

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 a sheriff may make an order, namely a “telecommunications restriction order” (as defined by section 80(2) of the 2015 Act), requiring the disconnection of certain communication devices within prisons and other custodial institutions.

Regulation 3 sets out what the sheriff must be satisfied of before making a telecommunications restriction order. It also contains at regulation 3(4) a power for the sheriff 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 or the applicant to apply to the sheriff 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 provides the sheriff with a power to order non-disclosure of the information to any person, other than the parties to the proceedings. Regulation 6(2) allows the sheriff 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 6(3) provides that if information provided in connection with an application for a telecommunications restriction order or an appeal against decision made under these regulations, is to be produced to any person other than a party, it will not be so disclosed until 5 working days after the order has been granted, or after the appeal has been disposed of.

Regulation 7 permits the sheriff to grant an order without the necessity of having an oral hearing. It also displaces the usual presumption that hearings are held in public and provides that, unless the sheriff orders otherwise, any hearing must be held in private.

Regulation 8 makes provision that an order may be made requiring the applicant to pay any or all of the costs of the communications provider involved in complying with a telecommunications restriction order.

Regulation 9 provides that the sheriff may discharge a telecommunications restriction order (or any other order under the Regulations, for example an order under regulation 6), or otherwise vary it. It makes further provision with respect to who may apply to the sheriff in this regard and ancillary matters.

Regulation 10 makes provision about appeals. It provides that parties may appeal on a point of law and/or fact to the Sheriff Appeal Court. The appeal should be made by summary application and be made within 21 days of the date of the decision appealed against.