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STATUTORY INSTRUMENTS

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**2007 No. 1933**

**ELECTRONIC COMMUNICATIONS**

**The Mobile Roaming (European Communities) Regulations 2007**

<i>Made</i>	- - - -	<i>5th July 2007</i>
<i>Laid before Parliament</i>		<i>9th July 2007</i>
<i>Coming into force</i>	- -	<i>30th July 2007</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>(1)</sup>.

The Secretary of State has been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to electronic communications<sup>(2)</sup>.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Mobile Roaming (European Communities) Regulations 2007 and shall come into force on 30th July 2007.

(2) In these Regulations—

“the Act” means the Communications Act 2003<sup>(3)</sup>;

[<sup>F1</sup>“electronic communications network” has the same meaning as in section 32(1) of the Act;]

[<sup>F2</sup>“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;]

[<sup>F3</sup>“information requirement” means a requirement of OFCOM under Article 16(4) of the EU Mobile Roaming Regulation or regulation 2B;]

“OFCOM” means the Office of Communications as established by the Office of Communications Act 2002<sup>(4)</sup>;

“the Tribunal” means the Competition Appeal Tribunal; and

“Tribunal rules” means rules made under section 15 of the Enterprise Act 2002<sup>(5)</sup>.

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(1) 1972 c.68.  
(2) S.I. 2001/3495.  
(3) 2003 c.21.  
(4) 2002, c.11.  
(5) 2002 c.40.

**Status:** Point in time view as at 31/12/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The Mobile Roaming (European Communities) Regulations 2007. (See end of Document for details)

[<sup>F4</sup>(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.]

**Textual Amendments**

- F1** Words in reg. 1(2) inserted (1.5.2013) by The Mobile Roaming (European Communities) (Amendment) Regulations 2013 (S.I. 2013/822), regs. 1(1), **2(1)(a)**
- F2** Words in reg. 1(2) substituted (1.5.2013) by The Mobile Roaming (European Communities) (Amendment) Regulations 2013 (S.I. 2013/822), regs. 1(1), **2(1)(b)**
- F3** Words in reg. 1(2) inserted (1.5.2013) by The Mobile Roaming (European Communities) (Amendment) Regulations 2013 (S.I. 2013/822), regs. 1(1), **2(1)(c)**
- F4** Reg. 1(3)(4) inserted (1.5.2013) by The Mobile Roaming (European Communities) (Amendment) Regulations 2013 (S.I. 2013/822), regs. 1(1), **2(2)**

**Commencement Information**

- I1** Reg. 1 in force at 30.7.2007, see **reg. 1(1)**

**National Regulatory Authority**

<sup>F5</sup>**2.** .....

**Textual Amendments**

- F5** Reg. 2 omitted (31.12.2020) by virtue of The Mobile Roaming (EU Exit) Regulations 2019 (S.I. 2019/587), regs. 1, **2**; 2020 c. 1, Sch. 5 para. 1(1)

**OFCOM directions on reference offers**

<sup>F6</sup>**2A.** .....

**Textual Amendments**

- F6** Reg. 2A omitted (31.12.2020) by virtue of The Mobile Roaming (EU Exit) Regulations 2019 (S.I. 2019/587), regs. 1, **2**; 2020 c. 1, Sch. 5 para. 1(1)

[<sup>F7</sup>**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.]

#### Textual Amendments

**F7** Regs. 2A, 2B inserted (1.5.2013) by [The Mobile Roaming \(European Communities\) \(Amendment\) Regulations 2013 \(S.I. 2013/822\)](#), regs. 1(1), 3

#### Notification of breach

**3.—**(1) Where OFCOM determine that there are reasonable grounds for believing that a person is breaching, or has breached, an obligation under the EU Mobile Roaming Regulation<sup>[F8]</sup> or these Regulations], they may give that person a notification under this regulation.

(2) A notification under this regulation is one which—

- (a) sets out the determination made by OFCOM;
- (b) specifies the obligation and the breach in respect of which that determination has been made; <sup>F9</sup>...
- (c) specifies <sup>F10</sup>the] period during which the person notified has an opportunity of making representations<sup>[F11];</sup>

<sup>F12</sup>(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.]

(3) A notification under this regulation—

- (a) may be given in respect of more than one breach; and
- (b) if it is given in respect of a continuing breach, may be given in respect of any period during which the breach has continued.

