

Title: Telecommunications Restriction Order IA No: HO0134 Lead department or agency: Home Office Other departments or agencies: National Offender Management Service.	Validation Impact Assessment		
	Date: 25/06/2015		
	Stage: Validation		
	Source of intervention: Domestic		
	Type of measure: Primary Legislation		
Contact for enquiries: Nick Barnett Home Office. Tel 0207 035 0766			

Summary: Intervention and Options	RPC Opinion: Validated
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
-£3.3m	Zero	Zero	Yes	Zero Net Cost

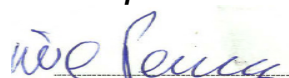
What is the problem under consideration? Why is government intervention necessary?
 In 2013, The National Offender Management Service (NOMS) seized over 7,400 unauthorised mobile phones and SIM cards in prisons in England and Wales.¹ Serious organised criminals have used unauthorised mobile phones to continue offending from behind prison walls. There was no legal power in place to compel Mobile Network Operators (MNOs) to disconnect unauthorised mobile phones in use and inside prisons, and the Home Office therefore introduced enabling legislation in the Serious Crime Act 2015 which provided a regulation-making power which addressed that gap.² The Act provides for the Secretary of State, or in Scotland, the Scottish Ministers, to draft regulations to confer on the courts a civil power to compel MNOs to disconnect unauthorised mobile phones in prisons. Disconnecting and/or blacklisting unauthorised mobile phones puts those devices beyond normal operational use.

What are the policy objectives and the intended effects?
 The policy will provide NOMS and relevant law enforcement bodies with a new and effective approach to disrupt serious organised criminals in prisons, reducing the associated harm. Unauthorised mobile phone use contributes towards indiscipline and is a threat to the safety and security of the prison estate. Imprisoned serious organised criminals have commissioned murder, planned escapes, imported automatic firearms, and arranged drug imports; all enabled by the use of illicit mobile phones.³ The 'Telecommunications Restriction Order' at Section 80 of the Serious Crime Act 2015, provides the necessary regulation-making power to disrupt unauthorised mobile phone use, and will further enhance NOMS' existing range of measures to manage this serious threat.

What policy options have been considered, including any alternatives to regulation?
 1) Do nothing: No change to existing legislation or to the manner in which unauthorised mobile phone use is disrupted in prisons.
 2) Non-regulatory option: NOMS installs mobile phone-blocking technologies across the prison estate. This would not require any regulatory changes, is an effective way to block mobile phone signals, and puts mobile phones beyond normal operational use. It is very expensive to fit and maintain this technology. Whilst the effectiveness of this option is recognised, the cost is disproportionate.⁴
 3) Telecommunications Restrictions Order: New legislation is needed to provide a clear legal power to compel MNOs to blacklist and disconnect unauthorised mobile phones in prisons. The Home Office will draft regulations which will confer onto the courts the power to order the blacklisting and disconnection of those unauthorised devices. The preferred option is Option 3. This option provides flexibility, operational effectiveness and considerable value for money compared to the non-regulatory option.

Will the policy be reviewed? It will be reviewed November 2020						
Does implementation go beyond minimum EU requirements?			No			
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro No	< 20 No	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded: n/k	Non-traded: n/k	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: 

Date 25/06/2015

Summary: Analysis & Evidence

Policy Option 3

Description: Telecommunications Restrictions Order

FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: -£3.3

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0.6	0.3	3.3

Description and scale of key monetised costs by 'main affected groups'

It is estimated that NOMS will incur costs of between £260k⁵ and £400k⁶ per year, in years 1-3, and then annual costs of approximately £200k in years 4-10.⁷ Her Majesty's Courts and Tribunal Service (HMCTS) is estimated to incur yearly costs of around £45k.⁸ The MNOs are estimated to incur yearly costs of between £30,000⁹ and £120,000.¹⁰ The Home Office will make a provision in secondary legislation for the County Court to award costs to the MNOs that they have incurred through complying with a court order.¹¹ Business is expected to benefit from unclaimed credit on SIM cards that are disconnected. This is referenced as an unmonetised benefit as the amounts involved are likely to be so small as to make it disproportionate to determine the exact figure.

