

## REQUEST FOR RULES OF COURT: DRUG DEALING TELECOMMUNICATIONS ORDERS

### Policy Proposal

1. To invite the Council to consider and approve draft rules amending the Summary Application Rules to support the Drug Dealing Telecommunications Restriction Orders Regulations 2017 (“the Regulations”).
2. A draft Act of Sederunt is produced at **Paper 7.2A**. This matter was previously considered by the Council at its October meeting and the paper considered at that time is produced at **Paper 7.2B** for ease of reference.

### Timing

3. Draft Regulations were laid in the Westminster Parliament on Thursday 12 October 2017 and can be seen at **Paper 7.2C**. Policyholders anticipate that the Parliamentary process will take around 6 weeks to complete. Debate slots in both Houses are still to be confirmed but it is anticipated that they will be made by the end of the year.

### Background

4. The Regulations allow the police or the National Crime Agency (NCA) to apply to a court for a Drug Dealing Telecommunications Restriction Order (“DDTRO”) to compel mobile network operators to close down mobile phone lines used to deal illegal drugs. The DDTRO has been designed to support the police and NCA in tackling the criminal threat of ‘county lines’.
5. Regulation 4 of the Regulations provides an application for a DDTRO must be made and heard without notice of the application or hearing being given to an affected person or their legal representative and to be heard and determined in the absence of an affected person or their legal representative.
6. Given the ‘without notice’ nature of DDTRO applications and hearings, members agreed that the general Summary Application Rules would not be sufficient to regulate court procedure. In addition, given the urgent nature of applications, members agreed that bespoke rules should prescribe the form of application for a DDTRO, the DDTRO itself, and the form for variation or discharge of a DDTRO.

7. Members agreed that rules similar to those in [Chapter 3 Part XLII of the Summary Applications Rules 1999](#), which relate to applications under section 23B(1) of the Regulation of Investigatory Powers Act 2000, would be appropriate.

### **Policy discussion**

8. Draft rules are produced for consideration at **Paper 7.2A**. As instructed, the rules prescribe bespoke forms for the form of application, form of order made by the court and form to apply for a discharge or variation of order.
9. The Rules replicate the provisions within the Regulations in relation to an application not being intimated and being heard and determined in private, given its critical nature. Policyholders have confirmed that Regulation 11 has been amended to clarify that only the initial application for a DTTRO is in private and thereafter applications to discharge, vary etc and appeals are to be held in public. It therefore follows that these applications require to be intimated.
10. Given the nature of the order sought, it was felt that the standard minute procedure would not be appropriate for minutes to discharge, extend or vary. Draft rule 3.50.2(5) makes provision for the sheriff to make such orders as he or she thinks fit for dealing with such an application.

### **Implementation**

11. The Secretariat has liaised with policyholders and the Legislation and Implementation Team within the Scottish Courts and Tribunals Service in the development of these rules and both are content with the proposed procedure.
12. At the last meeting it was noted that the provisions required were similar to a rules request due to be considered by the Rules Rewrite Committee in relation to the Criminal Finances Act 2017. Subject to timings, it was agreed that there would be merit in both sets of rules being included in one instrument. The Lord President's Private Office agreed to consider this following the rules being submitted to the Court of Session. Rules to support the Criminal Finances Act 2017 are currently being drafted and will be issued to the Committee to consider by correspondence before being submitted to the Council for approval.

**Recommendation**

- 13. The Council is invited to consider the draft rules at Paper 7.2A and to indicate whether it is content that they be submitted to the Court of Session for consideration, subject to any stylistic or typographical amendment.**

**SCJC Secretariat  
November 2017**

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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No.**

**SHERIFF COURT**

**Act of Sederunt (Summary Application Rules 1999 Amendment)  
(Drug Dealing Telecommunications Restriction Orders) 2017**

*Made* - - - - - \*\*\*November 2017  
*Laid before the Scottish Parliament* \*\*\*December 2017  
*Coming into force* - - - \*\*\*December 2017

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council [with such modifications as it thinks appropriate].

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 104(1) of the Courts Reform (Scotland) Act 2014(b) and all other powers enabling it to do so.