(4) Where a notification under this regulation has been given to a person in respect of a breach of an obligation under the EU Mobile Roaming Regulation <sup>F13</sup>or these Regulations], OFCOM may give a further notification in respect of the same breach of that obligation if, and only if—

- (a) the breach is one occurring after the time of the giving of the earlier notification;

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Changes to legislation: There are currently no known outstanding effects for the The Mobile Roaming (European Communities) Regulations 2007. (See end of Document for details)

- (b) the breach is a continuing breach and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or
- (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified breach.

**Textual Amendments**

**F8** Words in [reg. 3\(1\)](#) substituted (1.5.2013) by [The Mobile Roaming \(European Communities\) \(Amendment\) Regulations 2013 \(S.I. 2013/822\)](#), regs. 1(1), [4\(1\)](#)

**F9** Word in [reg. 3\(2\)\(b\)](#) omitted (1.5.2013) by virtue of [The Mobile Roaming \(European Communities\) \(Amendment\) Regulations 2013 \(S.I. 2013/822\)](#), regs. 1(1), [4\(2\)\(a\)](#)

**F10** Word in [reg. 3\(2\)\(c\)](#) substituted (1.5.2013) by [The Mobile Roaming \(European Communities\) \(Amendment\) Regulations 2013 \(S.I. 2013/822\)](#), regs. 1(1), [4\(2\)\(b\)\(i\)](#)

**F11** Semi-colon in [reg. 3\(2\)\(c\)](#) substituted for words (1.5.2013) by [The Mobile Roaming \(European Communities\) \(Amendment\) Regulations 2013 \(S.I. 2013/822\)](#), regs. 1(1), [4\(2\)\(b\)\(ii\)](#)

**F12** [Reg. 3\(2\)\(d\)-\(f\)](#) inserted (1.5.2013) by [The Mobile Roaming \(European Communities\) \(Amendment\) Regulations 2013 \(S.I. 2013/822\)](#), regs. 1(1), [4\(2\)\(c\)](#)

**F13** Words in [reg. 3\(4\)](#) substituted (1.5.2013) by [The Mobile Roaming \(European Communities\) \(Amendment\) Regulations 2013 \(S.I. 2013/822\)](#), regs. 1(1), [4\(1\)](#)

**Commencement Information**

**I2** [Reg. 3](#) in force at 30.7.2007, see [reg. 1\(1\)](#)

**Penalties for breach**

4.—<sup>[F14]</sup>(1) This regulation applies where a person is given a notification under regulation 3 which specifies a proposed penalty.]

<sup>[F15]</sup>(1A) OFCOM may not specify a penalty in relation to a breach of an information requirement if proceedings for an offence under regulation 5A have been brought against the notified person in respect of the breach.]

<sup>F16</sup>(2) .....

(3) Where a notification under regulation 3 relates to more than one breach, a separate penalty may be imposed in respect of each breach.

(4) Where such a notification relates to a continuing breach, no more than one penalty may be imposed in respect of the period of breach specified in the notification.

<sup>[F17]</sup>(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.]

<sup>F18</sup>(5) .....

<sup>F18</sup>(6) .....

#### Textual Amendments

- F14** Reg. 4(1) substituted (1.5.2013) by The Mobile Roaming (European Communities) (Amendment) Regulations 2013 (S.I. 2013/822), regs. 1(1), **5(1)**
- F15** Reg. 4(1A) inserted (1.11.2014) by The Mobile Roaming (European Communities) (Amendment) Regulations 2014 (S.I. 2014/2715), regs. 1(1), **2** (with reg. 4(2))
- F16** Reg. 4(2) omitted (1.5.2013) by virtue of The Mobile Roaming (European Communities) (Amendment) Regulations 2013 (S.I. 2013/822), regs. 1(1), **5(2)**
- F17** Reg. 4(4A)(4B) inserted (1.5.2013) by The Mobile Roaming (European Communities) (Amendment) Regulations 2013 (S.I. 2013/822), regs. 1(1), **5(3)**
- F18** Reg. 4(5)(6) omitted (1.5.2013) by virtue of The Mobile Roaming (European Communities) (Amendment) Regulations 2013 (S.I. 2013/822), regs. 1(1), **5(4)**

#### Commencement Information

- I3** Reg. 4 in force at 30.7.2007, see **reg. 1(1)**

### <sup>F19</sup> 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.

**Status:** Point in time view as at 31/12/2020.

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(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; 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.]

