

---

# Removing fax from the universal service obligations on BT and KCOM

---

[Removing fax from the universal service obligations on BT and KCOM](#) – Welsh overview

**STATEMENT**

Publication date: 13 January 2023

# Contents

---

## Section

1. Overview	1
2. Removing fax from the universal service conditions	2

## Annex

A1. Legal framework and Ofcom's role	10
A2. Notification of modifications to the universal service conditions	14

# 1. Overview

The telephony universal service obligation (USO) ensures that a minimum set of telephony services are available at an affordable price to people across the UK. BT and KCOM are the designated universal service providers in the UK, and Ofcom's current USO rules require them to provide facsimile (fax) services. The scope of the USO is set by Government through legislation and, until recently, it required fax services to be provided throughout the UK as a universal service.

Parliament recently removed the requirement to provide fax services from the USO legislation, following an initial consultation by Ofcom in November 2021. This amendment was made in light of the ongoing migration of telephony networks to internet protocol (IP) technology, which means that fax services can no longer be guaranteed to work in the same way. It also reflects the fact that use of fax in the UK is now very limited, and there are free, or low-cost, alternatives available.

Following the Government's decision to remove fax services from the USO legislation, we published a further consultation last year on proposals to update our rules on BT and KCOM to implement this change.

## What we have decided - in brief

**We have amended our rules to remove the requirement for BT and KCOM to provide fax services under the USO.** This change does not mean that fax services will stop working immediately, but instead there will no longer be an obligation on BT and KCOM to provide fax under our rules - it will ensure that our rules reflect the requirements in the universal service legislation and are not unduly burdensome. Current users of fax will need to look for alternatives (such as email) ahead of their telephony networks being migrated to IP - the timescales for this will depend on their telephony provider but is expected to be before the end of 2025.

## 2. Removing fax from the universal service conditions

- 2.1 The current telephony USO was established via legislation in 2003 and sets out the extent to which certain electronic communications services should be provided throughout the UK. The Universal Service Order 2003 ('the Order') requires that at least one designated universal service provider shall meet all reasonable requests by end-users for connection at a fixed location to the public electronic communications network and for access to publicly available telephone services at a fixed location.<sup>1</sup>
- 2.2 Until 1 October 2022, the Order specified in particular that those connections must be capable of allowing end-users to make and receive local, national and international telephone calls, **and facsimile**.
- 2.3 The Order does not specify in any detail how and by whom these services should be provided to consumers. It is therefore for Ofcom to decide how to implement the Order in the most appropriate way.
- 2.4 Since 2003, we have implemented the telephony USO through a combination of universal service conditions on BT and KCOM (whom we designated as universal service providers)<sup>2</sup> and general conditions on all providers.
- 2.5 We have implemented the requirement to provide telephony services through two sets of universal service conditions, referred to as the 'Telephony Universal Service Conditions' and the 'Broadband Universal Service Conditions'.<sup>3</sup> In particular, the requirement for the provision of a connection at a fixed location is contained in Broadband Universal Service Condition A2 on BT and KCOM.<sup>4</sup> This condition requires the provision of 'Telephony Services' on reasonable request, and the definition of these services includes "*the ability to make and receive calls and facsimile*".

### Migration to IP will impact the provision of fax services

- 2.6 The UK's fixed telecoms networks are undergoing substantial change as telecoms providers migrate their landline customers from the public switched telephone network (PSTN) to voice over IP technology over the next few years. BT has taken the decision to close the PSTN at the end of 2025 and other providers plan to follow a broadly similar timescale.<sup>5</sup>

---

<sup>1</sup> [The Electronic Communications \(Universal Service\) Order 2003](#), as amended.

<sup>2</sup> Oftel, July 2003. [Statement on the designation of BT and Kingston as universal service providers and the specific universal service conditions](#).

<sup>3</sup> [Universal Service Obligations \(broadband and telephony\)](#).

<sup>4</sup> The full legal framework is set out in Annex 1. Under the universal service conditions, BT is required to provide Telephony Services in the UK except for the Hull Area, and KCOM is required to provide Telephony Services in the Hull Area.

<sup>5</sup> [The future of fixed telephone services: Ofcom policy positioning statement](#).

