

EXPLANATORY MEMORANDUM TO
THE TRADE (MOBILE ROAMING) REGULATIONS 2023

2023 No.

1. Introduction

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

2. Purpose of the instrument

2.1 The purpose of this Statutory Instrument (SI) is to regulate international mobile roaming wholesale charges between the UK and Norway, and the UK and Iceland. It meets the obligations that the UK signed up to in the Free Trade Agreement (the Agreement) with Norway, Iceland and Liechtenstein on 8 July 2021. Due to its operators' commercial relationships with Switzerland, Liechtenstein opted out of this aspect of the Agreement.

2.2 Wholesale charges are the fees mobile operators charge each other when a customer travels to another country and uses the mobile network of an operator based in that territory. Retail charges are the fees they charge their customers. The regulations will introduce a cap on the wholesale element only. The focus on wholesale is because it is a cross-border international issue, whereas operators' retail charges are a domestic matter.

2.3 The second purpose of this SI is to grant Ofcom powers to enforce these caps on wholesale mobile roaming charges.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The 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 Media, Data and Digital Infrastructure, Julia Lopez MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Trade (Mobile Roaming) Regulations 2023 are compatible with the Convention rights.”

6. Legislative Context

6.1 Following the agreement of a Free Trade Agreement with Norway, Iceland and Liechtenstein, the UK is responsible for implementing provisions contained in it on mobile roaming. This includes the provisions on the maximum wholesale roaming

rates set out under Article 3.69 ‘International Mobile Roaming’. The provision on wholesale roaming applies to the UK, Norway and Iceland only, as Liechtenstein decided not to participate.

6.2 The relevant roaming text in the Agreement is as follows:

“With a view to facilitating surcharge-free international mobile roaming for end-users of each Party, the maximum rates that a supplier of public telecommunications services of a Party may levy on a supplier of public telecommunications services of another Party for the provision of wholesale international mobile roaming services (IMRS Rates) shall be the IMRS rates specified in Annex X-A [...];

The Committee on Services and Investment (Committee) shall, within a reasonable period of time, make a recommendation to the Joint Committee concerning the adoption, by amending Annex X-A, of the IMRS rates the Committee considers appropriate”.

6.3 On 21 September 2022, the Joint Committee decided that the rates adopted shall be as follows, which now form Annex X-A referred to in paragraph above:

Outgoing voice calls: €0.032 per minute.

Incoming SMS message: FREE.

Outgoing SMS message: €0.01 per SMS.

Data: €2.50 per gigabyte.

6.4 These rates are the same as those currently in force in the EU/EEA as set out in the EU regulations aimed at regulating roaming charges in the EU. This approach is consistent with the Agreement’s provision that asserts that Parties should consider relevant international benchmarks

7. Policy background

What is being done and why?

7.1 Mobile roaming is the temporary use of a mobile device abroad to make calls, send texts or use mobile data on a mobile phone when travelling abroad and using the mobile network of an operator based in that territory.

7.2 Under EU regulations aimed at regulating roaming charges in the EU, wholesale and retail charges are capped. These caps ceased to apply to the UK at the end of the Brexit Transition Period. Since then, three out of the four UK mobile operators (EE, Vodafone and Three) have re-introduced roaming charges for their new and upgrading customers travelling to the EU and EEA.

7.3 This Agreement caps the wholesale charges that UK operators can apply to Norway and Iceland operators when their customers are roaming in the UK. The Agreement is on the wholesale, not the retail element, as the former has to be covered by an international agreement, whereas retail can be covered by domestic legislation. The Agreement obligates Norway and Iceland to reciprocate and both have legislation ready to cap the charges their operators can charge UK operators (the Agreement will take effect as near simultaneously as possible for all three countries).

7.4 The implementation of this Agreement will ensure that UK operators are protected from high wholesale charges from Norway and Iceland operators. The regulation of

wholesale charges in this Agreement is with a view to facilitating surcharge-free international mobile roaming for the consumers of each Party to the Agreement.

- 7.5 Not proceeding with the SI would therefore not meet one of the key publicly stated achievements of the Agreement: keeping costs low for holiday makers and business travellers in Norway and Iceland.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.6 There was no relevant law covering roaming charges between the UK and Iceland and Norway before the changes made by this instrument. Before Implementation Period (IP) completion day, the relevant EU law (the EU regulations aimed at regulating roaming charges in the EU) guaranteed surcharge-free roaming for UK consumers in the EU and EEA states (including Norway and Iceland). This guarantee of surcharge-free roaming ceased on IP completion day.

Why is it being changed?

- 7.7 The legislation is being introduced to comply with the UK's international obligations under the terms of the UK-Norway, Iceland and Liechtenstein Free Trade Agreement.

What will it now do?

- 7.8 The SI will be the mechanism to ensure that the amount UK operators can charge Norway and Iceland operators when their customers are roaming in the UK is capped. In addition it will give Ofcom the power to enforce these caps on UK operators.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it revokes retained EU law.

9. Consolidation

- 9.1 Not consolidating any other SI.

10. Consultation outcome

- 10.1 No consultation conducted.

11. Guidance

- 11.1 No guidance provided.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because of the low level of impact per business and the limited number of businesses affected. A de minimis impact assessment (DMA) is available. The DMA has calculated Net Present Value (NPV) over a ten year period. In the most likely scenario, the NPV has been calculated as £0.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the Government will review the implementation and functioning of this Article within three years of entry into force of this Agreement, as per the obligation on the Parties at Article 3.69(8). In addition, the Parties are obliged to review the rates every two years, unless the Joint Committee decides otherwise, as per the Agreement's Article 3.69(5).

14.2 A statutory review clause is included in the instrument.

15. Contact

15.1 Richard Sullivan at the Department for Digital, Culture, Media and Sport. Telephone: 07712 693 823 or email: richard.sullivan@dcms.gov.uk can be contacted with any queries regarding the instrument.

15.2 Jonny Martin, Deputy Director for Digital Trade, at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Julia Lopez MP, Minister for Media, Data and Digital Infrastructure, at the Department for Digital Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

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) or 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) or 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) or 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) or 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) or 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 IP completion 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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or 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 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament 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.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion 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 IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 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

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Explanations where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972

- 1.1 The Minister for Media, Data and Digital Infrastructure, Julia Lopez MP, has made the following statement regarding regulations made under the European Communities Act 1972:

“In my opinion there are good reasons for the Trade (Mobile Roaming) Regulations 2023 to revoke the Mobile Roaming (European Communities) Regulations 2007 (S.I. 2007/1933), the Mobile Roaming (European Communities) (Amendment) Regulations 2009 (S.I. 2009/1591), the Mobile Roaming (European Communities) (Amendment) Regulations 2013 (S.I. 2013/822) and the Mobile Roaming (European Communities) (Amendment) Regulations 2014 (S.I. 2014/2715). Those enactments are spent following the expiry on 30th June 2022 of Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (EUR 2012/531).”