Localism Act 2011

2011 CHAPTER 20

PART 6

PLANNING

CHAPTER 5

ENFORCEMENT

123 Retrospective planning permission

(1) The Town and Country Planning Act 1990 is amended as follows.

(2) After section 70B insert—

"**70C Power to decline to determine retrospective application**

(1) A local planning authority in England may decline to determine an application for planning permission for the development of any land if granting planning permission for the development would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control.

(2) For the purposes of the operation of this section in relation to any particular application for planning permission, a "pre-existing enforcement notice" is an enforcement notice issued before the application was received by the local planning authority."

(3) In section 78(2)(aa) (which refers to an authority not having given notice that it has exercised its power under section 70A or 70B to decline to determine an application) after "or 70B" insert " or 70C ".

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(4) In section 174 (appeal against enforcement notice) after subsection (2) insert—

"(2A) An appeal may not be brought on the ground specified in subsection (2)(a) if—

(a) the land to which the enforcement notice relates is in England, and

(b) the enforcement notice was issued at a time—

(i) after the making of a related application for planning permission, but

(ii) before the end of the period applicable under section 78(2) in the case of that application.

(2B) An application for planning permission for the development of any land is, for the purposes of subsection (2A), related to an enforcement notice if granting planning permission for the development would involve granting planning permission in respect of the matters specified in the enforcement notice as constituting a breach of planning control."

(5) In section 177 (grant or modification of planning permission on appeals against enforcement notice) after subsection (1B) insert—

"(1C) If the land to which the enforcement notice relates is in England, subsection (1)(a) applies only if the statement under section 174(4) specifies the ground mentioned in section 174(2)(a)."

(6) In section 177(5) (deemed application for planning permission where appeal brought against enforcement notice) for the words from the beginning to "the appellant" substitute—

"Where an appeal against an enforcement notice is brought under section 174 and—

(a) the land to which the enforcement notice relates is in Wales, or

(b) that land is in England and the statement under section 174(4) specifies the ground mentioned in section 174(2)(a),

the appellant".

Commencement Information

I1 S. 123 in force at 6.4.2012 by S.I. 2012/628, **art. 8(b)** (with arts. 9, 12, 13, 16, arts. 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4)

124 Time limits for enforcing concealed breaches of planning control

(1) In the Town and Country Planning Act 1990 after section 171B insert—

"**171BA Time limits in cases involving concealment**

(1) Where it appears to the local planning authority that there may have been a breach of planning control in respect of any land in England, the authority may apply to a magistrates' court for an order under this subsection (a "planning enforcement order") in relation to that apparent breach of planning control.

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(2) If a magistrates' court makes a planning enforcement order in relation to an apparent breach of planning control, the local planning authority may take enforcement action in respect of—

(a) the apparent breach, or

(b) any of the matters constituting the apparent breach,

at any time in the enforcement year.

(3) "The enforcement year" for a planning enforcement order is the year that begins at the end of 22 days beginning with the day on which the court's decision to make the order is given, but this is subject to subsection (4).

(4) If an application under section 111(1) of the Magistrates' Courts Act 1980 (statement of case for opinion of High Court) is made in respect of a planning enforcement order, the enforcement year for the order is the year beginning with the day on which the proceedings arising from that application are finally determined or withdrawn.

(5) Subsection (2)—

(a) applies whether or not the time limits under section 171B have expired, and

(b) does not prevent the taking of enforcement action after the end of the enforcement year but within those time limits.

171BB Planning enforcement orders: procedure

(1) An application for a planning enforcement order in relation to an apparent breach of planning control may be made within the 6 months beginning with the date on which evidence of the apparent breach of planning control sufficient in the opinion of the local planning authority to justify the application came to the authority's knowledge.

(2) For the purposes of subsection (1), a certificate—

(a) signed on behalf of the local planning authority, and

(b) stating the date on which evidence sufficient in the authority's opinion to justify the application came to the authority's knowledge,

is conclusive evidence of that fact.

(3) A certificate stating that matter and purporting to be so signed is to be deemed to be so signed unless the contrary is proved.

