

Title: Mobile roaming (EU Exit) Regulations 2019 IA No: RPC Reference No: RPC18-DCMS-4303-(2) Lead department or agency: DCMS Other departments or agencies: Ofcom	Impact Assessment (IA)
	Date: 01/02/2019
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Secondary Legislation
	Contact for enquiries: Richard Sullivan 020 7211 2858 richard.sullivan@culture.gov.uk
Summary: Intervention and Options	RPC Opinion: Fit for purpose

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
n/a	n/a	n/a	Not in scope	n/a

What is the problem under consideration? Why is government intervention necessary?

The UK voted to leave the European Union in the June 2016 EU referendum. The government is now preparing to leave the EU in the best possible way for the UK’s national interest, providing maximum possible certainty as we do so. Repealing the European Communities Act will, without any further action, result in gaps and deficiencies in our statute book. This Statutory Instrument (SI) will use powers provided in the European Union (Withdrawal) Act 2018 to remedy deficiencies in EU-derived Telecoms legislation, to ensure that the UK Statute Book continues to operate effectively after Exit.

UK consumers travelling in the European Union currently have the guarantee of surcharge-free roaming. This means consumers can use their mobile devices to make calls, send texts and use mobile data services for no more than you would be charged when in the UK. This surcharge-free roaming, known as Roam Like at Home, is underpinned by the EU Roaming Regulation - Regulation (EU) No 531/2012. This Regulation also regulates the charges mobile operators can charge each other for providing roaming services.

In addition, the EU Roaming Regulation requires mobile operators to apply a default financial limit for mobile data usage of €50. Operators are also required to send an alert once a customer’s device reaches 80% and then 100% of the agreed data roaming limit. These requirements apply regardless of where a consumer is in the world, not only within the EU.

Absent a mobile roaming deal with the EU, the UK Government cannot set through national legislation caps on the wholesale charges EU operators can charge UK operators for handling roaming traffic. Only the EU, acting centrally, can commit all of its member states to limit the wholesale roaming rates of every operator in the EU. The UK Government cannot therefore unilaterally guarantee surcharge-free roaming for UK consumers travelling to the EU without exposing UK operators to the risk of being obliged to provide roaming services at a loss.

UK mobile operators will not be prevented from making and honouring commercial arrangements with mobile operators in the EU - and beyond the EU - to deliver the services their customers expect, including roaming arrangements. Surcharge-free roaming for UK consumers travelling in the EU may therefore endure due to commercial pressures or customer expectations. Some mobile operators (3, EE, O2 and Vodafone) have stated that they have no current plans to change their approach to mobile roaming after EU Exit.

The purpose of this Statutory Instrument is to remedy deficiencies in retained EU legislation. In the unlikely event of no deal, this Statutory Instrument will provide legal certainty to mobile operators that they will not be subject to one-sided regulation while ensuring the transparency requirements contained in the EU Roaming Regulation endure (i.e. no change).

Note that the EU Roaming Regulation applies to the EEA - the Member States of the EU plus Iceland, Liechtenstein and Norway. Subsequent references to its impact on the EU have EEA application.

What are the policy objectives and the intended effects?

This SI will ensure, in the unlikely event of no deal, that UK mobile operators would not face 'one-sided' regulation, i.e. the risk that the retail rates they can charge are capped, but there is no control over the rates they have to pay out to EU network operators - known as 'wholesale rates'. Therefore the SI would avoid a situation in which UK operators potentially face significant losses. It therefore mitigates the risk that mobile operators deactivate roaming capability (which they could do to protect themselves against the losses mentioned above). In addition, the SI would also reduce the risk of legal challenge arising from the imposition of one-sided regulation. Finally, it would allow operators some flexibility: in a competitive market they might decide it is in their commercial interests to continue with EU surcharge-free mobile roaming. They might also be able to secure appropriate commercial arrangements with EU operators to allow surcharge-free roaming to endure. The SI ensures there is no legal ambiguity upon EU Exit, replacing business uncertainty with legal clarity.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

1. **Current arrangements:** retaining existing mobile roaming arrangements for UK consumers in the EU is only possible as part of a negotiated deal including roaming. This SI would only be enacted in the unlikely event of a 'no deal' scenario, therefore this option is not relevant.
2. **Do nothing:** retain the EU Roaming Regulation in the UK statute book without any correction. As the Roaming Regulation is based on reciprocal arrangements between EU Member States, it would be unclear with which parts of the regulation UK operators would need to comply (if any). This option is not recommended as the legal status of the EU Regulation, as retained in UK domestic law, would be unclear on EU Exit - including whether one-sided regulation would apply. If it does the challenges would be the same as those faced in option 3.
3. **Domestic legislation with retail obligations on mobile operators:** preclude UK mobile operators from introducing a surcharge on their customers when they roam in the EU. However, it is not possible to oblige EU operators not to increase their charges to UK operators through domestic legislation. Such an option would therefore be 'one-sided'. Using domestic law to maintain surcharge-free EU roaming would face the following challenges:
 - UK operators would have uncapped exposure to the charges EU operators could place on them as they would have an obligation to provide roaming services surcharge-free. This uncapped exposure could be significantly damaging to UK operators.

- To limit their uncapped exposure, mobile operators could switch their customers to 'domestic only' packages. Customers on such packages would be unable to use mobile services outside the UK.
- Alternatively, operators would continue to offer roaming but increase the overall tariffs of their packages (known as the waterbed effect).
- This form of one-sided regulation would face significant legal challenges.

Therefore this option introduces significant cost, potential negative consumer impacts and legal risks. It has therefore been dismissed.

