

<b>Title:</b> Telecommunication Restriction Order <b>PIR No:</b> HO PIR 002 <b>Original IA/RPC No:</b> PRC14-FT-HO-2240(2) <b>Lead department or agency:</b> The Home Office <b>Other departments or agencies:</b> N/A  <b>Contact for enquiries:</b> Adam.Tregidga@homeoffice.gov.uk	<b>Post Implementation Review</b>
	<b>Date:</b> 04/08/2021
	<b>Type of regulation:</b> Domestic
	<b>Type of review:</b> Statutory
	<b>Date measure came into force:</b> 03/08/2016
	<b>Recommendation:</b> Keep
<b>RPC Opinion:</b> N/A	

<p><b>1. What were the policy objectives of the measure?</b></p> <p>The strategic objective is to reduce crime. To confer powers for a court to make a Telecommunications Restriction Order (TRO). That compels Mobile Network Operators (MNOs) to prevent or restrict the use of communication devices by persons detained in custodial institutions. This supports law enforcement and criminal justice partners to tackle the escalating use of illicit unauthorised mobile phones in prisons, and the harm and crime they enable. This delivers a unique capability; the tactical ability to remotely disconnect multiple mobile phones without the need to take physical possession of the device first.</p>
<p><b>2. What evidence has informed the PIR?</b></p> <p>Consultation with operational and strategic partners who were part of creating these Regulations and using the power operationally. This includes the police, HM Prison and Probation Service (HMPPS), the Home Office, Ministry of Justice, all MNOs, and the County Court responsible for granting TRO applications. This was complemented by reviewing the only two operational examples of when a TRO was deployed.</p>
<p><b>3. To what extent have the policy objectives been achieved?</b></p> <p>The use of illicit mobile phones was disrupted in the two operational examples available. The extent to which this disrupted criminal activities and in particular, serious and organised crime (SOC), is unknown due to the lack of data available and the sensitivity of these operations. The benefits of the two TROs is unknown, and therefore it has not been possible to do a robust benefits assessment. However, TROs are deployed when intelligence suggests the tactic can disrupt criminal activity. Therefore, of the 317 phones disrupted, many of these were likely to have been used for criminal activity and some of these activities would have been related to SOC.</p> <p>However, additional operational case studies are required to develop a sufficient evidence base to determine the extent to which these Regulations have delivered as envisaged in the original TRO Regulations Validation Impact Assessment (the 2015 IA) and by partners.</p>

Sign-off for Post Implementation Review: Chief Economist/Head of Analysis and Minister

**I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.**

Signed: Baroness Williamson  
Minister for Security

Tim Laken  
Chief Economist

Date: 04/08/2021

## Further information sheet

Please provide additional evidence in subsequent sheets, as required.

### 4. What were the original assumptions?

#### Volumes:

It was assumed that there might be 4 to 16 court applications per year. This was expected to lead to about 430 items disconnected per court order (handsets and SIM cards). There is one court application per TRO deployment.

#### Resulting Costs:

In the 2015 IA<sup>1</sup>, the policy presented a Net Present Value (NPV) of -£3.3 million over 10 years (2015 prices).

A breakdown of this estimated cost (all in 2015 prices, undiscounted) shows:

#### TRO cost to HMPPS:

- Legal costs of around £5,200 in year 1, £10,500 in year 2, £20,500 in years 3 and 4 (£1,300 per TRO application).
- Procurement costs of £200,000 in year 1, 2 and 3.
- Staffing costs of around £27,500 in year 1, £60,000 in year 2, £59,500 in years 3 and 4.
- Evidence analysis cost of £27,500 in year 1, £55,100 in year 2, £109,000 in years 3 and 4
- Annual costs of approximately £200,000 in years 4 to 10.

#### TRO cost to HMCTS:

- Annual costs of around £45,000.

#### TRO cost to MNOs:

- Annual costs of between £30,000 and £120,000.

#### Alternative option cost, to HMPPS:

- £300 million to fit the equipment across the HMPPS estate.
- £0.8 million per year in maintenance costs.