(4) Where the local planning authority apply to a magistrates' court for a planning enforcement order in relation to an apparent breach of planning control in respect of any land, the authority must serve a copy of the application—

(a) on the owner and on the occupier of the land, and

(b) on any other person having an interest in the land that is an interest which, in the opinion of the authority, would be materially affected by the taking of enforcement action in respect of the apparent breach.

(5) The persons entitled to appear before, and be heard by, the court hearing an application for a planning enforcement order in relation to an apparent breach of planning control in respect of any land include—

(a) the applicant,

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(b) any person on whom a copy of the application was served under subsection (4), and

(c) any other person having an interest in the land that is an interest which, in the opinion of the court, would be materially affected by the taking of enforcement action in respect of the apparent breach.

(6) In this section "planning enforcement order" means an order under section 171BA(1).

171BC Making a planning enforcement order

(1) A magistrates' court may make a planning enforcement order in relation to an apparent breach of planning control only if—

(a) the court is satisfied, on the balance of probabilities, that the apparent breach, or any of the matters constituting the apparent breach, has (to any extent) been deliberately concealed by any person or persons, and

(b) the court considers it just to make the order having regard to all the circumstances.

(2) A planning enforcement order must—

(a) identify the apparent breach of planning control to which it relates, and

(b) state the date on which the court's decision to make the order was given.

(3) In this section "planning enforcement order" means an order under section 171BA(1)."

(2) In section 188 of the Town and Country Planning Act 1990 (register of enforcement and stop notices)—

(a) in subsection (1) (matters to which registers apply) before paragraph (a) insert—

"(za) to planning enforcement orders,",

(b) in subsection (2)(a) (development order may make provision about removal of entries from register)—

(i) before "enforcement notice" insert " planning enforcement order, ",

(ii) before "any such notice" insert " any planning enforcement order or ", and

(iii) after "specified in the" insert " development ",

(c) in subsection (2)(b) (development order may make provision about supply of information by county planning authority) after "served by" insert " , and planning enforcement orders made on applications made by, ",

(d) after subsection (3) insert—

"(4) In this section "planning enforcement order" means an order under section 171BA(1).", and

(e) in the heading after "and stop notices" insert " and other enforcement action ".

(3) In section 191 of the Town and Country Planning Act 1990 (certificate of lawfulness of existing use or development) after subsection (3) insert—

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"(3A) In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—

(a) the time for applying for an order under section 171BA(1) (a "planning enforcement order") in relation to the matter has not expired,

(b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or

(c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired."

Commencement Information

I2 S. 124(1)(3) in force at 6.4.2012 by S.I. 2012/628, **art. 8(b)** (with arts. 9, 12, 13, 16, arts. 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4)

I3 S. 124(2) in force at 15.1.2012 for specified purposes by S.I. 2012/57, **art. 4(1)(i)** (with arts. 6, 7, arts. 9-11)

I4 S. 124(2) in force at 6.4.2012 in so far as not already in force by S.I. 2012/628, **art. 8(b)** (with arts. 9, 12, 13, 16, arts. 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4)

125 Assurance as regards prosecution for person served with enforcement notice

In the Town and Country Planning Act 1990 after section 172 (issue and service of enforcement notice) insert—

"172A Assurance as regards prosecution for person served with notice

(1) When, or at any time after, an enforcement notice is served on a person, the local planning authority may give the person a letter—

(a) explaining that, once the enforcement notice had been issued, the authority was required to serve the notice on the person,

(b) giving the person one of the following assurances—

(i) that, in the circumstances as they appear to the authority, the person is not at risk of being prosecuted under section 179 in connection with the enforcement notice, or

(ii) that, in the circumstances as they appear to the authority, the person is not at risk of being prosecuted under section 179 in connection with the matters relating to the enforcement notice that are specified in the letter,

(c) explaining, where the person is given the assurance under paragraph (b)(ii), the respects in which the person is at risk of being prosecuted under section 179 in connection with the enforcement notice, and

(d) stating that, if the authority subsequently wishes to withdraw the assurance in full or part, the authority will first give the person a letter specifying a future time for the withdrawal that will allow the person a reasonable opportunity to take any steps necessary to avoid any risk of prosecution that is to cease to be covered by the assurance.