4. **Domestic legislation without retail obligation on mobile operators (preferred option):** the option set-out in this SI. This approach will ensure that UK mobile operators do not face 'one-sided' regulation. i.e. the risk that the retail rates they can charge are capped, but there is no control over the rates they have to pay out to EU operators. It allows operators some flexibility: in a competitive market they may feel commercially compelled to continue with EU surcharge-free mobile roaming. They may also be able to secure commercial arrangements with EU operators allowing them to continue with surcharge-free roaming. In this option, the current transparency arrangements on mobile operators will be maintained.

Will the policy be reviewed? If applicable, set review date: Ordinarily the Government undertakes post-implementation reviews as a way of checking whether regulatory burdens are justified. This legislation aims to remedy deficiencies in retained EU legislation, ensuring UK operators are not subject to one-sided regulation. These circumstances mean that a post-implementation review of this legislation would be of limited value and would be impractical. This does not remove the general need to review and improve legislation in due course and where appropriate, but rather removes rigid review requirements as they relate in this SI.

Does implementation go beyond minimum EU requirements?		N/a		
Are any of these organisations in scope? Yes, all	Micro	Small	Medium	Large
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent) N/a		Traded:		Non-traded:

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

Signed by the responsible minister :	Margot James	Date:	01/02/2019
--------------------------------------	--------------	-------	------------

Summary: Analysis & Evidence

Policy Option 4 - domestic legislation without one-sided retail obligations

Description: Leaving the EU will mean the wholesale rates EU network operators charge UK operators will become unconstrained by regulation. The rate UK network operators charge EU operators will similarly be unconstrained. The cost of EU-UK roaming will be set commercially by each operator.

In this scenario, the Statutory Instrument makes clear that operators are not subject to one-sided regulation, as it explicitly removes the retail roaming caps to which UK operators are currently subject. It also ensures that the transparency requirements on UK operators continue. This means that UK operators will be able to respond to changes in wholesale prices and pass on the cost of roaming to customers through surcharges.

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
n/a	n/a	n/a	Low: Optional	High: Optional	Best Estimate: n/a

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	n/a	Optional	Optional
High	Optional		Optional	Optional
Best Estimate	n/a		n/a	n/a

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

Retaining the transparency requirements would incur minimal familiarisation cost to operators in that the currency of the default financial limit for mobile data usage whilst roaming would be converted from Euro to Sterling: from €50 to £45. Our best estimate for total costs to all operators is £10,000.

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

If operators were to pass on costs as roaming surcharges, consumers (both business and individuals) would be able to consume fewer roaming services at a similar price. We set out below why this is linked to wholesale rates. UK operators losing access to capped wholesale rates is a function of no longer being party to the EU Roaming Regulation. It is not a function of this SI.

Other costs, such as those potentially arising from operator market power, are too uncertain to quantify.

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

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

Clarifying the status of retail caps would reduce legal uncertainty and reduce the legal fees incurred by mobile operators. We do not have reliable estimates for these savings, but we assume total savings may be in the range of £30,000 - £2,000,000.

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

Total wholesale costs paid by UK operators to EU operators is equal or less with the SI compared to a 'do nothing' scenario.

Other potential benefits, such as the avoidance of certain risks to consumers, are too uncertain to quantify.

Key assumptions/sensitivities/risks
n/a

Discount rate (%)

n/a

Estimates for familiarisation costs and savings on legal fees are based on uncertain assumptions; in particular the costs per hour and number of hours involved.

All potential costs and benefits discussed below, except for familiarisation costs and legal fees, are highly dependent on the assumptions made about outcomes in a 'do nothing scenario' where no legal clarity is provided.

The impact of the scenarios considered will depend on mobile operators' commercial negotiations with their counterpart mobile operators in the EU, and then how mobile operators choose to reflect any changes to their customers. In the future, the impact would also be dependent on whether any provisions on roaming are included in the Future Economic Partnership between the UK and the EU. This any deal secured by the UK with the and/or through UK operators' wholesale price negotiations with their EU on mobile roaming, which is currently unknown and subject to future negotiations.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	
n/a	n/a	n/a	

Evidence Base

Background

Leaving the EU

The United Kingdom voted to leave the European Union, but we are not leaving Europe. We want a deep and special partnership with the EU. We have set out the Government's objectives for leaving the EU in our White Paper and the Prime Minister's Article 50 letter. The UK and the EU have also set out their joint ambitions for our Future Economic Partnership via the Political Declaration setting out the framework for the future relationship between the United Kingdom and the European Union. We have always been clear that we want a deal that works for the UK economy and one that works for the EU²⁷.

We are confident that a future partnership between the UK and EU is in the interests of both sides, so we approach these negotiations anticipating success. However, a responsible government should prepare for all potential outcomes. We have said that wherever we can, we will be open and clear with businesses, the public and our international partners about the UK Government's preparations for exit.

Roaming

Consumers using mobile services abroad 'roam' on the mobile networks in other countries. Their home mobile operator is charged a 'wholesale roaming' fee by the foreign network operator. In the past, home operators recovered this cost, and more, through retail roaming charges to consumers.

Before the EU Roaming Regulation, consumers experienced high roaming prices when travelling to the EU. It was quite common for consumers that were unaware of the additional charges to receive unexpectedly high bills for roaming in the EU. The European Commission often raised the issue of high roaming charges. In October 2005, it launched a consumer website on roaming tariffs in order to highlight the issue, which included the example of €12 for a 4-minute call. Some consumers chose not to use their mobiles abroad or to severely limit their use of mobiles, limiting their costs but also making travel more difficult, with a knock-on impact on the functioning of the single market and consumer welfare.

