

2017 No. 460

SHERIFF COURT

**Act of Sederunt (Summary Applications, Statutory Applications
and Appeals etc. Rules Amendment) (Drug Dealing
Telecommunications Restriction Orders) 2017**

Made - - - - 20th December 2017

Laid before the Scottish Parliament 21st December 2017

Coming into force - - 19th January 2018

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 104(1) of the Courts Reform (Scotland) Act 2014(b) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules Amendment) (Drug Dealing Telecommunications Restriction Orders) 2017.

(2) It comes into force on 19th January 2018.

(3) A certified copy is to be inserted in the Books of Sederunt.

Amendment of the Summary Application Rules 1999

2.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(c) is amended in accordance with this paragraph and paragraph 3.

(2) After Part L (transfers from the Lands Tribunal for Scotland to the sheriff under the electronic communications code)(d) of Chapter 3 (rules on applications under specific statutes) insert—

(a) 2013 asp 3. section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).

(b) 2014 asp 18.

(c) S.I. 1999/929, last amended by S.S.I. 2017/459.

(d) Part L was inserted by S.S.I. 2017/459.

“PART LI

DRUG DEALING TELECOMMUNICATIONS RESTRICTION ORDERS

Interpretation

3.51.1. In this Part—

“the 2015 Act” means the Serious Crime Act 2015(a);

“DDTRO Regulations” means the Drug Dealing Telecommunications Restriction Orders Regulations 2017(b); and

unless the context otherwise requires, words and expressions used in this Part and in the 2015 Act or the DDTRO Regulations have the meaning given by the 2015 Act or the DDTRO Regulations, as the case may be.

Drug Dealing Telecommunications Restriction Orders

3.51.2.—(1) An application under regulation 3 of the DDTRO Regulations (power to make a DDTRO) for a DDTRO—

(a) is to be made by summary application in Form 73; and

(b) must not be intimated to an affected person or their legal representative.

(2) A DDTRO is to be made in Form 74.

(3) An application for discharge, extension or variation of a DDTRO is to be made by an application in the process relating to the DDTRO in Form 75.

(4) Where an application under paragraph (3) is made, the sheriff may make such orders as he or she thinks fit for dealing with the application, including an order—

(a) requiring the applicant to intimate the application and any court order relating to it to any other person;

(b) requiring any party to lodge answers; and

(c) fixing a hearing on the application and any answers.

(5) An application for a DDTRO must be heard and determined in private.

(6) All proceedings in an application for discharge, extension or variation of a DDTRO must be heard and determined in public.

(7) Rule 2.5 (order for intimation to interested persons by the sheriff) does not apply to applications under this Part.

(8) Rule 2.30 (motion procedure), applying Chapter 15 of the Ordinary Cause Rules, applies to motions under this Part.”.

(a) 2015 c.9. The Serious Crime Act 2015 was relevantly amended by section 107 of the Digital Economy Act 2017 (c.30).
(b) S.I. 2017/1240.

3. In schedule 1, after Form 72, insert Forms 73, 74 and 75 as set out in the schedule of this Act of Sederunt.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
20th December 2017

SCHEDULE

Paragraph 3

Rule 3.51.2(1)(a)

Form 73

Form of application for a drug dealing telecommunications restriction order under regulation 3 of the Drug Dealing Telecommunications Restriction Orders Regulations 2017

SHERIFFDOM OF *(insert name of sheriffdom)*

Court ref. no.

AT *(insert place of sheriff court)*

APPLICATION FOR A DRUG DEALING TELECOMMUNICATIONS RESTRICTION ORDER UNDER REGULATION 3 OF THE DRUG DEALING TELECOMMUNICATIONS RESTRICTION ORDERS REGULATIONS 2017

in the cause

[A.B.] *(insert designation and address)*

Applicant

Against

[C.D.] *(insert designation and address)*

Respondent

Order sought from the court

The applicant applies to the court for an order under regulation 3 of the Drug Dealing Telecommunications Restriction Orders Regulations 2017 to prevent or restrict the use in connection with drug dealing offences of the relevant item(s) listed in the schedule to this application.

Statement

1. This application is made under regulation 3 of the Drug Dealing Telecommunications Restriction Orders Regulations 2017.
2. The applicant is *[design the applicant]*.
3. *[Specify ground of jurisdiction, and the facts upon which the ground of jurisdiction is based]*. This court accordingly has jurisdiction.

4. The respondent is *[insert name and address of affected person, where that person is the communications provider for the purposes of this application, and (if known) the name and address of any other affected person or, if not known, the fact that that person's whereabouts are unknown and the steps taken to ascertain that person's whereabouts]*.
5. The applicant is satisfied that the relevant item(s) listed in the schedule to this application [has/have been, or is/are likely to have been, used] or [is/are likely to be used in the future] *(delete as appropriate)* in connection with drug dealing offences; and has reasonable grounds to believe that the order would prevent or restrict the use of a communication device in connection with drug dealing offences.
6. *[Specify the grounds upon which the order is sought and the relevant facts supporting those grounds.]*
7. The applicant seeks an order, in respect of the item(s) listed in the schedule which will *[specify the terms of the order sought, under reference to the item(s) listed]* and which will require to be complied with by *[specify time]* on *[specify date]*, or some other time and date as the court considers reasonable. The time and date suggested by the applicant are in all the circumstances reasonable.
8. The applicant requests the court to include in the order a provision to the effect that the applicant and a communications provider who is subject to the order may agree a date and time, at which the requirements of the order must be complied with, that is earlier than the date and time specified in the order.