**Textual Amendments**

**F19** Reg. 4A inserted (1.5.2013) by [The Mobile Roaming \(European Communities\) \(Amendment\) Regulations 2013 \(S.I. 2013/822\)](#), regs. 1(1), 6

**Amount of penalty under regulation 4**

5.—(1) The amount of a penalty [<sup>F20</sup>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 in the case of any other breach of that Regulation or breach of [<sup>F21</sup>these Regulations], not exceeding ten per cent of the turnover of the notified provider’s relevant business for the relevant period, as OFCOM determine to be—

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

<sup>F22</sup>(2) .....

(3) For the purposes of this regulation the turnover of a person’s relevant business for a period shall be calculated in accordance with regulation 6.

(4) In this regulation and regulation 6—

“notified provider” has the same meaning as in regulation 4;

[<sup>F23</sup>“relevant business” means so much of any business carried on by the notified provider as consists in the provision of terrestrial public mobile communications services;]

“relevant period” means—

- (a) except in a case falling within subparagraphs (b) or (c), the period of one year ending with the 31st March next before the time when notification of the breach was given under regulation 3;
- (b) in the case of a person who at that time has been carrying on that business for a period of less than a year, the period, ending with that time, during which he has been carrying it on; and
- (c) in the case of a person who at that time has ceased to carry on that business, the period of one year ending with the time when he ceased to carry it on.

### Textual Amendments

- F20** Words in [reg. 5\(1\)](#) substituted (1.5.2013) by [The Mobile Roaming \(European Communities\) \(Amendment\) Regulations 2013 \(S.I. 2013/822\)](#), regs. 1(1), **7(1)(a)**
- F21** Words in [reg. 5\(1\)](#) substituted (1.5.2013) by [The Mobile Roaming \(European Communities\) \(Amendment\) Regulations 2013 \(S.I. 2013/822\)](#), regs. 1(1), **7(1)(b)**
- F22** [Reg. 5\(2\)](#) omitted (1.5.2013) by virtue of [The Mobile Roaming \(European Communities\) \(Amendment\) Regulations 2013 \(S.I. 2013/822\)](#), regs. 1(1), **7(2)**
- F23** Words in [reg. 5\(4\)](#) substituted (1.7.2009) by [The Mobile Roaming \(European Communities\) \(Amendment\) Regulations 2009 \(S.I. 2009/1591\)](#), reg. 1, **Sch. para. 2** (with [reg. 3](#))

### Commencement Information

- I4** Reg. 5 in force at 30.7.2007, see [reg. 1\(1\)](#)

## [<sup>F24</sup>Offences in connection with information requirements

**5A.—**(1) A person who fails to provide information in accordance with an information requirement is guilty of an offence and will be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(2) In proceedings against a person (“A”) for an offence under paragraph (1) it is a defence for A to show—

- (a) that it was not reasonably practicable for A to comply with the requirement within the period specified by OFCOM; but
- (b) that A has taken all reasonable steps to provide the required information after the end of that period.

(3) Proceedings for an offence under paragraph (1) may be brought in respect of a breach by a person of an information requirement only if—

- (a) OFCOM have given the person a notification under regulation 3 in respect of that breach;
- (b) that notification required the person to provide information;
- (c) a confirmation decision has been given under regulation 4A in respect of that requirement;
- (d) the period allowed under that decision has expired without the required information having been provided; and
- (e) OFCOM have not imposed a financial penalty under regulation 4 in respect of that breach.

(4) A person (“B”) is guilty of an offence if—

- (a) in pursuance of any information requirement, B provides any information that is false in any material particular; and
- (b) at the time B provides it, B either knows it to be false or is reckless as to whether or not it is false.

(5) A person guilty of an offence under paragraph (4) will be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.

(6) Where an offence under this regulation is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The Mobile Roaming (European Communities) Regulations 2007. (See end of Document for details)*

- (a) a director, manager, secretary or other similar officer of the body corporate; or
- (b) a person who was purporting to act in any such capacity,

that person (as well as the body corporate) is guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(7) Where an offence under this regulation—

- (a) is committed by a Scottish firm; and
- (b) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner of the firm,

that person (as well as the firm) is guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(8) In this regulation, “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.]