- 2.7 Migration to IP will offer benefits to consumers, such as clearer phone calls, and will help ensure the UK's landline telephone services are fit for the future.
- 2.8 Fax machines use voice-band data (or 'tones') that are carried over the PSTN voice service. They require both ends, and intermediary networks, of the fax call to support an analogue voice-band data channel for the analogue data. The nature of all-IP (digital) networks means that the timing and synchronisation that is relied on by fax for the duration of the transmission cannot be guaranteed. This means that the successful delivery of facsimile data cannot be guaranteed over all-IP networks.

## Our November 2021 consultation sought views on removing fax from the USO

- 2.9 In September 2021 the Minister for Digital Infrastructure consulted Ofcom on his proposal to remove the fax universal obligation from the Order.<sup>6</sup> In particular, he noted that removal may be appropriate given that it will no longer be feasible for BT and KCOM to meet this obligation following the withdrawal of the PSTN.<sup>7</sup>
- 2.10 In November 2021 we consulted on a number of changes to the universal service conditions and as part of that consultation we sought views on the removal of fax from the universal service obligations.<sup>8</sup> Thirteen responses to the consultation commented on this issue and the majority of respondents agreed with our view, albeit a few also raised some concerns.<sup>9</sup>
- 2.11 We published a statement on our universal service review in June 2022.<sup>10</sup> In the statement we summarised and responded to the comments raised by stakeholders. We concluded that it was appropriate for fax to be removed from the USO, given its limited ongoing use, the technological developments outlined above and the availability of a range of alternatives.
- 2.12 We also wrote to the Department for Digital, Culture, Media & Sport ('DCMS') setting out this view and included a summary of the relevant responses.<sup>11</sup>

## Amendment to the Universal Service Order

- 2.13 On 6 September 2022, a Statutory Instrument was laid in Parliament to amend the Order (the '2022 SI'), removing the requirement to provide facsimile services from the universal service obligation. This change came into force on 1 October 2022.<sup>12</sup>

---

<sup>6</sup> Under section 65(4) of the Communications Act 2003, the Secretary of State is required to consult Ofcom and such other persons as he considers appropriate before making a statutory instrument to change the Order.

<sup>7</sup> [Letter from DCMS to Ofcom](#)

<sup>8</sup> Ofcom, November 2021: [Consultation: Review of the telephony universal obligation](#)

<sup>9</sup> The non-confidential responses are published [here](#).

<sup>10</sup> Ofcom, June 2022: [Statement: Review of the telephony universal service obligation](#)

<sup>11</sup> [Letter from Ofcom to DCMS](#)

<sup>12</sup> [The Electronic Communications \(Universal Service\) \(Amendment\) Order 2022](#)

- 2.14 In her Ministerial statement, the Secretary of State for Digital, Culture, Media and Sport noted that she had consulted Ofcom in accordance with section 65(4) of the Communications Act 2003 ('the Act').<sup>13</sup>
- 2.15 The Secretary of State also noted that DCMS had been working with other Government departments to raise awareness of this change and others expected as part of PSTN to IP migration.
- 2.16 In the Explanatory Memorandum to the 2022 SI, DCMS explain that:  
*"[T]he Order is designed to offer a minimum safety net of services for consumers. The government is now satisfied that numerous alternatives to facsimile are available (some of which are free of charge) meaning this instrument will have a minimal impact on businesses, the public sector, and individuals. Alternatives to facsimile include document sharing services and email. The latter can also include read-receipts. DCMS also notes that the COVID-19 pandemic is likely to have accelerated changes in business practices, likely reducing the impact of this change even further."*<sup>14</sup>

## Our November 2022 consultation

- 2.17 In light of Parliament's amendment to the Order, we published a consultation on 2 November 2022 ('the November 2022 consultation') proposing a consequential amendment to the definition of 'Telephony Services' in BT and KCOM's universal service conditions.<sup>15</sup> Specifically, we proposed to remove the words "*and facsimile*" from the definition of 'Telephony Services' in both the Telephony and Broadband Universal Service Conditions, to reflect the fact that the requirement to provide facsimile services has been removed from the Order.
- 2.18 We published a notification of the proposed changes, as required by s48A of the Act.
- 2.19 We noted that the effect of the changes would be that:
- a) BT and KCOM are no longer required to provide facsimile services upon reasonable request throughout the UK (or the Hull Area, as appropriate) (Broadband Universal Service Conditions A.1 and A.2);
  - b) BT and KCOM are no longer required to ensure that their electronic communications networks are installed, kept installed and run for the purpose of providing facsimile services (Broadband Universal Service Condition A.4); and
  - c) BT and KCOM are no longer required to provide facsimile services on the basis of uniform prices (Telephony Universal Service Condition 1).