Date *(insert date)*

(Signed)

Applicant

[or Solicitor for Applicant] [add designation and business address]

Form 74

Form of a drug dealing telecommunication restriction order (“DDTRO”) under the Drug Dealing Telecommunications Restriction Orders Regulations 2017

SHERIFFDOM OF *(insert name of sheriffdom)*

Court ref. no.

AT *(insert place of sheriff court)*

The sheriff, having considered an application for an order under regulation 3 of the Drug Dealing Telecommunications Restriction Orders Regulations 2017 for a drug dealing telecommunications restriction order (“DDTRO”) to prevent or restrict the use in connection with drug dealing offences of the relevant item(s) listed in the schedule to this application, and being satisfied that such an order should be made:

- (i) make an order, in respect of the item(s) listed in the schedule to the application, that *[specify the terms of the order granted, under reference to the relevant item(s) listed]* which order is to be complied with by *[specify time]* on *[specify date]*;
- (ii) directs notification of this order to C.D. *(specify the identity of the communications provider who is subject to this order)* by *(specify means of notification)*;
- (iii) further orders that the applicant and C.D. *(specify the identity of the communications provider who is subject to this order)* may agree a date and time at which the requirements of the order must be complied with that is earlier than the date and time specified in paragraph (i) of this order; and
- (iv) directs the applicant to take reasonable steps to bring the making of the DDTRO to the attention of any affected person of whom the applicant is aware other than the communications provider.

Date *(insert date)*

(Signed)

Sheriff

Rule 3.51.2(3)

Form 75

Form of application for the discharge, extension or variation of a drug dealing telecommunications restriction order under regulation 10 of the Drug Dealing Telecommunications Restriction Orders Regulations 2017

SHERIFFDOM OF *(insert name of sheriffdom)*

Court ref. no.

AT *(insert place of sheriff court)*

APPLICATION

by

[Specify designation and address of applicant]

FOR [DISCHARGE *or* EXTENSION *or* VARIATION] *(as the case may be)* OF A DRUG DEALING TELECOMMUNICATIONS RESTRICTION ORDER UNDER REGULATION 10 OF THE DRUG DEALING TELECOMMUNICATIONS RESTRICTION ORDERS REGULATIONS 2017

in the cause

[A.B.] *(insert designation and address)*

Applicant

against

[C.D.] *(insert designation and address)*

Respondent

Order sought from the court

The applicant applies to the court for [discharge *or* extension *or* variation] *(as the case may be)* of an order under regulation 3 of the Drug Dealing Telecommunications Restriction Orders Regulations 2017 made by the court on *(specify date)*.

Statement

1. This application is made by [*specify whether the application is made by the applicant or respondent in the original application, or by any other affected person*]. It is made under regulation 10 of the Drug Dealing Telecommunications Restriction Orders Regulations 2017. The order made by the court on (*specify date*) provides that (*specify the terms of the order*).
2. The applicant seeks to discharge the terms of the order. [*OR (where the applicant seeks to extend or vary the terms of the order) The applicant seeks to [extend or vary] the terms of the order (as the case may be) by (specify the terms of the extension or variation sought).*]
3. The applicant seeks such [a discharge *or* extension *or* variation] of the order on the grounds that [*specify the grounds upon which the order is sought and the relevant facts supporting those grounds.*]

Date (*insert date*)

(*Signed*)

Applicant

[*or Solicitor for Applicant*] [*add designation and business address*]

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt amends the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 (“the Summary Application Rules”) in consequence of the Drug Dealing Telecommunications Restrictions Orders Regulations 2017 (“the 2017 Regulations”).

Paragraph 2(2) inserts new rules 3.51.1 and 3.51.2 into the Summary Application Rules to make provision for applications for drug dealing telecommunications restriction orders (“DDTROs”), and for the variation, extension or discharge of such orders, under the 2017 Regulations. Regulation 4 of the 2017 Regulations provides that an application for DDTROs must be made and heard without notice being given to an affected person or their legal representative, and heard and determined in their absence. An appeal lies to the Sheriff Appeal Court.

Paragraph 3 inserts new Forms 73, 74 and 75. An application for a DDTRO is to be made by summary application in Form 73, a DDTRO is to be made in Form 74, and an application for discharge, extension or variation is to be made by application in the process in Form 75.

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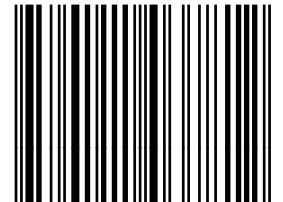
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, the Queen’s Printer for Scotland.

£6.00

S201712201010 12/2017 19585

<http://www.legislation.gov.uk/id/ssi/2017/460>

ISBN 978-0-11-103781-2



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