Competitive forces were weak: at the retail level, consumers would choose their mobile operator for reasons other than the price of roaming and at a wholesale level, the wholesale rates UK operators could secure were affected by weak operator competition in some member states. This meant that regulatory action was required, but regulating wholesale rates required concerted cross-border cooperation - Ofcom and its European counterparts could not address the underlying problem unilaterally. In recognition of the need for a coordinated approach, the EU-wide Roaming Regulation was first adopted in 2007, putting caps on wholesale and retail roaming charges for voice calls. These regulations have been extended over time to cover text and data services and have consistently pushed down the wholesale charges operators can charge each other and the retail charges they can charge their customers. The Roaming Regulation has now evolved so that consumers can "roam like at home" (RLAH), meaning retail roaming prices cannot exceed a consumer's normal, domestic prices. This retail obligation is underpinned by caps on the wholesale charges which European mobile operators can charge one another for handling roaming traffic.

RLAH has only been in force since June 2017 and so we do not yet have more than a year's worth of data to evaluate the impact of this change. However, consumers have embraced RLAH. Latest research shows a four-fold growth in data roaming since the measure was introduced.¹ Implementation of the latest regulation seems to have proceeded smoothly and there have been few reports of any offsetting price rises by mobile operators attempting to make up the lost roaming revenue (waterbed effects), except in certain Nordic countries.

If we leave the EU without a deal and with no correcting SI, there would be legal uncertainty around the applicability in practice of the EU Roaming Regulation, as it would be retained in UK law under the European

¹ European Commission - Report on the implementation of the Regulation on roaming on public mobile communications networks within the Union:
<https://ec.europa.eu/digital-single-market/en/news/report-implementation-regulation-roaming-public-mobile-communications-networks-within-union>

Union (Withdrawal) Act 2018. If RLAH is not mandated under the Regulation, whether surcharge-free mobile roaming in the EU continues to be widely available from April 2019 would be a commercial question for the mobile operators. As a consequence, surcharge-free mobile roaming in the EU may not continue to be standard across every mobile phone package from that point. It is also possible that surcharge-free roaming for UK customers continues across the EU based on commercial arrangements, but with different terms and conditions. This might affect the amount of calls that can be made, texts that can be sent and data that can be consumed. We would not expect the operators' roaming arrangements to change immediately. Some mobile operators (3, EE, O2 and Vodafone) have already stated that they have no current plans to change their approach to mobile roaming after EU Exit, regardless of whether this continues to be required under whatever legal arrangements are then in place.

High roaming charges continue to exist for UK consumers travelling outside the EU. However, these high charges exist alongside surcharge-free or low-cost roaming options to certain non-EU destinations on certain operators. Post-Exit, operators will have the commercial freedom to choose the approaches they takes to their customers roaming in the EU. However, consumers will have had two years of surcharge-free roaming in the EU via the EU Roaming Regulation. This experience may drive operator behaviour towards maintaining surcharge-free roaming to EU destinations.

Problem under consideration and rationale for intervention

Following the UK's exit from the EU, the existing EU regulations which enable UK mobile network operators access to capped wholesales rates in Member States will cease to apply. The arrangements that replace these rules will be subject to negotiation between the UK and EU. The White Paper proposes new arrangements for services and digital sectors, recognising that the UK and the EU will not have current levels of access to each other's markets. That approach would not preclude discussions with the EU on arrangements for consumers, for example in the area of mobile roaming, if that would be in the mutual interests of both sides. However, in the event of no deal, no new arrangements with the EU would be in place at the point of Exit.

The European Union (Withdrawal) Act 2018 will incorporate into domestic law EU-derived legislation, including the Roaming Regulation. This Statutory Instrument aims to correct deficiencies in the retained Roaming Regulation in the event there is no negotiated arrangement.

Policy objective

The objectives of the policy are, in the unlikely event of a no deal scenario, to retain a roaming regime for the UK which:

1. Will allow UK consumers to continue to receive mobile phone services while travelling in EU states
2. Is commercially viable for UK mobile operators
3. Will continue to provide transparency to UK customers roaming in EU member states.

The purpose of the SI is to give mobile operators legal clarity as to which laws they are subject following EU withdrawal. The courts could interpret that retail caps would need to remain in place as per the status quo. In

contrast, it is also possible that the courts could interpret the law in a way that the UK mobile operators were no longer subject to the retail caps, similar to the European Commission's interpretation².

Wholesale price increases, as we transition from being an EU member state, are not the subject of this impact assessment as they are not related to this SI. These costs are related to the EU Withdrawal Bill.

Description of options considered

Option 1: Current arrangements

This option, retaining existing mobile roaming arrangements for UK consumers in the EU, is only possible as part of a negotiated deal including roaming. This SI covers a 'no deal' scenario, in which retaining existing arrangements - the EU Roaming Regulation - is not an option. This impact assessment does not consider impacts relative to current arrangements in detail, but we do provide a summary assessment of these in a section below.

Option 2: Do nothing: not correcting the deficiencies in the retained EU law

This option would retain the EU Roaming Regulation in the UK statute book without any correction. As the Roaming Regulation is based on reciprocal arrangements between EU Member States, it would not be clear with which parts of the Regulation UK operators would need to comply (if any). This option would leave the legal situation unclear on EU Exit and has therefore been dismissed.

The purpose of this SI and impact assessment is to create the most secure environment for business and allow UK consumers to continue to access roaming services.

The analysis below compares options against this 'do nothing' scenario. In particular, it considers the worst case scenario for the interpretation of this law; one sided retail caps do apply.

Option 3: Domestic legislation with one-sided obligation

Under this option an SI would preclude UK mobile operators from introducing a surcharge on their customers when they roam in the EU. This could not oblige EU operators to cap their charges to UK operators. Using domestic law to maintain surcharge-free EEA roaming would face the following challenges:

- UK operators would have uncapped exposure to the charges EU operators could charge them as they would have an obligation to provide roaming services surcharge-free. This uncapped exposure could be significantly damaging to UK operators.
- The one-sided regulation would be open to legal challenge.
- To limit their uncapped exposure, operators could switch their customers to 'domestic only' packages. This would mean many customers would find their mobile devices could not access mobile voice and data services outside the UK, effectively ceasing roaming.
- Alternatively, operators would continue to offer roaming but increase the overall tariffs of their packages or other non-roaming services (known as the waterbed effect).