Other key non-monetised costs by 'main affected groups'

There is a small risk that genuine customers could be erroneously disconnected if NOMS incorrectly identifies the phone as being used in a prison without authorisation. NOMS will calibrate and test its technology to ensure only those handsets that are being used in a prison without authorisation will be identified and progressed towards disconnection. There will be a provision in the regulations to ensure that any erroneous disconnections can be quickly put-right, without the need to return to the court to vary the order. This is a necessary safeguard.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/k	n/k	n/k
High	n/k	n/k	n/k
Best Estimate	n/k	n/k	1n/k

2Description and scale of key monetised benefits by 'main affected groups'

We have not calculated the monetised benefits of preventing prisoners using mobile phones in prisons, as it is difficult to predict how many serious crimes will be prevented. The cost of organised crime to the UK is £24 billion pounds a year.¹² There is clear evidence that serving prisoners have used unauthorised mobile phones to arrange murder, to import drugs and to bring machine guns into the UK.

Other key non-monetised benefits by 'main affected groups'

- Disrupting the use of unauthorised mobile phone use in prisons will be an important tool in the fight against serious organised crime. Unauthorised mobile phone use also leads to indiscipline and is a threat to good order and security within prisons.

Key assumptions/sensitivities/risks

3.5%

Assumptions: No increase in wage costs. No further procurement in years 4 -10. No increase in evidential analysis costs.

Figures provided are based on between 4 and 16 County Court applications per year.

Sensitivities and risks: The number of MNOs may increase. Mobile phone technology may develop faster than anticipated, requiring further legislative intervention. The number of telecommunication devices identified may be higher than predicted. The number of court order applications may be higher than anticipated.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: £30,000 - £120,000	Benefits: £30,000 - £120,000	Net: 0	Yes	Zero net cost

Evidence Base.

1. The problem under consideration

There are around 7,000 serious organised crime group members in prison in England and Wales representing around 8% of the prison population.¹² We know of criminals using unauthorised mobile phones in prisons to enable serious crimes, including murder and the importation of firearms. Phones have been used to arrange large, harmful drug imports and even to facilitate prison escapes. In 2013, NOMS recovered over 7,400 SIM cards and handsets from the prison estate.¹

The use of an unauthorised mobile in prison is a criminal offence. Section 40D of the Prison Act 1952 makes it an offence to possess or use a mobile phone in prison. The Offender Management Act 2007 made it an offence to convey a mobile phone into or out of a prison. However, it is not always possible to attribute mobile phone use or possession to a named offender and prosecutions under these powers are rare. NOMS uses a range of measures to detect and seize unauthorised devices. However, the relatively small size of modern handsets and SIM cards enables the clandestine movement of these devices around the prison community.

2. Rationale for intervention

Mobile phones can be used by serious organised criminals to communicate outside of the established and approved communications channels, such as letter-writing, face-to-face visits and the use of approved prison telephones, allowing them to continue their criminal activity from behind bars. Organised crime is a threat to the well-being and security of our society. The government has a role in protecting its citizens and ensuring law enforcement agencies have the necessary powers.

As mobile phone technology becomes smaller, more sophisticated and more widespread, a new, flexible and affordable approach is needed to disrupt mobile phone use by prisoners. The strengthening of powers to provide a clear legal power to compel MNOs to blacklist and disconnect unauthorised mobile phones in prisons contributes to the strategic objectives of effective lifetime offender management, and the disruption of organised crime.

3. The Policy Objective

The policy objective is for NOMS to be able to make use of new technology to identify unauthorised mobile phone use in prisons, without needing to firstly take physical possession of the handset or SIM card.

