

2014 No. 2715

ELECTRONIC COMMUNICATIONS

**The Mobile Roaming (European Communities) (Amendment)
Regulations 2014**

<i>Made</i>	- - - -	<i>7th October 2014</i>
<i>Laid before Parliament</i>		<i>10th October 2014</i>
<i>Coming into force</i>	- -	<i>1st November 2014</i>

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

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

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Mobile Roaming (European Communities) (Amendment) Regulations 2014 and come into force on 1st November 2014.

(2) In these Regulations, “the 2007 Regulations” means the Mobile Roaming (European Communities) Regulations 2007(c), and any reference in these Regulations to a regulation by number alone refers to the regulation so numbered in the 2007 Regulations.

Amendments to the Mobile Roaming (European Communities) Regulations 2007

2. After regulation 4(1) insert—

“(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.”.

3. After regulation 5 insert—

“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;

(a) 1972 c.68; section 2 was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The powers conferred by section 2(2) of that Act were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51).

(b) S.I. 2001/3495.

(c) S.I. 2007/1933; amended by S.I. 2009/1591, 2012/1809 and 2013/822.

- (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—
- (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.”.

Transitional provisions

4.—(1) In this regulation “information requirement” has the same meaning as in the 2007 Regulations.

(2) In respect of a breach of an information requirement where the relevant information was requested before the date on which these Regulations came into force, the 2007 Regulations have effect as if these Regulations had not been made.

Ed Vaizey

Minister of State for Culture and the Digital Economy
Department for Culture, Media and Sport

7th October 2014

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

These Regulations amend the Mobile Roaming (European Communities) Regulations 2007 (S.I. 2007/1933, “the 2007 Regulations”), which implemented the old Roaming Regulation, and follow the Mobile Roaming (European Communities) (Amendment) Regulations 2013 (S.I. 2013/822), which contained the bulk of the provisions implementing the new Roaming Regulation .

Regulation 3 of these Regulations inserts new regulation 5A into the 2007 Regulations, imposing criminal penalties for breach of information requirements in line with those in section 144 of the Communications Act 2003. Regulation 2 makes a related change to regulation 4 of the 2007 Regulations.

Regulation 4 makes transitional provisions.

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