

# Judicial Review

## Claim form

**For Court use only** 20 Dec 2023

Name of court

Reference number AC-2023-LON-003728

Date

Day	Month	Year
<input type="text"/>	<input type="text"/>	<input type="text"/>



Help with fees reference number

**H W F** –  –

The rules relating to applications for Judicial Review are contained in CPR Part 54, and Practice Directions 54A – D. Search for the CPR on [www.justice.gov.uk](http://www.justice.gov.uk).



Additional information about judicial review proceedings can be found in the Administrative Court Judicial Review Guide. Search for the Guide on [www.gov.uk](http://www.gov.uk).

## Time Limit for filing a claim

A claim form must be filed promptly, and in any event **not later than 3 months** after the grounds to make the claim first arose: see CPR54.5(1).

## Section 1 – Details of the claimant and defendant

### 1. Claimant name and address(es)

First name(s)

Neil

Last name

McDougall

#### Address

Building and street

[Redacted]

Second line of address

[Redacted]

Town or city

[Redacted]

County (optional)

[Redacted]

Postcode

[Redacted]

Phone number

[Redacted]

Email (if you have one)

[Redacted]

**Note:** If there is more than one claimant, set out the details required by questions 1, 1.1 and 1.2 on a separate sheet, marking that sheet so that it is clear it relates to this part of the claim form.

**1.1** Claimant or claimant’s legal representative’s address to which documents should be sent.

Name of claimant or claimant’s legal representative’s

The first claimant is self-represented

Name of firm (if applicable)

n/a

**Address for service**

Building and street

n/a

Second line of address

n/a

Town or city

n/a

County (optional)

Postcode

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Phone number

Email

Reference number (if applicable)

**Note 1.1:** CPR 6.23 requires each party to proceedings to provide an address for service which must be an address in the United Kingdom. Communication concerning the claim is sent to this address. If a solicitor or legal representative acts for you, give that address (if in the United Kingdom). If not, provide an address to which communication concerning this claim should be sent.

## 1.2 Claimant's Counsel's details

First name(s)

First claimant is self represented

Last name

n/a

### **Address**

Building and street

n/a

Second line of address

n/a

Town or city

n/a

County (optional)

Postcode

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Phone number

Email

**1.3** 1st Defendant's name  
Secretary of State for Health and Social Care, c/o Government  
Legal Department, Litigation Group

**1.4** Defendant or (where known) Defendant's legal representative's  
address to which documents should be sent.

**Address**

Building and street

102 Petty France

Second line of address

Westminster

Town or city

London

County (optional)

Postcode

S	W	1	H	9	G	L
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Phone number

020 7210 3000

Email

sarah.beighton@governmentlegal.gov.uk

Reference number (if known)

Z2311040/AQQ/HO17

**1.5** 2nd Defendant's name

Secretary of State for Levelling Up, Housing and Communities, c/o  
Government Legal Department, Litigation Group

**1.6** Defendant's or (where known) Defendant's legal representative's  
address to which documents should be sent.

**Address**

Building and street

102 Petty France

Second line of address

Westminster

Town or city

London

County (optional)

Postcode

S W 1 H 9 G L

Phone number

020 7210 300

Email

marco.dallantonia@governmentlegal.gov.uk

Reference number (if applicable)

Z2309835/CLJ/JD3

## Section 2 – Interested parties

### 2.1 Interested party

Name

Secretary of State for Science, Innovation and Technology

Organisation (if applicable)

c/o Government Legal Department, Litigation Group

#### Address

Building and street

102 Petty France

Second line of address

Westminster

Town or city

London

County (optional)

Postcode

S W 1 H 9 G L

Phone number

020 7210 3000

Email

thetreasurysolicitor@governmentlegal.gov.uk

Reference number (if applicable)

Z2309835/CLJ/JD3

**Note 2:** An Interested Party is someone other than a defendant who is directly affected by the claim.

Where the claim for judicial review relates to proceedings in a court or tribunal, any other parties to those proceedings must be named in the claim form as interested parties. Full details of interested parties must be included in the claim form. For example, if you were a defendant in a criminal case in the Magistrates or Crown Court and are making a claim for judicial review of a decision in that case, the prosecution must be named as an interested party. In a claim which does not relate to a decision of a court or tribunal, you should give details of any persons directly affected by the decision you wish to challenge.

If you consider there is more than one interested party, set out their details on a separate sheet, marking that sheet so that it is clear it relates to this part of the claim form.

## Section 3 – Details of the decision to be judicially reviewed

**Note 3.1:** Use a separate sheet if you need more space for your answers, marking clearly which section the information refers to.

### 3.1 Give details of the decision you seek to have judicially reviewed.

The transposition of the European Electronic Communications Code (EECC) in the UK through the Electronic Communications and Wireless Telegraphy (Amendment) (EECC and EU Exit) Regulations 2020 (SI 2020 no. 1419) on the 21st December 2020, in the absence of the enactment of public health/environmental protections being a necessary 'instrument/or a provisions of such an instrument' operating under the necessary jurisdictions of local planning authorities/local authorities (LPAs/LAs).

