following notification expired on 31 August 2016.

Public Consultation

No consultation has taken place with the public as these measures concern only mobile phones illicitly used in prisons. It is already an offence to possess a mobile phone in a prison without authorisation.

Business

The amendments to the Serious Crime Bill followed a number of discussions between the Ministry of Justice, National Offender Management Service, Scottish Prison Service, National Crime Agency and Communications Providers (including Vodafone and Telefonica

(O2)). These Regulations are the agreed way forward in tackling the issue of illicit phone use in prisons. The Regulations in England and Wales came into force on 3 August 2016.

Options

No other options have been considered as in light of the discussions with the communication providers these Regulations are the agreed way forward.

Sectors and groups affected

Communication Providers of mobile telephony services.

Benefits

The benefits of this option are that it puts the decision to disable a communication device in a prison on a firm legal foundation and provides important safeguards against any erroneous disconnections.

Costs

The costs arising will be met by the Scottish Ministers or Police Scotland. Costs incurred by Scottish Ministers are as follows:

- Communications Data Request
- Court application
- Legal Representation
- Costs incurred by (any) parties to the application.

Scottish Firms Impact Test

The Regulations were not discussed with Scottish firms but discussed with the key UK telecommunications providers (Telefonica, Vodafone, Hutchison Telecom and EE) at joint meetings involving UK Ministers, Ministry of Justice, Her Majesty's Prison and Probation Service, the Scottish Prison Service and the National Crime Agency.

Competition Assessment

The Regulations will have no impact on competition as the Order of the court will be actioned by all of the communication providers. This has been agreed by the providers.

Test run of business forms

No new forms will be introduced.

Legal Aid Impact Test

The Regulations are not considered to impact on Legal Aid. Although the Regulations give rise to increased use of legal processes, an Order of the Court will disable a communication device that is used illicitly in a prison. It is already an offence to possess such a device in a prison.

Enforcement, sanctions and monitoring

Oversight of interference with wireless telegraphy remains the responsibility of OFCOM. The use of the Regulations will be monitored by the SPS. Statutory oversight of the Regulations is the responsibility of the Office of the Investigatory Powers Commissioner.

Implementation and delivery plan

The Regulations provide a lawful basis on which a court may order a communications

provider to disable a mobile phone where the court is satisfied that it is used without authorisation in a prison. The SPS will conduct an analysis of the data obtained from interference technologies, currently deployed at HMP Shotts, to identify phones that are being illicitly used in the prison. Once the analysis is completed the SPS will work with Police Scotland and the telecommunications provider to obtain further evidence that the phone is being illicitly used in a prison.

Summary and recommendation

Section 80 of The Serious Crime Act 2015 provides Scottish Ministers with a regulation making power to make provisions, conferring power on a court to order a Communications Provider (CP) to take action to prevent or restrict the use of communications devices by persons detained in prisons or young offenders institutions. Such action to include disconnecting unauthorised handsets and SIM cards which are held and used in prisons. These powers are another tool in tackling Serious and Organised crime as part of the Scottish Government strategy. The strategy is delivered via 4 distinct elements: Divert, Deter, Disrupt and Detect (the 4D's):

DIVERT – *‘individuals (particularly young people) from engaging in or using the products of Serious Organised Crime’.*

DETER – *‘through measures to protect communities, businesses and the public sector from Serious Organised Crime’.*

DISRUPT – *‘the activities of Serious Organised Crime Groups’.*

DETECT – *‘by boosting capacity and improving coordination to give Serious Organised Criminals no place to hide’.*

The disabling of illicit mobile phones in prisons is intended to disrupt the activities of Serious Organised Crime Groups as well as prevent intimidation or further victimisation of those affected by crime. Such activities include accessing social media sites from prisons. The disabling of mobile phones also contributes to the safety, security and good order of prisons by reducing bullying and intimidation of other prisoners who are forced to facilitate the introduction or possession of mobile phones. In addition it will further protect prison staff from the attempts of those involved in serious and organised crime to illicitly introduce mobile phones.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:**Date:****Minister's name****Minister's title****Scottish Government Contact point:**