This option introduces risks and negative consumer impacts and has therefore been dismissed.

Option 4: Domestic legislation without one-sided regulation (preferred)

² European Commission - Notice to stakeholders 12 March 2018: withdrawal of the United Kingdom and EU rules in the field of electronic communications:

https://ec.europa.eu/info/sites/info/files/notice_to_stakeholders_brexit_telecomms_final.pdf

This option is set out in this SI. It will ensure that UK mobile operators do not face 'one-sided' regulation, where the retail rates they can charge are capped, but there is no control over the rates they have to pay out to EU operators. This will avoid imposing significant cost, risk of legal challenge and operators deactivating roaming. It also allows operators some flexibility: in a competitive market they may feel compelled to continue with EU surcharge-free mobile roaming. They may also be able to secure commercial arrangements with EU operators allowing them to continue with surcharge-free roaming.

This option will also maintain the transparency arrangements so as to provide clarity on costs to UK customers roaming in EU member states. These requirements mean UK network operators have to send consumers a text message to inform them if they have 'roamed' onto a foreign network and the rates to which they are subject while roaming. The requirements also mandate UK network operators have a default financial limit of €50, which consumers have to actively overrule to continue spending on mobile roaming services. This is in an effort to stop consumers inadvertently accruing an unexpectedly large bill. The €50 limit would be amended to £45.

Monetised and non-monetised costs and benefits

The impact analysis provides an indication of the costs and benefits that would arise from policy option 4. These impacts are measured against what would happen if no SI were in place as set out above.

The 'do nothing' scenario is a 'no deal' scenario in which caps on the wholesale charges which EU (and EEA) operators can charge UK operators for handling roaming traffic no longer apply. Any changes to wholesale rates are as a result of leaving the EU without a deal and are outside the scope of this impact assessment. The analysis below considers the difference between leaving the EU Roaming Regulation in UK statute without any correction and laying domestic legislation without a retail obligation on mobile operators.

The impacts are dependent on what happens in a counterfactual 'do nothing' scenario. If the courts interpret the deficiencies in law to mean that retail caps become inoperable under the EU Withdrawal Act, the wider impact of this SI is zero as retail caps would not apply either way. Conversely, if the courts interpret that the law means that retail caps still apply, there may be wider impacts of the SI. There are direct impacts from familiarisation costs and reduced legal uncertainty in all do nothing scenarios.

Policy Option 4: Domestic legislation without one-sided regulation

Summary

The key costs and benefits of this measure relate to mobile operators. These are dependent on what would happen in the counterfactual scenario in which this SI is not implemented. In all scenarios mobile operators benefit from reduced legal uncertainty, at the expense of small familiarisation costs. Other benefits are dependent on the legal interpretation of EU Roaming Regulation in the UK statute in a do nothing scenario, as discussed below.

Other affected groups would be individuals and businesses who consume mobile roaming services. The impact on these groups is a function of how wholesale rates change after the caps are removed, which is outside the scope of the impact assessment. We discuss potential scenarios for these groups below.

This impact assessment does not provide detailed quantification of costs and benefits due to the inherent uncertainty of factors outside the scope of this SI and a lack of publicly available data.

Expected costs:

Direct costs

We recommend a continuation of the transparency requirements, i.e. no change. The only minor alteration would be to convert the currency of the default financial limit for mobile data usage whilst roaming: from €50 to £45.

There would be a minimal familiarisation cost to **operators** in converting the currency of the default financial limit. This may be estimated as the cost of one employee in each mobile operator in the UK taking up to one working day to read the provisions of this statutory instrument and update their terms and conditions. The cost can be calculated as £21.90, the average hourly wage of an employee in the telecoms sector³, multiplied by the number of hours required (1-3 days, 7 hours a day), multiplied by the number of mobile companies operating billing systems. As firms are not required to notify authorities when offering mobile services, we do not have exact figures on the number of mobile companies operating billing systems, but it is at least 40. A high estimate of the number of operators operating billing systems would be 60.

This suggests that the upper limit for the total cost to all mobile operators will be roughly £35,000:

$£21.9 \times 21 \times 60 + 30\% \text{ overheads}$

Our best estimate for familiarisation costs is closer to £10,000 ($£21.9 \times 7 \times 40 + 30\% \text{ overheads}$) and thus can be considered negligible.

There would not be a system set-up cost as operators' billing systems already exist and are able to price in sterling as well as Euro and these systems are used to alert consumers of roaming bill spend in all countries, not just in the EU.

Indirect Costs

In 2017, there were 54.7 million visits from UK residents to the EU, of which 4.8 million were travelling for business⁴. After leaving the EU, mobile operators may be able to pass on costs of roaming to individuals and businesses who use their mobile while traveling in the EU. This is because the UK Government cannot set through national legislation that puts caps on the wholesale roaming charges EU operators can charge UK operators. These impacts are not as a result of this SI and thus are not included in this impact assessment.

The only situation in which **individuals and businesses as consumers** might face costs as a result of this SI is if roaming surcharges were increased as a result of mobile operator market power, rather than a result of changes to wholesale prices. The removal of retail price caps leaves open the potential for operators to raise and maintain prices above the level that would prevail under competition, which would lead to a loss of economic welfare.

On the one hand, the structure of the UK and EU mobile markets do provide potential opportunities for operators to set prices above the socially optimal level, both retail and wholesale. As discussed above, the EU introduced Roaming Regulations partly in response to weak competitive forces in the market for mobile roaming. Consumers would choose their mobile operator for reasons other than the price of roaming and wholesale rates UK operators could secure were affected by weak operator competition in some member states. Although this SI is not related to wholesale price caps, the combination of no retail price caps and weak competition in the retail market might lead to higher costs to consumers.