The DLUHC and the DoH&C declined the opportunity to quash conduct that led to these deficiencies, and to remedy those deficiencies though the powers available to them under Schedule 8 paragraph 39(5) of the EU Withdrawal Act 2018 (revised).

### 3.2 Date of decision

Day

0 3

Month

1 1

Year

2 0 2 3

### 3.3 Name and address of the court, tribunal, person or body who made the decision to be reviewed.

Name

Secretaries of State for Health and Social Care/ for Levelling Up, Housing and Communities (being the first and second defendants).

#### Address

Building and street

as above at 1.4 and 1.6, above

Second line of address

as above at 1.4 and 1.6, above

Town or city

as above at 1.4 and 1.6, above

County (optional)

Postcode



## Section 4 – Permission to proceed with a claim for judicial review

**This section must be completed. You must answer all the questions and give further details where required.**

**4.1** I am seeking permission to proceed with my claim for Judicial Review.

Is this application being made under the terms of paragraph 17 Practice Direction 54A (Challenging removal)?

Yes

No

**4.2** Does your claim, or any interlocutory application, for example for interim relief or expedition, need to be decided urgently – i.e. within 7 days?

Yes. Complete form **N463** and file this with your application.

No

**4.3** Are you making any non-urgent interlocutory applications?

Yes. Complete Section 9.

No

**4.4** Does any part of the claim allege a breach of Convention rights protected under the Human Rights Act?

Yes. Identify the Convention rights you contend have been breached in the box below

Article 6 of the European Convention on Human Rights (or the Human Rights Act 1998) 6.1 Right to a fair and public hearing - in the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

No

**4.5** Have you complied with the pre-action protocol?

**Note 4.5:** See Practice Direction 54C.

Yes

No. Give reasons for non-compliance in the box below.

**4.6** Have you filed this claim in the region with which the claim is most closely connected?

Yes. Give any additional reasons for wanting it to be dealt with in this region in the box below

No. Give reasons in the box below

The claim concerns the UK as a whole, as the EECC 'instrument/or a provisions of such an instrument' in question as a consequence of the claim, should be operated under the necessary jurisdictions of local planning authorities/local authorities (LPAs/LAs) extending across all the nations of the UK as regulated directly by national regulatory authorities or through devolved administrations operating within England, Scotland, Wales and Northern Ireland.

**4.7** Is the claimant in receipt of a Civil Legal Aid Certificate?

Yes

No

## Section 5 – Statement of facts relied on

set out below

attached

See Bundle page numbers 21-27/128 below '3 Statement of facts relied on'

**Note 5:** Set out the facts on which your claim is based: see Practice Direction 54A, paragraph 4.2. Use separate sheets if you need more space; mark the sheets so that it is clear they relate to this section of the claim form.

## Section 6 – Detailed statement of grounds

6.1 The detailed statement of grounds are:

set out below

attached

See Bundle pages 28-32/128 below '4 Detailed statement of grounds'

**Note 6:** Set out each ground of challenge: see Practice Direction 54A at paragraph 4.2. Use separate sheets if you need more space; mark the sheets so that it is clear they relate to this section of the claim form.

## Section 7 – Aarhus Convention claim

7.1 Is this claim an Aarhus Convention claim

Yes. Give reasons why in the box below.

The claim is a claim under the 'Aarhus Convention') re: Article 9(2)(b) concerning the 'impairment of a right where administrative procedural law ... requires this as a precondition, and Article 9(3) concerning 'acts or omissions...which contravene...national law relating to the environment'.

No

7.2 Do you wish the court to vary or remove the limits on costs recoverable from a party?

Yes. Give reasons why in the box below.

Our financial situation is precarious partly because we have helped public objectors to exercise their rights over the inappropriate siting of radio masts without payment for over three years.

No

**Note 7:** For the definition of an Aarhus claim, see CPR 45.41. The cost limit provisions are at CPR 45.43 – 44.

## Section 8 – Details of remedy (including any interim remedy) being sought

1. A Quashing Order affirming that the Electronic Communications and Wireless Telegraphy Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020 made the subject of this Schedule 8 paragraph 39(5) EUWA 2018 challenge, is deficient in the absence of public health protections that fall to LAs/LPAs to enact under their EECC competent authority spectrum management obligations.

2. A Mandatory Order confirming the comparability of principles of European law applied by the UK Administrative Court in R (on the application of Delena Wells) v Secretary of State for Transport, Local Government and the Regions (2004, C-201/02) and the case made in this Schedule 8 paragraph 39(5) challenge, being that the 2004 case brought into effect direct 'of a kind' rights conferred by EU directives, that apply comparably to the rights asserted through this challenge as defined in paragraph 5.16 of the 'Statement of facts relied upon' above, as being direct rights that should flow from the UK's transposition of the EECC as an EU directive into UK law.

**Note 8:** State precisely the terms of the order you ask the court to make. The available remedies are at CPR 54.2 – 3. The court may make any/all of the following orders:

- (a) a mandatory order;
- (b) a prohibiting order;
- (c) a quashing order; or
- (d) an injunction restraining a person from acting in any office in which he is not entitled to act.

A claim for damages may be included but only if you are seeking one of the orders set out above.

