

## STATUTORY NOTICE

### REGARDING THE UPGRADING OR SHARING OF ELECTRONIC COMMUNICATIONS APPARATUS UNDER THE ELECTRONIC COMMUNICATIONS CODE AS IT APPLIES BY VIRTUE OF SCHEDULE 2 OF THE DIGITAL ECONOMY ACT 2017 (THE ELECTRONIC COMMUNICATIONS CODE: TRANSITIONAL PROVISION) IN RELATION TO A CODE OPERATOR WHO IS PARTY TO A SUBSISTING AGREEMENT

#### Paragraph 17 of Part 3 of Schedule 3A to the Communications Act 2003, as modified by paragraph 5A of Schedule 2 to the Digital Economy Act 2017

1. This is a statutory notice pursuant to paragraph 17(6) of the electronic communications code set out in Schedule 3A to the Communications Act 2003 (the “**Code**”), as modified by paragraph 5A of Schedule 2 to the Digital Economy Act 2017 in relation to a Code operator who is party to a subsisting agreement.<sup>1</sup>
2. We, KCOM Group Limited (“**KCOM**”), are a party to a subsisting agreement<sup>2</sup> [insert agreement name and date] (the “**Agreement**”) pursuant to which we keep [insert brief description of the electronic communications apparatus] (the “**Apparatus**”) installed under the land at [insert address of the land where the Apparatus is installed] (the “**Land**”).
3. We are required to provide this notice because we intend to share the use of the Apparatus that is installed under the Land with [insert name of relevant operator] (“**the Sharing Operator**”).
4. We intend to begin sharing the Apparatus on [insert date].

#### ADDRESS FOR CORRESPONDENCE ABOUT THIS NOTICE

5. We can be contacted about the sharing of the Apparatus in writing to:

KCOM Group Limited  
Wayleaves Team (Legal)  
37 Carr Lane  
Hull  
HU1 3RE

[wayleaves@kcom.com](mailto:wayleaves@kcom.com)

Whilst this notice is served by KCOM Group Limited it relates to the sharing of KCOM’s infrastructure by the Sharing Operator. The Sharing Operator is not working or acting on behalf of KCOM or acting as KCOM’s agent or partner. The Sharing Operator is building their own network, using KCOM’s physical infrastructure, e.g. ducts, to offer their own services. KCOM is not responsible for any acts or omissions of the Sharing Operator nor for any services the Sharing Operator may offer to their customers.

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<sup>1</sup> Paragraph 5A of the of Schedule 2 to the Digital Economy Act 2017 permits operators who have Code agreements pre-dating 28 December 2017 to upgrade and share apparatus under limited circumstances. Copies of the Communications Act 2003 and the Digital Economy Act 2017 can be found online at [www.legislation.gov.uk](http://www.legislation.gov.uk).

<sup>2</sup> As defined in paragraph 1(4) of Schedule 2 to the Digital Economy Act 2017

If you have any queries about the sharing of the infrastructure by the Sharing Operator please contact *[CP to insert contact details]*.

This notice does not entitle the Sharing Operator to enter the land to survey, install and/or maintain their apparatus without the prior consent of the occupier.

*[Insert date of Notice]*

NOTES FOR COMPLETING THIS NOTICE

*Paragraph 5A of Schedule 2 to the Digital Economy Act 2017 modifies the automatic rights to upgrade and share apparatus as set out in paragraph 17 of the Code to allow Code operators who are a party to a 'subsisting agreement' to upgrade and share apparatus installed under land in limited circumstances.*

What is a 'subsisting agreement'?

*A subsisting agreement is an agreement that pre-dates 28 December 2017, when the new Code in Schedule 3A to the Communications Act 2003 came into force.*

*Paragraph 1(4) of Schedule 2 to the Digital Economy Act 2017, sets out that a subsisting agreement is an agreement for the purposes of paragraph 2 or 3 of the electronic communications code under Schedule 2 to the Telecommunications Act that remains in force, or an order under paragraph 5 of that code that remains in force, in each case at the time the new Code comes into force.*

*Paragraph 2 of the Schedule sets out that a subsisting agreement is to be treated as an agreement made under the new Code, but subject to the Code modifications that are set out in that Schedule.*

Notice requirements

*In order to have the power to upgrade or share apparatus, paragraph 17 of the Code (as modified by paragraph 5A of Schedule 2 to the Digital Economy Act 2017) requires you to give notice before you begin to upgrade the electronic communications apparatus or (as the case may be) share its use. This notice must be given before the beginning of the period of 21 days ending with the day on which you begin to upgrade the apparatus or to share its use.*

*The notice must be attached, in a secure and durable manner, to a conspicuous object on the relevant land, ensuring it is in a position where it is reasonably legible. For these purposes, 'relevant land' means:*

- (a) in a case where you have a right to enter the land under which the electronic communications apparatus is installed, that land;*
- (b) in any other case, the land on which works will be carried out to enable the upgrading or sharing to take place or, where there is more than one set of works, the land on which each set of works will be carried out.*

*Paragraph 17 of the Code (as modified by virtue of paragraph 5A of Schedule 2 to the Digital Economy Act 2017) requires that the following conditions are also met:*

- the upgrading and sharing of the apparatus must have no adverse impact on the land; and*
- it must not impose any burden on any person with an interest in the land (which includes anything that has an adverse effect on the enjoyment of the land or causes loss, damage or expense to the person).*

NOTES FOR COMPLETING THIS NOTICE

ADDITIONAL NOTES

*Paragraph 17 of the Code (as modified by virtue of paragraph 5A of Schedule 2 to the Digital Economy Act 2017) does not confer any right to enter land for the purpose of upgrading or sharing the use of electronic communications apparatus.*

*Where the above notice requirements and conditions are met, paragraph 17(9) voids any agreement under Part 2 of the Code to the extent that it prevents or limits the upgrading or sharing of apparatus installed under land, or makes such upgrading or sharing subject to conditions that must be met by the operator (including a condition requiring the payment of money).*