On the other hand, the four largest mobile operators (3, EE, O2 and Vodafone) have already stated that they have no current plans to change their approach to mobile roaming after EU Exit, regardless of whether this continues to be required. Furthermore, consumers have experienced two years of surcharge-free roaming in the EU via the EU Roaming Regulation and the market dynamics have changed as a consequence. A decision by operators to revoke surcharge-free roaming after EU Exit is not the same as deciding not to offer it before 'Roam

³ ONS (2017), ASHE survey. This is for the latest available year (2015) - the current average hourly pay is expected to be aligned. Available online at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/adhocs/006608annualsurveyofhoursandearningsashepublicandprivatesectorsplitby1to4digitsoccode>

⁴ 'Travel trends estimates: overseas residents in the UK', ONS <https://www.ons.gov.uk/peoplepopulationandcommunity/leisureandtourism/datasets/overseasresidentsvisitsstotheuk>

like At Home' regulations. There may be loss aversion from consumers in regards surcharge-free roaming; this may provide sufficient competitive pressures to prevent operators from raising prices independently of changes to wholesale prices.

Overall it is very difficult to determine if operators have sufficient market power, or the relevant incentives, to impose costs on consumers. It is also very difficult to separate out any impacts from changes due to wholesale prices. Finally, it is also problematic comparing any market power effects to the benefits of avoiding the risks to consumers in a 'do nothing' scenario, namely the loss of roaming or a waterbed effect. For that reason we have not included any indirect costs to individual or business consumers in this impact assessment.

Expected benefits:

Direct Benefits

As stated above, retaining the EU Roaming Regulation in the UK statute book without any correction would leave the legal situation unclear on EU Exit. This SI has the direct benefit of removing that legal uncertainty.

This would avoid **mobile operators** facing fees for legal advice to ascertain which EU regulations still apply and any potential litigation resulting from this. The risks of uncapped exposure to the charges of EU operators is significant, and so it is reasonable to assume that operators would choose to incur *higher* legal costs than they would during normal operation (or for the implementation of this SI).

We do not have the information to reliably estimate the benefits from savings on legal fees. However, given that fees for corporate lawyers are hundreds of pounds per hour, it is almost certain that savings on these will outweigh any familiarisation costs. For example, at legal costs of £500 per hour, it would only require 4 mobile operators to hire lawyers for 3 days each for total legal fees to be greater than £40,000; this is greater than the upper limit of our estimate for familiarisation costs. In reality legal fees may be much higher than this, so it is reasonable to assume a net saving for mobile operators. For example, 40 operators incurring two weeks of legal fees at £1000 per hour gives a high estimate of over £2,000,000.

Note that policy option 3 would also remove the legal uncertainty around the interpretation of EU Roaming Regulation in the UK statute book. However, opting for one-sided regulation would in itself be open to legal challenge; this would likely negate any savings from legal fees when compared to a 'do nothing' option.

Indirect benefits

There may be indirect benefits for mobile operators, individual consumers and businesses as consumers.

Leaving the EU will mean that the wholesale rates which EU network operators and UK operators charge each other become unconstrained by regulation. The impacts of any potential changes to wholesale rates is outside the scope of this impact assessment.

Given that wholesale rates may change after leaving the EU regardless of this SI, **mobile operators** will benefit from not being constrained by surcharge-free roaming. Operators still have the flexibility to continue to offer surcharge-free roaming to their customers, but would also have the ability to respond to changes to wholesale rates charged by EU operators if necessary. In all scenarios for wholesale rates, total wholesale costs for UK operators would be equal or lower when retail caps are removed compared to when they are not (assuming roaming is not deactivated completely). This is because when surcharges are zero, the quantity of roaming services consumed is maximised, i.e. consumers do not need to moderate their mobile usage when abroad due to additional charges for roaming. This means that at each given wholesale price, total wholesale payments are also at their maximum.

To put it another way, in the case of one-sided retail caps, UK operators would have to pay the going wholesale price for all the call, texts and data used by their customers on a 'roam like at home basis'. With retail caps explicitly removed, UK operators would have the *option* to reduce the usage of roaming services by applying a roaming surcharge. Therefore either operators chose to keep surcharge-free roaming and the amount of roaming services consumed is unchanged, or surcharges are reintroduced and roaming services consumed

decreases. In both cases the total wholesale costs paid by UK operators to EU operators is equal or less with the SI compared to a 'do nothing' scenario.

As discussed above, there may also be benefits to **consumers**. The counterfactual for this impact assessment is the 'do nothing' option set out above. In this case the risk of uncapped exposure for operators means customers could lose access to roaming services entirely or face higher overall tariffs on their packages for other non-roaming services (waterbed effect). These outcomes are likely to be worse for consumers (both business and individual) than any impacts from the reintroduction of roaming-surcharges and thus it is reasonable to assume that they will not incur additional costs as a result of this SI.

Roaming deactivation is a much less favourable outcome than surcharges, as consumers will no longer be able to roam at any price point. Surcharges are also preferable to a waterbed effect for three reasons:

- surcharges are more transparent to consumers than changes to general mobile tariffs;
- surcharges are paid by the customer using the service, as opposed to being spread across the entire customer base meaning a transfer from customers not using roaming to those who do use roaming; and,
- surcharges maintain the price/demand relationship, without which demand would not fall as prices rise, thereby reducing the business burden.

For the same reasons given about costs to consumers - the difficulty separating out any impacts from changes due to wholesale prices and comparing any market power effects to the benefits of avoiding the risks to consumers in a 'do nothing' scenario - we have not included any indirect benefits to consumers in this impact assessment.