## Section 9 – Other applications (non-urgent)

**9.1** I wish to make the following applications for directions and/or interlocutory orders:

not applicable

**Note 9:** If you wish to make any interlocutory application now, set out the application and the reasons and/or evidence relied on in support of it in this Section. Use separate sheets if you need more space; mark the sheets so that it is clear they relate to this section of the claim form.

If, after this claim form has been filed, you wish to make an interlocutory application, use form N244.

## Section 10 – Supporting documents

The Claim Form must include or be accompanied by certain documents: see Practice Direction 54A, paragraph 4.4(1) – (2).

Please complete the checklist below

- 10.1  Statement of Facts
- 10.2  Statement of Grounds
- 10.3  Any written evidence relied on in support of the claim.
- 10.4  Any written evidence in support of any other application contained in the claim form
- 10.5  If the claim seeks to have any order quashed, a copy of the order.
- 10.6  If the claim for judicial review is directed to a decision of a public authority, a copy of the decision challenged.
- 10.7  If the claim for judicial review is directed to the decision of a court or tribunal, an approved copy of the reasons for the decision.
- 10.8  Copies of any documents relied on.
- 10.9  A copy of any statutory material relevant to the claim.
- 10.10  A list of essential documents for advance reading by the court.
- 10.11  If paragraph 17 of Practice Direction 54A applies to the claim, copies of the documents specified at paragraph 17.2(1) (a) – (d).

If it has not been possible to file any of the above documents, state the reason why the document is not available.

Reasons why you have not supplied a document and date when you expect it to be available:-

not applicable

**10.12**  If you contend the claim is an Aarhus Convention claim, the financial information required by CPR 45.42.

**10.13**  A copy of the legal aid or Civil Legal Aid certificate (if applicable)



## Statement of truth

I understand that proceedings for contempt of court may be brought against a person who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

- I believe** that the facts stated in this form are true.
- The claimant** believes that the facts stated in this form are true. **I am authorised** by the claimant to sign this statement.

### Signature

Neil McDougall and Karen Churchill (confirmed as joint claimants in the absence of digital signatures)

- Claimant
- Litigation friend
- Claimant's legal representative (as defined by CPR 2.3(1))

### Date

Day                      Month                      Year

1	1	1	2	2	0	2	3
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Full name

Neil Alexander McDougall/Karen Churchill

If claimant's legal representative, state name and firm

If signing on behalf of firm or company give position or office held

## The Court and venue

CPR part 54 – claims for Judicial Review are dealt with by the Administrative Court.

The general expectation is that proceedings will be administered and determined in the region with which the claim has closest connection; see Practice Direction 54C paragraph 2.5.

- Where the claim is proceeding in the Administrative Court in **London**, documents must be filed in the Administrative Court Office, Room C315, Royal Courts of Justice, Strand, London, WC2A 2LL.
- Where the claim is proceeding in the Administrative Court in **Birmingham**, documents must be filed in the Administrative Court Office, Birmingham Civil Justice Centre, Priory Courts, 33 Bull Street, Birmingham B4 6DS.
- Where the claim is proceeding in the Administrative Court in **Wales**, documents must be filed in the Administrative Court Office, Cardiff Civil Justice Centre, 2 Park Street, Cardiff, CF10 1ET.
- Where the claim is proceeding in the Administrative Court in **Leeds**, documents must be filed in the Administrative Court Office, Leeds Combined Court Centre, 1 Oxford Row, Leeds, LS1 3BG.
- Where the claim is proceeding in the Administrative Court in **Manchester**, documents must be filed in the Administrative Court Office, Manchester Civil Justice Centre, 1 Bridge Street West, Manchester, M3 3FX.

## Section 1 separate sheet addendum

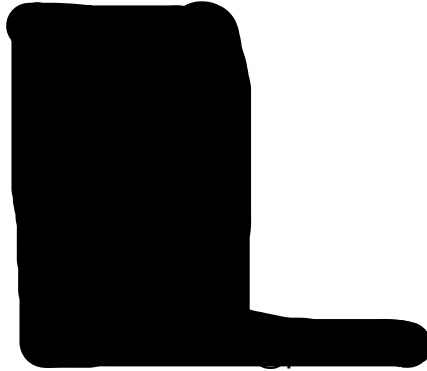
### 1 – Details of the second claimant

#### Second Claimant name and address

First name(s) Karen  
Last name Churchill

#### Address

Building and street  
Second line of address  
Town or city  
County  
Postcode  
Phone number  
Email (if you have one)



#### 1.1 Claimant or claimant's legal representative's address

not applicable as the second claimant is self-represented

#### 1.2 Claimant's Counsel's details

not applicable as the second claimant is self-represented

## Section 5 'Statement of facts'

5.1 The European Electronic Communications Code (EECC) was transposed in the UK through the Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020), in the absence of the enactment of public health/environmental protections required in accordance with the EECC Recital 110,

*'need to ensure that citizens are not exposed to electromagnetic fields at a level of harm to public health is imperative'.*

5.2 The transposition required that in accordance with the principle of effectiveness, the spectrum management functions of local planning authorities/local authorities (LPAs/LAs) are performed properly through EECC Recital 105 and the interconnected EECC Recital 106 and Article 45.2(h), which both refer to European Council Recommendations 1999/519/EC.

