

2013 No. 822

ELECTRONIC COMMUNICATIONS

**The Mobile Roaming (European Communities) (Amendment)
Regulations 2013**

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| <i>Made</i> | - - - - | <i>8th April 2013</i> |
| <i>Laid before Parliament</i> | | <i>10th April 2013</i> |
| <i>Coming into force</i> | - - | <i>1st May 2013</i> |

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a).

The Secretary of State has been designated for the purpose of section 2(2) of the European Communities Act 1972 in relation to electronic communications(b).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Mobile Roaming (European Communities) (Amendment) Regulations 2013 and shall come into force on 1st May 2013.

(2) Reference in these Regulations to a regulation by number alone refers to the regulation so numbered in the Mobile Roaming (European Communities) Regulations 2007(c).

Amendments to the Mobile Roaming (European Communities) Regulations 2007

2.—(1) In regulation 1(2)—

(a) after the definition of the Act insert—

““electronic communications network” has the same meaning as in section 32(1) of the Act;”;

(b) for the definition of the EU Mobile Roaming Regulation substitute—

““the EU Mobile Roaming Regulation” means the Regulation (EU) No. 531/2012 of the European Parliament and of the Council of 13th June 2012 on roaming on public mobile communications networks within the Union(d);”;

(c) after the definition of the EU Mobile Roaming Regulation insert—

““information requirement” means a requirement of OFCOM under Article 16(4) of the EU Mobile Roaming Regulation or regulation 2B;”.

(2) After regulation 1(2) insert—

(a) 1972 c.68; amended by Legislative and Regulatory Reform Act 2006 (c.51) s 27(1) and European Union (Amendment) Act 2008 (c.7) Sch, Part 1.

(b) S.I. 2001/3495.

(c) S.I. 2007/1933; amended by S.I. 2009/1591 and 2012/1809.

(d) OJ No L 172, 30.06.2012, p 10.

“(3) For the purposes of these Regulations, where there is a breach of an obligation under the EU Mobile Roaming Regulation or these Regulations that requires a person to do anything within a particular period or before a particular time, that breach shall be taken to continue after the end of that period, or after that time, until that thing is done.

(4) References in these Regulations to remedying the consequences of a breach include references to paying an amount to a person—

- (a) by way of compensation for loss or damage suffered by that person; or
- (b) in respect of annoyance, inconvenience or anxiety to which that person has been put.”.

3. After regulation 2 insert—

“OFCOM directions on reference offers

2A.—(1) OFCOM may give a direction to mobile network operators in relation to reference offers to be given under Article 3(5) of the EU Mobile Roaming Regulation.

(2) A direction given under paragraph (1) may be addressed to all mobile network operators, or to one or more classes of mobile network operator, or to one or more specific mobile network operators.

(3) A direction under this regulation is to be given by OFCOM publishing it in such manner as they consider appropriate for bringing it to the attention of persons who, in OFCOM’s opinion, are likely to be affected by it, or by OFCOM giving notification of it to those persons in accordance with regulation 17.

(4) A mobile network operator must comply with any direction given to it under paragraph (1).

(5) In this regulation, “mobile network operator” has the same meaning as it has for the purposes of Article 3 in the EU Mobile Roaming Regulation.

Information to be provided to OFCOM

2B.—(1) OFCOM may require a person falling within paragraph (2) to provide them with all such information as they consider necessary for the purpose of carrying out their functions under the EU Mobile Roaming Regulation and these Regulations.

(2) Any person who appears to OFCOM to have information required by them for the purpose of carrying out their functions under the EU Mobile Roaming Regulation and these Regulations is a person falling within this paragraph.

(3) A person required to provide information under this regulation must provide it in such manner and within such reasonable period as may be specified by OFCOM.

(4) OFCOM are not to require the provision of information under this regulation except—

- (a) by a demand for the information that describes the required information and sets out OFCOM’s reasons for requiring it; and
- (b) where the making of a demand for the information is proportionate to the use to which the information is to be put in carrying out OFCOM’s functions.

