STATUTORY INSTRUMENTS

2016 No. 830

TELECOMMUNICATIONS
PRISONS, ENGLAND AND WALES

The Telecommunications Restriction Orders (Custodial Institutions) (England and Wales) Regulations 2016

Made - - - -	*2nd August 2016*
Coming into force - -	*3rd August 2016*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 80 of the Serious Crime Act 2015(**1**).

In accordance with section 80(6) of that Act, a draft of these Regulations has been laid before and approved by resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Telecommunications Restriction Orders (Custodial Institutions) (England and Wales) Regulations 2016 and come into force on the day after the day on which they are made.

(2) These Regulations extend to England and Wales only.

Interpretation

2.—(1) In these Regulations—

"affected person" has the meaning given by paragraphs (2) to (4);

"authorisation" has the same meaning as in section 40D of the Prison Act 1952(**2**);

"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(**3**) in England and Wales.

(**1**) 2015 c.9.
(**2**) 1952 c.52. Section 40D was inserted by section 23 of the Offender Management Act 2007 (c.21) and amended by section 45 of the Crime and Security Act 2010 (c.17).
(**3**) 1971 c.80.

(2) In relation to an application for a telecommunications restriction order(**4**), "affected person"—

(a) means a person who would be likely to be affected by the order (if made), and

(b) includes a person who claims to have an authorisation to possess a communication device(**5**) to which the application relates.

(3) In relation to telecommunications restriction order that has been made, "affected person"—

(a) means a person who has been or is likely to be affected by the order, and

(b) includes a person who claims to have an authorisation to possess a communication device to which the order relates.

(4) But, subject to paragraphs (2)(b) and (3)(b), "affected person" does not include an individual detained in a custodial institution(**6**).

Power to make telecommunications restriction order

3.—(1) The county court may make a telecommunications restriction order if the court—

(a) is satisfied that a communication device identified in the order is inside a custodial institution, and

(b) has no reason to think that the device is in the possession of a person who has authorisation to possess it.

(2) 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.

(3) 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 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.

(4) A telecommunications restriction order must specify a date on or before which the requirements of the order are to be complied with.

(5) Unless the parties agree otherwise, the date specified under paragraph (4) 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 only on the application of—

(a) the Secretary of State,

(b) the Director General of the National Crime Agency,

(c) the Commissioners of Her Majesty's Revenue and Customs, or

(**4**) "Telecommunications restriction order" has the same meaning as in section 80 of the Serious Crime Act (c.9), that is: an order requiring a communications provider to take whatever action the order specifies for the purpose of preventing or restricting the use of communication devices by persons detained in custodial institutions. "Communications provider" is defined in that section as a person providing a service that consists in the provision of access to, and of facilities for making use of, any telecommunication system (whether or not one provided by that person). "Telecommunication system" is defined in that section as any system (including the apparatus comprised in it) that exists (whether wholly or partly in the United Kingdom or elsewhere) for the purpose of facilitating the transmission of communications by any means involving the use of electrical or electro-magnetic energy.

(**5**) "Communication device" has the same meaning as in section 80 of the Serious Crime Act (c.9), that is: an item specified in section 1(3) of the Prisons (Interference with Wireless Telegraphy) Act 2012 (c.20) (mobile telephones etc).

(**6**) "Custodial institution" has the same meaning as in section 80 of the Serious Crime Act (c.9), that is (so far as relevant to England and Wales): a prison, young offender institution, secure training centre or secure college.

(d) a chief officer of police.

(2) The other parties to the proceedings on an application for a telecommunications restriction order are—

(a) the communications provider to which the order would relate;

(b) any affected person who applies to be a party.

Notice and information to be given by applicant

5.—(1) The person applying for a telecommunications restriction order must—

(a) give notice of the application to the communications provider;

(b) take reasonable steps to give notice of the application to any affected person of whom the applicant is aware;

(c) inform the communications provider that it may submit written representations and evidence;

(d) inform any affected person notified under sub-paragraph (b) that the person may become a party to the proceedings and submit written representations and evidence.

(2) Where—

(a) a telecommunications restriction order contains provision made by virtue of regulation 3(3), and

(b) the applicant 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 provision does not apply in relation to that device.

Costs

6.—(1) The county court may order the person applying for a telecommunications restriction order to pay any other party's costs of the proceedings even if the application is successful.

(2) Where a communications provider is likely to incur (or has incurred) costs in complying with a telecommunications restriction order, the order (or a further order) may include a requirement for the applicant to pay any or all of those costs.

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

Appeals

7. An appeal against a decision of the county court under these Regulations may be made by—

(a) a party to the proceedings in which decision was made, or

(b) an affected person.

Restrictions on disclosure

8.—(1) The court may order that some or all of the information in a document submitted in connection with an 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—