The Serious Crime Act 2015 provides for a new civil power; a 'Telecommunications Restriction Order', which will confer on the County Court powers to compel MNOs to blacklist and disconnect handsets and SIM cards that are found by a Judge to be operating without authorisation inside prisons. This effectively puts the handset and SIM card beyond normal operational use. This measure will add to, and enhance, the existing legislation to combat illicit mobile phone use. This provision will also complement and strengthen the current approaches that NOMS undertakes to secure its prisons, maintain good order and help prevent serious organised criminals from offending behind prison walls.

4. The options under consideration

- 1) Do nothing option: NOMS recovers over 7,400 phones or SIM cards per year as part of their 'business as usual' security measures.¹ The complexity and scale of running the prison estate means the unauthorised use of mobile phones and SIMs cards cannot be completely eliminated by existing security procedures which rely on either physically taking possession of the phone, or using equipment to identify the presence of that device on an individual. This is not always possible and a new approach is needed to tackle those devices in use that remain hidden. As technology develops, the size of modern handsets decreases and this makes it inherently easier for prisoners to conceal these devices and move them around the prison estate. Unauthorised phones and devices in prisons have been used by criminals to commission serious organised crimes, such as gang-related murder and international drug

trades, as well as to assist in successful escapes. This option would not reduce the risk to the public or the level of serious crime committed using illicit mobile phones in prison.

- 2) Non-regulatory option: NOMS install mobile phone blocking technologies across their entire prison estate. This option is not affordable. In 2014, NOMS estimated that the cost to install fixed-site blocking systems across the prison estate is around £300m, plus £800k per year to maintain the infrastructure.⁴ In addition, mobile phone blocking technology will have to be regularly upgraded to keep pace with developments in both handset and network-spectrum technology, and the risk of technological obsolescence is therefore high. This option is also unaffordable.
- 3) Telecommunications Restriction Order: The Home Office will lay regulations in secondary legislation which will confer on the courts the power to order the blacklisting and disconnection of unauthorised mobile phones in use inside prisons. This will be achieved without the need to firstly take physical possession of the handset or SIM which can be easily concealed and moved, making them difficult to recover through established physical security measures. NOMS will use this power to identify phones and SIM cards that are in prison, using detection equipment enabled by the Prisons (Interference with Wireless Telegraphy) Act 2012. NOMS will then present this evidence before a Judge at a County Court. If the Judge is satisfied that those phones are being used without authorisation inside a prison, they would then make a Telecommunications Restriction Order, compelling the relevant MNOs to blacklist and disconnect those phones and SIM cards from their networks. This will quickly and effectively put that device beyond normal use, even if the exact location of the phone inside the prison is unknown. This option provides significant long-term savings over the installation of blocking technology.

5. Monetised and non-monetised costs

Option 1- Do nothing: There are no additional costs or benefits associated with the do nothing option.

Option 2- Non-regulatory option: It will cost up to £300m to fit blocking technology across NOMS' prison estate in England and Wales, plus up to an additional £800,000 per year to maintain this technology.

Option 3- Telecommunications Restriction Order: There will be additional costs for this provision. NOMS will incur costs as it procures equipment and resources its operations and as it applies for court orders. As this provision will increase the number of days that County Courts are hearing applications for orders, Her Majesty's Courts and Tribunal Services will also incur associated costs. The MNOs may incur legal costs to be represented at court, as well as administrative costs when complying with the court orders themselves. These costs are associated with blacklisting handsets and disconnecting SIM cards from their networks. It should be noted that the Home Office will provide in secondary legislation for a court to allow the MNOs to apply to recover their costs in full. In comparison to the costs of the non-regulatory option, this option delivers considerable value for money. The monetised costs have been explained further at section 8 of this assessment. In terms of non-monetised costs, there is a small risk that a genuine MNO's customer's handset is incorrectly identified as being used without authorisation inside a prison. This could lead to that customer's handset and SIM being blacklisted and disconnected through the inappropriate application of a 'Telecommunications Restriction Order'. NOMS will ensure that robust processes are in place to identify only those devices that are being used without authority inside prisons. The Home Office will make a provision in the secondary legislation to provide for that customer to apply to be reconnected to the MNO network, without the need to apply to the court directly to vary or discharge the order. Additionally, as a further safeguard, a mobile phone that has been blacklisted retains the ability to connect to the MNO network and make emergency calls should that need arise. These are considered important and necessary safeguards which will protect innocent third parties from the unintended consequences of an erroneous disconnection of their service.