---

<sup>13</sup> [Statement UIN HCWS284 made on 5 September 2022 by the Secretary of State for Digital, Culture, Media and Sport](#)

<sup>14</sup> <https://www.legislation.gov.uk/ukSI/2022/937/memorandum/contents>

<sup>15</sup> Ofcom 2022. [Removing fax from the universal service obligations on BT and KCOM](#)

## Consultation responses

- 2.20 We received twenty responses to our November 2022 consultation.
- 2.21 BT and KCOM agreed with our proposals. BT noted that the broader move to IP voice and broadband services offers more efficient ways of delivering services previously provided by fax.
- 2.22 KCOM pointed out that removal of fax services from the USO would not preclude their continued provision. It agreed with Ofcom's view that the nature of all-IP networks means that the timing and synchronisation that is relied on by fax for the duration of the transmission cannot be guaranteed. KCOM said that in these circumstances it would not be appropriate to continue to oblige KCOM and BT to continue to offer fax services. It also noted that given the purpose of the universal service obligations was to ensure that a minimum set of telephony services are available to people who need them, and alternatives to fax are available, it was unnecessary for fax to continue to form part of that minimum set of services.
- 2.23 Other respondents (primarily individual respondents), however, disagreed with our proposals. Respondents pointed to potential benefits of using fax over other technologies and noted that in some cases fax might be the best option available to them. For example, respondents noted that email addresses could be blocked, or emails could be delayed by service providers, meaning that fax was a more reliable method. Other respondents noted that they considered fax to be more secure than other alternatives, particularly if sharing bank details, and also that fax could be needed as a back-up in the event of internet/computer failures. One respondent argued that the technology to forward a signed, dated and witnessed document was not generally available to the public yet.
- 2.24 Some respondents raised concern that fax was still relied upon by some people, particularly those who were not computer literate or who did not have access to email (which might include those who are elderly and disabled).
- 2.25 Another respondent also noted there were still some institutions, in particular non-UK institutions, for which fax was significantly more reliable and much faster than regular mail, or for which there is currently no alternative.
- 2.26 A confidential response from a trade body said that its industry code specified fax as an approved mechanism for communications between interested parties in the industry and that, until such time as the code was amended, the industry must continue to operate under this obligation.
- 2.27 The Communications Consumer Panel and Advisory Committee for Older and Disabled People ('CCP') said that it recognised that fax was declining in use and in many circumstances had been superseded by other technologies, many of which offer an arguably higher level of protection of personal data. However, it noted that some public services and businesses still rely on fax and did not have an alternative solution, and the protection of fax services granted by the USO should not be removed too soon. In particular, it noted that fax was still in use in parts of the health service and urged Ofcom,

UK and devolved governments to work together, with industry and the health sector, to ensure that there was a safe and secure alternative to fax in place to protect consumers and citizens from failure of services due to internet and mobile outages.

- 2.28 Recognising that the removal of fax from the requirements of the universal service is a consequence of the migration to IP networks, the CCP also highlighted the need to raise awareness of this change, in particular to users of telecare alarm systems that would need updating to function over IP technology.

## Ofcom response and decision

- 2.29 As set out in detail in Annex 1, the scope of the telephony universal service in the UK is set by Government, through the Universal Service Order. We are required to implement the requirements of that Order, and do so through the universal service conditions and general conditions. In amending the Order in September 2022, Parliament has already taken the decision to remove the requirement to provide fax from the universal service obligations. Our November 2022 consultation related specifically to the consequential amendment of the universal services conditions which is required in order to implement Parliament's decision, that is, the way in which we amend the conditions to reflect Parliament's decision.
- 2.30 Our universal service rules apply specifically to BT and KCOM (as the UK's universal service providers) and there have never been any similar obligations on other telecoms providers to support the provision of fax, meaning that for many customers, their use of fax has never been underpinned by the universal service obligations.
- 2.31 Whilst the ongoing use of fax services is now very limited, we note that a number of respondents said they or other stakeholders still rely on fax to communicate in certain circumstances, and they raised concerns that other alternatives may not be suitable or available to them, either in the first instance or as a back-up solution in case of a power or other service failure.
- 2.32 As highlighted by KCOM, the removal of fax from the universal service rules does not prevent the continued provision of fax services - specifically, the change to our rules does not mean that fax services will immediately stop working. Fax calls today could be made between and over networks that have already transitioned to IP (for example the network supporting the destination number), with varying degrees of performance. As more networks complete their migration to IP, performance issues associated with fax transmission may become more common. Once migration is complete for all networks (which we expect to be before the end of 2025), it will not be possible for any provider to guarantee that fax transmission will work without issues. Current users of fax can continue

