

CODE OF PRACTICE FOR THE PREVENTION OF PERSISTENT UNAUTHORISED ADVERTISEMENTS

Code of Practice for exercising the powers set out in Sections 11 and 12
of the London Local Authorities Act 2007

**Published by London Councils,
Transport and Environment Committee**

LONDON COUNCILS

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London Councils represents all 32 London boroughs, the City of London, the Metropolitan Police Authority and the London Fire and Emergency Planning Authority. It is in an ideal position to advise on a range of issues relating to London government and other matters of concern to Londoners.

This Code of Practice is published by London Councils, Transport and Environment Committee (TEC). TEC is a statutory joint committee and aims to ensure that London boroughs' concerns and best practice are taken fully into account in the development and implementation of the whole range of transport and environment policies generated by Government departments, the European Union, and the Mayor of London.

FOREWORD

Unauthorised advertisements, such as posters, stickers and stencilling, cost the country thousands of pounds a year to clean up. They not only look unsightly but can lead to the serious decline of an area. Unauthorised advertisements can play a major role in making an area feel 'run down' leading to heavy littering, vandalism and more serious forms of crime. Residents' and visitors' perception of areas are adversely affected by low environmental quality and this leads to feelings of fear and dissatisfaction with an area. It is important that persistent unauthorised advertisements are dealt with quickly so that everyone in the community can enjoy cleaner, safer and greener living.

It is acknowledged that repeat unauthorised advertisements are a problem which adds to the costs of removal and management of the street environment. This Code of Practice encourages all parties to act in partnership to prevent unauthorised advertisements. Taking measures that will prevent future incidences of unauthorised advertisements in areas of prevalence is beneficial to all through improved amenity of an area and longer term financial savings.

Where there is an area which is prone to repeat or persistent unauthorised advertisements, preventative arrangements should be established by the affected parties. Stakeholders likely to be affected range from telecommunications companies to transport operators as well as national and regional public bodies.

The approach outlined in this Code will make it clear what each party's responsibilities are in helping eradicate the unsightly problem of unauthorised advertisements. I now hope that London boroughs and property owners and occupiers are encouraged to work cooperatively in tackling unauthorised advertisements. By working better in partnership with all those affected and by taking enforcement action against the perpetrators and those benefiting from this illegal activity all Londoners should see an improvement to their neighbourhood.

Councillor Mike Fisher
Chairman, Transport and Environment Committee
London Councils

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PREVENTION OF UNAUTHORISED ADVERTISEMENTS Advertising: measures to be taken on surfaces

INTRODUCTION

1. Section 11 of the London Local Authorities Act 2007 (“the 2007 Act”) relates to the prevention of unauthorised advertisements. Where a London borough has reason to believe that there is a persistent problem with the display of unauthorised advertisements on a relevant surface, it may serve a notice on the owner or occupier of the land on which the relevant surface is situated, requiring them to carry out such reasonable measures as may be required to prevent or reduce the problem.
2. The 2007 Act¹ requires a joint committee² to publish a Code of Practice (“CoP”) dealing with the exercise of the powers under section 11 of the 2007 Act before a borough can exercise those powers. London Councils Transport and Environment Committee (‘London Councils TEC’) is the joint committee for this purpose.
3. As this CoP has been prepared in consultation with the London boroughs and endorsed by London Councils TEC, London boroughs shall have regard to it in employing the powers set out in section 11 and 12 of the 2007 Act to aid in the prevention of unauthorised advertisements.
4. The purpose of the CoP is also to publicise the recommended process of partnership working to explain how local authorities and owners and occupiers can work together to tackle unauthorised advertisements.
5. The London boroughs, national and regional government, and owners and occupiers likely to be affected by unauthorised advertisements (‘stakeholders’) have been consulted in the preparation of this CoP. The CoP is published following a decision of London Councils TEC on 11 June 2009.

GENERAL PRINCIPLES

6. The London boroughs should use all reasonable steps to develop co-operative and constructive partnership arrangements with owners and occupiers in each of their local authority areas, which will support the prevention, management and removal of unauthorised advertisements and aim to minimise the need for a notice. It is also intended to foster a more standardised pan-London approach to the prevention of unauthorised advertisements.

¹ Section 11(7) of the 2007 Act.

² “Joint committee” means any joint committee established under section 101(5) the Local Government Act 1972 and comprising at least one member from each borough council.

7. It is acknowledged that property owners and occupiers are the victims of unauthorised advertising and the cost of its removal and prevention extrapolated across London, can run to millions of pounds. London boroughs should encourage owners and occupiers to both take measures, as far as possible, to prevent unauthorised advertisements, and also to work in constructive partnership with the London boroughs to develop joint working initiatives to ensure effective and efficient removal and prevention of unauthorised advertisements with the aim being that notices are only issued as a last resort.
8. London boroughs and owners and occupiers are encouraged to work in partnership in tackling unauthorised advertisements. Local authorities and, where practicable, owners and occupiers should co-operate in prosecuting offenders³ and be vigorous in taking enforcement action. Local authorities, owners and occupiers should share information and best practice on any enforcement action undertaken. Please see paragraphs 92-98 on Enforcement Powers.
9. All parties should work on the principle that local authority employed staff and their contractors working to prevent unauthorised advertisements are knowledgeable in their field and deal with the issues on a daily basis and in undertaking their duties act with due diligence. In the interests of partnership working a local authority may supply owners and occupiers with details of the local authority's contractors if the owner or occupier so wishes.