There are associated legal and administrative costs to the MNOs for this option. There are currently four MNOs in the UK, and each has provided a financial breakdown of what it will cost them to comply with the court order process. This involves legal representation at the court, as well as the

administrative costs of blacklisting handsets and disconnecting SIM cards from their networks. These costs are also outlined in section 9 of this document.

6. Benefits

Do nothing option: There are no additional benefits associated with the do nothing option.

Option 2- Non-regulatory option: Fitting signal-blocking equipment across the entire prison estate would be an effective short-term solution.

Option 3- Telecommunications Restriction Order: Disrupting the use of unauthorised mobile phone use in prisons without firstly having to take physical possession of the devices will add to, and strengthen, existing prison security measures. There is clear evidence that mobile phones enable serious crimes. Prisoners have used mobiles to import automatic machine guns, arrange large-scale drug imports and commission murder. The cost of organised crime to the UK is significant. A Home Office report, published in 2014, estimated the cost to be at least £24 billion pounds a year.¹³ Disrupting organised crime, by reducing mobile phone use by prisoners, may therefore lead to substantial benefits. We have not calculated the monetised benefits of preventing prisoners using mobile phones in prisons, as it is difficult to predict how many serious crimes will be prevented. However, to break-even, over the 10-year period, the policy would need to prevent less than 3 homicides or 145 serious woundings¹⁴.

Illicit mobile phones lead to indiscipline and are a threat to good order within prisons. By further reducing the number of these devices, it is further anticipated that the overall welfare and security of prisons will be improved. In 2015-2020, the Home Office will monitor the number of court order applications applied for, granted or refused, as well as the number of devices that are ordered to be disconnected by the courts. The Home Office will also obtain the number of handsets and SIM cards that are recovered by NOMS in the same period to measure the effectiveness of the legislation in reducing the number of unauthorised mobile phones in use inside prisons.

7. Summary and Recommendations

Table 1	Costs and Benefits	
Option	Costs	Benefits
2.	<p><u>Monetised:</u> Up to £300m to fit blocking-technology across the prison estate. Up to £800,000 per year to maintain the equipment.</p> <p><u>Non-monetised:</u> Risk that installed technology fails to keep pace with advancements in mobile and signal spectrum technology and may require significant future investment to remain fit for purpose.</p>	<p><u>Monetised:</u> We have not identified any monetised benefits for this option.</p> <p><u>Non-monetised:</u> Effective, signal blocking across the entire prison estate. Crime reduction benefits have not been quantified as it is difficult to accurately predict how many serious crimes would be prevented.</p>
3.	<p><u>Monetised:</u> -£3.3m net present value over 10-years.</p> <p><u>Non-monetised:</u> small risk of erroneous disconnection of genuine, authorised mobile phone accounts.</p>	<p><u>Monetised:</u> We have not identified any monetised benefits for this option</p> <p><u>Non-monetised:</u> Effective, long-term measure to disrupt unauthorised mobile phone use in prisons. Crime reduction benefits have not been quantified as it is difficult to accurately predict how many serious crimes would be prevented. However, breakeven analysis suggests that over the 10 year period, the policy would need to prevent less than 3 homicides or 145 serious woundings¹⁴</p>

The recommended option: Option 3 is the recommended option.

8. Implementation Plan

Section 80 of the Serious Crime Act 2015, provided the power to make regulations for a Telecommunications Restriction Order. However, Section 80 of that Act will not have any substantive effect until the regulations are laid by way of secondary legislation. As this provision may interfere with the Mobile Network Operator's business, it may also engage European Technical Standards Directive 98/34/EC. As such, we intend to notify the European Commission and observe a three-month standstill period before laying the secondary legislation. It is therefore anticipated that the provision will commence in December 2015.