5.3 The European Council Recommendations 1999/519/EC as a 'procedural standard', are a long-standing set of procedures agreed by the UK as a participating nation state which now require application within the legal framework of the EECC. The procedural standard is an essential component of public health/environmental protection provisions assigned to LPAs/LAs acting as EECC competent authorities when:

i) granting or refusing general authorisations for mast/antennas siting,

and,

ii) when LAs pursue contracts for small cell deployment.

5.4 LPAs/LAs are required to be resourced in accordance with EECC Recital 34 and Article 6.2, to perform these assigned functions as EECC competent authorities. The former (planned civil works) under EECC Recital 106 and the latter (civil works) under EECC Recital 105, operate under conditions specified in the EECC, and the interconnected directive on,

*'measures to reduce the cost of deploying high-speed electronic networks'* (the 2014 directive 2014/61/EC).

5.5 The twin telecommunication services directives require consistent and complete enactment of public health/environmental protection measures and provisions across the UK, where necessary through the devolved jurisdictions operating within England, Scotland, Wales and Northern Ireland.

5.6 Clarity on the EECC status of LPAs under the twin directives was sought through Matt Warman, then Under Secretary of State at the Department of Digital, Culture, Media and Sport (DDCMS). His answer to a question raised by Wera Hobhouse MP was given on the 22nd June 2021, and included the statement that,

*'the transposition of the EEC Directive would have no effect on the status of local planning authorities where they are considered competent authorities under EU Directive 2014/61/EC',*

implying that LPAs/LAs are EEC Directive competent authorities for the purposes of the regulation of involuntary public exposure to radio-frequency radiation (RFR) when granting or refusing general authorisations for mast/antennas siting and small cell deployments (see paragraph 5.2.9, and Remedy 5 of the *'Submission under Schedule 8 paragraph 39(5) of the European Union Withdrawal Act 2018'*, henceforth referred to as the *'EUWA 2018 Submission'* at Bundle, page 85).

5.7 A further attempt to obtain clarity on the EEC Directive competent authority status of LPAs/LAs from the Department of Levelling Up, Housing and Communities (DLUHC) initiated by Solihull Metropolitan Borough Council was unsuccessful, as the DLUHC and the UK Health Security Agency (UKHSA) failed to respond to four legitimate questions raised on the 24th March 2022 (appendix 1 paragraphs A1.1.2 and A.1.1.3 of the *'EUWA 2018 Submission'* at Bundle, pages 92 and 93).

5.8 The principle of legal certainty should have placed beyond doubt the jurisdictional impact and the implications of LPAs/LAs performing their spectrum management functions as EEC Directive competent authorities.

5.9 Paragraph 2.5.12 of the *'EUWA 2018 Submission'* for example (Bundle, page 68), is indicative of the unacceptable confusion and the absence of any coherent attempt by the UK Government to implement EEC Directive public health protection measures and provisions that were required to be performed by LPAs/LAs as the EEC Directive was brought into UK law ten days before EU Implementation Period (IP) completion day, being the 31st December 2020.

5.10 The failure of the UK Government to transpose the EEC Directive public health and environmental protection measures/provisions, which warrant the technical description of an 'instrument/or the provisions of such an instrument', appears to be a consequence of the misapplication of the Government's,

*'How to Implement European Directives'* (introduced in February 2018, and withdrawn on the 31st December 2020), referenced in the *'EUWA 2018 Submission'*, Section 2.4 *'UK policy on the transposition of EU Directives'*, (Bundle, pages 65 and 66), in accordance with the reality that,

*'in practice, most Directives leave no discretion as to whether to implement by way of legislation or other binding provision (paragraph 2.7).'*

5.11 Warnings made in paragraph 2.28 of the guidance,

*'where a provision of a Directive is intended to create rights for individuals, the legal position needs to be sufficiently precise and clear so that people can determine the full extent of their rights'* (bullet point 3),

and,

*'where the Directive's requirements are applied by administrative authorities, in order to avoid breaching the rule on sub-delegation. The rule on sub-delegation is a common law presumption that when Parliament gives a power to a specified person, that person should not delegate the exercise of the power to anyone else'* (bullet point 4),

that lawyers should be consulted and particular care should be taken, appear not to have been heeded.

5.12 LPAs/LAs are undoubtedly administrative authorities acting under the policy direction of the DLUHC and on behalf of the Secretary of State for Health (SoSfH), for the sub-delegated purposes of protecting the public from involuntary public exposure to RFR under the powers exercised by the SoSfH under Section 2A of the National Health Services Act 2006.

5.13 The absence of properly enacted EEC public health /environmental protection is further threatened by clause 15 of the Retained EU Law (Revocation and Reform) Act 2023 (paragraph 2.6.2 of the 'EUWA 2018 Submission', Bundle, **page 69**), and post-EU (IP) completion day restrictions placed on any challenge made as to how an EU directive was transposed, other than through the safeguards available under Schedule 8, paragraph 35(9) of the EUWA 2018 (revised).