DEFINITIONS

10. "Advertisement" includes any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, and (without prejudice to the previous provisions of this definition) includes any hoarding or similar structure used, or adapted for use, for the display of advertisements, and references to the display of advertisements shall be construed accordingly⁴.
11. "Unauthorised advertisements" means advertisements in respect of which advertising offences⁵ are committed. This includes what is commonly known as fly-posting. Fly-posting includes any size of material from small stickers up to large posters. Other mediums of unauthorised advertising becoming more prevalent in London, such as stencilling, are also covered by this Code.
12. "London borough" means London borough council and includes the Common Council of the City of London in its capacity as a local authority. In this Code of Practice, the terms "London borough", "local authority" and "council" are used interchangeably.
13. "A notice" means a notice under section 11 of the 2007 Act unless otherwise specified.

³ Under section 1 Criminal Damage Act 1971.

⁴ Town and Country Planning Act 1990, Part XV, section 336: Interpretation

⁵ An offence under section 132 of the Highways Act 1980, section 224(3) of the Town and Country Planning Act 1990 or section 5(4) of the London Local Authorities Act 2007

14. "Operational land" means land which is used by statutory undertakers for the purpose of carrying on their functions together with any land in which an interest is held for that purpose.
15. "Owners" and "occupiers" means those persons who legally own or occupy land respectively, and includes undertakers and statutory undertakers.
16. "Protected party" means:
 - Network Rail Infrastructure Limited;
 - Transport for London.

The names of these protected parties may change over time, and while every attempt will be made to keep this CoP up-to-date, local authorities should bear this in mind when exercising their powers to serve a notice.

17. "Relevant surface" means the surface of any premises, apparatus or plant.⁶

PROCEDURE

Initial process

18. Before starting to use the powers, the local authority should, as far as reasonably possible, identify the local owners and occupiers⁷ most likely to be affected and make contact with them to inform them of the new powers available to local authorities and the proposed co-operative approach to tackle the problem without resorting to formal notices. The local authority should then consider any responses received.
19. Busy public areas should be prioritised over lightly trafficked areas for speedy removal and prevention of unauthorised advertisements.
20. All parties should act so that measures to prevent or reduce unauthorised advertisements are implemented through partnership working as soon as possible following the identification of a problem. All parties should work together to identify and tackle those responsible for the unauthorised advertising and a notice should be issued as a last resort.
21. It is at the local authority's discretion to determine when there is a persistent problem with unauthorised advertisements. Local authorities should take a proportionate view and should be able to provide evidence to support their decisions on request.
22. Local authorities should retain dated photographic evidence of unauthorised advertising, clearly showing the issues and location. This should be shared with the owner or occupier in the case of any dispute.
23. Once a persistent problem has been identified and prior to a notice being issued, the local authority should consider the most appropriate, and not necessarily the most extensive,

⁶ Calling cards placed inside telephone boxes are not covered by this piece of legislation as they are classified as inside "buildings" and covered under section 46 and 47 Criminal Justice and Police Act 2001.

⁷ Typical checks that could be taken to identify or trace owners or occupiers could include searches on the electoral register, the land registry and checking business rate / National Non-Domestic Rate payers.

form of preventative measure. This should be done in partnership with the owner / occupier.

24. The local authority and owners and occupiers involved should each nominate a single point of contact ('SPOC'). The owner or occupier's SPOC may be a representative, but ultimate liability will fall on the owner or occupier in the case of a notice being issued.
25. In the interests of partnership working, the owner or occupier should be given reasonable time (dependant on the size and scale of the preventative measures required) to act to implement those measures to a standard agreed with the local authority.
26. Where an owner or occupier fails to respond to these approaches, the local authority may proceed to issue a notice, as necessary, in accordance with this CoP. A local authority should, however, take a long-term view and continue to try and develop a co-operative relationship, as owners and occupiers of premises change over time.

Process for issuing a notice

27. Where procedures described above fail to satisfactorily prevent or reduce the frequency of the display of unauthorised advertisements, a local authority should rely upon the powers under sections 11 and 12 of the 2007 Act.
28. In preparing the notice, reference must be made to the principles set out in this CoP.
29. All notices must be in writing.
30. A notice may be served on the owner or occupier of the land in or on which the relevant surface is situated.
31. In serving a notice a local authority may require the owner or occupier to take specific reasonable measures for the purpose of preventing or reducing the frequency of the display of unauthorised advertisements on the relevant surface.
32. These measures should as far as possible be determined in consultation and agreement with the owner or occupier under the partnership working approach and a local authority should consider the financial implications of any measures it requires an owner or occupier to take. However, the local authority has the power to stipulate reasonable measures if no agreement can be reached.
33. There is no legal definition of a reasonable measure, however, it could include:
 - Treating surfaces to make it more difficult to affix advertisements, such as stippled paint or slatted hoardings;
 - Taking additional enforcement action to target perpetrators, such as surveillance;
 - Designing out opportunities for the crime, such as relocating the premises, apparatus or plant.