Long term impacts

The future relationship between UK MNOs and their EU counterparts is uncertain, which makes assessment of long-term impacts challenging.

Before the EU Roaming Regulation - the first iteration of which was in 2007 - mobile roaming in the EU was expensive (as it was in the rest of the world). Since 2007 the costs mobile operators have been allowed to charge each other within the EU has fallen, as has the amount they have been allowed to charge consumers.

Alongside these regulatory developments, the commercial situation has changed radically since 2007. The amount of data used by consumers has increased dramatically. For roaming, this has meant a move away from low-use to high-use of data and pricing has reflected that in falling wholesale charges. These low wholesale charges would endure without a regulatory cap if the operators negotiate sufficiently advantageous commercial arrangements with EU commercial operators. However predicting the long run market dynamics of the wholesale and retail markets for roaming is very difficult.

The implementation of legislation which caps UK network operators' retail charges but not the amounts their European counterparts might charge them could impede their ability to strike advantageous deals. UK operators would go into a negotiation with their European counterparts in the knowledge that they could not pass on any changes to wholesale prices onto their customers, but that no such obligation would sit on the European operators. The European Commission has made it clear that, in the event of no deal, the UK would be seen as a

third country in terms of mobile roaming so EU operators could re-impose surcharges on their consumers roaming in the UK.⁵

This SI ensures that UK mobile operators can have a sustainable commercial footing on which to offer their consumers mobile roaming, recognising they will have the commercial freedom not to offer mobile roaming on the same terms as now.

Summary assessment relative to the current arrangements

In the unlikely event that we leave the EU without a deal, the costs that EU mobile operators would be able to charge UK operators for providing roaming services would no longer be regulated after March 2019. This would mean that surcharge-free roaming when customers travel to the EU could no longer be guaranteed.

Compared to the current arrangements, the future roaming regime would allow operators to respond to changes in wholesale prices and pass on the cost of roaming to customers through surcharges. This impact emerges from UK operators losing access to capped wholesale rates in the EU regulated by the Roaming Regulation. The wholesale prices which network operators negotiate between themselves are not something which is within the control of the UK government. Wholesale prices will be decided commercially between network operators (as is the case with rest of world).

On exit from the EU we want to ensure that UK companies have the maximum freedom to trade with and operate within European markets – and to let European businesses do the same in the UK. The advantage of removing the one-sided retail cap on UK operators is that it would allow UK operators to strike deals with their EU counterparts from a similar negotiating position. Four operators have said they have no current plans to re-introduce mobile roaming surcharges.

The 'current arrangements' of access to the EU Roaming Regulation are not available and is a function of leaving the EU. This, and the outcome of commercial negotiations on wholesale rates, is beyond the scope of this impact assessment.

Rationale and evidence that justify the level of analysis used in the IA

This impact assessment does not provide detailed quantification of costs and benefits due to the inherent uncertainty of factors outside the scope of this SI and a lack of publicly available data.

The Government recognises that there are specific consumer measures that are associated with the Digital Single Market. The Political Declaration on the UK's Future Economic Partnership proposes a framework for negotiations with the EU, including for services and digital sectors. That approach would not preclude discussions with the EU on arrangements for consumers, for example in the area of mobile roaming. However, in the event of 'no deal' (the scenario covered by this SI) it is not clear what future economic partnership would be proposed. This Impact Assessment provides a high level indicative assessment of the impacts from the SI.

Risks and assumptions

The impact of the scenarios considered have a high degree of uncertainty and in the future will depend on the outcome of negotiations. In assessing the impact of this legislation there are many uncertainties:

1. Uncertainty of growth in data roaming

The amount of data used by consumers has increased dramatically in recent years. In terms of EU data roaming, there has been four-fold growth since the surcharge-free roaming was introduced. However, smartphone

⁵ 'Notice To Stakeholders: Withdrawal of the United Kingdom and EU Rules in the Field of Electronic Communications', European Commission, March 2018
https://ec.europa.eu/info/sites/info/files/file_import/electronic_communications_en.pdf

penetration growth is slowing and consumers often use wifi for data-intensive applications (thus avoiding roaming charges)⁶. As a result it is difficult to predict expected growth in data roaming. UK operators might also seek to limit their exposure to roaming out-payments through the application of fair-use policies.

2. Distribution of Impact

The removal of retail caps will make the distribution of costs more transparent. One-sided retail caps increase the likelihood of a “waterbed effect”; any increases in wholesale prices can only be passed on to consumers by raising prices across other services. This could lead to a wider distribution of costs as they are spread across all consumers. This would also mean the vast majority of consumers subsidising a minority of “heavy roamers”. The removal of surcharge caps will enable network operators to offer a wider range of packages, potentially some premium packages which include roaming and cheaper packages without.

3. Consumer price elasticity

Another key area of uncertainty is around the consumer price elasticity of demand. When retail caps are withdrawn network operators will be able to surcharge for roaming. We are unable to tell how far this will affect the quantity of roaming services demanded.

In recent times consumer behaviour has shifted and smartphone usage has become more ubiquitous, rising to 78% ownership among UK adults in 2018⁷. This has facilitated the use of “over the top” internet-based services via apps that act as substitutes for traditional mobile network services - for example Skype, Whatsapp and other popular communications services. These services are now reaching near-universal penetration of smartphone users. In 2018 71% of adult smartphone owners used Whatsapp services and the same proportion used Facebook Messenger. This has been coupled with the decline of traditional services such as SMS and the growth in public wifi that allow alternative network access for app users. Growth in public wifi availability is set to continue across Europe, with €120 million to be made available from central EU funding through the WiFi4EU programme for municipalities to provide new public wifi hotspots⁸. Consumers may therefore be more willing to accept price rises for traditional roaming services than they have been historically.