- to use these services but if they have not already done so, could observe more performance issues associated with their use of fax over time.<sup>16</sup>
- 2.33 Migration to all-IP networks is happening all over the world, meaning that fax is increasingly unlikely to be guaranteed to work in other countries as well.<sup>17</sup>
- 2.34 The migration to IP process in the UK is being led by industry, but we previously carried out a joint exercise with government to identify areas of the economy that may be affected to ensure that impacted sectors have the information they need to prepare for IP migration. As part of that process, the impact on the reliability of fax services was flagged to relevant sectors where we understand fax may remain in use. In terms of the use of fax in the health sector, NHS England was required to phase out fax by April 2020.<sup>18</sup> We recognise that the NHS in the devolved administrations will also need to take measures to ensure they move away from using fax in future.
- 2.35 We are continuing to work with communication providers to help make sure issues raised by their migration to voice-over-IP services, are identified and addressed with the aim of protecting consumers from harm and minimising disruption. We recognise that the closure of the PSTN and migration to all-IP networks will also have an impact on other devices that use voiceband data (such as telecare alarms). As outlined in our policy positioning statement on migration to IP, we expect providers to assess customers' needs and offer advice and assistance to customers who use telecare devices.<sup>19</sup>
- 2.36 Whilst we note the concerns raised by respondents, we (and DCMS) are not aware of any specific need for fax to be used which would not easily be met by one of the available alternatives, including for those users who may have disabilities, such as textphones for deaf and speech-impaired citizens, and which would lead us to delay implementation of the change to the Order.<sup>20</sup> Email, picture messaging, document management platforms, online secure file transfer services and electronic signature services are widely available in the UK; such services enable reliable delivery of time-sensitive documents and are available either free, or are relatively inexpensive. Many of these services have the option to include password protection to ensure they are secure, and as noted by the CCP, may offer a greater level of personal data protection. Any companies or institutions that currently rely on fax will need to identify which of these available alternatives is suitable to meet the needs of their business and customers, including customers that do not have internet access. Similarly, where there are any industry codes or guidance which reference fax, it will be up to the relevant industry body to decide when and how to make any

---

<sup>16</sup> As noted on BT's website: "Generally fax is supported by the Digital Voice service, although it's not 100% guaranteed...If you need to use your fax machine, connect it to the phone port on the back of the Hub. It's best to send no more than ten pages at a time." See [Digital Voice: Will my existing phone and fax machine still work? | BT Help](#)

<sup>17</sup> [This 2018 report into experiences of migration to IP in other countries](#) gives examples of advice to fax users in other countries.

<sup>18</sup> [Health and Social Care Secretary bans fax machines in NHS](#) (www.gov.uk)

<sup>19</sup> For example, we have made clear that communications providers should identify customers who use critical downstream services (such as a telecare device), and develop appropriate communications plans and put in extra protection measures for them. For example, this could include delaying a customer's migration until satisfied that their downstream service is compatible with VoIP. [The future of fixed telephone services - Ofcom](#)

<sup>20</sup> BT Relay UK: [how to use Relay UK with a textphone.](#)

necessary updates given that fax services will no longer be guaranteed. As noted above, the impact of the change to VoIP on the reliability of fax services has been flagged to relevant sectors where we understand fax may remain in use.

- 2.37 The CCP also noted that fax can offer an alternative in the event of health or safety emergency situations as a result of a network outage. We note that communications providers have separate obligations under General Condition A3.2b requiring them to take all necessary measures to ensure uninterrupted access to emergency organisations as part of any voice communication service. In addition, fax machines use mains power, so if a mobile and/or broadband outage is the result of a power cut, fax services would also not work.
- 2.38 We are required to ensure that our universal service rules reflect the requirements of the Order and are proportionate. Therefore, having taken account of consultation responses and our statutory duties, we have decided that it is appropriate and proportionate to implement the change to the Universal Service Order by removing ‘facsimile service’ from the universal service conditions without delay.
- 2.39 In order to reflect the changes made to the Order promptly, and consistent with the proposals in our November 2022 consultation, this amendment comes into effect immediately. The amendment is set out in Annex 2.