#### Textual Amendments

**F24** Reg. 5A inserted (1.11.2014) by [The Mobile Roaming \(European Communities\) \(Amendment\) Regulations 2014 \(S.I. 2014/2715\)](#), regs. 1(1), 3 (with reg. 4(2))

#### Calculation of turnover of notified provider’s relevant business

6.—(1) The turnover of a notified provider shall be calculated in conformity with accounting practices and principles which are generally accepted in the United Kingdom.

(2) The turnover of a notified provider shall be limited to the amounts derived by that provider from the relevant business after deduction of sales rebates, value added tax and other taxes directly related to turnover.

(3) When a notified provider’s relevant business consists of two or more undertakings that each prepare accounts then the turnover shall be calculated by adding together the turnover of each, save that no account shall be taken of any turnover resulting from the supply of goods or the provision of services between them.

(4) Any aid <sup>F25</sup>... granted by a public body to a notified provider which relates to one of that provider’s ordinary activities shall be included in the calculation of turnover if the notified provider is himself the recipient of the aid and if the aid is directly linked to the carrying out by that provider of the relevant business.

[<sup>F26</sup>(5) In this regulation “aid” means a measure which—

- (a) fulfils the conditions set out in Article 1.1 of the Agreement on Subsidies and Countervailing Measures contained in Annex 1A to the WTO Agreement, and
- (b) is specific within the meaning of Article 2 of that Agreement, irrespective of whether the recipient deals in goods or services.]

#### Textual Amendments

**F25** Words in reg. 6(4) omitted (31.12.2020) by virtue of [The State Aid \(Revocations and Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1470\)](#), reg. 1(2), **Sch. 2 para. 10(2)(a)** (with Sch. 3)

**F26** Reg. 6(5) inserted (31.12.2020) by [The State Aid \(Revocations and Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1470\)](#), reg. 1(2), **Sch. 2 para. 10(2)(b)** (with Sch. 3)



**Commencement Information**

**I5** Reg. 6 in force at 30.7.2007, see [reg. 1\(1\)](#)

[<sup>F27</sup>**6A.** Where OFCOM receives an amount in respect of a financial penalty under these Regulations, OFCOM shall pay that amount into the Consolidated Fund.]

**Textual Amendments**

**F27** [Reg. 6A](#) inserted (1.5.2013) by [The Mobile Roaming \(European Communities\) \(Amendment\) Regulations 2013 \(S.I. 2013/822\)](#), regs. 1(1), **8**

**Reference of disputes to OFCOM**

<sup>F28</sup>**7.** . . . . .

**Textual Amendments**

**F28** [Regs. 7-12](#) omitted (31.12.2020) by virtue of [The Mobile Roaming \(EU Exit\) Regulations 2019 \(S.I. 2019/587\)](#), regs. 1, **2**; 2020 c. 1, Sch. 5 para. 1(1)

**Action by OFCOM on dispute reference**

<sup>F28</sup>**8.** . . . . .

**Textual Amendments**

**F28** [Regs. 7-12](#) omitted (31.12.2020) by virtue of [The Mobile Roaming \(EU Exit\) Regulations 2019 \(S.I. 2019/587\)](#), regs. 1, **2**; 2020 c. 1, Sch. 5 para. 1(1)

**Legal proceedings about referred disputes**

<sup>F28</sup>**9.** . . . . .

**Textual Amendments**

**F28** [Regs. 7-12](#) omitted (31.12.2020) by virtue of [The Mobile Roaming \(EU Exit\) Regulations 2019 \(S.I. 2019/587\)](#), regs. 1, **2**; 2020 c. 1, Sch. 5 para. 1(1)

**Procedure for resolving disputes**

<sup>F28</sup>**10.** . . . . .

**Textual Amendments**

**F28** [Regs. 7-12](#) omitted (31.12.2020) by virtue of [The Mobile Roaming \(EU Exit\) Regulations 2019 \(S.I. 2019/587\)](#), regs. 1, **2**; 2020 c. 1, Sch. 5 para. 1(1)

**Status:** Point in time view as at 31/12/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The Mobile Roaming (European Communities) Regulations 2007. (See end of Document for details)

## Disputes involving other member States

<sup>F28</sup> **11.** .....

### Textual Amendments

**F28** Regs. 7-12 omitted (31.12.2020) by virtue of [The Mobile Roaming \(EU Exit\) Regulations 2019 \(S.I. 2019/587\)](#), regs. 1, 2; 2020 c. 1, Sch. 5 para. 1(1)

## Resolution of referred disputes

<sup>F28</sup> **12.** .....