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(2) At any time after a person has under subsection (1) been given a letter containing an assurance, the local planning authority may give the person a letter withdrawing the assurance (so far as not previously withdrawn) in full or part from a time specified in the letter.

(3) The time specified in a letter given under subsection (2) to a person must be such as will give the person a reasonable opportunity to take any steps necessary to avoid any risk of prosecution that is to cease to be covered by the assurance.

(4) Withdrawal under subsection (2) of an assurance given under subsection (1) does not withdraw the assurance so far as relating to prosecution on account of there being a time before the withdrawal when steps had not been taken or an activity had not ceased.

(5) An assurance given under subsection (1) (so far as not withdrawn under subsection (2)) is binding on any person with power to prosecute an offence under section 179."

Commencement Information

I5 S. 125 in force at 6.4.2012 by S.I. 2012/628, **art. 8(b)** (with arts. 9, 12, 13, 16, arts. 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4)

126 Planning offences: time limits and penalties

(1) The Town and Country Planning Act 1990 is amended as follows.

(2) In section 187A(12) (maximum penalty of level 3 on standard scale for offence of being in breach of a breach of condition notice) for "fine not exceeding level 3 on the standard scale" substitute "fine—

(a) not exceeding level 4 on the standard scale if the land is in England;

(b) not exceeding level 3 on the standard scale if the land is in Wales".

(3) In section 210 (penalties for non-compliance with tree preservation regulations) after subsection (4) insert—

"(4A) Proceedings for an offence under subsection (4) may be brought within the period of 6 months beginning with the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings came to the prosecutor's knowledge.

(4B) Subsection (4A) does not authorise the commencement of proceedings for an offence more than 3 years after the date on which the offence was committed.

(4C) For the purposes of subsection (4A), a certificate—

(a) signed by or on behalf of the prosecutor, and

(b) stating the date on which evidence sufficient in the prosecutor's opinion to justify the proceedings came to the prosecutor's knowledge,

is conclusive evidence of that fact.

(4D) A certificate stating that matter and purporting to be so signed is to be deemed to be so signed unless the contrary is proved.

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(4E) Subsection (4A) does not apply in relation to an offence in respect of a tree in Wales."

(4) In section 224 (enforcement of control as to advertisements) after subsection (6) insert—

"(7) Proceedings for an offence under subsection (3) may be brought within the period of 6 months beginning with the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings came to the prosecutor's knowledge.

(8) Subsection (7) does not authorise the commencement of proceedings for an offence more than 3 years after the date on which the offence was committed.

(9) For the purposes of subsection (7), a certificate—

(a) signed by or on behalf of the prosecutor, and

(b) stating the date on which evidence sufficient in the prosecutor's opinion to justify the proceedings came to the prosecutor's knowledge,

is conclusive evidence of that fact.

(10) A certificate stating that matter and purporting to be so signed is to be deemed to be so signed unless the contrary is proved.

(11) Subsection (7) does not apply in relation to an offence in respect of an advertisement in Wales."

(5) An amendment made by this section applies only in relation to offences committed after the amendment has come into force.

Commencement Information

I6 S. 126 in force at 6.4.2012 by S.I. 2012/628, **art. 8(b)** (with arts. 9, 12, 13, 16, arts. 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4)

127 Powers in relation to: unauthorised advertisements; defacement of premises

(1) In Part 8 of the Town and Country Planning Act 1990 (special controls) in Chapter 3 (advertisements) after section 225 insert—

"**225A Power to remove structures used for unauthorised display**

(1) Subject to subsections (2), (3) and (5) and the right of appeal under section 225B, the local planning authority for an area in England may remove, and then dispose of, any display structure—

(a) which is in their area; and

(b) which, in the local planning authority's opinion, is used for the display of advertisements in contravention of regulations under section 220.

(2) Subsection (1) does not authorise the removal of a display structure in a building to which there is no public right of access.

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(3) The local planning authority may not under subsection (1) remove a display structure unless the local planning authority have first served a removal notice on a person who appears to the local planning authority to be responsible for the erection or maintenance of the display structure.