This is not an exhaustive list and it will be up to each local authority – and on appeal, a magistrates' court – to decide on a case by case basis what is reasonable.
34. Where there is both an owner and an occupier on whom a notice could be served, a local authority should consider what course of action would be most equitable. Regard should

be had to the terms and conditions of any tenancy, to the nature of the works required and to the degree of benefit to be derived by the different persons concerned, as these are matters to which the court will have regard if there is an appeal on this point.⁸ A local authority should make reasonable enquiries to obtain this information, and consider any representations received from the owner or occupier. However if sufficient information to make a determination is not available, notices may be served on both the owner and occupier. A notice may subsequently be withdrawn if further information comes to light.

- 35.** Where the owner or occupier has been identified, the notice should preferably be served by hand or by recorded delivery so that a verifiable written record can be kept as evidence of service.
- 36.** In circumstances where the owner or occupier can be identified and is a company, the notice should be addressed to the 'Company Secretary' or clerk at the registered or principal office of that company. The notice should also be copied to the local area office of that company.
- 37.** Where, after reasonable enquiry, it has not been possible to ascertain the name and address of the owner or occupier, a local authority may deliver the notice to some person on the land, or in the absence of such a person, affix the notice to the land. This will constitute proper service.
- 38.** In circumstances where a notice is affixed rather than served by post, photographic evidence of the notice having been served should be taken by the authority, clearly showing the location and date on which the notice has been served to ensure it is admissible as evidence in court.
- 39.** The notice will state a reasonable timeframe within which the measures set out in the notice must be taken, being not less than 28 days from the date of the service of the notice. The time period for an owner or occupier's compliance with the notice may be extended with the agreement of the local authority.
- 40.** Local authorities should take into consideration resource constraints of owners or occupiers on whose relevant surface the unauthorised advertising is present when serving a notice, for example, in setting the timeframe for compliance with the notice.
- 41.** The powers of the local authority under section 11 of the 2007 Act are restricted to actions to prevent or reduce the frequency of the display of unauthorised advertisements on the relevant surface. No other interference with the property or structure is permitted.
- 42.** All measures proposed must be consistent with town and country planning legislation and historic buildings and ancient monuments legislation.⁹
- 43.** The notice should make reference to governing legislation and the CoP, and stipulate that measures taken to prevent or reduce the frequency of the display of unauthorised advertisements on the relevant surface by the owner or occupier should be completed in accordance with relevant legislative requirements and established good practice, and have regard to this CoP.

⁸ Section 290(3)(e) and section 290(5) of the Public Health Act 1936.

⁹ Section 11(5) of the 2007 Act and section 42 Local Government (Miscellaneous Provisions) Act 1976.

44. Where there is the opportunity to display best practice, the owner or occupier should be encouraged to do so.
45. Local authorities must act consistently and impartially with the owners and occupiers with whom they have dealings.
46. In the interests of partnership working, a local authority may use its discretion to grant an extension to the period for complying with the notice in response to a valid request from the owner or occupier (for example, to bring the implementation of the required measures in line with planned works by the owner or occupier).

Appeals

47. Anyone served with a notice may appeal to a magistrates' court on any of the following grounds, as appropriate, that:
 - (a) the notice is not justified by reference to section 11;
 - (b) there is some informality, defect or error in, or in connection with, the notice;
 - (c) the authority have unreasonably refused to approve the execution of alternative measures, or that the measures required by the notice are otherwise unreasonable in character or extent, or are unnecessary;
 - (d) the timeframe set out for complying with the notice is not reasonably sufficient;
 - (e) the notice might have been lawfully and more equitably served on the occupier of the land instead of the owner, or vice versa, or;
 - (f) the measures set out in the notice are for the common benefit of the land concerned and other land and that some other owner or occupier whose land will benefit from the measures set out in the notice therefore ought to contribute towards the expenses of complying with the notice.¹⁰
48. Only the owner or occupier served with a notice has the right of appeal against that notice.
49. Appeal is to a magistrate's court and must be made within 21 days of the notice being served.
50. This CoP should be provided to the court where any appeal proceedings are lodged.
51. A local authority should consider seriously any proposal from an owner or occupier to negotiate an agreement rather than make a formal appeal.
52. The owner or occupier lodging an appeal must serve their notice of appeal on all other parties referred to in their grounds of appeal including the relevant local authority. They may also choose to serve a copy on any other person having an interest in the land in question.
53. When an appeal is lodged, the effect of the notice is suspended pending the outcome of that appeal.

¹⁰ Refer section 290 Public Health Act 1936.

Counter-notices and Protected Parties

- 54.** Protected parties have the additional benefit, under section 12 of the 2007 Act, of serving a counter-notice, rather than having to rely upon their power to appeal.
- 55.** Section 12 subsection (2) allows for a protected party to serve a counter-notice upon the local authority within 28 days of the notice being served. This counter-notice must specify alternative measures which will, in their reasonable opinion, have the effect of preventing or reducing the frequency of the display of unauthorised advertisements on the relevant surface to the same or greater extent than the measures required in the local authority's notice.
- 56.** It is recommended that the local authority enter into dialogue and work closely with the protected party prior to a notice being served, and in serving a notice, to ensure that all measures are acceptable to both the local authority and protected party. It is intended that this will foster a partnership approach and prevent the need for counter or further notices.
- 57.** Where a counter-notice is served, all aspects of the original notice will stand except the measures required to be carried out, which will be the alternative measures set out in the counter-notice.
- 58.** The original timeframe for compliance set out in the notice will transfer to the counter-notice (being a reasonable period not less than 28 days from the date of the service of the counter-notice), unless the protected party agrees an extension of time with the local authority.

