

2017 No. 423

TELECOMMUNICATIONS

PRISONS

**The Telecommunications Restriction Orders (Custodial
Institutions) (Scotland) Regulations 2017**

Made - - - - 28th November 2017

Coming into force - - 1st December 2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 80 of the Serious Crime Act 2015^(a) and all other powers enabling them to do so. In accordance with section 80(7) of that Act, a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Telecommunications Restriction Orders (Custodial Institutions) (Scotland) Regulations 2017 and come into force on 1st December 2017.

Interpretation

2. In these Regulations—

“affected person” means a person who has been affected by a telecommunications restriction order or is likely to be affected by it if it is made, and includes a person who claims to have authorisation, as defined in regulation 3(2), to possess a communications device to which the application or order relates, but does not include an individual imprisoned or detained in a custodial institution;

“further order” means an order discharging or varying the telecommunications restriction order under regulation 9;

“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 in England and Wales, as prescribed in the Banking and Financial Dealings Act 1971^(b).

(a) 2015 c.9.
(b) 1971 c.80.

Power to make a telecommunications restriction order

- 3.**—(1) A sheriff may make a telecommunications restriction order if they—
- (a) are satisfied that a communication device, identified in the application for the order, is inside a custodial institution; and
 - (b) have reason to think that the device is in the possession of a person who has no authorisation to possess it.
- (2) “Authorisation” under this regulation is written authorisation that—
- (a) is given in favour of any person specified in the authorisation (or a person of a specified description);
 - (b) confers authority to possess the relevant communications device; and
 - (c) is given by—
 - (i) the governor or director of a custodial institution in relation to activities at that custodial institution; or
 - (ii) the Scottish Ministers in relation to activities at any specified custodial institution.
- (3) 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.
- (4) 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, subsequent to the making of the order, 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.
- (5) A telecommunications restriction order must specify a date on or before which the requirements of the order are to be complied with. Unless the parties to the proceedings agree otherwise, the date 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 by summary application on the application of the Scottish Ministers or the chief constable of the Police Service of Scotland.
- (2) The other parties to the proceedings in an application for a telecommunications restriction order may be—
- (a) the communications provider to which the order would relate;
 - (b) any affected person who applies to be a party, and is permitted by the sheriff to enter the proceedings.

Notice and information to be given by the applicant

- 5.**—(1) The applicant when applying for a telecommunications restriction order must—
- (a) ensure notice of the application is given to the communications provider;
 - (b) take reasonable steps to give notice of the application to any affected person of whom they are aware;
 - (c) ensure the communications provider is informed that it may submit written representations and evidence;
 - (d) inform any affected person notified under sub-paragraph (b) that they may become a party to the proceedings and submit written representations and evidence.

(2) Where—

- (a) a telecommunications restriction order contains provisions made by virtue of regulation 3(4); and
- (b) the applicant subsequently 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 requirement does not apply in relation to that device.

Restrictions on disclosure

6.—(1) The applicant may request an order that some or all of the information in a document submitted in connection with an application for a telecommunications restriction order, or an appeal against a decision made under these Regulations, is not to be disclosed, without the permission of the court, to any person who is not a party to the proceedings.

(2) If satisfied that it is necessary in the public interest to do so, the sheriff may impose restrictions on the disclosure of information to a party to the proceedings.

(3) Where an application is made for an order under this regulation, it should be made by summary application and detail any restriction on disclosure that is being sought.

(4) Where information mentioned in paragraph (1) is to be disclosed to any person, other than a party to the proceedings, it will not be so disclosed until 5 working days have passed since the granting of the telecommunications restriction order, or any appeal in the proceedings is disposed of.

Hearing

7. The sheriff may grant the telecommunications restriction order without holding an oral hearing. A hearing to be held in respect of an application for an order or an appeal against a decision made under these Regulations must be held in private unless the sheriff otherwise directs.

Costs

8.—(1) Where a communications provider is likely to incur (or has incurred) costs in complying with a telecommunications restriction order, the communications provider, or the applicant if the communication provider is not a party to the proceedings, may request that the order (or a further order) include a requirement for the applicant to pay any or all of those costs.

(2) A requirement under paragraph (1) may specify the amount to be paid or may specify how the amount is to be calculated.

Power to discharge or vary a telecommunications restriction order etc

9.—(1) A sheriff may discharge a telecommunications restriction order, 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 a telecommunications restriction order must set out the grounds on which the application is made.

(3) An application for variation of a telecommunications restriction order must set out the terms of the variation sought.

(4) The following provisions of these Regulations apply to an application for a discharge or variation of a telecommunications restriction order as they apply to an application for such an order—

- (a) regulation 6;
- (b) regulation 7.

Appeals

10.—(1) An appeal to the Sheriff Appeal Court against a decision of the sheriff under these Regulations may be made by a party to the proceedings in which the decision was made.

(2) An appeal under paragraph (1) may be made—

- (a) on a point of law;
- (b) on a point of fact; or
- (c) on a point of fact and law.

(3) The appeal will be made by summary application and must be made within 21 days of the date of the decision appealed against.

St Andrew's House,
Edinburgh
28th November 2017

MICHAEL MATHESON
A member of the Scottish Government

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(4) 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.

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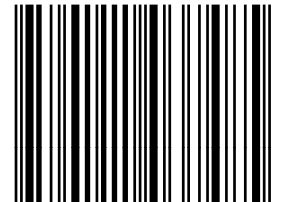
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