(5) A demand for information required under this regulation must be contained in a notice served on the person from whom the information is required.”.

4.—(1) In regulation 3(1) and (4), for “or regulation 13” substitute “or these Regulations”.

(2) In regulation 3(2)—

- (a) at the end of subparagraph (b), omit “and”;
- (b) in subparagraph (c)—
 - (i) for “a reasonable” substitute “the”;
 - (ii) for “about the matters notified.” substitute “;”;

- (c) after subparagraph (c) insert—
- “(d) to the extent that the notification relates to an information requirement, specifies the information to be provided by the person to OFCOM in order to comply with the requirement;
 - (e) to the extent that the notification relates to an obligation which is not an information requirement, specifies the steps that OFCOM think should be taken by the person in order to—
 - (i) comply with the obligation; and
 - (ii) remedy the consequences of the breach; and
 - (f) specifies any penalty which OFCOM are minded to impose in accordance with regulation 4.”.

5.—(1) For regulation 4(1) substitute—

“4.—(1) This regulation applies where a person is given a notification under regulation 3 which specifies a proposed penalty.”.

(2) Omit regulation 4(2).

(3) After regulation 4(4) insert—

“(4A) But in relation to a continuing breach, a penalty may be specified in respect of each day on which the breach continues after—

- (a) the giving of a confirmation decision under regulation 4A(4)(c) which requires immediate action; or
- (b) the expiry of any period specified in the confirmation decision for complying with a requirement so specified.

(4B) The amount of a penalty under paragraph (4A) is to be such amount not exceeding £500 per day for a breach of an information requirement and £20,000 per day for any other breach as OFCOM determine to be—

- (a) appropriate; and
- (b) proportionate to the breach in respect of which it is imposed.”.

(4) Omit regulation 4(5) and (6).

6. After regulation 4 insert—

“Enforcement of notification under regulation 3

4A.—(1) This regulation applies where—

- (a) a person has been given a notification under regulation 3;
- (b) OFCOM have allowed the person an opportunity to make representations about the matters notified; and
- (c) the period allowed for the making of representations has expired.

(2) OFCOM may—

- (a) give the person a decision (a “confirmation decision”) confirming the imposition of requirements on the person in accordance with the notification under regulation 3; or
- (b) inform the person that they are satisfied with the person’s representations and that no further action will be taken.

(3) OFCOM may not give a confirmation decision to a person unless, after considering any representations, they are satisfied that the person has, in one or more of the respects notified, been in breach of an obligation specified in the notification under regulation 3.

(4) A confirmation decision—

- (a) must be given to the person without delay;

- (b) must include reasons for the decision;
- (c) may require immediate action by the person to comply with requirements of a kind mentioned in regulation 3(2)(d) or (e) or may specify a period within which the person must comply with those requirements; and
- (d) may require the person to pay—
 - (i) the penalty specified in the notification under regulation 3; or
 - (ii) such lesser penalty as OFCOM consider appropriate in the light of the person’s representations or steps taken by the person to comply with the obligation or remedy the consequences of the breach, and
- (e) may specify the period within which the penalty is to be paid.

(5) It is the duty of the person to comply with any requirement imposed by a confirmation decision.

(6) That duty is enforceable in civil proceedings by OFCOM—

- (a) for an injunction;
- (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988(a); or
- (c) for any other appropriate remedy or relief.

(7) A penalty imposed by a confirmation decision—

- (a) must be paid to OFCOM; and
- (b) if not paid within the period specified by them, is to be recoverable by them accordingly.”.

7.—(1) In regulation 5(1)—

- (a) for the words from “imposed under regulation 4” to “not exceeding £50,000” substitute “notified under regulation 3 (other than a penalty falling within regulation 4(4A)) shall be such amount, in the case of a breach of an information requirement not exceeding £2,000,000”; and
- (b) for “regulation 13” substitute “these Regulations”.