### 5. Were there any unintended consequences?

The findings from the Review consultation included:

- The time taken to navigate the application process up to and including navigating the court process took far longer and required more resources than envisaged.
- There remains limited awareness of these Regulations among law enforcement and HMPPS.
- The approach HMPPS take to address this threat has changed since their adoption in 2016, necessitating a change in how TROs are deployed.

### 6. Has the evidence identified any opportunities for reducing the burden on business?

The 2015 IA for these Regulations found no net financial impact on business, which remains the case. This is because the court can order MNO costs to be reimbursed by the TRO applicant.

Revoking these Regulations will not deliver benefits or cost savings to business.

### 7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements?

This measure does not implement any EU or other international obligations.

<sup>1</sup> Telecommunications Restriction Order Validation Impact Assessment (2015), HO0134, The Home Office, 26 June 2015. See: <https://www.legislation.gov.uk/ukia/2015/258>

## Evidence Base

### A. Background

A Telecommunications Restriction Order (TRO), as set out in the legislation, 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.’

The objective underpinning these Regulations is to reduce crime by tackling the illegal<sup>2</sup> use of mobile phones by prisoners in a custodial institution. This provides a unique capability, enabling law enforcement to apply for a court order to compel Mobile Network Operators (MNOs) to remotely deactivate multiple mobile phones in prisons. Without a TRO, MNOs would not be obliged to act on a request from law enforcement to deactivate an unauthorised mobile phone in the possession of a prisoner.

The use of unauthorised mobile phones and SIM cards in prisons in England and Wales is a significant and escalating problem. The use of illegal mobile phones threatens good order and discipline across the entire custodial estate as a key enabler of crime, SOC and terrorism. The clearest picture is provided by the HMPPS Annual Digest 2019/20<sup>3</sup> which highlighted that in the 12 months up to March 2020 there were almost 12,000 incidents where mobile phones were found, and approximately 5,500 incidents where SIM cards were found in prisons. This is compared to 11,000<sup>4</sup> incidents of where mobile phones have been found in the previous 12 months to March 2019 and 10,600<sup>5</sup> incidents in the year to March 2018.

### B. Rationale

The Government has taken measures to address the significant and ever-changing threat of illicit communication devices impacting safety and good order in prisons. This included legislating for the TRO, to provide law enforcement with the power to apply to the court for an order to compel MNOs to remotely disconnect unauthorised mobile phones in use and inside prisons. This negates the need for HMPPS to first take physical possession of the device to deactivate it.

This power delivers a unique capability to law enforcement and HMPPS. It enables for the mass disconnection of all mobile phones identified as unauthorised in an establishment. Without the ability to compel MNOs to remotely deactivate a mobile phone, law enforcement and HMPPS would have to rely upon MNOs agreeing to voluntarily disconnect unauthorised mobile phones in prisons.

The alternative tactical options available to law enforcement and HMPPS to deploying a TRO can include:

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<sup>2</sup> As stipulated under section 40D (3A) of the Prison Act 1952.

<sup>3</sup> HMPPS, *Annual Digest 2019/20*, (30 July 2020 and updated on 10 June 2021).

<sup>4</sup> HMPPS, *Annual Digest 2018/19* (July 2019 and updated March 2020).

<sup>5</sup> HMPPS, *Annual Digest 2017/19* (July 2018).

- Delivering a specific prison wing or prison wide search. Doing so cannot guarantee all mobile phones are found as once a search begins prisoners can hide or dispose of illicit items. Conducting a search on this scale is also a costly, resource intensive and complex undertaking that can be disruptive to the good order and discipline in an establishment.
- Installing permanent phone signal blocking technology. This a costly and complex capability to deploy in an establishment, necessitating ongoing costs to run and maintain this technology.

## **C. Policy objectives**

The strategic objective is to 'reduce crime'.

A TRO requires 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.

The objective underpinning these Regulations is to support law enforcement and HMPPS to tackle and disrupt the illicit use of mobile phones by prisoners in prisons.