Consumers have not had to pay any roaming surcharges in the EU since 2017, which may be another factor in how sensitive consumers are to the price roaming. On the one hand consumers may now view roaming abroad as more of a necessity, decreasing price sensitivity; on the other they may be more opposed to paying any sort of surcharge.

In addition to this there is uncertainty around if or by how much network operators would pass on any costs through surcharges. It is possible they may choose to absorb costs so as to provide ‘roam like at home’ type services to consumers. It is not possible to estimate this pass through effect as we do not know either (a) the wholesale prices network operators will negotiate with one another or (b) the internal workings of the network operators as they relate to pricing decisions.

4. Commercial decisions by EU operators

Perhaps most importantly we cannot predict with any certainty the commercial decisions that will be made by operators in the EU with respect of their wholesale charges to UK operators. They will have the commercial freedom to increase their wholesale charges unconstrained by the EU Roaming Regulation cap. This may suggest they would take this opportunity. However, it may be the case that in a competitive market, they would offer competitive rates to UK operators given the considerable volume of traffic. Predicting the commercial changes EU operators may make is speculative and are a result of no longer being party to the EU Roaming Regulation, rather than this SI. Additionally, some of the larger UK operators - notably Vodafone and O2 (Telefonica UK) - are multinational firms whose parent companies own networks across Europe. This may allow

⁶ Ofcom - Communications Market Report 2017:

https://www.ofcom.org.uk/__data/assets/pdf_file/0017/105074/cmr-2017-uk.pdf

⁷ Ofcom Communications Market Report 2018: <https://www.ofcom.org.uk/research-and-data/multi-sector-research/cmr/cmr-2018/interactive>

⁸ WiFi4EU, Digital Single Market: <https://ec.europa.eu/digital-single-market/en/policies/wifi4eu-free-wi-fi-europeans>

preferential wholesale EU roaming rates for the relevant UK-based subsidiaries, further skewing the ability to predict commercial outcomes for future roaming in EU jurisdictions.

Small and Micro Business Assessment

Impact on small and micro business customers

As with larger organisations, some small and micro businesses across the UK may pay to provide mobile services to employees to support everyday communication. Reliable estimates for small and micro business mobile use patterns are not available, with information gathered to date focusing on small and medium sized enterprises (SMEs). Two thirds of SMEs use mobile devices for business purposes. However, research from 2016 - before guaranteed surcharge-free roaming took effect - showed that the main concerns for such businesses was the availability and reliability of mobile coverage to support operations. Roaming rates for mobile services abroad have not historically been raised as an area that is business-critical for small firms.⁹ As with individual consumers, when people use their mobile phones for business purposes, they could use over-the-top services permitting them to make calls and send messages over wifi, thus helping them avoid roaming costs. The growth in availability of free wifi in public locations such as cafés and airports also facilitates business connectivity abroad.

As discussed above, it is very difficult to determine if there will be indirect costs or benefits on businesses as consumers as a result of this SI. Any impacts that are a function of how wholesale rates change after these are no longer capped are outside the scope of the assessment. Impacts beyond this, such as effects from market power or the avoidance of risks in a 'do nothing' scenario, are too uncertain to quantify. We have no reason to believe the assessment of costs and benefits to consumers applies differently to small and micro business customers.

Impact on small and micro market operators

The mobile market itself contains mobile network operators (MNOs) and mobile virtual network operators (MVNOs). The MNO sector is made up large businesses. The big four MNOs (EE, Vodafone, O2 and Three), including their wholly-owned MVNO services (GiffGaff in the case of O2 and TalkMobile for Vodafone), make up 85% of the retail mobile subscription shares¹⁰.

MVNOs, which use the network infrastructure of the four main UK providers to offer services to end users, range from large employers through to micro businesses.

In total, MVNOs had a combined market share of 15% at the end of 2015. The operators included in this category include Tesco Mobile, Virgin Mobile, GiffGaff, Lycamobile, Lebara and TalkMobile. These top six operators account for 86% of the MVNO customer base, equivalent to 11% of the overall mobile market¹¹. Many of these MVNOs operate as subsidiaries of much larger organisations e.g. Tesco Mobile and Tesco PLC; Virgin Mobile and Virgin Media; TalkMobile and Vodafone; iD and Carphone Warehouse. Lycamobile, the largest MVNO, has over 16 million customers across 22 countries¹². A further eight providers offering virtual mobile services are too large to meet the commonly accepted definitions of small and micro businesses¹³. This includes Sky UK and TalkTalk.

Beyond these larger virtual operators, there were at least 11 commercial MVNOs operating in the UK market in 2018 which could be considered small and micro businesses. This covers companies who meet the European

⁹ Ofcom - SME experiences of communications services 2016; https://www.ofcom.org.uk/__data/assets/pdf_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf

¹⁰ Ofcom - The Communications Market 2016: https://www.ofcom.org.uk/__data/assets/pdf_file/0026/26648/uk_telecoms.pdf

¹¹ State of the UK MVNO Market - <https://www.grantthornton.co.uk/globalassets/1.-member-firms/united-kingdom/pdf/publication/state-of-the-uk-mvno-market.pdf>

¹² LycaMobile - <https://www.lycamobile.co.uk/en/about-us/>

¹³ A small business employs fewer than 50 staff; a micro business employs fewer than 10. See House of Commons Library - <https://researchbriefings.files.parliament.uk/documents/SN06152/SN06152.pdf>

Commission definition of MVNO: those operators who issue their own SIMs, have their own Mobile Number Codes and are not majority owned by a national telecoms company. A list of these operators is below:

- CESG
- Cloud9 Communications Limited
- FMS Solutions Limited
- Hanhaa Limited
- Hay Systems Limited
- Icron Network Limited
- Shyam Telecom UK Ltd
- Stour Marine Limited
- Synectiv Ltd
- Tismi BV
- Vectone Mobile Limited

Individual operator subscriber data is commercially sensitive information and therefore a granular breakdown cannot be provided as part of this impact assessment. There may also be other small and micro businesses involved in the provision of mobile services - such as resellers of SIMs registered to existing operators - but as the UK does not operate a pre-notification regime this information is not captured in existing registers. Gathering this data would require a new exercise with significant resource outlay. It would also require coordination with Ofcom, as the responsible sector regulator with vires to collect information. An exercise of this scale would not be possible to conduct and conclude in time for EU exit in the event of no agreement being reached.