Notice to undertake works and Protected Parties

- 59.** Where a protected party fails to comply with a notice and does not appeal the notice, a local authority cannot undertake the preventative works on a protected party's behalf by entering onto their operational land, without giving at least 28 days notice in writing under section 12(6) of the 2007 Act. This notice may be served at the same time as a notice under section 11(3) of the 2007 Act.
- 60.** A notice served under section 12(6) of the 2007 Act on a protected party must specify the relevant surface concerned and its location.
- 61.** Where such a notice is served for the purposes of entering onto operational land to prevent unauthorised advertising, the protected party may, within 28 days of the notice being served, serve a counter-notice on the local authority setting out reasonable conditions that the local authority shall follow when undertaking works to prevent unauthorised advertising where the conditions are necessary either in the interests of safety, or the efficient and economic operation of the protected party's undertaking. The local authority must then comply with these conditions when entering the protected party's operational land to prevent unauthorised advertising.

- 62.** The protected party may also refuse access to its operational land if it believes that there is a risk to personal safety or an unreasonable risk to the efficient and economic operation of its undertaking.¹¹

POWER TO UNDERTAKE WORKS

- 63.** A local authority may, with the agreement of the owner or occupier and at his expense, undertake the work necessary to implement the measures set out in a notice.
- 64.** A court may, by application of an owner, order an occupier to allow the owner to execute the works necessary to comply with a notice where the occupier has been preventing the owner from doing so.¹²
- 65.** Subject to the right of appeal (refer: Paragraphs 47-53: 'Appeals'), if the person required by the notice fails to comply within the timeframe set down in the notice, the local authority may undertake the work itself.¹³

RECOVERY OF EXPENSES

- 66.** Where the local authority has itself had to implement the measures that the owner or occupier failed to do to comply with the notice served upon them, the local authority can, through legal proceedings, recover from the owner or occupier the reasonable costs incurred. An owner or occupier failing to comply with a notice may also on summary conviction be fined by the court.¹⁴
- 67.** Where a local authority has incurred expenses for which the owner is liable, and these remain unpaid, the expenses, and interest accruing, may be recovered by the local authority from the person who is the owner of the land at the date when the works are completed, or at the date when a demand for the expenses is served, and any amount owing shall be a charge on the property.¹⁵
- 68.** Local authorities may only recover those expenses reasonably incurred in preventing or reducing the frequency of unauthorised advertising including the costs of administration of issuing notices, following up notices and recovery of expenses.
- 69.** Local authorities should not seek to use these powers as a means of raising additional revenue.
- 70.** Local authorities cannot recover their expenses where the relevant surface –
- a) forms part of a flat or dwellinghouse; or
 - b) is within the curtilage of or forms part of the boundary of the curtilage of a dwellinghouse.¹⁶

¹¹ Refer section 12 (7) (b) and section 12(9) LLAA 2007

¹² Refer section 289 Public Health Act 1936.

¹³ Refer subsection 290(6) Public Health Act 1936.

¹⁴ Refer subsection 290(6) Public Health Act 1936.

¹⁵ Refer section 291 Public Health Act 1936.

¹⁶ Section 11(9) of the 2007 Act

71. The local authority will invoice the owner or occupier for the amount due setting out a breakdown of the costs and payment should be made within 60 days.

PREVENTATIVE MEASURES

Pre-cleaning

72. When undertaking works, employees of local authorities must use materials that comply with COSHH – Control of Substances Hazardous to Health Regulations 2002. Wherever possible, local authorities are encouraged to use environmentally friendly materials and products when undertaking works, but should bear in mind the cost of using alternative products as only reasonable costs incurred can be recovered (see paragraph 66).
73. Local authorities must take all reasonable steps to prevent damage to property and comply with any legislation governing health and safety when removing unauthorised advertisements and applying preventative measures. Specifically they:
- must not use high-pressure jet washers or steam cleaners where this will damage property, in particular in respect of any street cabinets or other property holding electronic equipment (such as ticket machines and parking meters) or historic buildings or monuments where irreversible damage may be done to the surface.
 - must take all due care to ensure damage is not done to brickwork or stonework.
 - before commencing work, cleaning operatives must be made aware of the 240v mains electricity supply to all payphones and many street cabinets. Further guidance is provided below and under the heading “Safety”.

Listed and Protected Buildings and Monuments – Royal Mail Post Boxes

74. Most postboxes are “listed monuments” and therefore, certain types of preventative measures, such as the use of stipple paint is not possible. Royal Mail has processes in place to remove unauthorised advertisements from its post boxes within 14 days of receiving a report or within 24 hours if the material is offensive. Local authorities have a dedicated number and email address to use to report incidents of unauthorised advertising on post boxes and this can be obtained via Royal Mail on 0845 7740740 or through London Councils.