5.14 The European Commission provided summary analysis in its *'Principles of EU Environmental Law'* on how EU directives apply directly, and specifically, in respect to the principle of effectiveness in the briefing on *'General Principles and Effectiveness'*, see:

[https://www.era-comm.eu/Introduction\\_EU\\_Environmental\\_Law/EN/module\\_2/module\\_2\\_2.html](https://www.era-comm.eu/Introduction_EU_Environmental_Law/EN/module_2/module_2_2.html)

which reports that,

*'under the principle of cooperation in good faith laid down in Article 4(3) of the Treaty on European Union (TEU), Member States are required to give full effect to the provisions of the EU law. This means they have to interpret the national law in line with EU law, to refuse to apply any conflicting provision of national law and also to nullify the unlawful consequences of a breach of EU law. Such an obligation is owed, within the sphere of its competence, by every organ of the Member State concerned'*.

5.15 The briefing presents the *Wells* case in summary, which provides context for the comparability of this case to the case argued in this Schedule 8, paragraph 39(5) challenge tied to **Remedy 15**, (Bundle, **page 89**), as an example of a UK case where,

*'in Case C-201/02Wells, the CJEU held it is for the competent authorities of a Member State to take, within the sphere of their competence, all the general or particular measures necessary to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment. Such particular measures include, subject to the limits laid down by the principle of procedural autonomy of the Member States, the revocation or suspension of a consent already granted, in order to carry out an assessment of the environmental effects of the project', and in the cases (not drawn upon in this Schedule 8, paragraph 39(5) EUWA 2018 challenge) Case C-71/14East Sussex County Council, para. 54-55;Case C-416/10Křížan, para. 106), where it was held that, 'the principle of effectiveness also means that the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law must not make it in practice impossible or excessively difficult to exercise these rights'.*

5.16 Citizen rights founded on the principle of effectiveness which this Schedule 8 paragraph 39(5) challenge seeks to protect, are,

*'not rendered impossible in practice or excessively difficult to exercise',*

as they concern:

1. citizen rights to public health protection applied through the EECC *'procedural standard'* in a telecommunication services specific environmental impact assessment (as affirmed in EECC Recital 46 as being specific to such services), that must be conducted prior to a general authorisation/planning permission being granted for the siting of a new mast/antennas by a LPA, or through the facilitation of small cell deployments by a LA,

and,

2. the right of citizens in the circumstances described in 1. above, and as described in the DLA Piper statement issued on behalf of Public Health England (paragraphs 1.7.4 and 1.7.7 of the *'EUWA 2018 Submission'*, Bundle, **page 59**), by having their written objections raising legitimate interests in such circumstances, and the evidence they submit on the adverse health effects /environmental effects of proposed developments being properly taken into account before requests for LPA/LA authorisations /permissions for applications/contractual arrangements, are determined.

5.17 These rights (derived from analysis concluded in paragraph 4.2.12 of the *'EUWA 2018 Submission'*, Bundle, **page 80**) are set in the context of being *'of a kind'* comparability to the rights asserted in the *Wells* case, and through the case asserted in this Schedule 8 paragraph 39(5) challenge (Section 4.2 titled, *'Of a kind' comparability'*, *'EUWA 2018 Submission'*, Bundle, **pages 78 to 81**), are derived from:

*'the principle of cooperation in good faith',*  
*'the principle that Community law should be applied uniformly',*  
*'the principle of equality',*  
*'the principle of legal certainty',*  
*'the principle of procedural autonomy',*  
*'the principle of equivalence',*  
and,  
*'the principle of effectiveness'.*

5.18 The *'of a kind'* comparability between the *Wells* case and the case made here is further reinforced by the parallel functions that were required to be performed by LPAs/LAs to protect citizen rights through the *Wells* case litigation, and the functions of LPAs/LAs that are in contention in the case here, as explained in Section 4.4 of the *'EUWA 2018 Submission'* (Bundle, **pages 82 and 83**), titled,

*'LPAs/LAs are required to undertake specialist and distinct EECC environmental impact assessments under the public health provisions of the directive, as their direct effect is imperative to the implementation of the EECC as a binding legal framework for spectrum management and use'.*

5.19 The failure of the UK Government to transpose the public health and environmental protection measures/provisions into UK law through the required EECC competent authority status of LPAs/LAs, creates a *lacuna* in the effective management of the radio spectrum which unlawfully extinguishes the citizen rights 1., and 2., as stated in paragraph 5.16 above, that require protection through the tasks/functions performed by LPAs/LAs as primary regulators of involuntary public exposure to RFR.

5.20 The effective management of the radio spectrum through the multiple measures/provisions of the EECC as a,

*'legal framework (that) ensures freedom to provide communication networks and services ... to provide communication networks and services ... (subject to conditions laid down in the directive) ... in particular measures regarding public policy, public security and public health (EECC Recital 5)',*

is paramount, and action by the UK Government and EECC competent authorities including LPAs/LAs on the,

*'need to ensure that citizens are not exposed to electromagnetic fields at a level of harm to public health is imperative' (EECC Recital 110),*



are inescapable EECC requirements, irrespective of changes in the status of EU Retained law and the shift from the UK from being a EU Member State to an EECC participating nation state subsequent to the transposition of the EECC on the 21st December 2020.