The provision will extend to England and Wales and Scotland. The Government related stakeholders are the National Offender Management Service, Scottish Prison Service, Her Majesty's Courts and Tribunals Service, Scottish Courts, Ministry of Justice, Law Enforcement bodies, Treasury Solicitors and the Crown Prosecution Service. External stakeholders include the Mobile Network Operators and a very limited number of their customers. Guidance will be required for the Mobile Network Operators, and guidance and training will be required for the Judiciary, Her Majesty's Courts and Tribunal Service, Treasury Solicitors and the National Offender Management Service. The costs to these stakeholders are fully outlined in the Annex. The provision will commence in December 2015 and an internal review date has been set for November 2020

9. Assumptions

It is not possible to say with certainty how many applications NOMS will make each year as there are a number of operational factors which will determine how regularly the powers are used. However, NOMS has indicated that it expects to apply for between 4 and 16 court order applications per year (depending on the stage of roll out).

HMCTS approved a Justice Impact Test assessment, and stated that the costs to the court service would be around £45,000 per year.

The cost to NOMS of applying for a court order is established by taking the cost of a County Court order application, which is £280, and adding that to the cost of representation by Treasury Solicitors and Counsel. Treasury Solicitors provided an estimation of what resources would be needed to prepare and represent the court application. They estimated 3 hours preparatory work at £100 per hour. The estimated costs to instruct Counsel include 3 hours preparatory work, 1 hour to present the case in court and 1 hour's write-up after the hearing. Treasury Solicitor estimated this work would cost £100 per hour. The total figure for representation is around £1000. Therefore, the total legal costs for NOMS will be around £1,300 per court order application. The low estimated cost to NOMS per year is therefore around £5,200 and the high estimated cost to NOMS would be around £20,500. NOMS will incur procurement costs in years 1, 2 and 3 of this measure coming into force. These estimated costs are around £200,000 per year. It is assumed that NOMS will not require any additional procurement after year 3. NOMS will incur staffing costs in years 2-10 of this measure, at around £50,000 per year. It is assumed that NOMS will not incur any additional staffing costs.

The MNOs provided individual costs for legal representation. These figures have been aggregated and divided by the number of MNOs (4) to give an average cost of £950 per MNO, per court order. The low cost to the MNOs to be represented per year is therefore around £15,000 and the high estimated cost would be around £60,000 per year

A law enforcement operation in a single prison in 2012 identified a number of illicit mobile phones in use and using that operation as a baseline, it has been assumed that the number of handsets and SIM cards referred for disconnection would be around 430 items per court order¹⁵. The MNOs will incur costs when they disconnect those items from their networks. The MNOs provided individual staffing costs to complete these actions. These figures were aggregated and divided by the number of MNOs to give an average cost of around £3,800 per court order.

One-in-Two-out: The MNOs will be able to apply to the court to recover all of their costs that they incur in complying with a Telecommunications Restriction Order. This includes all their legal and staffing resource costs associated with representation at court, and performing the subsequent

blacklisting and disconnecting of handsets and SIM cards. The MNOs already blacklist handsets and disconnect SIM cards as part of their normal business activity, for example when blacklisting handsets that have been reported lost or stolen by their customers, or when disconnecting customers who have failed to pay their bill, and it is not expected that they will incur any additional technological or training costs associated with complying with a Telecommunications Restriction Order.

It is therefore considered that in the scope of One-in, Two-out, the net cost to business under this measure is zero.

10. Risks

This approach to tackling serious organised crime is a new one, and if this new measure proves particularly effective, then the number of applications to the court could increase. Given the uncertainty in applications to court we have estimated the costs assuming volumes are either 50% lower or 50% higher in the table below.

