**EXPLANATORY MEMORANDUM TO**

**THE MOBILE ROAMING (EUROPEAN COMMUNITIES) (AMENDMENT) REGULATIONS 2014**

**2014 No. 2715**

**1.** This explanatory memorandum has been prepared by the Department for Culture, Media and Sport (DCMS) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments

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## 2. Purpose of the instrument

2.1 These Regulations complement and develop implementation of Article 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"). The new Roaming Regulation regulates the European market in mobile roaming services. These are voice, text and data services used by someone using a mobile phone outside his or her own Member State.

## 3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

## 4. Legislative Context

4.1 The new Roaming Regulation came into force on 1st July 2012, and replaced 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"). The old Roaming Regulation was implemented by the Mobile Roaming (European Communities) Regulations 2007 (S.I. 2007/1933; "the 2007 Regulations"). Implementation of the new Roaming Regulation was largely completed by the Mobile Roaming (European Communities) (Amendment) Regulations 2013 (S.I. 2013/822), but this instrument enhances the implementation of Article 18 of the new Roaming Regulation, which requires penalties for breaches of the new Roaming Regulation to be "effective, proportionate and dissuasive".

4.2 These Regulations impose a criminal penalty, alongside the existing civil penalties, for breaches of information requirements in relation to mobile roaming. Breaches may occur, for example, if the national regulatory authority (Ofcom), requests information from an

operator and the operator fails to provide it, or if the information is false. There is an aggravated offence where false information is provided knowingly or recklessly. The basic offence is punishable by a fine on summary conviction or an unlimited fine on indictment; the aggravated offence is punishable by a fine on summary conviction, or a fine and/or two years' imprisonment on indictment. The fines on summary conviction are, at the time these Regulations come into force, subject to the general statutory maximum of £5,000, but will be without limit when section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force.

4.3. The provisions which are being inserted into the 2007 Regulations mirror provisions from the mainstream regime in the Communications Act 2003, especially section 144.

## 5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

## 6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

- *What is being done and why*

7.1 Through the Mobile Roaming (European Communities) (Amendment) Regulations 2013 (S.I. 2013/822), which amended the 2007 Regulations, implementing measures were put in place to ensure Ofcom could fully and effectively oversee the operation of the Regulation - including making provision for notification of breaches, enforcement powers (including powers of direction on the wholesale reference offer), civil penalties for breaches (including raising the threshold to £2m), and information gathering powers setting out administrative procedures to be followed (including enforcement provisions).

7.2 The second stage of the implementation process involves introducing criminal penalties for breaches of requirements imposed under Ofcom's information gathering powers. This will enhance the dissuasiveness of penalties in accordance with Article 18 of the new Roaming Regulation.

7.3 Similar information gathering powers, and parallel criminal sanctions and civil penalties apply for information required by Ofcom from time to time for the purposes of it discharging its other regulatory functions (see, in particular, section 144 of the Communications Act 2003; also section 33 of the Wireless Telegraphy Act 2006). Therefore, the absence of criminal sanctions where Ofcom discharges its functions under the new Roaming Regulation would have represented a significant departure from the wider regulatory regime and the dissuasive element of sanction.

7.4 The availability of criminal penalties, in respect of information gathering for Ofcom's other functions relating to electronic communications reflects a recognition of the importance that they play in enabling Ofcom to obtain and rely on full and accurate information in a timely manner, on which evidence it can then base its decisions. This is particularly the case in that the required information is often of a complex financial, economic and technical nature, and often that evidence cannot be independently verified or obtained from other sources, either not at all or not without significant resource and delay.

- *Consolidation*

7.5 Although this instrument makes some additional amendments to the 2007 Regulations, we do not consider the amendments to be sufficient to require the 2007 Regulations to be revoked and replaced. The Department will consider the possibility of consolidation in the light of any amendments resulting from the review of the new Roaming Regulation, which is due in 2016.

## 8. Consultation outcome

8.1 We originally consulted with key stakeholders (mobile network operators (MNOs), fixed line operators and consumer groups) in establishing the UK's negotiating position on the original European Commission proposals. We wrote again to those key stakeholders, outlining our proposals for implementation and seeking views. We received one response to this communication raising (unfounded) concerns on DCMS specifying remedies for breach of compliance with the Regulation.

## 9. Guidance

9.1 No guidance is required.

## 10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it has no significant impact on business, charities or voluntary bodies.

10.2 There will be no impact on the public sector. Additional costs to Ofcom, the independent national regulator, are expected to be negligible.

## 11. Regulating small business

11.1 This instrument does not apply to small business.

## 12. Monitoring and review

12.1 The Secretary of State is required to review the 2007 Regulations, which this instrument amends. The report of the first such review must be published on or before 30th June 2017.

## 13. Contact

13.1 John Sexton at the Department for Culture Media and Sport Tel: 0207 211 6540 or email: john.sexton@culture.gsi.gov.uk can answer any queries regarding the instrument.