(2) Omit regulation 5(2).

8. After regulation 6 insert—

“6A. Where OFCOM receives an amount in respect of a financial penalty under these Regulations, OFCOM shall pay that amount into the Consolidated Fund.”

9. In regulation 11—

- (a) in paragraph (4), for the words from “must” to the end substitute—
 - “(a) must co-ordinate their efforts with the other regulatory authorities within whose jurisdiction the matter falls,
 - (b) may consult BEREC in order to bring about a consistent resolution of the dispute, and
 - (c) may request BEREC to adopt an opinion as to the action to be taken to resolve the dispute.”;

(b) after paragraph (5) insert—

“(5A) Where an opinion is received from BEREC in relation to the reference or dispute, it shall be the duty of OFCOM to secure that steps taken in relation to the reference or dispute take account of the opinion (whether the opinion was requested by OFCOM or by the other regulatory authorities).”;

(c) after paragraph (6) insert—

(a) 1988 c.36.

“(6A) OFCOM must—

- (a) ensure, so far as practicable, that a period agreed under paragraph (6) is long enough for BEREC to provide an opinion, if one has been requested by OFCOM or by the other regulatory authorities; and
- (b) agree to any necessary extension of the period if an opinion is requested from BEREC (by OFCOM or by the other regulatory authorities) after the period has been agreed.

(6B) Paragraph (6A) does not apply if the dispute in question has resulted in, or creates an immediate risk of—

- (a) a serious threat to the safety of the public, to public health or to national security;
- (b) serious economic or operational problems for persons who are communications providers or persons who make associated facilities available; or
- (c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities, or for other users of the radio spectrum.”; and

(d) in paragraph (7)—

(i) after subparagraph (a) insert—

“(aa) “BEREC” means the Body of European Regulators for Electronic Communications;” and

(ii) for subparagraph (b) substitute—

“(b) “electronic communications service” and “associated facility” have the same respective meanings as in section 32(2) and (3) of the Act.”.

10. After regulation 16 insert—

“Service of notifications and other documents

17.—(1) This regulation applies where provision made (in whatever terms) by or under these Regulations authorises or requires—

- (a) a notification to be given to any person; or
- (b) a document of any other description (including a copy of a document) to be sent to any person.

(2) The notification or document may be given or sent to the person in question—

- (a) by delivering it to the person;
- (b) by leaving it at the person’s proper address; or
- (c) by sending it by post to the person at that address.

(3) The notification or document may be given or sent to a body corporate by being given or sent to the secretary or clerk of that body.

(4) The notification or document may be given or sent to a firm by being given or sent to—

- (a) a partner in the firm; or
- (b) a person having the control or management of the partnership business.

(5) The notification or document may be given or sent to an unincorporated body or association by being given or sent to a member of the governing body of the body or association.

(6) For the purposes of this regulation and section 7 of the Interpretation Act 1978^(a) (service of documents by post) in its application to this regulation, the proper address of a person is—

- (a) in the case of body corporate, the address of the registered or principal office of the body;
- (b) in the case of a firm, unincorporated body or association, the address of the principal office of the partnership, body or association;
- (c) in the case of a person to whom the notification or other document is given or sent in reliance on any of paragraphs (3) to (5), the proper address of the body corporate, firm or (as the case may be) other body or association in question; and
- (d) in any other case, the last known address of the person in question.

(7) In the case of—

- (a) a company registered outside the United Kingdom,
- (b) a firm carrying on business outside the United Kingdom, or
- (c) an unincorporated body or association with offices outside the United Kingdom,

the references in paragraph (6) to its principal office include references to its principal office within the United Kingdom (if any).

(8) In this regulation—

- (a) “document” includes anything in writing;
- (b) “notification” includes notice; and
- (c) references to giving or sending a notification or other document to a person include references to transmitting it to that person and to serving it on that person.

(9) This regulation has effect subject to regulation 18.