SI of particular importance to MVNOs

The legal clarity provided by this SI is of particular benefit for MVNOs - at least 11 of which are small and micro businesses as above - for two distinct reasons:

1. Coming to a definitive conclusion on the status of the EU Roaming Regulation entirely falling away - or whether some of it would become retained domestic law in the event of this SI not being taken forward - would be more challenging for companies without well-resourced in-house legal teams (or the resources to secure external legal advice). MVNOs tend to be smaller than the four mobile operators and therefore will find lack of legal clarity more challenging. The specific uncertainty MVNOs would have to address is whether the retail obligation on them not to charge their consumers when travelling in the EU endures post-Exit. It is arguable that it would endure as EU law is frozen on Exit. However, it is also arguable (and is argued in this impact assessment) that the retail obligations on UK operators would fall-away on Exit as the Roaming Regulations would fall away as we are leaving the EU. This SI does not add new regulation - it clarifies the legal situation.
2. MVNOs can find sustaining surcharge-free roaming for their customers especially challenging compared to their parent mobile operators. They have no network of their own, which means no overseas consumers roam on their network (as they do not have one) so cannot do deals with overseas operators directly. Indeed, they have to pay a commercially-set rate to their parent operator for their customers roaming capability overseas. This rate may - or may not - be as competitive as the rate the parent operator itself secures with an overseas operator. MVNOs are therefore especially sensitive to rules around roaming surcharges, as to sustain roaming they may have to pay more than their parent operator would for the same amount of traffic.

The combination of parent operators passing on unconstrained wholesale charges and an obligation on MVNOs not to surcharge their customers has potential to impose significant costs to smaller operators. This increases the chance that MVNOs would be forced to deactivate roaming for their customers to

avoid damaging losses. A decision which, whilst unavoidable, may in itself do significant commercial damage. This SI ensures that this form of 'one-sided' regulation does not occur.

Summary and preferred option with description of implementation plan

We want to ensure that UK companies have the maximum freedom to trade and do business with the EU. The Government recognises that there are specific consumer measures that are associated with the Digital Single Market. The Political Declaration on the UK's Future Economic Partnership proposes a framework for negotiations with the EU, including for services and digital sectors. That approach would not preclude discussions with the EU on arrangements for consumers, for example in the area of mobile roaming, if that would be in the mutual interests of both sides.

In that context, domestic legislation removing the retail caps on operators and continuing the transparency requirements will best fulfil our policy objectives as it:

1. Will allow UK consumers to continue to receive mobile phone services while travelling in EU states
2. Is commercially viable for UK mobile operators
3. Will continue to provide transparency to UK customers roaming in EU member states.

Post-Implementation Review

We recognise that Ministers have a duty to include a statutory review provision in new secondary legislation that has a regulatory effect on business, unless it is not appropriate to do so. A post-implementation review is not appropriate in this case for the 'exceptional reasons' allowed for in the relevant guidance.¹⁴ This SI is made under the EU Withdrawal Act 2018, so no review clause is required."

This legislation emerges from a 'no deal' Exit from the EU (which we contend forms an 'exceptional reason'). It aims to remedy deficiencies in retained EU legislation, in line with the EU Withdrawal Act 2018, by ensuring UK operators are not subject to one-sided regulation. EU Exit means that a post-implementation review of this SI would be of limited value as the previous regulatory regime is not available to the UK outside of the EU. Any resumption of surcharge-free roaming in a no-deal scenario would thus be the result of negotiations with the EU rather than any domestic post-implementation review. This may be similar to the Political Declaration on the UK's Future Economic Partnership which proposes a framework for negotiations with the EU, including for services and digital sectors. That approach would not preclude discussions with the EU on arrangements for consumers, for example in the area of mobile roaming.

In addition, the alternative options (such as 'do nothing' or maintain one-sided retail regulation) are not appropriate now or in the future. This does not remove the general need to review and improve legislation in due course and where appropriate, but rather removes rigid review requirements as they relate to this SI. All Departments are able to review their legislation without a statutory clause.

Within the UK's existing regulatory regime, Ofcom undertakes regular reviews of the telecoms market to ensure it is well-functioning. It has a statutory duty "to further the interests of consumers in relevant markets, where appropriate by promoting competition". Ofcom's role is further reflected in its 2018 review of the Mobile Call Termination market, where it considered calls to UK mobile numbers while roaming abroad in scope of its market definition¹⁵. Government receives regular updates from Ofcom and will have the opportunity to review

¹⁴ 'SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015 Statutory Guidance under s.31 of the Small Business, Enterprise and Employment Act Determining whether it is appropriate to make provision for review (Post-Implementation Review Guidance)', BEIS
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/674755/small-business-act-s31-statutory-review-requirements.pdf

¹⁵ See para 3.81 in Ofcom - Final Statement: Mobile Call Termination Market Review 2018:
https://www.ofcom.org.uk/__data/assets/pdf_file/0021/112458/Final-Statement-Mobile-Call-Termination-Market-Review-2018-2021.pdf

mobile roaming whenever it is convenient or appropriate. In the event of competition concerns emerging, Ofcom has concurrent Competition Act powers with the Competition and Markets Authority.