Telecommunications Cabinets and Payphones

75. Street cabinets are an essential part of those networks housing electronic components which must be readily accessible to engineers, or that are unsuitable for installation underground. They contain sensitive equipment, the value of which rises above £30,000 in some cabinets, and are installed using powers under the Telecommunications Code (Schedule 2, Telecommunications Act 1984 as amended by Schedule 3, Communications Act 2003), and must be maintained, (under the New Roads and Street Works Act 1991) in the interest of public safety.

- 76.** There is increasing demand upon the electrical equipment housed within street cabinets for example through roll-out of Broadband Internet services, as undertakers seek to maximise the cabinet occupancy (or efficiency) and avoid unnecessary construction in roads and footpaths. Any electrical damage arising from cleaning operations is likely to lead to loss of service to customers for a period of time. It is important to remember that undertakers' customers are also local authorities' residents.
- 77.** All cleaning materials must meet COSHH regulations and COSHH specification sheets should be available to support this:
- in order to prevent damage to corrosive (rusting) and thermal characteristics of cabinets, the use of abrasive cleaning materials or fluids is not to be permitted on cabinets;
 - in order to prevent unnecessary damage to polycarbonate windows the use of abrasive cleaning materials, such as green scouring pads, is not to be permitted on payphones;
 - when cleaning payphones, it is particularly important that care is taken to prevent water from entering the terminal box, light fittings or payphone mechanism.
- 78.** Local authorities must ensure that contractors appointed by them operate within the requirements of this CoP and the law.

APPLYING PREVENTATIVE MEASURES

- 79.** In treating Telecommunications Cabinets and Payphones local authorities must not use paint or sealant that may restrict or block the flow of ventilating air to equipment, or seize locks or hinges. They must also not obscure the cabinets' and payphones' identification numbers.

Dealing with electrical equipment

- 80.** Street cabinets are essential to the provision of communication services. They house critical electrical and electronic equipment, and serve as access points for key maintenance of the network, together with the management of a service provider's customers. The avoidance of the effects of dampness or water penetration is imperative, and common to all undertakers' street furniture and local authority street furniture (housing electrical equipment). Undertakers and local authorities should take all reasonable steps to take preventative measures to safeguard their equipment, for example using materials that are easy to clean and difficult to affix unauthorised advertisements to. This may involve partnership working between local authorities and undertakers to develop the most practical solutions for the street environment. Undertakers have different specifications and requirements in seeking to minimise such effects. These are set out in terms of network delivery, integrity and management, in addition to obligations under the Health and Safety at Work Act 1974. This is a complex area, with a number of factors overlapping. As such, definitive advice in relation to electrical equipment has not been prepared, however, local authorities should be aware of the following points:

- all cabinets house equipment that will be sensitive to the effects of dampness and water penetration;
- the degree of any service loss (commonly referred to as 'outage') caused by cleaning cabinets will probably be a function of the degree of penetration of water (or any other cleaning fluids), the degree of sensitivity of the housed equipment and the timeframe to effect repairs, which in turn might be dictated by the delivery time of replacement pieces of equipment;
- electrical supply may be provided from underground cables or via overhead lines;
- to simplify risk assessments, local authorities should assume that ALL cabinets have electrical connection;
- cabinets will be of different sizes but, more importantly, may perform different network-delivery functions within a Service Provider's network architecture;
- there may be different network architectures in a particular Local Authority – as point of reference the historical Cable TV industry (now substantially Virgin Media) comprised over 20 different companies. Generic grouping of cabinet types (and associated electrical requirements) will not necessarily be possible in all cases;
- ventilation louvres (fixed or variable) provide ventilation to cabinets, which becomes critical in hot weather conditions. Equipment is strategically placed close to the louvres in order to maximise cooling effects. As such louvre points should be treated as 'sensitive' zones.

81. In consideration of the above points it is essential that service providers and local authorities work closely together and agree the following points:

- Any special measures relating to a cabinet which is the subject of a notice;
- Stand-by and call-out procedures in the event of accidents and damages;
- Liabilities in the event of any accidents;
- Liabilities in the event of damage.

ACCESS AND SAFETY

82. When undertaking work to prevent unauthorised advertising, if the owner or occupier is required to park on the highway (where there is no designated parking area) the owner or occupier may apply to the Local Authority's Parking Dispensation Service who may provide a parking dispensation if it is deemed appropriate.

83. The safety of staff cleaning property and of the general public is paramount. Local authorities should work with partners to ensure their health and safety obligations are met.

84. Under no circumstances should these powers be exercised in a manner which endangers the safety, security or reliability of the transport network.

Access to track/rail property

- 85.** The removal of unauthorised advertisements from surfaces belonging to statutory undertakers operating railways¹⁷ may require the carrying out of special safety procedures including temporary track closures ('possessions'). Working in partnership, all effort should be made to co-ordinate the work with other activities in order to avoid excessive costs. Accordingly, local authorities must consult with statutory railway undertakers as to what would be a reasonable period of time for compliance prior to service of a notice. Due to required procedure for removing unauthorised advertisements from surfaces belonging to statutory undertakers operating railways, these statutory undertakers should work in constructive partnership with the London boroughs to develop joint working initiatives to ensure effective and efficient removal of unauthorised advertisements, with the aim being that notices are only issued as a last resort.
- 86.** In the case of railway land, local authorities must not under any circumstances enter or authorise any person to enter this land unless permission is granted by a statutory railway operator. Only the statutory railway undertaker concerned is in a position to authorise entry by persons in possession of appropriate railway safety certification, meeting the requirements of the Railways and Other Guided Transport Systems (Safety) Regulations 2006. A failure to comply with this instruction is likely to place the local authority concerned in breach of its own duties under the Health and Safety at Work, etc. Act 1974. The officer(s) of the authority authorising entry may in such circumstances also render themselves liable to prosecution in their personal capacity.