(4) Subsection (3) applies only if there is a person—

(a) who appears to the local planning authority to be responsible for the erection or maintenance of the display structure; and

(b) whose name and address are either known by the local planning authority or could be ascertained by the local planning authority after reasonable enquiry.

(5) If subsection (3) does not apply, the local planning authority may not under subsection (1) remove a display structure unless the local planning authority have first—

(a) fixed a removal notice to the display structure or exhibited a removal notice in the vicinity of the display structure; and

(b) served a copy of that notice on the occupier of the land on which the display structure is situated.

(6) Subsection (5)(b) applies only if the local planning authority know who the occupier is or could identify the occupier after reasonable enquiry.

(7) Where—

(a) the local planning authority has served a removal notice in accordance with subsection (3) or (5)(b), and

(b) the display structure is not removed by the time specified in the removal notice,

the local planning authority may recover, from any person on whom the removal notice has been served under subsection (3) or (5)(b), expenses reasonably incurred by the local planning authority in exercising the local planning authority's power under subsection (1).

(8) Expenses are not recoverable under subsection (7) from a person if the person satisfies the local planning authority that the person was not responsible for the erection of the display structure and is not responsible for its maintenance.

(9) Where in the exercise of power under subsection (1) any damage is caused to land or chattels, compensation may be recovered by any person suffering the damage from the local planning authority exercising the power, but compensation is not recoverable under this subsection or section 325(6)—

(a) for damage caused to the display structure; or

(b) for damage reasonably caused in removing the display structure.

(10) The provisions of section 118 apply in relation to compensation under subsection (9) as they apply in relation to compensation under Part 4.

(11) In this section “removal notice”, in relation to a display structure, means notice—

(a) stating that in the local planning authority's opinion the display structure is used for the display of advertisements in contravention of regulations under section 220;

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(b) stating that the local planning authority intend after a time specified in the notice to remove the display structure; and

(c) stating the effect of subsections (7) and (8).

(12) A time specified under subsection (11)(b) may not be earlier than the end of 22 days beginning with the date of the notice.

(13) In this section "display structure" means (subject to subsection (14))—

(a) a hoarding or similar structure used, or designed or adapted for use, for the display of advertisements;

(b) anything (other than a hoarding or similar structure) principally used, or designed or adapted principally for use, for the display of advertisements;

(c) a structure that is itself an advertisement; or

(d) fitments used to support anything within any of paragraphs (a) to (c).

(14) Something is a "display structure" for the purpose of this section only if—

(a) its use for the display of advertisement requires consent under this Chapter, and

(b) that consent has not been granted and is not deemed to have been granted.

(15) In subsection (13) "structure" includes movable structure.

225B Appeal against notice under section 225A

(1) A person on whom a removal notice has been served in accordance with section 225A(3) or (5)(b) may appeal to a magistrates' court on any of the following grounds—

(a) that the display structure concerned is not used for the display of advertisements in contravention of regulations under section 220;

(b) that there has been some informality, defect or error in, or in connection with, the notice;

(c) that the period between the date of the notice and the time specified in the notice is not reasonably sufficient for the removal of the display structure;

(d) that the notice should have been served on another person.

(2) For the purposes of subsection (3), a person is a "permitted appellant" in relation to a removal notice if—

(a) the removal notice has been fixed or exhibited in accordance with section 225A(5)(a);

(b) the person is an owner or occupier of the land on which the display structure concerned is situated; and

(c) no copy of the removal notice has been served on the person in accordance with section 225A(5)(b).

(3) A person who is a permitted appellant in relation to a removal notice may appeal to a magistrates' court on any of the following grounds—

(a) that the display structure concerned is not used for the display of advertisements in contravention of regulations under section 220;

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(b) that there has been some informality, defect or error in, or in connection with, the notice;

(c) that the period between the date of the notice and the time specified in the notice is not reasonably sufficient for the removal of the display structure.

(4) So far as an appeal under this section is based on the ground mentioned in subsection (1)(b) or (3)(b), the court must dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

(5) If an appeal under subsection (1) is based on the ground mentioned in subsection (1)(d), the appellant must serve a copy of the notice of appeal on each person who the appellant considers is a person on whom the removal notice should have been served in accordance with section 225A(3) or (5)(b).