5.21 Section 1 of the *'EUWA 2018 Submission'* titled, *'The legal significance of public health protection provision – European directives as EU retained law'* (Bundle, **pages 53 to 62**), concludes with an assertion of the essential tasks/functions that LPAs/LAs must perform to protect citizen rights through the argument and evidence presented in Section 1.7 of the submission titled, *'Can LPAs/LAs immunise themselves from taking into account contrary and contradictory evidence on what constitutes an established adverse health effect of RFR?'* (Bundle, **pages 58 to 60**).

5.22 And, Section 1.8 of the *'EUWA 2018 Submission'* titled, *'LPAs/LAs are primary regulators of involuntary public exposure to RFR'*, (Bundle, **pages 60 to 62**), requires review in the context of:

i) Section 4 of the *'EUWA 2018 Submission'* titled, *'Unresolved ambiguity regarding 'of a kind' legal decisions on the preserved status of rights concerning the public health protection provisions of telecommunication directives'* (Bundle, **pages 76 to 83**),

and specifically,

ii) Section 4.2 *'Of a kind'* comparability (Bundle, **pages 78 to 81**),

and,

iii) the legal status of this Schedule 8, paragraph 39(5) challenge, as established in Section 3 titled, *'Pre/post Brexit law impacting upon citizen rights'* (Bundle, **pages 71 to 76**).

5.23 Section 3 of the submission highlights the contention that the UK Government's transposition of the EECC into UK law on the 21st December 2020, breaches the citizen rights 1., and 2., as stated in paragraph 5.16 above, justifying the enactment of the remedies outlined in Section 5 of the *'EUWA 2018 Submission'* titled *'Remedies required within the scope of the DLUHC and the DoH under Schedule 8 paragraph 39(5) EUWA 2018'* (Bundle, **pages 83 to 91**), through the two Orders listed in Section 8 of this application for Judicial Review (Bundle, **page 15**), and as justified in Section 6 **'Detailed Statement of Grounds'** (**pages 28 to 32** below).

5.24 The issue of a letter before claim raising this Schedule 8 paragraph 39(5) EUWA 2018 (revised) challenge as presented on the 13th September 2023 (Bundle, **pages 34 to 41**) to the Department of Health and Social Care (DoH) and the Department of Levelling Up, Housing and Communities

(DLUHC) as appropriate regulatory national regulatory authorities, resulted in responses dated 3rd November 2023, which effectively represent a neutral stance from the Departments in relation to the challenge (Bundle, **pages 42-43 and 44**).

5.25 Our attempts to obtain clarity on the pre-action final position of the UK Government on the case raised in this challenge, is outlined in an email dated 4th December 2023 (Bundle, **pages 45 to 48**).

## Section 6 – Detailed statement of grounds

### Ground 1: Direct rights are in contention

6.1.1 Public Health England (now incorporated within the UK Health Security Authority (UKHSA)), consistently assert on behalf of the Secretary of State for Health that involuntary public exposure to radio-frequency radiation (RFR),

*'occurs through product safety legislation, health and safety legislation and **planning policy**. These regulatory areas all consider the international guidelines',*

making the rights 1., and 2. asserted in this Schedule 8 paragraph 39(5) challenge, direct rights related to planning policy (in its broad meaning, to include compliance with extant planning law and planning procedures) as defined in paragraph 5.16 of the '**Statement of facts relied upon**', above.

6.1.2 The direct rights (traceable to Article 4 of the EU Withdrawal Agreement 2020) claimed in this application, are not enacted in extant planning policy as it is currently interpreted and applied by relevant Government Departments being national regulatory authorities, nor by local authorities serving the functions of LAs and LPAs as EECC competent authorities.

6.1.3 We contend that planning policy as operating across the UK currently is deficient as a consequence of the UK Government's failure to enact properly the required public health provisions designed into the European Electronic Communications Code (EECC) on, and beyond its transposition on the 21st December 2020. This is demonstrated through case examples in '**Conflicting and contradictory positions taken by LPAs Solihull MBC, Mendip DC and Bath and North East Somerset (BANES) Council on their EECC competent authority status**' in Appendix 1 of the 'EUWA 2018 Submission' (Bundle, **pages 92 to 107**).

6.1.4 That failure was something that occurred before the 31st December 2020 which warrants remedy/remedies to the deficient transposition of the EECC public health protection provisions, which are not disallowed as a consequence of Schedule 1 paragraph 3 of the EUWA 2018, as this Schedule 8 paragraph 39(5) EUWA 2018 challenge is pursued to protect our rights under 1., and 2., as rights protected within three years of the EU Implementation Period (IP) completion day (being on the 31st December 2023).

6.1.5 Schedule 8 paragraph 39(5) EUWA 2018, therefore provides an opportunity for us to challenge, *'any enactment' (1) ... 'made against either administrative action or domestic legislation other than Acts of Parliament or rules of law' (2) ... or 'any conduct' (2) ... 'concerning the flawed enactment of a directive that may be ... 'incompatible with any principle of EU law' (3).*

notes above being:

(1) derived from EUWA 2018 (revised) Schedule 8 paragraph 39(5)(b)(ii).