### Textual Amendments

**F28** Regs. 7-12 omitted (31.12.2020) by virtue of [The Mobile Roaming \(EU Exit\) Regulations 2019 \(S.I. 2019/587\)](#), regs. 1, 2; 2020 c. 1, Sch. 5 para. 1(1)

## Other dispute resolution

**13.**—(1) Undertakings subject to obligations under the EU Mobile Roaming Regulation shall ensure that—

- (a) existing procedures for the resolution of disputes for the time being approved by OFCOM under section 54 of the Act are available to their end-users in connection with the EU Mobile Roaming Regulation; or
- (b) procedures are established for the resolution of disputes in connection with the EU Mobile Roaming Regulation which are available to their end-users and approved by OFCOM and in determining whether to give such approval OFCOM shall comply with the provisions of section 54 of the Act as if that section applied to the approval of dispute procedures for the purposes of this sub-paragraph as it applies to the approval of dispute procedures for the purposes of section 52 of the Act; or
- (c) where procedures for the resolution of disputes have been established by OFCOM under section 55 of the Act, they comply with those procedures as if they extended to their end-users.

(2) In this regulation “end user” has the same meaning as in section 151 of the Act.

### Commencement Information

**I6** Reg. 13 in force at 30.7.2007, see [reg. 1\(1\)](#)

## Appeals against decisions by OFCOM

**14.**—(1) A person affected by a decision by OFCOM under the EU Mobile Roaming Regulation or these Regulations may appeal against it to the Tribunal.

(2) The means of making an appeal is by sending the Tribunal a notice of appeal in accordance with Tribunal rules.

(3) The notice of appeal must be sent within the period specified, in relation to the decision appealed against, in those rules.

(4) The notice of appeal must set out—

- (a) the provision under which the decision appealed against was taken; and
  - (b) the grounds of appeal.
- (5) The grounds of appeal must be set out in sufficient detail to indicate—
- (a) to what extent (if any) the appellant contends that the decision appealed against was based on an error of fact or was wrong in law or both; and
  - (b) to what extent (if any) the appellant is appealing against the exercise of a discretion by OFCOM.
- (6) In this regulation references to a decision—
- (a) include references to a decision that is given effect to by the exercise or performance of a power or duty conferred or imposed by the EU Mobile Roaming Regulations or these Regulations; but
  - (b) include references to a failure to make a decision, and to a failure to exercise a power or to perform a duty, only where the failure constitutes a failure to comply with any form of request to make the decision, exercise the power or perform the duty;
- and references in the following regulations to a decision appealed against are to be construed accordingly.
- (7) For the purposes of this regulation and the following regulations a decision to which effect is given by the exercise or performance of a power or duty conferred or imposed by the EU Mobile Roaming Regulation or these regulations, shall be treated, except where provision is made for the making of that decision at a different time, as made at the time when the power is exercised or the duty performed.

**Commencement Information**

**I7** Reg. 14 in force at 30.7.2007, see [reg. 1\(1\)](#)

**Decisions of the Tribunal**

**15.—(1)** The Tribunal shall dispose of an appeal under regulation 14 in accordance with this regulation.

(2) The Tribunal shall decide the appeal on the merits and by reference to the grounds of appeal set out in the notice of appeal.

(3) The Tribunal’s decision must include a decision as to what (if any) is the appropriate action for OFCOM to take in relation to the subject-matter of the decision under appeal.

(4) The Tribunal shall then remit the decision under appeal to OFCOM with such directions (if any) as the Tribunal considers appropriate for giving effect to its decision.

(5) The Tribunal must not direct OFCOM to take any action which OFCOM would not otherwise have power to take in relation to the decision under appeal.

(6) It shall be the duty of OFCOM to comply with every direction given under paragraph (4).

(7) In any document recording the decision of the Tribunal under this regulation, the Tribunal shall have regard to the need for excluding, so far as practicable, commercial information the disclosure of which would or might, in its opinion, significantly harm the legitimate business interests of any person to whom it relates.