These Regulations do that by allowing law enforcement to seek a court order that compels communication providers to permanently disconnect unauthorised mobile phones, which have been identified by law enforcement and included in the court order. This capability fills a gap, without these powers, law enforcement would have to rely upon communication providers voluntarily disconnecting illicit mobile phones in prisons.

## **D. Policy option implemented**

Notwithstanding the available alternative options to tackle and disrupt illicit communication devices in prisons. The policy decision taken in 2016 was to deliver Regulations that allowed law enforcement to seek a court order to compel communication providers to remotely disconnect multiple unauthorised mobile phones in prisons. Had this option not been legislated for by government, the 'do-nothing' option would have prevailed, and this particular tactic would not be available to law enforcement.

The partners consulted in this review included relevant colleagues in police, HMPPS, and communication providers who all unanimously supported the creation of these Regulations in 2016 and their retention.

The TRO delivers a unique disruption capability that can be impactful, timely and of high value when used, as demonstrated by the two available operational deployment case studies.

These Regulations also afford communication providers with the legal means to action law enforcement requests to deactivate unauthorised mobile phones, as well as an agreed mechanism to manage complications associated with an order, such as the mistaken disconnection of a mobile phone outside of a custodial estate.

## **E. Summary of the analytical assessment at the time**

### **Assumptions**

It was assumed 4 to 16 applications would be made per year, with 430 items disconnected per court order (handsets and SIM cards). There is one court application per TRO deployment.

### **Analysis**

Monetised benefits of preventing prisoners using mobile phones were not calculated as it is difficult to predict how many serious crimes will be prevented. However, a break-even analysis was conducted which showed that to break-even, over the 10-year period, the policy would need to prevent less than three homicides or 145 incidents of serious violence.

### **Costs and benefits**

In the 2015 IA<sup>6</sup>, the policy presented a Net Present Value (NPV) of -£3.3 million over 10 years (2015 prices).

A breakdown of this estimated cost (all in 2015 prices, undiscounted) shows:

#### **Cost to HMPPS:**

- Legal costs of around £5,200 in year 1, £10,500 in year 2, £20,500 in years 3 and 4 (£1,300 per TRO application).
- Procurement costs of £200,000 in year 1, 2 and 3.
- Staffing costs of around £27,500 in year 1, £60,000 in year 2, £59,500 in years 3 and 4.
- Evidence analysis costs of £27,500 in year 1, £55,100 in year 2, £109,000 in years 3 and 4.
- Annual costs of approximately £200,000 in years 4 to 10.

#### **Cost to HMCTS:**

- Annual costs of around £45,000.

#### **Cost to MNOs:**

- Annual costs of between £30,000 and £120,000.

### **Other non-monetised benefits**

Business was expected to benefit from unclaimed credit on SIM cards that are disconnected, however, the amounts involved were likely to be so small as to make it disproportionate to determine the exact figure.

### **Any other impacts (small business, trade, wider etc).**

There was a small risk that genuine customers could be erroneously disconnected if HMPPS incorrectly identifies the phone as being used in a prison without authorisation. However, HMPPS anticipated calibrating and testing its technology to ensure only those handsets that are being used in a prison without authorisation will be identified and progressed towards disconnection. There was also an agreed mitigation process put in place in case a mobile phone outside of the mobile phones identified in the court order and in the prison in question

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<sup>6</sup> Telecommunications Restriction Order Validation Impact Assessment (2015), HO0134, The Home Office, 26 June 2015. See: <https://www.legislation.gov.uk/ukia/2015/258>

was disconnected. That process would enable such a mobile phone to be reconnected by the relevant communications provider.

## **F. Evaluation/review of impacts**

- Due to the lack of evidence and data around the outcomes and benefits around TROs, it has not been possible to conduct a full economic assessment.
- TROs have been deployed twice and disconnected a total of 317 devices during these deployments. Some of these devices will have been used for criminal activities, both SOC and non-SOC. However, the proportion used for criminal activities or SOC activities is unknown.
- There is potential for a TRO to be good value for money (VfM) due to the high harm and high value nature of SOC, which has a cost to society of £37 billion per year, but the small sample of deployments and lack of data does not enable a robust assessment.