## Relevant legal tests

- 2.40 When making decisions under sections 67 and 45 of the Act, we must be satisfied that the legal tests in section 47(2) of the Act are met.<sup>21</sup> We consider that our changes to the definition of ‘Telephony Services’ and ‘Telephony Service’ in the Telephony Universal Service Conditions and the Broadband Universal Service Conditions (as set out in Annex 2) meet these tests. In particular we consider our changes are:
- **objectively justifiable:** as they are consistent with our duties and policy objectives in that they reflect the changes made to the universal service requirements as set by the Secretary of State. They are also consistent with our duty, under section 6 of the Act, to keep the carrying out of our functions under review, with a view to securing that our regulation does not involve the maintenance of burdens which have become unnecessary;
  - **not unduly discriminatory:** as the removal of the obligations relating to the provision of fax services applies equally to both BT and KCOM;
  - **proportionate:** as the removal of the requirement to provide facsimile services reflects the requirements of the Order and removes a regulatory burden; and
  - **transparent:** as we have explained our reasoning in the 2022 November consultation and the decisions have been set out clearly in this document.

---

<sup>21</sup> These tests are set out in detail in Annex 1.

## Impact assessment and equality impact assessment

- 2.41 The analysis presented in this document constitutes an impact assessment as defined in section 7 of the Act.<sup>22</sup>
- 2.42 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policymaking. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in our activities. However, as a matter of policy, we are committed to carrying out impact assessments in relation to the great majority of our policy decisions.<sup>23</sup>
- 2.43 Section 149 of the Equality Act 2010 (the ‘2010 Act’) imposes a duty on Ofcom, when carrying out its functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and other prohibited conduct related to the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation. The 2010 Act also requires Ofcom to have due regard to the need to advance equality of opportunity and foster good relations between persons who share specified protected characteristics and persons who do not.
- 2.44 Section 75 of the Northern Ireland Act 1998 (the ‘1998 Act’) also imposes a duty on Ofcom, when carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations across a range of categories outlined in the 1998 Act. Our Revised Northern Ireland Equality Scheme explains how we comply with our statutory duties under the 1998 Act.<sup>24</sup>
- 2.45 To help us comply with our duties under the 2010 Act and the 1998 Act, we have assessed the impact of our proposals on persons sharing protected characteristics and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations.
- 2.46 We do not consider that our decision to implement the changes to the Order has equality implications under the 2010 Act or the 1998 Act. In particular, we do not envisage the impact of our decision to be to the detriment of any group of society.

---

<sup>22</sup> The Explanatory Note to the 2022 SI notes that no significant impact on the private, voluntary or public sector is foreseen as a consequence of the change, and that it was not necessary for DCMS to carry out a full impact assessment.

<sup>23</sup> For further information about our approach to impact assessments, see the guidelines, [Better Policy Making - Ofcom's approach to Impact Assessment](#).

<sup>24</sup> Ofcom, 2019. [Revised Northern Ireland Equality Scheme for Ofcom](#).

# A1. Legal framework and Ofcom's role

## Purpose of the universal service

- A1.1 The requirement to secure universal services in the UK derives from the European Electronic Communications Code ("EECC"). The EECC has been implemented into UK law through the Communications Act 2003 (the "Act") and secondary legislation.
- A1.2 Under the EECC, universal service means the provision of at least a minimum set of services to everyone on request and at an affordable price.<sup>25</sup> It ensures that a basic set of telephony services are available to people who need them (particularly those in remote or rural areas or vulnerable customers, whom the market might not otherwise choose to serve), and where there would otherwise be a risk of social exclusion arising from the lack of such access which would prevent their full social and economic participation in society.