Access to Ports and Airports

- 87.** Access to ports and airports is likely to be strictly controlled because of the risks to security; in particular access to airside at commercial airports is subject to stringent security checks. Many ports have byelaws restricting access to areas in the port and, in the light of the threat from terrorism, new security measures have been introduced in ports to control access to sensitive areas. Additionally ports and airports generally cover an extensive area and may have complex and heavily used traffic routes. In order to ensure that they do not stray into areas where they are endangered by heavy plant, contractors should be escorted to the place where they need to work. Contractors carrying out work at ports and airports should therefore contact the harbour authority or airport authority responsible for the site to arrange access before carrying out any work.
- 88.** When working airside at airports contractors should take particular care to avoid leaving any loose debris which can be sucked into aircraft engines. Any such items (known as FOD – flying object debris) should be placed in the bins provided for the purpose.

Upkeep and Maintenance

- 89.** Once a measure has been applied, by agreement with the local authority or as a result of a notice, it is the owner or occupier's responsibility to ensure its upkeep and maintenance so that the unauthorised advertising does not recur.

¹⁷ For the purpose of this CoP railways include: mainline, local, London Underground, Docklands Light Railway, Croydon Tramlink

- 90.** In the interest of joint working, if at any stage it becomes apparent that the preventative measure is inadequate, or has not been maintained, and unauthorised advertising has recurred, the owner or occupier should work with the local authority to install more stringent preventative measures to prevent the need for the local authority to serve a notice.

Liability

- 91.** A local authority should be mindful that where it undertakes works in exercise of these powers, it may be liable to pay compensation for any damage sustained by any person who has not been in default.¹⁸

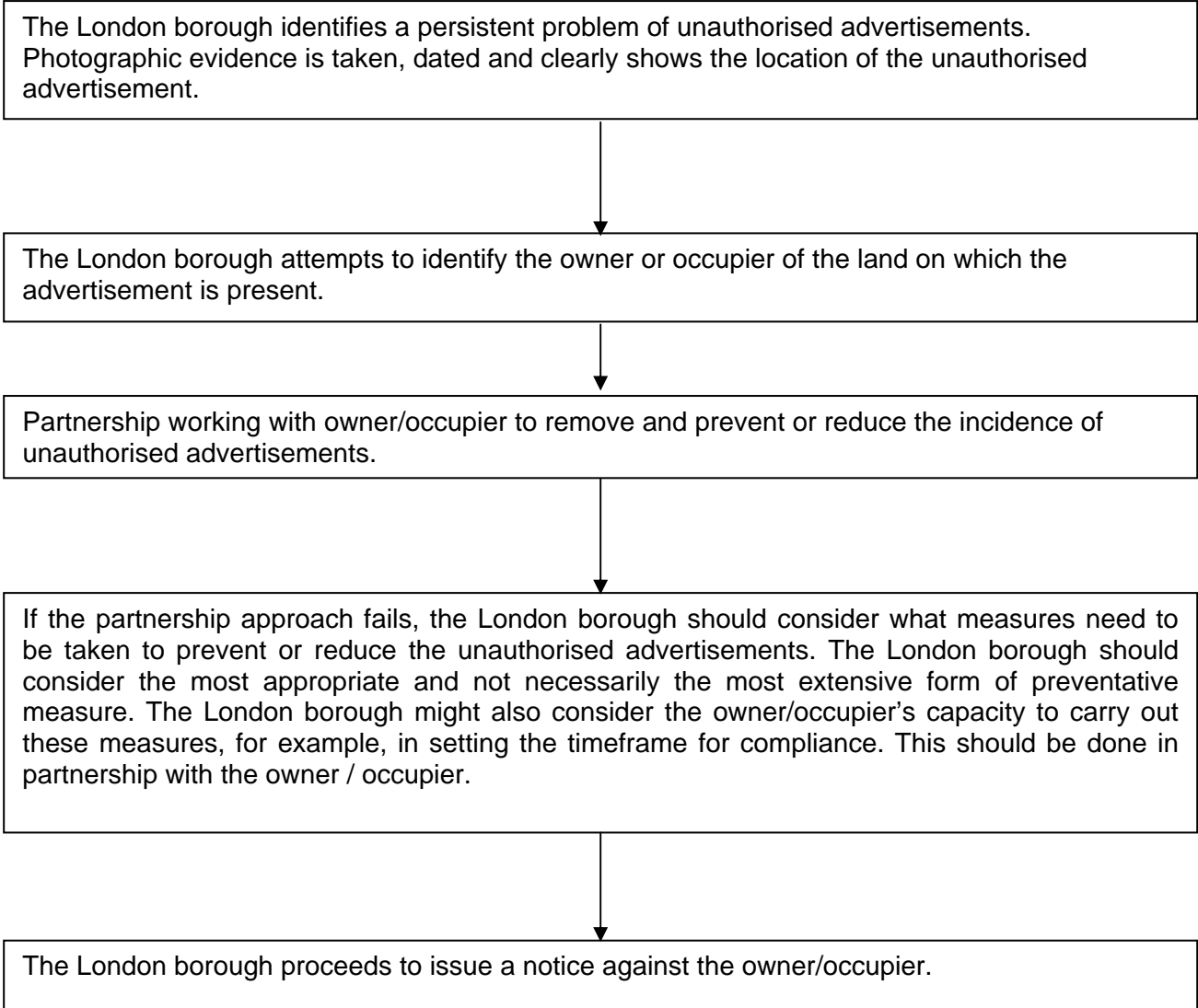
Enforcement Powers for the Removal of Unauthorised Advertisements

