



STATUTORY INSTRUMENTS.

S.I. No. 228 of 2013



COMMUNICATIONS (MOBILE TELEPHONE ROAMING)
REGULATIONS 2013

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I, PAT RABBITTE, Minister for Communications, Energy and Natural Resources, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), for the purpose of giving full effect to Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012¹, hereby make the following regulations:

Citation and cesser

1. (1) These Regulations may be cited as the Communications (Mobile Telephone Roaming) Regulations 2013.

(2) These Regulations cease to have effect on 30 June 2022.

Definitions

2. (1) In these Regulations—

“Act of 2002” means Communications Regulation Act 2002 (No. 20 of 2002);

“Framework Regulations” means European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011);

“Mobile Phone Roaming Regulation” means Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012¹;

“Regulations of 2007” means Communications (Mobile Telephone Roaming) Regulations 2007 (S.I. No. 792 of 2007) (as amended by the Communications (Mobile Telephone Roaming) (Amendment) Regulations 2010 (S.I. No. 156 of 2010));

“Regulator” means Commission for Communications Regulation;

“undertaking” means a person engaged in the provision of electronic communications networks or services or associated facilities to which the Mobile Phone Roaming Regulation applies;

“Universal Service and Users’ Rights Regulations” means European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011 (S.I. No. 337 of 2011);

“user” means a legal entity or natural person using a publicly available electronic network or service to which the Mobile Phone Roaming Regulation applies.

¹OJ No. L 172, 30.06.12, p. 10.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 2nd July, 2013.*

(2) A word or expression that is used in these Regulations and is also used in the Mobile Phone Roaming Regulation, has, unless the context otherwise requires, the same meaning in these Regulations that it has in the Mobile Phone Roaming Regulation.

Supervision and enforcement

3. (1) The Regulator shall carry out the functions of the national regulatory authority referred to in Article 16 of the Mobile Phone Roaming Regulation.

(2) The Regulator may, for the purpose of further specifying requirements to be complied with relating to an obligation imposed by or under the Mobile Phone Roaming Regulation, issue directions to an undertaking to do or refrain from doing anything that the Regulator specifies in the direction.

(3) Section 10(1) of the Act of 2002 is amended by inserting after paragraph (a) the following:

“(aa) to ensure compliance by undertakings with obligations under Regulation (EU) No. 531/2012 of the European Parliament and of the Council of 13 June 2012¹.”.

Users’ Contracts

4. Regulation 14 of the Universal Service and Users’ Rights Regulations is amended—

(a) in paragraph (4) by substituting “Subject to paragraph (4A), an undertaking referred to in paragraph (1)” for “An undertaking referred to in paragraph (1)”, and

(b) by inserting after paragraph (4) the following:

“(4A) Paragraph (4) shall not apply to a modification to retail roaming tariffs necessary to comply with an obligation imposed by Regulation (EU) No. 531/2012 of the European Parliament and of the Council of 13 June 2012¹.”.

Dispute resolution between undertakings

5. In the event of a dispute arising between undertakings in connection with obligations laid down in the Mobile Phone Roaming Regulation, the dispute resolution procedure laid down in Regulations 31 and 32 of the Framework Regulations applies and those Regulations are to be read accordingly.

Dispute resolution between undertakings and end-users

6. In the event of an unresolved dispute involving a consumer or end-user and concerning an issue falling within the scope of the Mobile Phone Roaming Regulation, the out-of-court procedures for settling unresolved disputes referred to in Regulation 27 of the Universal Service and Users’ Rights Regulations applies and those Regulations are to be read accordingly.

Offences

7. (1) An undertaking which fails to comply with—

(a) (i) its obligations under Article 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15 or 16, or

(ii) a requirement of the Regulator under Article 16,

of the Mobile Phone Roaming Regulation, or

(b) a requirement of the Regulator under Regulation 3(2) of these Regulations,

commits an offence and is liable on summary conviction to a class A fine.

(2) In proceedings for an offence under paragraph (1) in relation to compliance with Article 14 or 15 of the Mobile Phone Roaming Regulation, or a requirement of the Regulator under Regulation 3(2) of these Regulations, it is a defence to show that—

(a) reasonable steps were taken to comply with the relevant obligation, or

(b) it was not possible to comply with the relevant obligation.

(3) An offence under this Regulation may be prosecuted summarily by the Regulator.

(4) Where the Regulator has made an application under Regulation 8 to the High Court to secure a person's compliance with—

(a) (i) its obligations under Article 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15 or 16, or

(ii) a requirement of the Regulator under Article 16,

of the Mobile Phone Roaming Regulation, or

(b) a requirement of the Regulator under Regulation 3(2) of these Regulations,

the Regulator may not bring proceedings against the person for an offence under this Regulation or give a notice under section 44 of the Act of 2002 for failing to comply with the obligation or requirement.

(5) An offence under this Regulation is an offence to which section 44 of the Act of 2002 applies.

Compliance order

8. (1) Where the Regulator finds that an undertaking has not complied with an obligation or requirement under the Mobile Phone Roaming Regulation or an obligation or requirement under these Regulations, the Regulator shall notify the undertaking of those findings and give the undertaking an opportunity to

state its views or, if the non-compliance can be remedied, to remedy the non-compliance within a reasonable time limit as specified by the Regulator.

(2) The Regulator may publish, in such manner as it thinks fit, any notification given by it under this Regulation subject to the protection of the confidentiality of any information that the Regulator considers confidential.

(3) The Regulator may amend or revoke any notification under this Regulation.