(2) as per explanatory note 409 EUWA 2018 – the quashing of conduct by 'other public authorities' could take direct effect by the public authority accepting that a challenge is successful, or after a Court does so by deciding that the challenge is justified and that direct rights flow as a consequence.

(3) as per explanatory note 410 EUWA 2018.

6.1.6 Hence, the Schedule 8 paragraph 39(5) challenge remains a legitimate means to secure rights 1., and 2., defined in paragraph 5.16 of the '**Statement of facts relied upon**', accommodated through current planning policy (again in its broad meaning, to include compliance with extant planning law and

planning procedures) as applied by LAs/LPAs as EECC competent authorities in compliance with relevant EECC Recitals and Articles as 'accrued' EU law, as those rights under the '*principle of effectiveness*' are (as highlighted at paragraph 4.2.12, Bundle, **page 80**),

*'not rendered impossible in practice or excessively difficult'*,

to exercise, as rights conferred by the Community legal order.

## **Ground 2. 'Of a kind' comparability within the meaning of Section 4(2)(b) EUWA 2018**

6.2.1 The rights asserted as 1., and 2., above, are '*of a kind*' comparability as referenced in paragraph 98 of explanatory notes to the EUWA 2018, protected through Section 4(2)(b) EUWA 2018 as being,

*'rights of a kind' ... (is) ... 'intended to ensure that rights are retained if they are of a similar kind to those so recognised. So rights arising under a particular directive that have been recognised by a court before exit day as having direct effect, could be relied upon by other individuals who are not parties to that case, in circumstances which the directive is intended to address'.*

6.2.2 The '*of a kind*' comparability of those rights with the rights that this Schedule 8 paragraph 39(5) challenge is intended to protect, is demonstrated in the case of *R (on the application of Delena Wells) v Secretary of State for Transport, Local Government and the Regions* (2004).

6.2.3 A letter before claim in compliance with the pre-action protocol for judicial review was issued on the 13th September 2023 to the assumed defendant national regulatory authorities (reproduced at Bundle **pages 34 to 41**), alongside the '*EUWA 2018 Submission*' seeking the administrative quashing of conduct, and the adoption of multiple remedies (presented in Section 5 '*Remedies required within the scope of the DLUHC and the DoH under Schedule 8 paragraph 39(5) EUWA powers*' of the '*EUWA 2018 Submission*' (Bundle, **pages 83 to 91**).

6.2.4 As the national regulatory authorities declined to quash conduct in accordance with the powers granted under Schedule 8 paragraph 39(5) EUWA 2018 (as interpreted in note 211 of the EUWA 2018 explanatory note), providing no **substantive** responses to the letter before claim (the responses dated 3rd November 2023, are at Bundle, **pages 42-43 and 44**), we consequently assume that the UK Government is sustaining a 'neutral stance' given the absence of clarity provided to our follow-up email of the 4th December 2023 (Bundle, **pages 45 to 48**).

6.2.5 We are therefore seeking from the Administrative Court:

**I. A Quashing Order** affirming that the Electronic Communications and Wireless Telegraphy Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020 made the subject of this Schedule 8 paragraph 39(5) EUWA 2018 challenge, is deficient in the absence of public health protections that fall to LAs/LPAs to enact under their EECC competent authority spectrum management obligations.

This deficiency is a consequence of the failure of UK national regulatory authorities to institute 'general authorisation' systems (as defined in EECC Article 2(22)), to ensure that LAs and LPAs enact their competent authority status to protect public health when determining applications for mast siting and small cell deployment in accordance with EECC Recitals 105, 106, and for the purposes of Recital 110 and Article 45.2(h), the absence of which led to the the flawed enactment of the EECC as an EU directive (EU directive 2018/1972) on the 21st December 2020.

**2. A Mandatory Order** confirming the comparability of principles of European law applied by the UK Administrative Court in *R (on the application of Delena Wells) v Secretary of State for Transport, Local Government and the Regions* (2004, C-201/02) and the case made in this Schedule 8 paragraph 39(5) challenge, being that the 2004 case brought into effect direct 'of a kind' rights conferred by EU directives, that apply comparably to the rights asserted through this challenge as defined in paragraph 5.16 of the '**Statement of facts relied upon**' above, as being direct rights that should flow from the UK's transposition of the EEC as an EU directive into UK law.

The Mandatory Order should require the relevant national regulatory authorities to complete the transposition of the European Electronic Communications Code into UK law forthwith, by enacting the '*general authorisation systems*' designed to protect public health as summarised in the **Section 8 'Details of the action that the defendant is expected to take'** in the letter before claim (paragraphs 8.1 to 8.10, Bundle **pages 40 to 41**), and as reported in full in '**Section 5 Remedies required within the scope of the DLUHC and the DoH under Schedule 8 paragraph 39(5) EUWA 2018 powers**' in the '*EUWA 2018 Submission*' (Bundle **pages 83 to 91**).

The Mandatory Order is requested in the absence of a substantive response by the national regulatory authorities to our 13th September 2023 letter before claim, issued in compliance with the judicial review pre-action protocol.