- 92.** This section sets out local authority powers to remove unauthorised advertisements.
- 93.** Photographic evidence should be used to support the prosecution of individuals and companies responsible for unauthorised advertisements.
- 94.** Local authorities currently hold powers to remove placards and posters and to charge the removal costs, or take action against the person or persons responsible for displaying the advertisements, or causing them to be displayed, under section 225 of the Town and Country Planning Act 1990, where the advertisements are in contravention of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. These powers remain the recommended ones for removal of unauthorised advertising.
- 95.** With regards to unauthorised advertisements displayed on hoardings or other structures, a local authority may issue a notice under section 11 of the London Local Authorities Act 1995 which requires the removal of the hoarding or structure.
- 96.** Section 31 of the Clean Neighbourhoods and Environment Act 2005 (“CNE Act 2005”) amends section 48 of the Anti Social Behaviour Act 2003 (“ASB Act 2003”) to incorporate provisions to combat unauthorised posters and flyers. The ASB 2003 Act provisions allow for the service of a ‘removal notice’ on the person responsible for the defaced surface.
- 97.** In addition to the provisions in section 31 of the CNE Act 2005, section 34 of CNE Act 2005 amends section 225 of the Town and Country Planning Act 1990 so as to give all local authorities the power to recover the cost of removing illegal unauthorised advertising from the person or persons responsible for displaying the advertisement or causing it to be displayed. Additionally Schedule 5 of the CNE Act 2005 repeals section 10 of the 1995 Act since there is no need to retain the separate London powers once this legislation applies nationally.
- 98.** Defra have produced a publication entitled “Defacement Removal Notices” (PB number PB11577e) which provides guidance on Sections 48 to 52 of the ASB Act 2003 as amended by the CNE Act 2005.

¹⁸ Refer section 278 Public Health Act 1936.

APPENDIX A: Flow chart of procedure for service of notice.

STAGE 1: Initial process



STAGE 2: Service of a notice and undertaking works under powers contained in the LLA Act 2007

The notice requires the owner/occupier to carry out measures within a specified timescale (not less than 28 days from the date of the service of the notice).

The notice must be in writing

Can the owner / occupier be identified?

Yes

The notice should be served on the owner or occupier by hand or recorded delivery.

Where the owner or occupier is identified as a company, the notice should be addressed to the 'Company Secretary' or Clerk at the registered office and copied to the local area office.

No

The notice may be affixed to the land.

The London borough should take photographic evidence of the notice, clearly showing the location and date on which the notice has been served to ensure it is admissible as evidence in court.

The London borough may use its discretion and allow the owner/occupier more time to comply with the notice, in order to facilitate a partnership approach.

An owner/occupier may appeal to a magistrates' court within 21 days of the notice being served.

Protected parties may serve a counter-notice within 28 days of the notice being served as an alternative to lodging an appeal.

This CoP should be provided to the court where any appeal proceedings are lodged.

The London borough should consider any proposal from an owner/occupier to negotiate an agreement rather than make a formal appeal.

If an owner/occupier fails to comply with a notice and does not appeal, or their appeal is unsuccessful:

If a protected party fails to comply and does not serve a counter notice:

the London borough can carry out the measures themselves and recover the cost of doing so. Wherever possible, the London borough is encouraged to use environmentally friendly materials and products when undertaking works

But, the London borough cannot carry out the work without giving at least 28 days notice in writing under section 12(6). This notice may be served at the same time as the notice under section 11(3).

The protected party can, again, serve a counter-notice within 28 days of receiving the notice under section 12(6), setting out conditions for the London borough to follow when undertaking work on its

The London borough can only use section 11 to prevent or reduce the display of unauthorised advertisements - no other interference with the property or structure is permitted.

STAGE 3: Cost recovery

Local authorities may only recover those expenses reasonably incurred in preventing or reducing the frequency of unauthorised advertising including the costs of administration of issuing notices, following up notices and recovery of expenses.
Please see paragraph 70 for exemptions when local authorities cannot recover expenses.

APPENDIX B: Standard Notice Template

[COUNCIL]

LLAA2007

London Local Authorities Act 2007: Section 11

UNAUTHORISED ADVERTISING PREVENTION NOTICE

To:

Of:

The Owner/Occupier of premises/land known as **[ADDRESS/ DESCRIPTION]**
[NAME OF HIGHWAY, POSTAL DISTRICT AND POST CODE] in the **[LONDON BOROUGH OF]**

on which **[[the [DESCRIPTION] e.g. phone box located at [LOCATION]]** is situated and

on which 'unauthorised advertising' is prevalent.

