

## Your response

| Question   | Your response  |
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| <p><b>Q1. Do you have any comments on our proposals relating to improving the clarity of the Code of Practice?</b></p>             | <p>Confidential? – N</p> <p>Clarity is welcome since the Code of Practice is a document that should be referred to by all parties to an agreement, including Operators who do not necessarily understand a particular type of site and lay people who do not understand how the Electronic Communications Code works.</p>  |
| <p><b>Q2. Do you have any comments on our proposals relating to including legislative changes in the Code of Practice?</b></p>     | <p>Confidential? –N</p> <p>The NFU agrees that an explanation of how telecommunications legislation has changed helps set the scene and tone of the rest of the document. What is more difficult is when legislation is put into acronym format and so used for the remainder of the document. For a lay person unused to this type of format it is very difficult to read and requires having to refer back to other parts of the document. A glossary on a separate page encompassing any acronyms including legislation would be helpful.</p> |
| <p><b>Q3. Do you have any comments on our proposals relating to the definition of 'Site Provider' in the Code of Practice?</b></p> | <p>Confidential? – N</p> <p>Whilst 'Site Provider' is not a particularly layman friendly term, it is how the industry refers to an landowner / occupier of land. It also makes sense to keep it consistent with the wording of the Code. The Code of Practice could consider inserting a glossary of terms to which 'Site Provider' could be added.</p>  |
| <p><b>Q4. Do you have any comments on our proposals relating to contact information in the Code of Practice?</b></p>               | <p>Confidential? – N</p> <p>These changes are sensible since there many different facets to an Operator including contractors and professional advisers acting on their behalf. It is important for a Site Provider to know the contact details for whichever person or department is most relevant to any particular enquiry.</p> <p>Removing the requirement to provide information to the Operator's head office is also sensible as if the Operator is a large company there is a high chance that any</p>                                   |

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|   | <p>correspondence of this type could get lost. Likewise, where there are many offices, a) a Site Provider may not know which one is the head office and b) the head office may not be the office at which the required contact information is compiled.</p>  |
| <p><b>Q5. Do you have any comments on our proposals relating to professional fees in the Code of Practice?</b></p>                  | <p>Confidential? –N</p> <p>It is important that communication between parties is as transparent as possible and setting out where professional fees would be compensated will help this. It also helps to manage expectations where parties are unfamiliar with the processes involved and their extent. The NFU would not however want whatever is set out to be too prescriptive and exhaustive since there may be some types of fees which arise which are perfectly reasonable for the character of the site but which neither party had foreseen when entering into initial negotiations.</p> <p>One comment the NFU does have is that we are aware that some operators are seeking to put a cap on the level of fees that they will cover albeit some Operators do extend this cap where necessary. The NFU understands that Operators cannot just write a blank cheque but if the fees are reasonably incurred then, as the new wording states ‘a Site Provider should not be left out of pocket’. Sites vary and some may require a greater level of professional advice than others. In addition, the ability of a Site Provider to carry out some of the work before passing to an adviser will vary. The introduction of a cap, will almost certainly leave some Site Providers with a deficit either financially or more importantly, through not obtaining the requisite level of advice due to cost.</p> |
| <p><b>Q6. Do you have any comments on our proposals relating to responding to a request for access in the Code of Practice?</b></p> | <p>Confidential? – N</p> <p>The addition of these new paragraphs is welcome as they do set out to a perhaps lay Site Provider that an Operator does have options in how they may deal with this situation and what could occur in the event a Site Provider does not respond.</p> <p>The NFU does think that the wording of paragraph A2.25 is quite complicated and long. Some of the wording such as ‘reasonably practicable’ is not very ‘user friendly’ if one</p>   |

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|   | <p>considers this paragraph has been added for the benefit of a Site Provider.</p>   |
| <p><b>Q7. Do you have any comments on our proposals relating to electromagnetic fields exposure in the Code of Practice?</b></p>        | <p>Confidential? – N<br/> The NFU is not an expert in this area but is of the opinion that strict compliance with any conditions and overall safety regulation must be adhered to.</p>   |
| <p><b>Q8. Do you have any comments on our proposals relating to the sharing and upgrading of apparatus in the Code of Practice?</b></p> | <p>Confidential? – N<br/> It is good to see that sharing and upgrading have been split into overground and underground apparatus as these are dealt with differently to a degree. The NFU however wonders why the provisions for additional Site Provider permissions regarding site access to apparatus as seen in the underground section have not been replicated for the overground section as Operators who share overground apparatus will need to secure these provisions in advance of sharing. If it is in the underground section only, it almost implies that it only applies to underground apparatus and not overground.</p> <p>As this updated Code of Practice is aimed at bringing clarity to the operation of the Electronic Communications Code, it is very important that Site Providers are made aware that the right to share and upgrade only relates to apparatus and not the land itself or rights in the land.</p> <p>Seeking individual access agreements in the event of sharing apparatus has an additional benefit to Site Providers as it will mean they are aware of all the different persons who might need to enter their land. This is particularly important for security purposes and for the health and safety of such visitors.</p> <p>The NFU also questions whether paragraph A2.67 is in the correct place? It has been added to the ‘underground’ section but then uses poles as an example which clearly are overground apparatus.</p> |
| <p><b>Q9. Do you have any comments on our proposals relating to ADR in the Code of Practice?</b></p>                                    | <p>Confidential? – N<br/> The NFU is encouraged that the Code of Practice states that courts may take unreasonable refusal of ADR into account when awarding costs, however having recently</p>  |

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|  | <p>attended an ADR session between an Operator and Site Provider it was very clear that the Operator had merely ‘made an appearance’ at the session rather than using it properly as a means of resolving a dispute. This of course added to the costs of both parties, the Site Provider having significantly less resources than the Operator to continue in the dispute. Courts therefore should also take the level of engagement of parties at ADR into account.</p> <p>The NFU does not see that the words ‘reasonably practicable’ are required in A2.88 as operators should consider ADR in all situations.</p>  |
| <p><b>Q10. Do you have any overarching comments on our proposals for the Code of Practice (included in its entirety in Annex 2 above)?</b></p> | <p>Confidential? – N</p> <p>The NFU is particularly pleased to see that there is a much more detailed section on renewals of existing sites since this has been the source of the many disputes we have been approached about. The NFU would however like the Code of Practice to acknowledge that there may be different renewal procedures for different types of agreement.</p> <p>The Code of Practice is aimed at all parties to an agreement under the Electronic Communications Code. This includes Site Providers who usually do not deal with legislation, legal agreements or legal processes. This Code of Practice needs to reflect this in the language that it uses in certain areas, for example, a very legal phrase ‘reasonably practicable’ is used on numerous occasions throughout.</p> <p>One issue with this Code of Practice is that it is not legally binding and there are no penalties for failure in its compliance. From a lay person perspective they may make every effort to adhere to it believing that it has a higher status than it does, only to then allow them to be ridden over rough shod by an Operator who understands the lack of consequence very well. This should be made clear in the document.</p> |

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