(6) If—

(a) a removal notice is served on a person in accordance with section 225A(3) or (5)(b), and

(b) the local planning authority bring proceedings against the person for the recovery under section 225A(7) of any expenses,

it is not open to the person to raise in the proceedings any question which the person could have raised in an appeal under subsection (1).

(7) In this section "removal notice" and "display structure" have the same meaning as in section 225A.

225C Remedying persistent problems with unauthorised advertisements

(1) Subsections (2) and (3) apply if the local planning authority for an area in England have reason to believe that there is a persistent problem with the display of unauthorised advertisements on a surface of—

(a) any building, wall, fence or other structure or erection; or

(b) any apparatus or plant.

(2) The local planning authority may serve an action notice on the owner or occupier of the land in or on which the surface is situated.

(3) If after reasonable enquiry the local planning authority—

(a) are unable to ascertain the name and address of the owner, and

(b) are unable to ascertain the name and address of the occupier,

the local planning authority may fix an action notice to the surface.

(4) For the purposes of this section "an action notice", in relation to a surface, is a notice requiring the owner or occupier of the land in or on which the surface is situated to carry out the measures specified in the notice by a time specified in the notice.

(5) A time may be specified in an action notice if it is a reasonable time not earlier than the end of 28 days beginning with the date of the notice.

(6) Measures may be specified in an action notice if they are reasonable measures to prevent or reduce the frequency of the display of unauthorised advertisements on the surface concerned.

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(7) The time by which an owner or occupier must comply with an action notice may be postponed by the local planning authority.

(8) This section has effect subject to—

(a) the other provisions of the enactments relating to town and country planning;

(b) the provisions of the enactments relating to historic buildings and ancient monuments; and

(c) Part 2 of the Food and Environmental Protection Act 1985 (which relates to deposits in the sea).

(9) Subsection (10) applies if—

(a) an action notice is served under subsection (2) or fixed under subsection (3); and

(b) the measures specified in the notice are not carried out by the time specified in the notice.

(10) The local planning authority may—

(a) carry out the measures; and

(b) recover expenses reasonably incurred by the local planning authority in doing that from the person required by the action notice to do it.

(11) Power under subsection (10)(a) is subject to the right of appeal under section 225D.

(12) Where in the exercise of power under subsection (10)(a) any damage is caused to land or chattels, compensation may be recovered by any person suffering the damage from the local planning authority exercising the power, but compensation is not recoverable under this subsection for damage reasonably caused in carrying out the measures.

(13) The provisions of section 118 apply in relation to compensation under subsection (12) as they apply in relation to compensation under Part 4.

(14) The local planning authority may not recover expenses under subsection (10)(b) in respect of a surface that—

(a) forms part of a flat or a dwellinghouse;

(b) is within the curtilage of a dwellinghouse; or

(c) forms part of the boundary of the curtilage of a dwellinghouse.

(15) Each of sections 275 and 291 of the Public Health Act 1936 (provision for authority to agree to take the required measures at expense of owner or occupier, and provision for expenses to be recoverable also from owner's successor or from occupier and to be charged on premises concerned) applies as if the reference in that section to that Act included a reference to this section.

(16) In this section—

"dwellinghouse" does not include a building containing one or more flats, or a flat contained within such a building;

"flat" means a separate and self-contained set of premises constructed or adapted for use as a dwelling and forming part of a building from some other part of which it is divided horizontally;

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"unauthorised advertisement" means an advertisement in respect of which an offence—

(a) under section 224(3), or

(b) under section 132 of the Highways Act 1980 (unauthorised marks on highway),

is committed after the coming into force of this section.

225D Right to appeal against notice under section 225C

(1) A person on whom notice has been served under section 225C(2) may appeal to a magistrates' court on any of the following grounds—

(a) that there is no problem with the display of unauthorised advertisements on the surface concerned or any such problem is not a persistent one;

(b) that there has been some informality, defect or error in, or in connection with, the notice;

(c) that the time within which the measures specified in the notice are to be carried out is not reasonably sufficient for the purpose;

(d) that the notice should have been served on another person.

