

Your response

Question	Your response
<p>Question 1: Please provide feedback on the additions, amendments and clarifications we have made to the wording of the licence condition to implement our decisions on the scope of the licence condition in our October 2020 Statement, giving reasons for your response.</p>	<p>Confidential? – Y / N</p> <p>N/A</p>
<p>Question 2: Please provide feedback on the additions and clarifications to our ‘Guidance on EMF Compliance and Enforcement’, giving reasons for your response.</p>	<p>Confidential – N</p> <p>The EU 2018 Electronic Communications Code is being transposed into UK Law by December 21st, 2020. The code states that public health must be treated as “imperative” and that a "competent authority or authorities" are required to reconcile environmental and public health concerns.</p> <p>Paragraphs 106, 110 and Article 45 in the 2018 EEC code are below for your reference. *</p> <p>Various bodies are currently involved in "advice" about RFR exposure; including Ofcom, PHE, local authority planners, local authority directors of public health and environmental protection managers. Currently, public safety is based on all these agencies pointing back to "guidance" exposure levels set by ICNIRP; however:</p> <ul style="list-style-type: none"> • Public Health England are commissioned by the Secretary of State for Health but they themselves have no statutory obligations • PHE point to ICNIRP (International Commission on Non-Ionising Radiation Protection) • ICNIRP is an independent non-governmental organisation in Germany with no statutory standing in international law. There is a deep

controversy about the adequacy of ICNIRP's guidelines, many scientists are appealing for their guidelines to be revoked and a court has recently ruled them to be unreliable (Court of Turin 2020) The flaws with ICNIRP and their advice are currently being pursued in the UK by a legal case led by Michael Mansfield QC.

- Ofcom defers to Public Health England (PHE)
- British planners are instructed via para 116 in the National Planning Policy Framework that they may not consider anything other than ICNIRP when considering applications for Telecoms masts and antennae, yet i) NPPF is designed to promote sustainable development which isn't possible given the evidence that RFR is a pollutant with harmful effects. See *Directive 2010/75/EU on Industrial Emissions in notes below for RFR qualification as a pollutant blow ** ii*) has undeniable 'siting' impacts that are material to planning decisions.
- When BANES (Bath and North East Somerset) was asked to weigh up and investigate the evidence of harm via a Statutory Nuisance Complaint under the Environmental Protection Act 1990, they responded by declaring it to be Ofcom's responsibility.

The Local Authorities are currently in a double bind when it comes to RFR emissions, on the one hand they are instructed to follow ICNIRP "guidelines" on

the other, for liability purposes they have to weigh the evidence of harm themselves.

“A public body must determine how much weight to put on the PHE guidance. Equally that body must determine what other evidence from your client or other members of the public or interested parties to consider in making any decision. If it be alleged that a public body now or in the future acted unlawfully in placing reliance on the guidance, that cannot retrospectively taint the guidance with illegality”.

Quote from a letter from DLA Piper, UK solicitors for PHE, to Leigh Day solicitors, dated 8th August 2019).

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Another double bind is found in briefings to local authority planners to only take into account siting and appearance of radiofrequency radiation installations, yet the NPPF para 115 a) states that an applicant must provide:

‘the outcome of consultations with organisations with an interest in the proposed development, in particular with the relevant body where a mast is to be installed near a school or college, or within a statutory safeguarding zone surrounding an aerodrome, technical site or military explosives storage area;’

This paragraph points to the health dangers posed by radiofrequency radiation emissions.

Also, it seems that when faced directly with this dilemma the Bristol Planning Case Officer felt unable to act on this as he claimed that the telecoms industry would appeal.

"The refusal of this application on the grounds of potential health risks to residents(including

children) would not be likely to be justified or upheld at appeal. Therefore, it is felt that significant weight cannot be attached to this issue in this instance"

***Bristol Student Union Mast Decision notice
Sept 17th 2020. Planning ref 20/03473/F***

This current double bind is unacceptable and given the requirement to transpose paragraphs 106 and 110, and Article 45 of the EU Code 2018 into UK law, it is of utmost urgency that the Secretary of State for Health identifies which **competent authorities** will operate under the transposed UK law, well before the 21st December deadline. A proposal and consultation about this is urgently needed.

* 2018 EEC CODE

Paragraph 5

“This Directive creates a legal framework to ensure freedom to provide electronic communications networks and services, subject only to the conditions laid down in this Directive and to any restrictions in accordance with Article 52(1) of the Treaty on the Functioning of the European Union (TFEU), in particular measures regarding public policy, public security and public health, and consistent with Article 52(1) of the Charter of Fundamental Rights of the European Union (the ‘Charter’).”

Paragraph 106

Where mobile operators are required to share towers or masts for environmental reasons, such mandated sharing could lead to a reduction in the maximum transmitted power levels allowed for each operator for reasons of public health, and this in turn could require operators to install more transmission sites to ensure national coverage. Competent authorities should seek to reconcile the environmental and public health considerations in question, taking due account of the precautionary approach set out in Council Recommendation 1999/519/EC (1).

Paragraph 110 is the directive that says protecting public health is imperative and precautionary principle should apply.

The need to ensure that citizens are not exposed to electromagnetic fields at a level harmful to public health is imperative. Member States should pursue consistency across the Union to address this issue, having particular regard to the precautionary approach taken in Recommendation 1999/519/EC, in order to work towards ensuring more consistent deployment conditions. Member States should apply the procedure set out in Directive (EU) 2015/1535, where relevant, with a view also to providing transparency to stakeholders and to allow other Member States and the Commission to react

Article 45 Management of Radio Spectrum

4 b) "protect public health against electromagnetic fields, taking utmost account of Recommendation 1999/519/EC;"

**** Directive 2010/75/EU on Industrial Emissions**, apply in the UK as part of the Integrated Pollution Prevention and Control (IPPC) regime which operates across the EU. Elements of this regime, can be, but not necessarily are, made subject to regulation under Section 2(3)(a), or 2(3)(b), of the PPCA 1999.

22. Annex II of the 2010 Directive provides a list of polluting substances requiring control through the IPPC regime, to include:

12. Substances and mixtures which have been proven to possess **carcinogenic** or **mutagenic** properties or properties which may affect **reproduction** via the air'.

Question 3: Please provide feedback on the trial version of our EMF calculator, giving reasons for your response.

Confidential? – Y / N

N/A