### **Available evidence and data**

- TROs have been deployed twice.<sup>7</sup>
- A total of 317 phones were deactivated. However, it is not known how many of these were used for SOC related purposes.

### **Costs:**

The total cost of deploying a TRO is estimated to be between about £2,000 and £20,000 with a considerable degree of uncertainty. The difference between the lower and upper bound is the number of disconnections applied for in the TRO.

A breakdown of some of the costs is provided below. A full breakdown of the overall costs and ranges have not been disclosed because of the sensitive nature of these operations but have been included in the overall estimate.

- The standard court fee for considering a TRO application = £353.
- Average HMPPS cost for intelligence work to inform a TRO = £1,250 to £5,000.
- Average police cost to apply for and support a TRO = £1,000 to £3,000.<sup>8</sup>
- Average costs to MNOs to action TRO related requests = £500.

Using the case studies sighted, the expected and actual costs, benefits and implications of deploying a TRO have been compared in Table 1.

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<sup>7</sup> Reasons for which are summarised on page 2, section 5.

<sup>8</sup> In the two cases where a TRO was deployed, there were no additional police costs as they were absorbed into existing operational budgets.

**Table 1, Expected and actual outcomes from TRO deployments, 2021.**

<b>Expected vs actual outcomes</b>	
<b>Expected</b>	<b>Actual</b>
<p>The overall cost to HMPPS and HMCTS for considering and deploying 4 to 16 applications per year was estimated at costing £3.3 million over 10 years.</p>	<p>This cost was not borne out in reality as there were only two TRO deployments over the five-year period since the legislation came into force.</p>
<p><b>Cost breakdowns:</b></p> <p>Cost to HMPPS:</p> <ul style="list-style-type: none"> <li>• Legal costs of around £5,200 in year 1, £10,500 in year 2, £20,500 in years 3 and 4 (£1,300 per TRO application).</li> <li>• Procurement costs of £200,000 in year 1, 2 and 3.</li> <li>• Staffing costs of around £27,500 in year 1, £60,000 in year 2, £59,500 in years 3 and 4.</li> <li>• Evidence analysis costs of £27,500 in year 1, £55,100 in year 2, £109,000 in years 3 and 4.</li> <li>• Annual costs of approximately £200,000 in years 4 to 10.</li> </ul> <p>Average annual cost: £45,000 incurred by HMCTS.<sup>9</sup></p> <p><b>Alternative option</b> HMPPS cost, signal blocking equipment:</p> <ul style="list-style-type: none"> <li>• £300 million to fit mobile phone signal blocking equipment across the estate.</li> <li>• £0.8 million per year in maintenance costs.</li> </ul>	<p>There has been no ongoing cost due to HMPPS not establishing a full time TRO team as envisaged.</p> <p>Total costs incurred by HMPPS and police for securing two TROs were absorbed into existing operational budgets.<sup>10</sup></p> <p>An average cost for a TRO can be between £2,000 to £20,000 depending on the operational approach taken. This estimate is variable as it depends on the operational aims, investigatory techniques used and tactics employed. The vast majority of costs are incurred by the applicant, with some cost to MNOs as detailed below.</p>

<sup>9</sup> The HM Courts and Tribunals Service charge a standard Court Charge of £353 for processing a TRO, contributing to covering some of these costs.

<sup>10</sup> Each example approached deploying a TRO differently, therefore, further operational examples are needed to inform an accurate average deployment cost.