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The Mobile Roaming (European Communities) Regulations 2007. (See end of Document for details)*

#### Commencement Information

**18** Reg. 15 in force at 30.7.2007, see [reg. 1\(1\)](#)

#### Appeals from the Tribunal

**16.**—(1) A decision of the Tribunal on an appeal under regulation 15 may itself be appealed.

An appeal under this regulation—

- (a) lies to the Court of Appeal or to the Court of Session; and
- (b) must relate only to a point of law arising from the decision of the Tribunal.

(2) An appeal under this regulation may be brought by—

- (a) a party to the proceedings before the Tribunal; or
- (b) any other person who has sufficient interest in the matter.

(3) An appeal under this regulation requires the permission of the Tribunal or of the Court to which it is to be made.

(4) In this regulation references to a decision of the Tribunal include references to a direction given by it under regulation 15(4).

#### Commencement Information

**19** Reg. 16 in force at 30.7.2007, see [reg. 1\(1\)](#)

#### [<sup>F29</sup>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 (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.

#### Textual Amendments

**F29** Regs. 17-19 inserted (1.5.2013) by [The Mobile Roaming \(European Communities\) \(Amendment\) Regulations 2013 \(S.I. 2013/822\)](#), regs. 1(1), **10**

#### 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—

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*Changes to legislation: There are currently no known outstanding effects for the The Mobile Roaming (European Communities) Regulations 2007. (See end of Document for details)*

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

#### Textual Amendments

**F29** Regs. 17-19 inserted (1.5.2013) by [The Mobile Roaming \(European Communities\) \(Amendment\) Regulations 2013 \(S.I. 2013/822\)](#), regs. 1(1), 10

#### 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.]

**Textual Amendments**

**F29** Regs. 17-19 inserted (1.5.2013) by [The Mobile Roaming \(European Communities\) \(Amendment\) Regulations 2013 \(S.I. 2013/822\)](#), regs. 1(1), **10**

*Stephen Timms*  
Minister of State for competitiveness and  
Consumer Affairs  
Department for Business, Enterprise and  
Regulatory Reform

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement Articles 8 and 9 of the Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC (“the Roaming Regulation”) (OJ No L171, 29.6.2007, p32).

Article 8(1) requires that the dispute resolution procedures in Articles 20 and 21 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (the Framework Directive) (OJ L108, 24.4.2002, p.33) relating to disputes between communications providers are available in relation to disputes between different communications providers under the Roaming Regulation.

Article 8(2) of the Roaming Regulation requires that member States ensure that the dispute resolution procedures in Article 34 of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services (the Universal Service Directive) (OJ L108, 29.4.2002, p.51) relating to disputes between communications providers and end users are available for disputes under the Roaming Regulation.

Article 9 requires that member States lay down the rules on penalties applicable to infringements of the Roaming Regulation.

Regulation 2 of these Regulations designates OFCOM as the national regulatory authority for the purposes of the Roaming Regulation.

Regulation 3 of these Regulations provides for a notification procedure where OFCOM determine that there has been a breach of the Roaming Regulation or these Regulations.

Regulation 4 of these Regulations gives OFCOM the power to impose a penalty for breach of the Roaming Regulation or these Regulations.

Regulation 5 of these Regulations provides for the amount of penalty which may be imposed under Regulation 4. A penalty of up to £50,000 may be imposed for breach of a requirement under Article 7(4) of the Roaming Regulation to provide OFCOM with information in relation to the implementation and enforcement of the Roaming Regulation. A penalty of up to 10% of turnover of “relevant business”, as defined in these Regulations, may be imposed by OFCOM for all other breaches of the Roaming Regulation or regulation 13 of these Regulations.

Regulation 6 specifies how the turnover of “relevant business” is to be calculated for the purposes of regulation 5 of these Regulations.

Regulations 7 to 12 of these Regulations implement Article 8(1) of the Roaming Regulation.

Regulation 13 of these Regulations implements Article 8(2) of the Roaming Regulation.

Regulations 14 to 16 of these Regulations provide that a person affected by a decision of OFCOM under the Roaming Regulation or these Regulations may appeal that decision to the Competition Appeal Tribunal. Decisions of the Competition Appeal Tribunal may be appealed on a point of law to the Court of Appeal or the Court of Session in Scotland.

A full Regulatory Impact Assessment and Transposition Note have been produced. Copies may be obtained from Geoff Smith, Business Relations Directorate (BR2) of 1 Victoria Street, London, SW1H 0ET and are annexed to the Explanatory Memorandum which is available on the OPSI website.



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