**Citation and commencement, etc.**

**1.**—(1) This Act of Sederunt may be cited as the Act of Sederunt (Summary Application Rules 1999 Amendment) (Drug Dealing Telecommunications Restriction Orders) 2017.

(2) It comes into force on [date] 2017.

(3) A certified copy is to be inserted in the Books of Sederunt.

**Amendment of the Summary Application Rules 1999**

**2.**—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc Rules) 1999(c) is amended in accordance with this paragraph and paragraph 3.

(2) After Part XLIX: (transfers from the Lands Tribunal for Scotland to the sheriff under the Electronic Communications Code) of Chapter 3(d) (rules on applications under specific statutes) insert—

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(a) 2013 asp 3. section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).

(b) 2014 asp 18.

(c) S.I. 1999/929, last amended by S.S.I. 2017/xxx.

(d) Part XLIX was inserted by S.S.I. 2017/xxx.

**“PART L****DRUG DEALING TELECOMMUNICATIONS RESTRICTION ORDERS****Interpretation**

**3.50.1.** In this Part and in Forms 76, 77 and 78 of schedule 1—

- “the 2015 Act” means the Serious Crime Act 2015(a);
- “affected person” has the same meaning as in Regulation 2 of the DDTRO regulations;
- “communication device” has the same meaning as in section 80A(12) of the 2015 Act;
- “communication provider” has the same meaning as in section 80A(12) of the 2015 Act;
- “a DDTRO” means a drug dealing telecommunications restriction order as defined in section 80A(2) of the 2015 Act;
- “the DDTRO Regulations” means the Drug Dealing Telecommunications Restriction Orders Regulations 2017(b)
- “drug dealing offence” has the same meaning as in section 80A(4) of the 2015 Act; and
- “relevant item” has the same meaning as in Regulation 2 of the DDTRO regulations.

**Drug Dealing Telecommunications Restriction Orders**

**3.50.2.**—(1) An application under Regulation 3 of the DDTRO Regulations (power to make a DDTRO) for a DDTRO is to be made by summary application in Form 76.

(2) An application under subparagraph (1) must not be intimated to an affected person or such person’s legal representative.

(3) Where an application for a DDTRO is granted by the sheriff the order is to be in Form 77.

(4) An application for discharge, extension or variation of a DDTRO is to be made by minute in the process relating to the DDTRO in Form 78.

(5) Where an application under paragraph (4) is made, the sheriff shall make such orders as he or she thinks fit for dealing with the application, and such orders may include—

- (a) an order for the person lodging the application to intimate the application and any court order relating to it to any other person;
- (b) an order for any party to lodge answers; and
- (c) an order for a hearing on the minute and any answers.

(5) An application for a DDTRO must be held and determined by the sheriff in private.

(6) An application for discharge, extension or variation of a DDTRO, or a motion hearing in such application, must be held and determined by the sheriff in public.

(7) Rule 2.5 (order for intimation to interested persons by the sheriff) shall not apply to any application or motion under this Part.

(8) Rule 2.30 (motion procedure), applying Chapter 15 of the Ordinary Cause Rules, shall apply to any motion under this Part.”

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(a) 2015 c.9. The Serious Crime Act 2015 was relevantly amended by section 107 of the Digital Economy Act 2017 (c.30).

(b) S.I. 2017/xx [DN: These Regs are in draft form and this reference will need to be updated, around late December 2017].

3. In schedule 1, after Form 75, insert Forms 76, 77 and 78 as set out in the schedule of this Act of Sederunt.

Edinburgh  
Date

*CJM SUTHERLAND*  
Lord President  
I.P.D.

## SCHEDULE

Rule 3.50.2(1)

### Form 76

**Form of application for a drug dealing telecommunications restriction order, in terms of the Drug Dealing Telecommunications Restriction Orders Regulations 2017**

SHERIFFDOM OF *(insert name of sheriffdom)*

Court ref. no.

