

POLICY NOTE

THE TELECOMMUNICATIONS RESTRICTIONS ORDERS (CUSTODIAL INSTITUTIONS) (SCOTLAND) REGULATIONS 2017

SSI 2017/xxx

The above instrument was made in exercise of the powers conferred by section 80 of the Serious Crime Act 2015. The instrument is subject to affirmative procedure.

Policy Objectives

The presence of electronic communications devices, in particular illicit mobile telephones, presents serious risks to the security of prisons and young offender's institutions as well as to the safety of the public. Mobile telephones are used for a range of criminal purposes in these institutions, including commissioning serious violence, harassing victims, organised crime and gang activity. Access to mobile telephones is also strongly associated with drug supply, violence and bullying.

A number of progressive steps have been taken to tackle the issue of illicit mobile phone use in prisons. The Prisons Scotland Act 1989 was amended (Section 41ZA) and provides that it is an offence to possess, or give to a prisoner in prison, or use, without authorisation or outside of the designated area of the prison, a personal communication device such as a mobile telephone or any other portable electronic device capable of transmitting or receiving a communication. It is also a disciplinary offence for a prisoner to possess a personal communication device such as a mobile telephone in a prison or young offender's institution.

The Prisons (Interference with Wireless Telegraphy) Act 2012 allows the Scottish Prison Service to procure and install mobile signal denial technology in prisons. Two types of this technology was piloted in two sites, HMP Shotts and HMP Glenochil. The technology was installed and operational by the end of the financial year 2013-14. The technology seeks to prevent illicit mobile phones in prisons connecting to the mobile phone networks.

These Regulations will allow the Scottish Prison Service to take a further step in tackling the damage caused by illicit mobile phone use in prisons by allowing a court, where it is satisfied that the phone (communication device) is inside a custodial institution and has reason to think that the device is in the possession of a person who has no authorisation to possess it, to order a communications provider to disable that mobile phone.

Consultation

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

Consultation on these Regulations has taken place with other justice agencies and bodies including Police Scotland, the Judicial Institute, Scottish Courts and Tribunal Service and the Scottish Civil Justice Council. The power to make these Regulations was inserted into the UK Serious Crime Act 2015 following consultation and in agreement with the key

communications providers (Telefonica, Vodafone, Hutchison Telecom and EE). A draft of these Regulations was also provided to the European Commission in compliance with EU Directive 2015/1535/EU. This was required to uphold the basic principles of the EU to include the freedom to provide services and ensure transparency in respect of national initiatives for the establishment of new technical standards or regulations. The standstill period following notification expired on 31 August 2016. No comments were received.

Impact Assessments

There are no equality, children's or privacy impact assessments as these Regulations will tackle illicit mobile phone possession in prisons. It is already an offence to possess, or give to a prisoner in prison, or use, without authorisation or outside of the designated area of the prison, a personal communication device such as a mobile telephone or any other portable electronic device capable of transmitting or receiving a communication.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed. The impact of this policy on business is considered to be negligible and limited to the disconnection of illicit mobile phones used in prisons. Whilst the impact will be loss of revenue from the use of such phones, this loss is accepted by the operators who fully support the efforts to tackle serious and organised crime. The Regulations are the agreed way forward between the Scottish and UK Governments and the key mobile network operators.

Scottish Government
Education, Communities and Justice Directorate