<b>Expected vs actual outcomes</b>	
<b>Expected</b>	<b>Actual</b>
Annual cost: £30,000 to £120,000 incurred by MNOs. <sup>11</sup>	In the original IA, MNOs were expected to incur costs for legal representation of £950 per court order and additional staffing of £3,800 per court order.  These costs did not materialise based on the two case studies as no legal representation was required. However, MNO's may need up to two days of work to action a TRO, or a cost to the application in the region of £500. <sup>12</sup>
Savings to society deemed too difficult to predict against.	There is insufficient evidence to quantify savings to society at this time.  There was a total of 317 mobile phones and 247 SIMs deactivated due to these two operational examples and there is an expectation that this may have resulted in disrupting crime enabled by the unauthorised use of these mobile phones.
The Regulations would have no net impact on business.	There has been no net impact on business as MNOs have been reimbursed when required and court fees paid by the applicant.
There would be no increase in wage costs.	There has not been an increase in wage costs, as the bespoke TRO team in HMPPS has not been established, and resource costs associated with the two TRO operational examples were absorbed into existing police/HMPPS budgets. In future a resource cost may be incurred.
There would be 4 to 16 County Court applications per year.	There have been two applications in five years.
The approach to tackling unauthorised mobile phones focused on disconnecting these devices.	The approach has been refined focusing on the intelligence dividend and attributing a crime before disconnection when tactically required.
The deployment of capabilities under a TRO were viewed in isolation.	The deployment of capabilities under a TRO are now viewed as part of an integrated tactical approach. Focusing on intelligence led surveillance of targeted individuals and attribution of those devices and the crimes they enable to individual offenders, ahead of actioning a TRO.
Completing a TRO application would take 27 days.	Completing a TRO application has taken roughly 4-6 weeks, with the Court process navigated in between 10 to 21 working days

<sup>11</sup> In the legislation there is provision for the court to stipulate as part of the order that the applicant pays any or all of the costs likely to be incurred by a communications provider.

<sup>12</sup> Staffing costs that were charged by an MNO were fixed at £250 per day.



### **Any other impacts (small business, trade, wider etc).**

Due to the lack of evidence and data available, it has not been possible to determine whether the risk of genuine customers being disconnected materialised, but no complaints or challenges were raised following the two TRO deployments sighted.

## **G. Risks, unintended consequences, PSED impacts and mitigating actions**

There are likely to be analytical risks due to the high degree of uncertainty and limited evidence and data to support a full assessment.

There are likely to be very few economic risks as based on the two case studies available, TROs present very good value for money and is cheaper than previously anticipated, therefore there is little chance of cost over-runs.

## **H. Recommendation (keep, amend, repeal)**

The recommendation is to keep the Telecommunications Restriction Order (the TRO), and to promote the use of TROs ahead of a future review of these Regulations as mandated in the legislation.

The Reviews consultation and analyse of available case studies made clear:

- The threat from the unauthorised use of mobile phones in prisons is significant and escalating.
- The TRO fills an operational gap and provides a unique tactic.
- The TRO can be a cost-effective tactic when compared to alternative tactical options.
- When the TRO has been deployed it has been effective, allowing for the disconnection of a large number of illicit mobile phones at once.

## Annex 1, Public Sector Equality Duty Test

Mandatory specific impact test - Statutory Equalities Duties	Complete
<p><b>Statutory Equalities Duties</b></p> <p>The public sector equality duty (PSED) requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations in the course of developing policies and delivering services.</p> <p>The prison population is approximately 80,000 individuals, of that roughly 75,000 individuals are male.<sup>13</sup> That means the TRO will most likely impact male prisoners due to the gender balance in the prison population in England and Wales. Similarly, given the over-representation of Black and minority ethnic people in the prison estate<sup>14</sup>, it has the potential to have a disproportionate impact on some ethnic groups, specially people of Black and of mixed ethnicity. However, the Home Office have not identified any risk of direct discrimination, and any disproportionality in its application would be justifiable as a proportionate means of achieving a legitimate goal. However, as the TRO has only been used twice, there is not sufficient data to identify whether there has been any disproportionality in its application.</p> <p><b>The SRO has agreed these findings.</b></p>	<p><b>Yes</b></p>

<sup>13</sup> Information derived from the HMPPS population bulletin: weekly: 23 July 2021 on the UK Governments website - [Prison population figures: 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/prison-population-figures-2021).

<sup>14</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/881317/tackling-racial-disparity-cjs-2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881317/tackling-racial-disparity-cjs-2020.pdf)