AT *(insert place of sheriff court)*

APPLICATION FOR A DRUG DEALING TELECOMMUNICATIONS RESTRICTION ORDER, IN TERMS OF THE DRUG DEALING TELECOMMUNICATIONS RESTRICTION ORDERS REGULATIONS 2017

in the cause

[A.B.] *(insert designation and address)*

Applicant

Against

[C.D.] *(insert designation and address)*

Respondent

### Order sought from the court

The applicant applies to the court for an order under regulation 3 of the Drug Dealing Telecommunications Restriction Orders Regulations 2017 to prevent or restrict the use in connection with drug dealing offences of the relevant item(s) listed in the schedule to this application.

### Statement

1. This application is made pursuant to Regulation 3 of the Drug Dealing Telecommunications Restriction Orders Regulations 2017.
2. The applicant is *[insert name and office rank or position of applicant]*. *[Specify ground of jurisdiction, and the facts upon which the ground of jurisdiction is based]*.

This court accordingly has jurisdiction.



3. The respondent is *[insert name and address of affected person, where that person is the communications provider for the purposes of this application, and (if known) the name and address of any other affected person or, if not known, the fact that that person's whereabouts are unknown and the steps taken to ascertain that person's whereabouts]*.
4. The applicant is satisfied that the relevant item(s) listed in the schedule to this application [has been, or is likely to have been, used] or [is likely to be used in the future] *(delete as appropriate)* in connection with drug dealing offences; and has reasonable grounds to believe that the order would prevent or restrict the use of a communication device in connection with drug dealing offences.
5. *[Specify the grounds upon which the order is sought and the relevant facts supporting those grounds.]*
6. The applicant seeks an order, in respect of the items listed in the schedule which will *[specify the terms of the order sought, by reference to the relevant item(s) concerned]* and which will require to be complied with by *[specify time]* on *[specify date]*, or some other time and date as the court considers come into force. The time and date suggested by the applicant is in all the circumstances reasonable.
7. The applicant requests the court to include in the order a provision to the effect that the applicant and a communications provider who is subject to the order may 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 order.

Date *(insert date)*

*(Signed)*

Applicant

*[or Solicitor for Applicant] [add designation and business address]*

Rule 3.50.2 (3)

## Form 77

**Form of a drug dealing telecommunication restriction order (“DDTRO”), in terms of the Drug Dealing Telecommunications Restriction Orders Regulations 2017**SHERIFF COURT ..... (*specify*)

COURT REF. NO .....

ON ..... (*insert date*)

The sheriff, having considered an application for an order under regulation 4 of the Drug Dealing Telecommunications Restriction Orders Regulations 2017 for a drug dealing telecommunications restriction order (“DDTRO”) to prevent or restrict the use in connection with drug dealing offences of the relevant item(s) listed in the schedule to this application, and being satisfied that such an order should be made:

- (i) make an order, in respect of the items listed in the schedule to the application, that [*specify the terms of the order granted, by reference to the relevant item(s) concerned*] which order is to be complied with by [*specify time*] on [*specify date*];
- (ii) directs notification of this order to C.D. (*specify the identity of the communications provider who is subject to this order*) by (*specify means of notification*);
- (iii) further orders that the applicant and C.D. (*specify the identity of the communications provider who is subject to this order*) may 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 paragraph (i) of this order; and
- (iv) directs the applicant to take reasonable steps to bring the making of the DDTRO to the attention of any affected person of whom the applicant is aware other than the communications provider.

Date (*insert date*)(*Signed*)

Sheriff

Rule 3.50.2(4)

## Form 78

### **Form of application for the discharge, extension or variation of a drug dealing telecommunications restriction order, in terms of the Drug Dealing Telecommunications Restriction Orders Regulations 2017**

SHERIFFDOM OF *(insert name of sheriffdom)*

Court ref. no.

AT *(insert place of sheriff court)*

#### APPLICATION

of

*[Specify designation and address of applicant]*

FOR [DISCHARGE *or* EXTENSION *or* VARIATION] *(as the case may be)* OF A DRUG DEALING TELECOMMUNICATIONS RESTRICTION ORDER, IN TERMS OF THE DRUG DEALING TELECOMMUNICATIONS RESTRICTION ORDERS REGULATIONS 2017

in the cause

[A.B.] *(insert designation and address)*

Applicant

Against

[C.D.] *(insert designation and address)*

Respondent

#### **Order sought from the court**

The applicant applies to the court for [discharge *or* extension *or* variation] *(as the case may be)* of an order under regulation 3 of the Drug Dealing Telecommunications Restriction Orders Regulations 2017 made by the court on *(specify date)*.