Notifications and documents in electronic form

18.—(1) This regulation applies where—

- (a) regulation 17 authorises the giving or sending of a notification or other document by its delivery to a particular person (“the recipient”); and
- (b) the notification or other document is transmitted to the recipient—
 - (i) by means of an electronic communications network; or
 - (ii) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible.

(2) The transmission has effect for the purposes of these Regulations as a delivery of the notification or other document to the recipient, but only if the requirements imposed by or under this regulation are complied with.

(3) Where the recipient is OFCOM—

- (a) they must have indicated their willingness to receive the notification or other document in a manner mentioned in paragraph (1)(b);
- (b) the transmission must be made in such manner and satisfy such other conditions as they may require; and
- (c) the notification or other document must take such form as they may require.

(4) Where the person making the transmission is OFCOM, they may (subject to paragraph (5)) determine—

- (a) the manner in which the transmission is made; and

(a) 1978 c. 30.

- (b) the form in which the notification or other document is transmitted.
- (5) Where the recipient is a person other than OFCOM—
 - (a) the recipient, or
 - (b) the person on whose behalf the recipient receives the notification or other document,

must have indicated to the person making the transmission the recipient's willingness to receive notifications or documents transmitted in the form and manner used.

- (6) An indication to any person for the purposes of paragraph (5)—
 - (a) must be given to that person in such manner as he may require;
 - (b) may be a general indication or one that is limited to notifications or documents of a particular description;
 - (c) must state the address to be used and must be accompanied by such other information as that person requires for the making of the transmission; and
 - (d) may be modified or withdrawn at any time by a notice given to that person in such manner as he may require.

(7) Paragraphs (5) and (6) do not apply in relation to a notification or other document given by OFCOM under regulation 11 to BEREK or the regulatory authorities of member States.

(8) An indication, requirement or determination given, imposed or made by OFCOM for the purposes of this regulation is to be given, imposed or made by being published in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

(9) Regulation 17(8) applies for the purposes of this regulation as it applies for the purposes of that regulation.

Review

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

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the EU Mobile Roaming Regulation (which is implemented by these Regulations) is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by the EU Mobile Roaming Regulation and these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published on or before 30th June 2017.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.”.

Transitional provisions

11.—(1) In this regulation—

“the 2007 Regulations” means the Mobile Roaming (European Communities) Regulations 2007;

“commencement date” means the date on which these Regulations come into force;

“new Roaming Regulation” means the Regulation (EU) No. 531/2012 of the European Parliament and of the Council of 13th June 2012 on roaming on public mobile communications networks within the Union; and

“old Roaming Regulation” means the Regulation (EC) No. 717/2007 of the European Parliament and of the Council of 27th June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC(a) as amended by Regulation (EC) No. 544/2009 of the European Parliament and of the Council of 18th June 2009 amending Regulation (EC) No. 717/2007 and Directive 2002/21/EC(b).

(2) In respect of a breach or alleged breach of an obligation under the old Roaming Regulation which occurred or is alleged to have occurred before 1st July 2012 the 2007 Regulations have effect as if these Regulations had not been made.

(3) In respect of a breach or alleged breach of an obligation under the new Roaming Regulation which occurred or is alleged to have occurred on or after 1st July 2012 but before the commencement date, the 2007 Regulations shall have effect as if—

(a) regulation 4(4A) and (4B) (inserted by regulation 5(3) of these Regulations) and the words “(other than a penalty falling within regulation 4(4A))” in regulation 5(1) (as amended by regulation 7 of these Regulations) were omitted; and

(b) in regulation 5(1) (as amended by regulation 7 of these Regulations), for “£2,000,000” there was substituted “£50,000”.

(4) Where a notification was given under regulation 3 in respect of a breach or alleged breach of an obligation under the new Roaming Regulation which occurred or is alleged to have occurred on or after 1st July 2012 but before the commencement date, the 2007 Regulations have effect as if regulations 4 to 6 of these Regulations had not been made (in addition to the modification made by paragraph (3)(b) of this regulation).