## Scope of the universal service

- A1.3 The scope of the telephony universal service in the UK is set by Government. In particular, the Secretary of State is required by section 65 of the Act to set out by order the extent to which electronic communications network and services must be provided, made available or supplied throughout the UK. Using his powers under section 65 of the Act, the Secretary of State made the Electronic Communications (Universal Service) Order 2003 (the "Order").<sup>26</sup> The Order has been amended a number of times to reflect changing technology and consumer need.
- A1.4 Amongst other things, the Order requires at least one designated universal service provider to meet all reasonable requests by end-users for connection at a fixed location to the public electronic communications network and for access to publicly available telephone services over that communication network. Until recent changes to the Order made by the Electronic Communications (Universal Service) (Amendment) Order 2022,<sup>27</sup> this connection had to be capable of allowing end-users to make and receive facsimile, as well as local, national and international telephone calls.
- A1.5 However, as noted in Section 2, on 6 September 2022, a statutory instrument was laid in Parliament to amend the Order, removing the requirement to provide facsimile services from the universal service obligation. The change came into force on 1 October 2022.<sup>28</sup>

---

<sup>25</sup> Recital 212 of the EECC

<sup>26</sup> [The Electronic Communications \(Universal Service\) Order 2003 \(legislation.gov.uk\)](#), as amended

<sup>27</sup> [The Electronic Communications \(Universal Service\) \(Amendment\) Order 2022](#) SI 2022/937

<sup>28</sup> [The Electronic Communications \(Universal Service\) \(Amendment\) Order 2022](#)

## Ofcom's role in securing the universal service

A1.6 The Order does not specify in any detail how and by whom the universal service should be provided to consumers. It is therefore for Ofcom to decide how to implement the Order in the most appropriate way.

## Ofcom's power to set conditions

A1.7 To secure compliance with the obligations in the Order, Ofcom has the power to set different types of regulatory conditions, including:

- a) universal service conditions, which apply to designated providers only; and
- b) general conditions of entitlement ("general conditions"), which apply to all providers of electronic communications networks and/or electronic communications services or to providers of a particular description specified in the condition which supply such networks and/or services.

A1.8 We can only set or modify universal service conditions and general conditions where we are satisfied that the conditions are:

- a) not unduly discriminatory against particular persons or against a particular description of persons;
- b) proportionate to what they are intended to achieve; and
- c) transparent in relation to what they are intended to achieve.

A1.9 In addition, in relation to universal service conditions we must be satisfied that the conditions are objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which they relate.

## Ofcom's statutory duties

A1.10 In fulfilling our role in respect of the implementation of the Order, we must have regard to our duties under the Act.

A1.11 In particular, we must consider our principal duty in s.3(1) of the Act to further the interests of citizens in relation to communications matters and the interests of consumers in relevant markets, where appropriate by promoting competition. In the carrying out of our functions, we are also required to secure (among other things) the availability throughout the UK of a wide range of electronic communications services (s.3(2)(b) of the Act).

A1.12 We must also have regard (among other things) to the following:

- a) the desirability of ensuring the security and availability of public electronic communications networks and public electronic communications services (s.3(4)(ea) of the Act);

- b) the desirability of ensuring that relevant markets facilitate end-to-end connectivity in the interests of consumers in those markets (s.3(4)(eb) of the Act); and
- c) the interests of those consumers in respect of choice, price, quality of service and value for money (s.3(5) of the Act).

A1.13 In addition, we must have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed (s.3(3) of the Act).

A1.14 We must also act in accordance with the six requirements at s.4 of the Act, of which the following appear particularly relevant:

- a) promoting the interests of all members of the public in the UK;
- b) carrying out our functions in a manner which, as far as practicable, does not favour one form of network, communications service or associated facility; or one means of providing or making available such a network, service or facility; and
- c) promoting connectivity.

A1.15 We are also required by s.6 of the Act to keep the carrying out of our functions under review with a view to securing that our regulation does not involve either:

- a) the imposition of burdens which are unnecessary; or
- b) the maintenance of burdens which have become unnecessary.

## How Ofcom has secured compliance with the Order to date

A1.16 Oftel (Ofcom's predecessor) exercised its powers under sections 45 and 67 of the Act to set the universal service conditions and to designate BT and KCOM (then known as Kingston Communications) as the telephony universal service providers.<sup>29</sup> The universal service conditions have been amended by Ofcom over time.<sup>30</sup>

A1.17 The universal service conditions are currently contained in:

- a) a notification under section 48 of the Act dated 21 July 2003 (the "Telephony Universal Service Conditions"). These conditions have been amended a number of times, the most recent amendment being on 8 June 2022;<sup>31</sup> and
- b) a notification under section 48 of the Act dated 6 June 2019 (the "Broadband Universal Service Conditions").<sup>32</sup> These conditions were amended in November 2021.<sup>33</sup>

---

<sup>29</sup> Under the universal service conditions, BT is required to provide Telephony Services in the UK except for the Hull Area, and KCOM is required to provide Telephony Services in the Hull Area.