#### **Statement**

1. This application is made by *[specify whether the application is made by the applicant or respondent in the original application, or by any other affected person]*. It is made pursuant to Regulation 10 of the Drug Dealing Telecommunications Restriction Orders Regulations 2017. The order made by the court on *(specify date)* provides that *(specify the terms of the order)*.

2. The applicant seeks to discharge the terms of the order. [*OR (where the applicant seeks to extend or vary the terms of the order) The applicant seeks to [extend or vary] the terms of the order (as the case may be) by (specify the terms of the extension or variation sought).*]

3. The applicant seeks such [a discharge *or* extension *or* variation] of the order on the grounds that [*specify the grounds upon which the order is sought and the relevant facts supporting those grounds.*]

Date (*insert date*)

(*Signed*)

Applicant

[*or Solicitor for Applicant [add designation and business address]*]

**EXPLANATORY NOTE**

*(This note is not part of the Act of Sederunt)*

This Act of Sederunt amends the Summary Application Rules 1999 to make provision for applications for a drug dealing telecommunications restriction order, and for variation, extension or discharge of such an order, in terms of the Drug Dealing Telecommunications Restrictions Orders Regulations 2017 (“the 2017 Regulations”). In terms of Regulation 4 of the 2017 Regulations, an application for a DDTRO must be made and heard without notice of the application or the hearing being given to an affected person or their legal representative, and heard and determined in their absence. Any appeal lies to the Sheriff Appeal Court.

Paragraph 2(2) inserts new subparagraphs 3.50.1 and 3.50.2 into the Summary Application Rules 1999, and paragraph 3 adds new Forms 76, 77 and 78. These rules make provision for an application for a DDTRO to be made by summary application, in Form 76, for a DDTRO to be made in Form 77, and for applications for discharge and variation to be made by minute in the process in terms of Form 78.

## REQUEST FOR RULES OF COURT: DRUG DEALING TELECOMMUNICATIONS RESTRICTION ORDERS

### Policy Proposal

1. To invite the Council to consider a request from the Home Office for court rules to support the Drug Dealing Telecommunications Restriction Orders Regulations 2017 (“the Regulations”).
2. The rules request can be seen at **Paper 7.3A**. Regulations are still be finalised but draft Regulations have been produced at **Paper 7.3B**. Should draft rules be instructed, the final Regulations will be provided to the Council alongside the rules.
3. The request has not previously been considered by any of the Council’s Committees.

### Background

4. Section 107 of the Digital Economy Act 2017 introduces a new Section 80A of the Serious Crime Act 2015 which provides for regulations to make provision conferring power on a court to make a Drug Dealing Telecommunications Restriction Order (“DDTRO”). In Scotland, power to make DDTROs has been conferred on the sheriff court.
5. The Regulations allow the police or the National Crime Agency (NCA) to apply to a court for a DDTRO to compel mobile network operators (MNOs) to close down mobile phone lines used to deal illegal drugs. The DDTRO has been designed to support the police and NCA in tackling the criminal threat of ‘county lines’. This is the term used by the police to describe a drug distribution model where urban criminal gangs travel to smaller towns or communities to sell drugs, predominately crack cocaine and heroin (see paragraphs 11-16 of the policy paper at **Paper 7.3A**).

### Timing

6. **Paper 7.3A** states that the Regulations will come into force by the end of November or by the end of the year at the latest and requests rules by 01 December 2017.

7. Following discussions with the Home Office, it has been agreed that a later coming into force date would be prudent to allow for both the Regulations and court rules to come into force at the same time. It is intended that draft rules, if instructed, will be considered by the Council at its next meeting on 20 November 2017, with sufficient time thereafter for the Scottish Parliament to consider the instrument before it comes into force.