(5) In respect of a dispute, to the extent that the dispute (as defined in Article 8 of the old Roaming Regulation) relates to obligations in existence before 1st July 2012, regulations 7 to 13 have effect as if any reference to the new Roaming Regulation is a reference to the old Roaming Regulation.

(6) In respect of any decision made by OFCOM before 1st July 2012, regulation 14 has effect as if any reference to the new Roaming Regulation is a reference to the old Roaming Regulation.

Ed Vaizey

Minister for Culture, Communications and Creative Industries
Department for Culture, Media and Sport

8th April 2013

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement articles 16, 17 and 18 of the Regulation (EU) No. 531/2012 of the European Parliament and of the Council of 13th June 2012 on roaming on public mobile communications networks within the Union (“the new Roaming Regulation”) (O.J. No L 172, 30.06.2012, p 10). The new Roaming Regulation repeals and replaces the Regulation (EC) No. 717/2007 of the European Parliament and of the Council of 27th June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC as amended by Regulation (EC) No. 544/2009 of the European Parliament and of the Council of 18th

(a) OJ No L 171, 29.6.2007, p 32.

(b) OJ No L 167, 29.06.2009, p.12.

June 2009 amending Regulation (EC) No. 717/2007 and Directive 2002/21/EC (“the old Roaming Regulation”).

These Regulations amend the Mobile Roaming (European Communities) Regulations 2007 (S.I. 2007/1933, “the 2007 Regulations”), which implemented the old Roaming Regulation.

Regulation 2 amends the definition of the EU Mobile Roaming Regulation in the 2007 Regulations so as to refer to the new Roaming Regulation instead of the old one, and inserts a definition of “information requirement” and provisions relating to breach of obligations and remedying of breaches.

Regulation 3 inserts new regulations 2A and 2B into the 2007 Regulations. New regulation 2A gives OFCOM power to give directions in relation to reference offers under article 3 of the new Roaming Regulation, which obliges mobile network operators to give other providers access to their networks for wholesale roaming. New regulation 2B contains provisions relating to OFCOM’s powers to obtain information.

Regulations 4, 5 and 6 amend regulations 3 and 4 of the 2007 Regulations and insert a new regulation 4A, so as to align enforcement procedures under the 2007 Regulations with the ones in sections 96A to 96C of the Communications Act 2003 for general conditions of entitlement, and sections 138 to 139A of that Act for information requirements. The amendments give OFCOM power to impose daily penalties for continuing breach.

Regulation 7 amends regulation 5 of the 2007 Regulations to increase the maximum civil penalty for breach of information requirements from £50,000 to £2,000,000, in line with the maximum penalty in section 139 of the Communications Act 2003.

Regulation 8 amends regulation 11 of the 2007 Regulations to provide for OFCOM, the national regulatory authority, to involve other national regulatory authorities and BEREC (the Body of European Regulators for Electronic Communications) in disputes involving other Member States. This is in line with amendments made to article 21 of Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services by Directive 2009/140/EC of the European Parliament and of the Council of 25th November 2009.

Regulation 9 inserts new provisions governing the giving of notifications and the sending of other documents. It also inserts a requirement on the Secretary of State to review the operation of the 2007 Regulations. The first review report must be published on or before 30th June 2017. The European Commission is due to review the operation of the new Roaming Regulation and report not later than 30th June 2016.

Regulation 10 makes transitional provisions.

A transposition note is annexed to the Explanatory Memorandum published alongside the instrument on www.legislation.gov.uk.

[A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available at www.culture.gov.uk and is published with the Explanatory Memorandum.]

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STATUTORY INSTRUMENTS

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ELECTRONIC COMMUNICATIONS

The Mobile Roaming (European Communities) (Amendment)
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£5.75

E6288 04/2013 136288T 19585

ISBN 978-0-11-153845-6



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