<sup>30</sup> In 2019, we also designated BT and KCOM as the universal service providers for broadband.

<sup>31</sup> A consolidated copy of the Telephony Universal Service Conditions is available in Annex 1 of [Statement: Review of the telephony universal service obligation](#) (ofcom.org.uk)

<sup>32</sup> [Statement: Delivering the Broadband Universal Service](#) (ofcom.org.uk), see Annex 1

<sup>33</sup> [Universal Service Conditions \(broadband and telephony\)](#) - Ofcom

## Removing fax from the universal service conditions on BT and KCOM

- A1.18 In line with the Order (as drafted before the Government's amendment in September 2022 which came into effect on 1 October 2022), the universal service conditions currently require BT and KCOM to provide telephony services (including the ability to make and receive facsimile) upon reasonable request throughout the UK (or the Hull Area, as appropriate) (Broadband Universal Service Conditions A.1 and A.2), and on the basis of uniform prices (Telephony Universal Service Condition 1). BT and KCOM are also required to ensure that their electronic communications networks are installed, kept installed and run for the purpose of providing telephony services, including facsimile services (Broadband Universal Service Condition A.4).
- A1.19 In addition, Ofcom has imposed a number of general conditions to secure the implementation of other requirements of the Order. These include general conditions relating to the provision of directory information, measures for end-users with disabilities, and measures relating to billing. The general conditions do not place any requirement on communications providers to provide facsimile services throughout the UK.

## A2. Notification of modifications to the universal service conditions

### **Modifications under sections 45 and 67 of the Communications Act 2003 (the “Act”) of Universal Service Conditions contained in (i) Ofcom’s notification under section 48 of the Act of 21 July 2003, and (ii) Ofcom’s notification under section 48 of the Act of 6 June 2019**

#### **Background**

1. On 17 July 2003, the Secretary of State made secondary legislation (the “Order”)<sup>34</sup> setting out the extent to which electronic communications networks and electronic communications services must be made available or supplied throughout the UK as part of the universal service obligation.
2. To secure the provision of the universal service specified in the Order, Oftel (Ofcom’s predecessor) designated BT and KCOM as the universal service providers<sup>35</sup> and exercised its powers to set universal service conditions in 2003.<sup>36</sup> These conditions have been modified on a number of occasions and are currently contained in:
  - a) a notification made by Ofcom under section 48 of the Act dated 21 July 2003 (the “Telephony Universal Service Conditions”). These conditions have been amended on a number of occasions, most recently in June 2022;<sup>37</sup> and
  - b) a notification made by Ofcom under section 48 of the Act dated 6 June 2019 (the “Broadband Universal Service Conditions”).<sup>38</sup> These conditions were amended in September 2020 and November 2021.<sup>39</sup>
3. Ofcom has also secured the provision of some universal services specified in the Order through general conditions. In September 2017, Ofcom concluded a comprehensive review of the General Conditions, and a set of revised General Conditions came into force on 1 October 2018.<sup>40</sup>

---

<sup>34</sup> The Electronic Communications (Universal Service) Order 2003, which came into force on 25 July 2003

<sup>35</sup> Oftel’s Universal Service Notification, dated 21 July 2003, took effect on 25 July 2003

<sup>36</sup> The power to set universal service conditions derives from sections 45 and 67 of the Act.

<sup>37</sup> The universal service conditions were amended in 2003, 2011 and 2012. The most recent amendment in June 2022 can be found here: [Statement: Review of the telephony universal service obligation \(ofcom.org.uk\)](#)

<sup>38</sup> [Statement: Delivering the Broadband Universal Service \(ofcom.org.uk\)](#), see Annex 1

<sup>39</sup> [Universal Service Obligations \(broadband and telephony\) - Ofcom](#)

<sup>40</sup> The General Conditions and changes to them can be accessed [here](#).

