



STATUTORY INSTRUMENTS

S.I. No. 792 of 2007



COMMUNICATIONS (MOBILE TELEPHONE ROAMING)
REGULATIONS 2007

(Prn. A7/2202)

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I, EAMON RYAN, Minister for Communications, Energy and Natural Resources, in exercise of the powers conferred on me by section 46A (inserted by section 14 of the Communications Regulation (Amendment) Act 2007 (No. 22 of 2007)) of the Communications Regulation Act 2002 (No. 20 of 2002) and for the purpose of giving full effect to Regulation (EC) No. 717/2007 of the European Parliament and the Council of 27 June 2007¹, hereby make the following regulations:

Citation and cesser

1. (1) These Regulations may be cited as the Communications (Mobile Telephone Roaming) Regulations 2007.

(2) These Regulations cease to have effect on 30 June 2010.

Definitions

2. (1) In these Regulations—

“Act of 2002” means the Communications Regulation Act 2002 (No. 20 of 2002) (as amended by the Communications Regulation (Amendment) Act 2007 (No. 22 of 2007));

“Mobile Phone Roaming Regulation” means Regulation (EC) No. 717/2007 of the European Parliament and the Council of 27 June 2007¹;

“Regulator” means Commission for Communications Regulation.

(2) A word or expression which is used in these Regulations and which 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. The Regulator shall carry out the functions of the national regulatory authority referred to in Article 7 of the Mobile Phone Roaming Regulation.

Dispute resolution between undertakings

4. 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 Regulation 31 (as amended by Regulation 9 of the European Communities (Electronic Communications Networks and Services) (Framework) (Amendment) Regulations 2007 (S.I. No. 271 of 2007))

¹OJ No. L.171, 29.06.2007, p.32

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 7th December, 2007.*

and 32 of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 (S.I. No. 307 of 2003) applies and those Regulations are to be read accordingly.

Dispute resolution between undertakings and end-users

5. 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 dispute resolution procedures laid down in Regulation 28 (inserted by Regulation 22 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) (Amendment) Regulations 2007 (S.I. No. 374 of 2007)) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003 (S.I. No. 308 of 2003) applies and those Regulations are to be read accordingly.

Offences

6. (1) An undertaking—

- (a) being the operator of a visited network, which fails to comply with its obligations under Article 3 in relation to wholesale charges for the making of regulated roaming calls originating on that network,
- (b) being a home provider, which fails to comply with its obligations under Article 4 or 6 to roaming customers, or
- (c) which fails to comply with a requirement of the Regulator under Article 7(4) or (6),

of the Mobile Phone Roaming Regulation commits an offence and is liable on summary conviction to a fine not exceeding €5,000.

(2) In proceedings for an offence under paragraph (1) in relation to compliance with Article 6 of the Mobile Phone Roaming Regulation 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 7 to the High Court to secure a person's compliance with an obligation under Article 3, 4 or 6 or a requirement under Article 7(4) or (6) of the Mobile Phone Roaming Regulation, the Regulator may not bring proceedings against the person for an offence under Regulation 6 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

7. (1) Where the Regulator finds that an undertaking—

- (a) being the operator of a visited network, has failed to comply with its obligations under Article 3 in relation to wholesale charges for the making of regulated roaming calls originating on that network,
- (b) being a home provider, has failed to comply with its obligations under Article 4 or 6 to roaming customers, or
- (c) has failed to comply with a requirement of the Regulator under Article 7(4) or (6),

of the Mobile Phone Roaming Regulation it shall notify the undertaking of those findings and give it an opportunity to state its views or remedy any non-compliance not later than—

- (i) one month after issue of the notification,
- (ii) such shorter period—
 - (I) if the Regulator considers that cessation of the breach of obligation should be immediate,
 - (II) as is agreed by the Regulator with the person concerned, or
 - (III) stipulated by the Regulator in case of repeated non-compliance, or
- (iii) such longer period as may be 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 which the Regulator considers confidential.

(3) Where, at the end of the period referred to in paragraph (1), the Regulator is of the opinion that the undertaking concerned has not complied with the obligation or the requirement, the Regulator may, subject to paragraph (7), apply to the High Court for such order as may be appropriate, to compel compliance with the obligation or requirement. The Court may, as it thinks fit, on the hearing of the application make an order compelling compliance with the obligation or requirement or refuse the application. An order compelling compliance shall stipulate a reasonable period for the person to comply with the obligation or requirement.

(4) An application for an order under paragraph (3) shall be by motion and the Court when dealing with the matter may make such interim or interlocutory order as it considers appropriate.

(5) The Court shall not deny any interim or interlocutory relief referred to in paragraph (4) solely on the basis that the Regulator may not suffer any damage if such relief were not granted pending conclusion of the action.

(6) (a) An application for an order under paragraph (3) may include an application for an order to pay to the Regulator such amount, being not more than €500,000, by way of financial penalty, as the Regulator may propose as appropriate in the light of the non-compliance.

(b) In deciding on such an application, the 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 Court to be paid by a person 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 Court shall consider the circumstances of the non-compliance, including—

(i) its duration,

(ii) the effect on roaming customers and other undertakings,

(iii) the submissions of the Regulator on the appropriate amount, and

(iv) any excuse or explanation for the non-compliance.

(7) Where the Regulator has brought proceedings for an offence under Regulation 6 or an amount has been duly paid under a notice given under section 44 of the Act of 2002 in respect of a failure by a person to comply with an obligation under Article 3, 4 or 6 or a requirement under Article 7(4) or (6) of the Mobile Phone Roaming Regulation, the Regulator shall not make an application for an order under this Regulation to the High Court to compel compliance by the person with the obligation or requirement.

Powers of authorised officers

8. For the purpose of the exercise by the Regulator of its powers under Article 7 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

9. (1) Where a notification is required under these Regulations to be given to an undertaking or a requirement is made under Article 7 of the Mobile Phone Roaming Regulation of an undertaking, the notification or requirement shall be addressed to the undertaking and shall be given to the person in one 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 post in a pre-paid registered letter addressed to the undertaking at the address at which it carries on business,
 - (d) if an address for the service of notices has been furnished by the undertaking, by leaving it at, or sending it by pre-paid registered post addressed to the undertaking to, that address,
 - (e) in any case where the Regulator considers that the immediate giving of the notice is required, by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the undertaking carries on business or, if an address for the service of notices has been furnished by the undertaking, that address, provided that the sender's—
 - (i) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or
 - (ii) facsimile machine generates a message confirming successful transmission of the total number of pages of the notice.
- (2) For the purposes of this Regulation, a company registered under the Companies Acts, is deemed to be ordinarily resident at its registered office and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.



GIVEN under my Official Seal,
30 November 2007

EAMON RYAN,
Minister for Communications, Energy and Natural Resources.

EXPLANATORY NOTE

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

The purpose of these regulations is to give full effect to Regulation (EC) No. 717/2007 of the European Parliament and the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC.

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