

*Draft Regulations laid before Parliament under section 80A(11) of the Serious Crime Act 2015, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2017 No. 0000**

**TELECOMMUNICATIONS  
DANGEROUS DRUGS**

The Drug Dealing Telecommunications  
Restriction Orders Regulations 2017

*Made - - - - - \*\*\*  
Coming into force in accordance with regulation 1*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 80A(1), (5) to (8) and (9)(a), (d) to (h) and (k) of the Serious Crime Act 2015<sup>(1)</sup>.

In accordance with section 80A(11) of that Act, a draft of these Regulations has been laid before and approved by resolution of each House of Parliament.

**Citation and commencement**

1. These Regulations may be cited as the Drug Dealing Telecommunications Restriction Orders Regulations 2017 and come into force on the day after the day on which they are made.

**Interpretation**

2. In these Regulations—

“affected person”—

- (a) in relation to an application for a DDTRO, means a person who would be likely to be affected by the order (if made); and
- (b) in relation to a DDTRO that has been made, means a person who has been or is likely to be affected by the order;

“applicant” means the person who applies for a DDTRO;

“DDTRO” means a drug dealing telecommunications restriction order<sup>(2)</sup>;

“device ID” includes—

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(1) 2015 c. 9. Section 80A was inserted by section 107 of the Digital Economy Act 2017 (c.30).

(2) “Drug dealing telecommunications restriction order” is defined in section 80A(2) of the Serious Crime Act 2015.

- (a) an International Mobile Equipment Identity (IMEI) number;
  - (b) a Mobile Equipment Identifier (MEID) number;
  - (c) an Electronic Serial Number (ESN);
  - (d) a Mobile Station International Subscriber Directory Number (MSISDN);
  - (e) an Integrated Circuit Card Identifier (ICCID);
  - (f) an International Mobile Subscriber Identity (IMSI);
  - (g) a mobile identification number (MIN) or mobile subscription identification number (MSIN);
  - (h) a media access control address (MAC);
  - (i) a Universal Device Identifier (UDID);
  - (j) an Android identifier number (Android\_ID); or
  - (k) any other serial number or identification number, used with a communications device;
- “relevant item” means—
- (a) a communication device<sup>(3)</sup>; or
  - (b) a phone number or something else that may be used with a communication device, including a subscriber identity module (SIM) or device ID.

### **Power to make a DDTRO**

- 3.—(1) The court<sup>(4)</sup> may make a DDTRO if the court—
- (a) is satisfied that a relevant item identified in the order—
    - (i) has been, or is likely to have been, used; or
    - (ii) is likely to be used in the future,in connection with drug dealing offences<sup>(5)</sup>; and
  - (b) it has reasonable grounds to believe that the order would prevent or restrict the use of a communication device in connection with drug dealing offences.
- (2) A DDTRO has effect—
- (a) until the date, or the end of the period, that the order specifies (if any); or
  - (b) if no date or period is specified, until discharged under regulation 10.
- (3) A DDTRO may provide for the order, or any specified requirements of it, not to apply in relation to any relevant item that the applicant discovers is not being used in connection with drug dealing offences.
- (4) A DDTRO must specify the date and time on or before which the requirements of the order are to be complied with.
- (5) The date and time specified for the purposes of paragraph (4) must be the end of the fifth working day after the date of the order unless the applicant requests that the court specify a different date and time and the court agrees that the request is reasonable.

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<sup>(3)</sup> The expression “communication device” is defined in section 80A(12) of the Serious Crime Act 2015.

<sup>(4)</sup> The word “court” is defined in section 80A(12) of the Serious Crime Act 2015.

<sup>(5)</sup> The expression “drug dealing offences” is defined in section 80A(4) of the Serious Crime Act 2015.

(6) A DDTRO must include provision permitting the applicant and the communications provider(6) subject to the order to 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 DDTRO.

(7) In this regulation, “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 under the Banking and Financial Dealings Act 1971(7) in the part of the United Kingdom in which—
  - (i) in the case of a communications provider which is a company or limited liability partnership, it has its registered office;
  - (ii) in all other cases, the communications provider has its principal place of business.

