EXPLANATORY MEMORANDUM TO

THE MOBILE ROAMING (EU EXIT) REGULATIONS 2019

2019 No. 587

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Digital, Culture, Media and Sport and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 This instrument is being made in order to address deficiencies arising from the withdrawal of the United Kingdom from the European Union in legislation relating to mobile roaming, to ensure that the legislation continues to operate effectively after exit. The instrument amends the following:

- EU legislation relating to mobile roaming
- UK implementing regulations

It also revokes EU tertiary legislation relating to mobile roaming which is not appropriate to be retained on the UK's statute book after exit from the EU.

Explanations

What did any relevant EU law do before exit day?

2.2 The EU Roaming Regulation (Regulation (EU) No 531/2012) – "the Roaming Regulation" – as amended by Regulation (EU) 2015/2120 and Regulation (EU) 2017/920), regulates the charges mobile network operators charge each other for providing services in other EU Member States ("wholesale charges"). It also regulates the charges mobile network operators can charge their customers ("retail charges"). The Roaming Regulation applies across the EU and the European Economic Area (EEA).

2.3 The main provision in the current Roaming Regulation states that consumers cannot be charged more for using mobile services when travelling in the EU than they would be in their home Member State (i.e. roaming is surcharge-free).

2.4 The Roaming Regulation also sets out transparency obligations on mobile operators. These require operators to inform their customers when travelling abroad when they have reached 80% and 100% of their data allowance. These transparency obligations apply to customers travelling worldwide (i.e. not just in the EU/EEA).

2.5 Operators are also required to take reasonable steps to protect customers from paying roaming charges for inadvertently accessed roaming services. This is when a phone used in a border region of one country may pick up the mobile signal from a network based in another.

2.6 In addition, the Roaming Regulation sets a financial limit that caps the spend of customers' mobile data roaming overseas. This limit is set at €50 and means that after spending €50, the customer will not be able to consume any more data until they make an active choice to continue. If the customer chooses to continue using data

services the amount they can be charged is not limited. This applies to customers travelling worldwide.

Why is it being changed?

2.7 Under the terms of section 3(1) of the European Union (Withdrawal) Act 2018 ("the Act"), "Direct EU legislation, so far as operative immediately before exit day, forms part of domestic law on and after exit day." In order to prepare for the UK's orderly withdrawal from the EU, this instrument will ensure that the legislation will continue to operate effectively at the point of EU Exit.

What will it now do?

2.8 The requirements on UK mobile operators to guarantee surcharge-free roaming for customers in the EU are inoperable after exit. This is because the UK will no longer be part of the EU regulatory system for mobile roaming that limits the charges that EU operators can place on UK operators. The costs of regulating retail roaming charges without harmonised wholesale charges may lead to roaming becoming unaffordable for many operators. This would then lead to roaming services being removed from some packages used by customers, or mobile services as a whole becoming more expensive to compensate for the increased costs. The instrument therefore removes the requirement on UK mobile operators to guarantee surcharge-free roaming for customers in the EU after exit.

2.9 The instrument will retain in UK law:

- the current transparency obligations on mobile operators to inform customers travelling abroad that they have reached 80% and 100% of their data allowance;
- the financial limit provisions set out in the Roaming Regulation, converting the €50 limit to £45. This means that after spending £45, the customer will not be able to consume any more data until they make an active choice to continue. If the customer chooses to consume more data they will face additional costs.

These rules apply to UK customers roaming worldwide.

2.10 The instrument will also retain Roaming Regulation provisions to inform customers on how to avoid inadvertent roaming in border regions. Operators will continue to be required to take reasonable steps to protect their customers from paying roaming charges for inadvertently accessed roaming services.

2.11 The retained provisions concern consumer protections that are not contingent on membership of the EU regulatory framework and do not require a harmonised approach to be operable.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see European Union (Withdrawal) Act 2018, section 24) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Minister for Digital and Creative Industries, Margot James, has made the following statement regarding Human Rights:

"In my view the provisions of the Mobile Roaming (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument relies on the European Union (Withdrawal) Act 2018 to amend legislation to ensure that EU retained law operates effectively after exit. It also corrects cross-references in legislation that would be inappropriate to retain after Exit. This will ensure they function correctly after exit day.

6.2 The EU Roaming Regulation establishes a harmonised framework for regulated wholesale and retail mobile roaming charges within the EU. Ofcom is the designated regulator for the UK.

6.3 The instrument amends the EU Roaming Regulation to address deficiencies arising from the UK's exit from the EU. These deficiencies arise because the Regulation will no longer be operable as a result of leaving the EU.

6.4 The instrument amends the Mobile Roaming (European Communities) Regulations 2007 (SI 2007/1933), which contains provisions implementing the EU Roaming Regulation, to remove references to obligations related to membership of the EU and the regulatory framework for mobile roaming that will become redundant after the UK exits.