4. On 6 September 2022, a Statutory Instrument was laid in Parliament to amend the Order, removing the requirement to provide facsimile services from the universal service obligation (the “2022 SI”). The change came into force on 1 October 2022.<sup>41</sup>
5. In November 2022 and in accordance with s.48A of the Act, Ofcom published a consultation document (the “November 2022 consultation”) giving notice of its proposals to modify the Telephony Universal Service Conditions and the Broadband Universal Service Conditions, in order to implement the changes made by the 2022 SI. Ofcom proposed to implement the 2022 SI by removing the requirement to provide facsimile services from the universal service conditions.
6. A copy of the proposed changes was sent to the Secretary of State under s48C(1) of the Act.
7. In response to the November 2022 consultation, Ofcom received 20 responses. Non-confidential versions of all responses have been published on Ofcom’s website.<sup>42</sup> The Secretary of State has not notified Ofcom of any international obligation on the United Kingdom for the purposes of section 48A(6)(b).

## Decisions

8. Ofcom has decided to modify the universal service conditions imposed on BT and KCOM by removing “and facsimile” from the definition of “Telephony Services” and “Telephony Service” in each of BT’s and KCOM’s Telephony and Broadband Universal Service Conditions, as set out below.
9. These decisions are made under powers set out in sections 45(10) and 67(1) of the Act. The modifications take effect from the date of this notification.
10. The Telephony Universal Service Conditions are amended as follows:
  - a. the words “and facsimile” shall be deleted from the definition of “Telephony Services” contained in Schedule 1 (Universal Service Conditions for BT), and
  - b. the words “and facsimile” shall be deleted from the definition of “Telephony Services” contained in Schedule 2 (Universal Service Conditions for KCOM).
11. The Broadband Universal Service Conditions are amended as follows:
  - a. the words “and facsimile” shall be deleted from the definition of “Telephony Service” contained in paragraph 2 of Part 2 of Schedule 1 (Universal Service Conditions for BT), and
  - b. the words “and facsimile” shall be deleted from the definition of “Telephony Service” contained in paragraph 2 of Part 2 of Schedule 3 (Universal Service Conditions for KCOM).

---

<sup>41</sup> [The Electronic Communications \(Universal Service\) \(Amendment\) Order 2022](#)

<sup>42</sup> The non-confidential responses are published [here](#)

12. Ofcom's reasons for making these decisions are set out in the final statement accompanying this notification.

## **Ofcom's duties and legal tests**

13. In accordance with sections 48A(6) and (7) of the Act, Ofcom has considered every representation made to it about the proposals contained in the November 2022 Consultation, and has decided to give effect to its proposals.
14. Ofcom considers that the modifications set out in this notification meet the tests contained in section 47(2) of the Act in that they are objectively justifiable, not unduly discriminatory, proportionate, and transparent.
15. In making the decisions referred to in this notification, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six requirements in section 4 of the Act. Ofcom also considers that its decisions are consistent with its duty, under section 6 of the Act, to keep the carrying out of its functions under review, with a view to securing that regulation does not involve the maintenance of burdens which have become unnecessary.
16. In making the modifications referred to in this notification, Ofcom has also had regard to the Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services designated by the Secretary of State for Digital, Culture, Media and Sport for the purposes of section 2A of the Act.
17. A copy of this notification has been sent to the Secretary of State under section 48C(1) of the Act.

## **Interpretation**

18. For the purpose of interpreting this notification:
  - a. except in so far as the context otherwise requires, words or expressions have the meaning assigned to them in paragraph 19 below, and otherwise any word or expression has the same meaning as it has in the Act;
  - b. headings and titles shall be disregarded;
  - c. expressions cognate with those referred to in this notification shall be construed accordingly; and
  - d. the Interpretation Act 1978 shall apply as if this notification were an Act of Parliament.
19. In this notification:
  - a. "Act" means the Communications Act 2003 (2003 c. 21);
  - b. "BT" means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 1159 of the Companies Act 2006;

- c. "KCOM" means KCOM Group Limited, whose registered company number is 02150618, defined as "Kingston" in the 2003 Notification, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined in section 1159 of the Companies Act 2006; and
- d. "Ofcom" means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002 (2002 c. 11).

Signed

A handwritten signature in black ink, appearing to be 'Selina Chadha', is enclosed in a thin black rectangular border.

**Selina Chadha**

**Director of Connectivity**

**A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002**

**13 January 2023**