#### **Application for a DDTRO**

4.—(1) A DDTRO may be made only on the application of—

- (a) the Director General or Deputy Director General of the National Crime Agency; or
- (b) a police officer of the rank of superintendent or above.

(2) An application for a DDTRO must—

- (a) be made and heard without notice of the application or hearing having been given to an affected person or their legal representative; and
- (b) be heard and determined in the absence of an affected person or their legal representative.

#### **Notice and information to be given by the applicant**

5.—(1) The applicant must, as soon as reasonably practicable after it has been made by the court—

- (a) serve a copy of the DDTRO on the communications provider; and
- (b) take reasonable steps to bring the making of the DDTRO to the attention of any other affected person of whom the applicant is, or ought reasonably to be, aware.

(2) Where—

- (a) a DDTRO contains provision made by virtue of regulation 3(3); and
- (b) the applicant discovers that a relevant item in relation to which the order, or any particular requirement of it, would apply (but for that provision) is not being used in connection with drug dealing offences,

the applicant must comply with the requirements in paragraph (3).

(3) The requirements are that—

- (a) the applicant must as soon as reasonably practicable notify the communications provider of the discovery and inform the provider in writing that, accordingly, the order or provision does not apply in relation to that relevant item; and
- (b) where the communications provider has already complied with the terms of the DDRTTO, the applicant must as soon as reasonably practicable notify any other affected person of the discovery and inform them in writing that, accordingly, the order or provision does not apply in relation to that relevant item.

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(6) The expression “communications provider” is defined in section 80A(12) of the Serious Crime Act 2015.

(7) 1971 c. 80.

### **Information to be given by a communications provider**

6. A communications provider required to comply with a DDTRO must notify—
- (a) the applicant; and
  - (b) the Office of Communications<sup>(8)</sup>,

as soon as is reasonably practicable once the requirements of the order have been complied with.

### **Costs of complying with a DDTRO**

7.—(1) Where a communications provider is likely to incur (or has incurred) costs in complying with a DDTRO, the order (or a further order) may include a requirement for the applicant to pay any or all of the communications provider's costs that the court considers reasonable.

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

### **Appeals**

- 8.—(1) An appeal against a decision of the court under these Regulations may be made by—
- (a) the applicant; or
  - (b) an affected person.

(2) Where an appeal is to be made by an affected person who is a communications provider, notice in writing of the intention to appeal must be served on the applicant at least 24 hours before any appeal is made.

- (3) Where an appeal is to be made by an affected person who is not a communications provider—
- (a) notice in writing of the intention to appeal must be served on the applicant and any communications provider required to comply with the DDTRO at least 24 hours before any appeal is made; and
  - (b) both the applicant and any communications provider required to comply with the DDTRO must be named as parties to the appeal.

(4) Where an appeal is successful in relation to only part of a DDTRO, the remainder of the order remains in force.

(5) The applicant may not be ordered to pay any other party's costs (or, in Scotland, expenses) of the proceedings on any appeal by an affected party if the appeal is unsuccessful.

### **Restrictions on disclosure**

9.—(1) At the request of the applicant (but not otherwise), the court may order that some or all of the information in any submission (either written or oral) made to the court in connection with any application under these Regulations, or an appeal against a decision made under these Regulations, is not to be disclosed, without the permission of the court, to any person other than—

- (a) the applicant; or
- (b) a person (if any) who is specified, or of a description specified, in the order.

(2) An order made under paragraph (1) may be expressed to continue for such period as the court sees fit, including—

- (a) until the determination of any appeal against a decision made under these Regulations; or
- (b) indefinitely.

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(8) The Office of Communications is often referred to as OFCOM.

(3) The court may not impose restrictions on the disclosure of information under paragraph (1) unless satisfied that it is necessary to do so in the public interest.

(4) An application for an order under this regulation may be determined in advance of, or at the same time as, an application or appeal mentioned in paragraph (1).

(5) No information mentioned in paragraph (1) may be disclosed to any person until the application for an order under this regulation is disposed of.

(6) A breach of paragraph (5) is a contempt of court.