## Discussion

### *Applications and hearings*

8. Regulation 4 of the Regulations provides an application for a DDTRO must be made and heard without notice of the application or hearing being given to an affected person or their legal representative and to be heard and determined in the absence of an affected person or their legal representative.
9. Given the 'without notice' nature of DDTRO applications and hearings, it is thought that the general Summary Application Rules would not be sufficient to regulate court procedure. In addition, given the urgent nature of applications, it is thought that bespoke rules may be required to prescribe the form of application for a DDTRO, the form of a DDTRO itself, and the form for variation or discharge of a DDTRO.
10. Similar rules currently exist in [Chapter 3 Part XLII of the Summary Applications Rules 1999](#), which relate to applications under section 23B(1) of the Regulation of Investigatory Powers Act 2000. Those rules prescribe standard forms for the application and the order of the sheriff and confirm that the application is to be heard and determined in private.
11. **Members are invited to consider whether specific rules of court should make provision for the form of applications for DDTROs and orders of the court, and for the variation or discharge of a DDTRO.**

### *Appeals*

12. In their policy paper, the Home Office requests the Council's view on the DDTRO route of appeal. Advice has been provided confirming that the standard route of appeal to the Sheriff Appeal Court would apply. An appeal against the decision of the Sheriff Appeal Court may then be taken, with permission, to the Inner House.



### *Restrictions on disclosure*

13. Regulation 9 allows the applicant to request restrictions on the disclosure of information submitted in connection with an application or appeal. The request can be written or oral, and may be determined in advance of, or at the same time as, an application or appeal.
14. Rule 2.30 of the Summary Application Rules provides that any motion relating to a summary application shall be made in accordance, and regulated by, Chapter 15 of the Ordinary Cause Rules. Given the ‘without-notice’ nature of a DDTRO application, it is thought that rules will be required to dis-apply Rule 2.30 for written requests and to provide for such motions to be lodged without intimation and heard or determined in private. We will be liaising with policy holders to explore how it is envisaged such requests will be made to the court.

### **Links to other initiatives**

15. Paragraph 10 of the policy paper provided by the Home Office (**Paper 7.3A**) advises that similar legislation is contained in Section 80 of the Serious Crime Act 2015, which allows specified law enforcement bodies to apply for a Telecommunications Restriction Order in relation to mobile phones within custodial institutions.
16. Regulations to give effect to Section 80 are expected to come into force in Scotland in November 2017. The Scottish Prison Service’s Legal Services section advised the Secretariat in August 2017 that those Regulations have been drafted in such a way that the orders may be applied for using the normal Summary Application Rules and that there is no intention to submit a request for specific court rules to the Council.

### **Implementation**

17. At this stage, the Home Office are unable to estimate the number of DDTRO applications to be made in Scotland annually. The Secretariat will liaise with the Judicial Institute and the Scottish Courts and Tribunals Service in relation to any impact on training or guidance arising from the development of rules.

### **Consultation**

18. The Home Office has consulted with a range of partners in developing the Regulations. These are listed at paragraph 18 of **Paper 7.3A**. No public consultation was carried out due to operational sensitivity.

### **Recommendation**

19. **The Council is invited to consider the rules request from the Home Office at Paper 7.3A and to indicate whether it wishes to instruct LPPO to prepare draft rules for consideration at the next meeting.**

**LPPO and Scottish Civil Justice Council Secretariat  
September 2017**

*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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D R A F T   S T A T U T O R Y   I N S T R U M E N T S

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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(a).

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(b);

“device ID” includes—

- (a) an International Mobile Equipment Identity (IMEI) number;
- (b) a Mobile Equipment Identifier (MEID) number;

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

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

- (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(a); 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(b) 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(c); 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.

(6) A DDTRO must include provision permitting the applicant and the communications provider(d) 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

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(a) The expression “communication device” is defined in section 80A(12) of the Serious Crime Act 2015.

(b) The word “court” is defined in section 80A(12) of the Serious Crime Act 2015.

(c) The expression “drug dealing offences” is defined in section 80A(4) of the Serious Crime Act 2015.

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

- (c) a day that is a bank holiday under the Banking and Financial Dealings Act 1971<sup>(a)</sup> 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 DDTRO, 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.

#### **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>(b)</sup>,

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

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(a) 1971 c. 80.

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

**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.

(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(a) 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

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(a) 2015 c. 26.

(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

### 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).

DRAFT