Take Notice that the Council of the **[LONDON BOROUGH OF]** ["the Council"], has observed persistent unauthorised advertising on the **[premises, apparatus or plant]** located at (state address) causing a blight on the local environment which the Council considers to be detrimental to the amenity of the area.

The Council, in exercise of the powers conferred upon it by section 11 of the London Local Authorities Act 2007, **HEREBY GIVES YOU NOTICE THAT YOU MUST WITHIN [No. not less than 28] DAYS** from the service of this Notice upon you, take appropriate measures to prevent or reduce the frequency of the display of unauthorised advertisements on the **[premises, apparatus or plant]**.

In the event that you fail to undertake the works within the period specified in the foregoing paragraphs the Council **HEREBY GIVES YOU NOTICE** that the Council may carry out the necessary works required to comply with the notice and recover the cost of doing so from you.

Should you feel aggrieved by the requirements of this notice you may appeal to a Magistrates' Court. Your attention is drawn to the appeals provisions set out on the notes overleaf.

DATED:

Our Ref:

ADDRESS (to which any communication:
regarding this Notice may be sent):- for **[Officers Name]**, being the
Officer appointed for this purpose

[London Borough of]
[Address]

This matter is being dealt with by:

Tel:

NOTES

Measures required by the Notice

1. The notice requires you to prevent or reduce the frequency of illegal advertisements from the premises, apparatus or plant within the period specified in the notice, being not less than 28 days after the notice has been served.

Special provisions to comply with the notice

2. Where this Notice has been served by the Council on any of the following “protected parties”:
 - Network Rail;
 - Transport for London

section 12 of the 2007 Act provides that ‘protected parties’ will receive different treatment in the exercise of the powers set out in section 11 of the 2007 Act. Where the protected party fails to comply with a notice within the timeframe set down in the notice, a local authority, prior to entering onto operational land to install preventative measures, must serve at least 28 days written notice of their intention to do so.

Extension of the period to comply with measures

3. The period within which you are to comply with the requirements of this Notice, may be extended with the agreement of the Council.

Appeal to Magistrates’ Court

4. A person upon whom a notice has been served under section 11(3) of the 2007 Act may, within 21 days from the date of the service of this Notice upon you, appeal to a magistrates’ court on any of the following grounds which are appropriate in the circumstances:
 - (a) the notice is not justified by reference to section 11;
 - (b) there is some informality, defect or error in, or in connection with, the notice;
 - (c) the authority have unreasonably refused to approve the execution of alternative measures, or that the measures required by the notice are otherwise unreasonable in character or extent, or are unnecessary;
 - (d) the timeframe set out for complying with the notice is not reasonably sufficient;
 - (e) the notice might have been lawfully and more equitably served on the occupier of the land instead of the owner, or vice versa, or;
 - (f) the measures set out in the notice are for the common benefit of the land concerned and other land and that some other owner or occupier whose land will benefit from the measures set out in the notice therefore ought to contribute towards the expenses of complying with the notice.

Where grounds upon which an appeal under this section is brought include a ground specified in (e) or (f) above, the appellant shall serve a copy of his notice of appeal on each other person referred to therein.

5. If and in so far as an appeal is based on the ground of some informality, defect or error in or in connection with the notice, the court shall dismiss the appeal, if it is satisfied that the informality, defect or error was not a material one.
6. You may serve a copy of the notice of appeal on any other person having an estate or interest in the premises in question. Upon the hearing of the appeal, the court may make such order as it thinks fit with respect to the person by whom any work is to be executed, and the contribution to be made by any other person towards the cost of the work, or as to the proportions in which any expenses which may become recoverable by the local authority are to be borne by the appellant and such other person.
7. In exercising its powers the court shall have regard:
 - (a) as between an owner and an occupier, to the terms and condition, whether contractual or statutory, of the tenancy, and to the nature of the works required; and,
 - (b) in any case, to the degree of benefit to be derived by the different persons concerned.

Penalties

8. Subject to such right of appeal as above, if you are required by the notice to take measures and you fail to comply within the period thereby limited, the Council may itself implement the required measures and recover from you the expenses reasonably incurred by it in so doing. The expenses and interest accrued thereon shall, until recovered, be a charge on the premises.
9. In any proceedings brought by the Council against you for the recovery of any expenses that the Council is entitled to recover, it shall not be open to you to raise any question which you could have raised on appeal.

APPENDIX C: Key regional and national stakeholders

National Government

Department for Environment, Food and Rural Affairs (Defra)
Local Environmental Quality Team

Home Office
Anti Social Behaviour Unit (Together Campaign)

Department for Business, Enterprise and Regulatory Reform (BERR)
Fixed Network Unit

Department for Transport

Regional Government

Greater London Authority (GLA)

Government Office for London (GOL)

Local Government Associations

London Councils

Local Government Association (LGA)

Local Government

London Boroughs

Common Council of the City of London

Relevant Regional Bodies

London Fire and Emergency Planning Authority (LFEPA)

Metropolitan Police Authority (MPA)

Transport for London (TfL)

Police, Fire and Ambulance

British Transport Police

City of London Police

London Ambulance Service HQ

London Fire Brigade HQ

Metropolitan Police

Royal Parks Constabulary

Protected parties

Network Rail

Transport for London