

Your response

Question	Your response
<p>Question 1: Do you have any comments on the drafting of the new template notice as set out in Annex 1?</p>	<p>Confidential? – NO</p> <p>Clarification is requested from OFCOM, particularly regarding the Operational Land and critical assets and infrastructure of an Electricity Distribution Network Operator (DNO). The numbered points below are of substantial concern.</p> <ol style="list-style-type: none"> 1. The Notices should/must not apply to a DNO's operational property and assets as there will be potential conflict and interference with Electricity Industry Statutory Rights and obligations. 2. The Notices are largely 'one sided' and make no reference to the enhanced Health & Safety requirements for e.g. the high kV substations and operational premises of a DNO. 3. The Notices do not require the Telecom Operator ['Operator'] to timely and fully set out their full Scope of Works, Risk Assessment and Method Statement and all requirements for access/works. The landlord will be placed under pressure to agree access without knowing the telecom Operator's detailed proposed works including duration/personnel/ works supervision/ vehicles/ plant equipment/ materials and temporary onsite storage of materials and equipment. 4. The Notices will remove any landlord/landowner rights to object to works or place adequate physical protection, works supervision and control measures in place e.g. for air rights being infringed and safety concerns regarding crane lifting operations that 'over-sail' critical operational assets such as electricity substations and high voltage u/g cables.

5. The Notices will also, inadvertently, apply to non-Licensed Telecom Operators in so far as such as Operator/ party is a subtenant, sharer or Licensee of the Code Telecom Operator?
6. The Notice allow the Operators' to proceed to Court on perceived unreasonably delayed access and without having provided fully detailed works or having prior agreed relevant Health & Safety obligations and requirements.
7. The Notices are stated to be intended for 'unresponsive operators' but their effect [especially if used with an 'operational emergency' access request] is to put any and all landlords/landowners under pressure to agree reduced controls on early access.
8. The Notices refer to 'Target premises' and appear not to differentiate between Operator leased land and other landlord/3rd party land and **without any reference to insurance and indemnity** cover being provided/confirmed to the Landlord [compensation for loss and damage is decided at Court/Lands Tribunal].
9. If there is a dispute on costs regarding the Operator's forced Site access, the Landlord's discretionary rights on any non-demised land is removed by the Notices and any dispute would need to be resolved at Court/Lands Tribunal.
10. The new template Notices need to be considered in the context of further changes to the Telecom Code that are due in 2023 i.e. removing Operator requirements to obtain Landlord consent under any Site Lease agreements. Forced and early Site access and with payment of minimal Landlord costs.
11. There is no requirement for the Operator to 'account' for their forced access. There is no update for the Landlord after access

for e.g. notification of any property damage to the Landlord/landowner and provision of accurate as built drawings, schedule of condition/landlord site inspection, at the expense of the Code telecom operator. It is proposed that that an Operator should complete a suitable form of Notice to the landlord /landowner following an emergency or other access event to detail any incidents of damage/interference.

12. There have been examples of receiving Site access requests for 'emergency access' and which appear to not at all be verified as required for bona fide emergency [reasons] and there is a separate concern that the Operators can use 'emergency access' as another lever to use with the Template Notices to obtain **'low cost, low landlord input, early access'** as is really what the Operators are looking for.

13. The Operators should be required not to issue any template notices on DNO's until all relevant H & S requirements and supervision and costs have been fully resolved.

14. The Template notices will remove a landlord/landowner's ability to impose any Licence/ full supervision costs, on any Operator that is seeking Works/ crane access to our critical assets and infrastructure.

15. The Template notices will also apply to Wayleaves and make no differentiation between the 'operational' and 'non-operational' land of DNO's.

16. Additional Comment [i.e. 'additional' to our response on the previous consultation exercise].

- i. We have serious safety and other concerns regarding posting a Template Notice on or near to

	<p>our properties as a process to gain access is not acceptable under any circumstances due to the presence of high voltage critical infrastructure. Entry to any Operational DNO property cannot be permitted unless strictly in accordance with any lease arrangement in place or by prior written approval only and not simply through the act of 'attaching' a notice.</p> <p>ii. There is a high risk that a DNO would not be aware that a Template Notice had been attached to a relevant or other operational DNO property as the DNO has many unmanned operational sites. The proposed arrangements/ process makes no provision for legal service of the Template Notice on the registered office/ current operational address of the DNO and again, that is a serious concern.</p>
<p>Question 2: Do you have any comments on the drafting of the new template notice as set out in Annex 2?</p>	<p>Confidential? – NO</p> <p>The question 2 responses are the same as for Question 1</p>

Please complete this form in full and return to eccodepowers@ofcom.org.uk.