



## NEW BILL TO ADDRESS HEALTH CONCERNS OVER TELECOMMUNICATIONS MASTS

**T**he Telecommunications Masts (Planning Control) Bill has been published and a provisional date for the second reading has been set for 24 February 2006. The Bill acknowledges that there is at least concern over the potential effects of telecommunications masts and equipment in relation to educational and medical facilities.

It appears that educational facilities as defined in the bill will include universities and colleges as well as schools and nurseries.

The new measures will impose requirements on an operator applying for planning permission for telecommunications equipment, and will restrict operators' rights to continue to use land for telecommunications equipment if it is an educational or medical facility.

### Summary

The measures introduced by the Bill:

- Require more information to be made public at the planning application stage about the nature of the equipment to be erected and potential risks.
- Require local planning authorities to give special consideration to objections raised where masts are to be erected that may pose a particular risk to medical or educational establishments.
- Prevent replacement of existing masts by new masts of a different type or capacity. Where this is to happen, the operator has to apply for planning permission so that proper consideration is given to actual or perceived risks.
- Amend the Telecommunications Act 1984 (TA 1984) and the Communications Act 2003 (CA 2003) to:
  - Prevent an operator getting an order for rights to use land for telecommunications equipment if the land is used for an educational or medical facility;
  - Enable educational or medical bodies to require telecommunications equipment to be removed from their land or to require land compulsorily acquired by an operator to be handed back to its original owner.





### **New requirements for planning applications for masts**

The Bill will amend the Town and Country Planning Act 1990 (TCPA 1990) by requiring applications for planning permission for telecommunications masts and associated apparatus to be accompanied by both of the following:

- A precautionary principle statement.
- A beam of greatest intensity certificate.



### **Precautionary principle statement**

This is a statement "which describes the effect upon the environment or human health which might arise from the installation or use of the telecommunications masts and associated apparatus". The local planning authority will have to make the statement available for public inspection and indicate how representations can be made in respect of it; the local planning authority will also have to take into account representations made in respect of it when considering the application for planning permission.

Given the state of scientific evidence on the effects on health of phone masts, the requirement to have a statement on the potential effects of the mast on health or the environment suggests that the function of the statement can only be to draw comment on any perceived threat and on local sensitivities.

### **Beam of greatest intensity certificate**

Every application for planning permission must be accompanied by a beam of greatest intensity certificate. This certificate must set out:

- The area and maximum range of the "beam of greatest intensity".
- The minimum and maximum distances at ground level of the beam of greatest intensity.
- An explanation of the way in which the intensity of radiation falls off with distance from an antenna and of the level of the intensity of radio frequency radiation.
- An indication of where the beam of greatest intensity falls, and the nearest and farthest distance from the antenna to these points.

As with the precautionary principle statement, the local planning authority will have to make the beam of greatest intensity certificate available for public inspection and will have to indicate how representations can be made in respect of it.

The information in the certificate and any representations made in respect of it, must be taken into account by the local planning authority before it decides to grant planning permission for the telecommunications mast and associated apparatus if, according to the certificate, the beam of greatest intensity falls on:

- Land that is occupied by or consists of an educational or medical facility. An educational facility will be defined in section 71C TCPA 1990 as "any premises used for the education of children and young adults, whether such education is full or part time, and includes a nursery school". A medical facility will be defined as "any premises used for medical treatment or care".
- Any part of residential property.

## Changes to the General Permitted Development Order 1995

The Bill will also amend the Town and Country Planning (General Permitted Development) Order 1995 to deal with what development in relation to telecommunications masts will be permitted development for the purposes of Schedule 2, part 2 (minor operations).

- Use of land to put up temporary moveable masts to replace unserviceable masts will be treated as permitted development, provided the temporary equipment is not on the land for more than three months.
- Use of land to set up permanent masts which replace existing masts that have become unserviceable will be permitted development (so no express planning permission will be required). However, development will not be permitted if the unserviceable mast and associated apparatus is replaced by a mast or associated apparatus that is of a different type or capacity.

## Amendments to the Telecommunications Act 1984 and the Communications Act 2003

If a telecommunications operator requires rights over land for the installation of telecommunications equipment and subsequent maintenance, alteration or repair, they must be set out in writing between the operator and an owner or occupier of land.

The operator may give notice to the land owner or occupier of the rights that the operator needs. If the land owner or occupier refuses or fails to give the requisite rights in a written agreement, the operator may go to court and apply for an order.

The Bill amends Schedule 2 to the TA 1984 as follows:

- It prevents an operator getting an order for rights to use land for telecommunications equipment if the land is used for an educational or medical facility.
- It enables certain bodies to require the removal of telecommunications masts and equipment from land used for an educational or medical facility, or to require land compulsorily acquired for use by an operator to revert to the original owner.



### **No court order available imposing rights for operators**

The Bill provides that no court order can be made under paragraph 5 of Schedule 2 requiring a land owner or occupier to give rights to an operator if the rights would be over land or buildings consisting of an educational, nursery or medical facility.

### **Removal of equipment and reverter**

The Bill adds a new paragraph 5A to Schedule 2 under which an operator may be required:

- To remove all telecommunications masts and associated apparatus from land used for medical or health related purposes or for education.
- To hand back to the original owner any land acquired by compulsory purchase under section 118 of the CA 2003. The implication is that the land was previously owned by a medical or educational facility.

Once the court has made an order all transmissions from telecommunications masts and associated apparatus that are subject to the order must cease after 28 days. No compensation is payable to the operator as a result of the court order.

### **Comment**

This is a first draft of the Bill, but one area that will need close consideration will be the definition of educational facility.

Educational Facilities are defined as those being used "for the education of children and young adults" yet there is no definition of 'young adults'. 'Young persons' means those under the age of 18, as defined in the Children & Young Persons Acts 1933-69. Further and higher education institutions are likely to be covered by the Bill, as FE colleges have large numbers of students under 18 and HEI's have some. If 'young adults' is intended to include students over the age of 18, any doubts about the Bill's application will be removed.

If you would like any further information about the issues discussed in this Update, please contact Aled Liddington, Legal Executive, on **Direct Dial:** 44(0)870 763 1535 or **Email:** aled.liddington@martjohn.com

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