(7) Where an application under this regulation is not granted by the court—

(a) the court must give the applicant an opportunity to withdraw any related DDTRO application; and

(b) if the applicant withdraws the DDTRO application, the court must return any form submitted to the court in relation to the DDTRO application, and any documents submitted in connection with that application, to the applicant.

### **Power to discharge or vary a DDTRO etc.**

**10.**—(1) The court may discharge an order made under these Regulations, or extend or otherwise vary it, on the application of—

(a) the applicant; or

(b) an affected person.

(2) An application for the discharge, extension or variation of an order made under these Regulations must set out the grounds on which it is made.

(3) An application for an extension or variation of an order made under these Regulations must set out the terms of the extension or variation sought.

(4) Where an application under this regulation is to be made by an affected person who is a communications provider, notice in writing of the intention to apply must be served on the applicant at least 24 hours before the application is made.

(5) Where an application under this regulation is to be made by an affected person who is not a communications provider—

(a) notice in writing of the intention to apply must be served on the applicant and any communications provider required to comply with the DDTRO at least 24 hours before the application is made; and

(b) both the applicant and any communications provider required to comply with the DDTRO must be named as parties to the application.

(6) The court may order the applicant to pay any other party's costs (or, in Scotland, expenses) of the proceedings if an application by an affected person under this regulation is successful.

### **Hearing of applications etc.**

**11.**—(1) A hearing held to deal with an application for a DDTRO must be held and determined in private.

(2) Subject to any order made pursuant to regulation 9, a hearing held to deal with an appeal against a decision made under these Regulations must be held in public.

### **Review by Secretary of State**

**12.**—(1) The Secretary of State must from time to time—

(a) carry out a review of the regulatory provision contained in these Regulations; and

- (b) publish a report setting out the conclusions of the review.
- (2) The first report must be published before the end of the period of five years beginning with the date on which these Regulations come into force for any purpose.
- (3) Subsequent reports must be published at intervals not exceeding five years.
- (4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015<sup>(9)</sup> requires that a report published under this regulation must, in particular—
  - (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
  - (b) assess the extent to which those objectives are achieved;
  - (c) assess whether those objectives remain appropriate; and
  - (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.
- (5) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Date

*Name*  
Minister of State  
Home Office

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<sup>(9)</sup> 2015 c. 26.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made under section 80A of the Serious Crime Act 2015 (c. 9) and provide a mechanism for a court to make a drug dealing telecommunications restriction order (“DDTRO”) requiring the disconnection of a communication device, phone number or something else used with a communication device which is being used in connection with drug dealing offences.

Regulation 3 sets out what the court must be satisfied of before making a DDTRO. It also contains, at regulation 3(3), a power for the court to provide that an order, or any specified requirement 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 to apply to the court for the order to be varied or discharged.

Regulation 4 specifies who may apply for a DDTRO and that such an application must be made without notice and without any affected party being present.

Regulation 5 imposes requirements on the applicant to give certain notice and information as specified (including information to the communications provider where a device is disconnected in error).

Regulation 6 provides that a communications provider must notify the person who applied for a DDTRO, and the Office of Communications (Ofcom), that the order has been complied with.

Regulation 7 makes provision as to the costs involved in complying with a DDTRO.

Regulation 8 makes provision about appeals, including provision restricting the awarding of costs (or, in Scotland, expenses) in the event of an unsuccessful appeal.

Regulation 9 provides that, at the request of the applicant for a DDTRO (but not otherwise), the court may order that information submitted to the court may not be disclosed without the permission of the court to anyone apart from the applicant or any other person(s) specified in the non-disclosure order.

Regulation 10 provides that the court may discharge a DDTRO (or any other order under the Regulations, for example an order under regulation 9), or extend or otherwise vary it. It makes further provision with respect to who may apply to the court in this regard and ancillary matters.

Regulation 11(1) provides that hearings in connection with an application for a DDTRO must be held and determined in private. Regulation 11(2) confirms that appeals must be held in public.

Regulation 12 contains a requirement for the Secretary of State to carry out a review of these Regulations.

These Regulations have been notified in draft to the European Commission in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p.1).

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is annexed to the Explanatory Memorandum which is available alongside the instrument at [www.legislation.gov.uk](http://www.legislation.gov.uk).