6.2.6 The Administrative Court would be acknowledging that the EEC public health protection provision is an '*of a kind*',

*'recognised in a case decided before 31 December 2020, prior to the end of the transition'*,

being the case of *R (on the application of Delena Wells) v Secretary of State for Transport, Local Government and the Regions* (2004), and that the direct rights accrued through the *Wells* case are comparable to the direct rights that should accrue as being,

*'sufficiently clear and precise'*,

in the case brought in this Schedule 8 paragraph 39(5) EUWA 2018 challenge.

6.2.7 The test for whether a particular provision has direct effect is derived from the case *9/70 Grad v Finanzamt Traunstein* [1970] ECR 825,

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61970CJ0009>

which in summary (derived from the *Van Gend en Loos* judgment), require a provision to be:

1. sufficiently clear and precise,

2. unconditional,

and,

3. one that leaves no scope for discretion as to its implementation.

see: <https://eur-lex.europa.eu/EN/legal-content/summary/the-direct-effect-of-european-union-law.html>

6.2.8 Paragraph 3 of the *Grad* judgment, at page 836 reads,

*'the question concerns the combined effect of provisions contained in a decision and a directive. According to Article 189 of the EEC Treaty a decision is binding in its entirety upon those to whom it is addressed. Furthermore, according to this article a directive is binding, as to the result to be achieved, upon each Member*

*State to which it is addressed, but leaves to the national authorities the choice of form and methods'.*

And, the question was answered in the affirmative at page 841.

6.2.9 Further, in *Comet v. Produktschap*,

the ECJ established that the procedural rules of each member state generally apply to cases of EU law. However, two basic principles must be adhered to: '*equivalence*' (the procedure for EU cases must be equivalent to the procedure for domestic cases) and '*effectiveness*' (the procedure cannot render the law functionally ineffective).

see: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61976CJ0045>

6.2.10 The two principles are described by Blondi and Giulla in their '*National Procedural Autonomy*', (March 2019, Introduction, paragraph 2), as central to a,

*'progressively developed... test to assess the compatibility of national procedural rules with EU law under the so-called principles of effectiveness and equivalence (procedural autonomy test)'*.

see: <https://opil.ouplaw.com/display/10.1093/law-mpeipro/e1878.013.1878/law-mpeipro-e1878>

### **Ground 3. Application in time.**

6.3.1 This Schedule 8 paragraph 39(5) EUWA 2018 challenge makes proceedings within the 31st December 2023 deadline a remedy of last resort under the European Union (Withdrawal Agreement) Act (EUWAA) 2020 affirmed deadline for a Schedule 8 paragraph 39(5) challenge, being that,

*'paragraph 3 of Schedule 1 does not apply in relation to any proceedings begun within the period of three years beginning with completion day'*,

<https://www.legislation.gov.uk/ukpga/2018/16/schedule/8>

6.3.2 Properly enacted EECC public health/environmental protection provisions are further threatened by clause 15 of the Retained EU Law (Revocation and Reform) Act 2023 ('**Statement of facts relied on**', paragraph 5.13, Bundle **page 23**), and post-EU IP completion day restrictions placed on any challenge made as to how an EU directive was transposed other than through the now activated safeguards available under Schedule 8, paragraph 35(9) of the EUWA 2018 (revised).

6.3.3 The REUL Act 2023 received Royal Assent on the 29th June 2023, repealing directly effective EU law rights and obligations, and abolishing the application of general principles of EU law across the UK from the end of 2023.

6.3.4 The claimants made extensive efforts to gain clarity through: LAs/LPAs direct; through a LA via the DLUHC; and, through a Member of Parliament direct, via the responsible Under Secretary of State ('Statement of Facts', paragraph 5.6 and 5.7, Bundle **page 21-22**) which were intended to establish citizen rights arising from LA/LPAs enactment of their EECC competent authority status concerning public health protection provisions, that arguably should have been applied routinely.

6.3.5 The Schedule 8 paragraph 39(5) EUWA submission and associated research was prepared during the summer recess and issued on the 13th September 2023, being timely in respect to:

i) the requirement for legal proceedings on a Schedule 8 paragraph 39(5) challenge to commence as a last resort, prior to the 31st December 2023, being within the stipulated three years period extending beyond the EU Withdrawal Implementation Period (IP) Completion Day being 31st December 2020,

ii) Royal Assent being given to the REUL Act 2023, and its implementation date coinciding with the end of the stipulated three year period identified in i) above,

and,

iii) giving the assumed relevant national regulatory authorities (the DLUHC and the DoH) a once extended 50 day period to respond substantially to the letter before claim submitted in accordance with the judicial review pre-action protocol.

6.3.6 The application for judicial review is thus in time, and timely given these circumstances.

6.3.7 The judgment in *Comet v. Produktschap* (link above, at page 2049) affirms,

*'that no rule of Community law confers on an individual the right to have an administrative act of a Member State annulled or withdrawn if under the national law of that Member State, the act can no longer be contested and has become final',*

and that,

*'individuals are able to rely on the direct effect of a Community provision only in so far as they may do so under the provisions of administrative law and the procedural law of the Member state concerned'.*