(4) Where, at the end of a period specified by the Regulator in a notification under paragraph (1), the Regulator is of the opinion that the undertaking concerned has not complied with the obligation or requirement, the Regulator may, whether or not the non-compliance is continuing, subject to paragraph (10), apply to the High Court for such order as the Regulator considers appropriate including—

- (a) a declaration of non-compliance,
- (b) an order directing compliance with the obligation or requirement,
- (c) an order directing the remedy of any non-compliance with the obligation or requirement, or
- (d) an order as provided for in paragraph (9).

(5) The High Court may, on the hearing of the application referred to in paragraph (4), make such order as it thinks fit which may include—

- (a) a declaration of non-compliance,
- (b) an order directing compliance with the obligation or requirement,
- (c) an order directing the remedy of any non-compliance with the obligation or requirement, or
- (d) an order as provided for in paragraph (9),

or refuse the application.

(6) An order of the High Court made under paragraph (5) compelling compliance may stipulate that the obligation or requirement must be complied with immediately or may specify a reasonable time limit for compliance and may also stipulate appropriate and proportionate measures aimed at ensuring compliance.

(7) The High Court when dealing with an application under paragraph (4) may make such interim or interlocutory order as it considers appropriate.

(8) The High Court shall not deny any interim or interlocutory relief, referred to in paragraph (7), solely on the basis that the Regulator may not suffer any damage if such relief were not granted pending conclusion of the action.

- (9) (a) An application for an order under paragraph (4) may be for, or include, an application for an order to pay to the Regulator such amount, by way of financial penalty, which may include penalties having effect for periods of non-compliance with the obligation or requirement as the Regulator may propose as appropriate in the light of the non-compliance or any continuing non-compliance. Such an application for an order in respect of a financial penalty for a period of non-compliance may be made even if there since has been compliance with the obligation or requirement.
- (b) In deciding on such an application, the High Court shall decide the amount, if any, of the financial penalty which should be payable and shall not be bound by the amount proposed by the Regulator.
- (c) Any financial penalty ordered by the High Court to be paid by an undertaking under this paragraph shall be paid to and retained by the Regulator as income.
- (d) In deciding what amount, if any, should be payable, the High Court shall consider the circumstances of the non-compliance with the obligation or requirement, including—
- (i) its duration,
 - (ii) the effect on consumers, users and other operators,
 - (iii) the submissions of the Regulator on the appropriate amount,
 - (iv) any excuse or explanation for the non-compliance including any evidence of the undertaking that reasonable steps were taken to comply with the relevant obligation or requirement or that it was not possible to comply with an obligation or requirement, and
 - (v) any evidence that the undertaking profited or had been unjustly enriched, whether directly or indirectly, as a result of the non-compliance.

(10) Where the Regulator has brought proceedings for an offence under these Regulations or given a notice under section 44 of the Act of 2002 in respect of an alleged offence under these Regulations, the Regulator shall not make an application for an order under this Regulation to the High Court to compel compliance by the undertaking with the obligation or requirement to which the proceedings or notice relates.

(11) A notification or opinion issued under this Regulation shall not constitute a notification or opinion for the purposes of a decision mentioned in Regulation 2 of the Framework Regulations and Part 2 of the Framework Regulations shall not apply to these Regulations.

Powers of authorised officers

9. For the purpose of the exercise by the Regulator of its powers under Article 16 of the Mobile Phone Roaming Regulation an authorised officer may exercise any of the functions conferred on an authorised officer under section 39 of the Act of 2002, and that section and section 40 of the Act of 2002 are to be read accordingly.

Service of notification or requirement

10. (1) Where the Regulator issues a direction or notification under these Regulations, it shall be in writing, state the reasons on which it is based, be addressed to the undertaking concerned and, as soon as practicable, be sent or given in any of the following ways—

- (a) by delivering it to the undertaking,
- (b) by leaving it at the address at which the undertaking carries on business,
- (c) by sending it by pre-paid registered letter addressed to the undertaking at the address at which the undertaking ordinarily carries on business,
- (d) if an address for the service of directions or notifications has been furnished by the undertaking to the Regulator, by leaving it at, or sending it by pre-paid registered letter to, that address, or
- (e) in any case where the Regulator considers that the immediate giving of the direction or notification is required, by sending it, by means of a facsimile machine or by electronic mail, to a device or facility for the reception of facsimiles or electronic mail located at the address at which the undertaking ordinarily carries on business or, if an address for the service of notices has been furnished by the undertaking, that address, but only if—
 - (i) the sender's facsimile machine generates a message confirming successful delivery of the total number of pages of the direction or notification, or
 - (ii) the recipient's facility for the reception of electronic mail generates a message confirming receipt of the electronic mail,

and it is also given in one of the other ways mentioned in subparagraphs (a) to (d).

(2) For the purposes of this Regulation, a company within the meaning of the Companies Acts is deemed to be ordinarily resident at its registered office and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

Transitional arrangements

11. (1) A measure that was in force under the Regulations of 2007 immediately before the commencement of these Regulations shall continue in force as if it was made under these Regulations.

(2) For the purpose of this Regulation, “measure” means a direction, notice, notification or other act of an equivalent effect made by the Regulator

(3) Notwithstanding the cessation or revocation of the Regulations of 2007, notifications by the Regulator on a person under Regulation 7 of those Regulations—

(a) continue in force, and

(b) may continue to be issued, revoked or amended,

as if the Regulations of 2007 had not ceased or been revoked.

Revocations.

12. The following Regulations are revoked:

(a) Communications (Mobile Telephone Roaming) Regulations 2007 (S.I. No. 792 of 2007);

(b) Communications (Mobile Telephone Roaming) (Amendment) Regulations 2010 (S.I. No. 156 of 2010).



GIVEN under my Official Seal,
18 June 2013.

PAT RABBITTE,
Minister for Communications, Energy and Natural Resources.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to a legal interpretation.)

The purpose of these regulations is to give full effect to Regulation (EU) No. 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile telephone networks within the European Union.

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