Volumes	Total cost (present value), £m
50% lower	2.35
50% higher	4.17

It is assumed that the number of MNOs will remain the same. If the number of MNOs were to fall, then the costs would also fall in respect of legal representation. If the number of MNOs were to increase, then all associated costs, with the exception of disconnection costs, would also increase.

If the number of court order applications did increase, then there would also be an increase in the administration and disconnection costs that the MNOs incur as they complied with the new legislation. However, as the MNOs can apply to the courts for their costs, the impact on the MNOs would be short-lived and temporary.

It is assumed that the costs of legal representation to NOMS will not increase. It is also assumed that the unit costs to NOMS in evidential analysis will not increase, however, if the number of devices identified beyond the assumed figures increases, then these costs would also proportionately increase. There is a risk that technology will advance to such an extent that these measures are unable to keep pace with those developments and new technology or legislation is required to disrupt the use of unauthorised mobile phones in prisons.

11. Annex

¹ Figure provided by NOMS

²Section 80 of the Serious Crime Act 2015 'Telecommunications Restriction Order'

³Provided by NOMS. In 2009 an imprisoned gang member received a life sentence for arranging the murder of a rival; also in 2009 a prisoner was sentenced to 18 years for drug smuggling, and in 2013, two prisoners escaped from custody. In January 2015, a serving prisoner was sentenced to life in prison for importing machine guns. All of these serious crimes were enabled by the use of unauthorised mobile phones in prisons.

⁴NOMS estimates it would cost up to £300m to fit the equipment and up to £800,000 a year in maintenance.

⁵In year 1, NOMS will incur legal costs (applying for a court order and instructing Treasury Solicitors and Counsel) of around £5,200. NOMS will incur procurement costs of £200,000 and staffing costs of around £27,500. Additionally, NOMS will incur evidence analysis costs of around £27,500. In year 2, NOMS will incur legal costs of around £10,500, procurement costs of around £200,000 and staffing costs of around £60,000. NOMS will also incur evidence analysis costs of around £55,114.

⁶In year 3, NOMS will incur legal costs of around £20,500, procurement costs of around £200,000, staffing costs of around £59,500 and evidence analysis costs of around £109,000.⁷ In year 4, NOMS will incur legal costs of around £20,500, staffing costs of around £59,500 and evidence analysis costs of around £109,000. NOMS will not incur any further procurement costs in years 4-10.

⁸Her Majesty's Courts and Tribunal Service (HMCTS) approved a Justice Impact Test and stated that the yearly costs to HMCTS would be around £45,000

⁹There are currently 4 Mobile Network Operators in the UK. Each MNO provided detailed information on what it will cost them to comply with a court order. These costs are made up of optional legal costs (to be represented in court), and administrative costs associated with the technical requirements of blacklisting handsets and blocking SIM cards. As the costs provided for each action varied between the respondents, the average cost was taken. Each MNO is estimated to incur an average of around £1,000 in legal costs per court order. Each MNO will incur an average cost of £9 to blacklist a handset and an average cost of £9 to disconnect a SIM card from the network. The total number of blacklisting and disconnecting involved will invariably fluctuate, but an average figure of 180 blacklist items and 252 disconnection items have been used as a baseline figure per court order. This has been derived from the prisons operation in 2012. The year 1 figures are based on four court order applications per year.

¹⁰These figures are based on 16 court applications per year, using the same legal and administrative costs, and number of handset and SIM items as before.

¹¹Whilst the MNOs will incur the costs associated with blacklisting and disconnecting handsets and SIM cards, the secondary legislation will provide for the Courts to award costs to the MNOs that they have incurred as they comply with a court order. NOMS would be liable to pay those costs. It is therefore considered that in practice, the MNOs will not bear any direct costs associated with the Telecommunications Restriction Order.

¹²NCA report 'National Strategic Assessment of Serious Organised Crime' May 2015

¹³Home Office (2013) Understanding organised crime: estimating the scale and the social and economic costs.

¹⁴Home Office (2003/4) The economic and social costs of crime against individuals and households. Figures adjusted to 2013 prices.

¹⁵Home Office figures.