6.5 The instrument also revokes the following EU tertiary legislation:

- *Commission Implementing Regulation (EU) No 1203/2012*, which relates to the separate sale of regulated retail roaming services within the EU.
- *Commission Implementing Regulation (EU) 2016/2286*, which sets rules on the application of fair use policy, the methodology for assessing the sustainability of the abolition of retail roaming surcharges and the application to be submitted by a roaming provider for the purposes of that assessment.
- *Commission Implementing Regulation (EU) 2018/1979*, which sets the weighted average of maximum mobile termination rates across the Union and repealing Commission Implementing Regulation (EU) 2017/2311.

7. Policy background

What is being done and why?

7.1 This instrument addresses deficiencies arising from the UK's exit from the EU in legislation relating to mobile roaming.

7.2 The Roaming Regulation is directly applicable in UK law. This instrument amends that Regulation to remove inoperative provisions after the UK exits the EU. At present, EU legislation requires EU operators to offer capped charges to UK operators whose customers use their networks ("wholesale roaming rates"). Only by limiting wholesale roaming rates, can operators guarantee not to charge customers for roaming services ("retail roaming rates").

7.3 The UK will no longer be part of the EU regulatory framework as a result of leaving the EU. This means it will not be possible to impose a limit on the wholesale charges faced by UK operators when their customers use networks owned by EU operators. This instrument therefore removes provisions requiring guaranteed surcharge-free roaming.

7.4 Requirements on operators to offer consumer protections via transparency obligations and a financial limit for data usage are not affected by the wholesale charges placed on UK operators by EU operators when their customers roam. These requirements are not contingent on the UK being party to the EU regulatory framework, which regulates maximum wholesale charges for roaming. The instrument therefore retains provisions on operators to offer transparent information and a financial limit for data usage.

8. European Union (Withdrawal) Act / Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There are currently no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 Government has engaged with a wide range of stakeholders, including consumer, industry and regulatory bodies, in the process of developing this instrument. Ofcom's views have been taken into consideration in development of the instrument. A draft of the instrument was shared with Ofcom and with officials in the devolved administrations.

10.2 Discussions have also taken place with stakeholders in the telecoms sector. Mobile operators noted that absent a cap on the charges EU operators can apply to UK operators (as currently regulated by the EU), any increases in costs would likely be passed on to customers. Additionally, operators also raised concerns that a limit on the costs that could be passed onto customers would affect the sustainability of certain roaming services. This means that roaming services could be removed altogether from some customers.

10.3 Discussions have also taken place with consumer bodies. Some have expressed concerns that the removal of the requirement for UK operators to offer surcharge-free roaming would lead to the reintroduction of higher charges for customers travelling to

the EU. These consumer bodies proposed that Government maintains surcharge-free roaming for UK customers.

10.4 After careful consideration, the Government decided not to adopt this proposal. The Roaming Regulation establishes harmonised rules across the EU which underpin surcharge-free roaming, and these will become inoperable after exit. In addition, the costs of regulating retail roaming charges without harmonised wholesale charges may lead to roaming becoming unaffordable for many operators. This would then lead to roaming services being removed from some packages used by customers, or mobile services as a whole becoming more expensive to compensate for the increased costs. This reasoning was set out by the Government to consumer bodies to explain why the proposal for retention of surcharge-free roaming after exit was not adopted.

11. Guidance

11.1 None.

12. Impact

12.1 There is an impact on businesses that offer mobile roaming services. Businesses will incur a limited one-off cost when familiarising themselves with the limited changes to regulations and converting the €50 financial limit to £45 for automated notifications to customers. There is no impact on charities or voluntary bodies.

12.2 There is no impact on the public sector.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses,

13.2 The legislation does not introduce new requirements on small businesses. Instead it corrects deficiencies arising from the UK's withdrawal from the EU in legislation that applies to them. No disproportionate impact on small businesses is therefore expected.

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Richard Sullivan, policy lead on mobile roaming at the Department of Digital, Culture, Media and Sport Telephone: 020 7211 2858 or email: richard.sullivan@culture.gov.uk can be contacted with any queries regarding the instrument.

15.2 Henry Shennan, Deputy Director, Telecoms, at the Department of Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Margot James, Minister for Digital and the Creative Industries at the Department of Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Appropriateness statement

1.1 The Minister for Digital and Creative Industries, Margot James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Mobile Roaming (EU Exit) Regulations 2019 does no more than is appropriate."

1.2 This is the case because the instrument is limited to making amendments to the Regulation (EU) No. 531/2012 of the European Parliament and of the Council of 13th June 2012 on roaming on public mobile communications networks within the Union, and ancillary legislation, and corrects deficiencies which would otherwise arise if that Regulation, and ancillary legislation, were to be retained as United Kingdom law.

2. Good reasons

2.1 The Minister for Digital and Creative Industries, Margot James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action."

2.2 These are the correction of the deficiencies referred to in paragraph 2.8 of the explanatory memorandum.

3. Equalities

3.1 The Minister for Digital and Creative Industries, Margot James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

3.2 The Minister for Digital and Creative Industries, Margot James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, the Minister for Digital and Creative Industries, Margot James, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.