(2) The occupier or owner of premises which include a surface to which a notice has been fixed under section 225C(3) may appeal to a magistrates' court on any of the following grounds—

(a) that there is no problem with the display of unauthorised advertisements on the surface concerned or any such problem is not a persistent one;

(b) that there has been some informality, defect or error in, or in connection with, the notice;

(c) that the time within which the measures specified in the notice are to be carried out is not reasonably sufficient for the purpose.

(3) So far as an appeal under this section is based on the ground mentioned in subsection (1)(b) or (2)(b), the court must dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

(4) If an appeal under subsection (1) is based on the ground mentioned in subsection (1)(d), the appellant must serve a copy of the notice of appeal on each person who the appellant considers is a person on whom the notice under section 225C(2) should have been served.

(5) If—

(a) notice under section 225C(2) is served on a person, and

(b) the local planning authority bring proceedings against the person for the recovery under section 225C(10)(b) of any expenses,

it is not open to the person to raise in the proceedings any question which the person could have raised in an appeal under subsection (1).

225E Applying section 225C to statutory undertakers' operational land

(1) Subsection (2) and (3) apply where the local planning authority serves a notice under section 225C(2) requiring a statutory undertaker to carry out measures

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in respect of the display of unauthorised advertisements on a surface on its operational land.

(2) The statutory undertaker may, within 28 days beginning with the date of service of the notice, serve a counter-notice on the local planning authority specifying alternative measures which will in the statutory undertaker's reasonable opinion have the effect of preventing or reducing the frequency of the display of unauthorised advertisements on the surface to at least the same extent as the measures specified in the notice.

(3) Where a counter-notice is served under subsection (2), the notice under section 225C(2) is to be treated—
   (a) as requiring the alternative measures specified in the counter-notice to be carried out (instead of the measures actually required by the notice under section 225C(2)); and
   (b) as having been served on the date on which the counter-notice is served.

(4) The time by which a statutory undertaker must carry out the measures specified in a counter-notice served under subsection (2) may be postponed by the local planning authority."

(2) In Part 8 of the Town and Country Planning Act 1990 (special controls) after Chapter 3 insert—

"CHAPTER 4

REMEDYING DEFACEMENT OF PREMISES

225F **Power to remedy defacement of premises**

(1) Subsections (2) and (3) apply if—
   (a) premises in England include a surface that is readily visible from a place to which the public have access;
   (b) either—
      (i) the surface does not form part of the operational land of a statutory undertaker, or
      (ii) the surface forms part of the operational land of a statutory undertaker and subsection (11) applies to the surface;
   (c) there is a sign on the surface; and
   (d) the local planning authority consider the sign to be detrimental to the amenity of the area or offensive.

(2) The local planning authority may serve on the occupier of the premises a notice requiring the occupier to remove or obliterate the sign by a time specified in the notice.

(3) If it appears to the local planning authority that there is no occupier of the premises, the local planning authority may fix to the surface a notice requiring the owner or occupier of the premises to remove or obliterate the sign by a time specified in the notice.

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(4) A time specified under subsection (2) or (3) may not be earlier than the end of 15 days beginning the date of service or fixing of the notice.

(5) Subsection (6) applies if—

(a) a notice is served under subsection (2) or fixed under subsection (3); and

(b) the sign is neither removed nor obliterated by the time specified in the notice.

(6) The local planning authority may—

(a) remove or obliterate the sign; and

(b) recover expenses reasonably incurred by the local planning authority in doing that from the person required by the notice to do it.

(7) Power under subsection (6)(a) is subject to the right of appeal under section 225I.

(8) Expenses may not be recovered under subsection (6)(b) if the surface—

(a) forms part of a flat or a dwellinghouse;

(b) is within the curtilage of a dwellinghouse; or

(c) forms part of the boundary of the curtilage of a dwellinghouse.

(9) Section 291 of the Public Health Act 1936 (provision for expenses to be recoverable also from owner's successor or from occupier and to be charged on premises concerned) applies as if the reference in that section to that Act included a reference to this section.

(10) For the purposes of this section, a universal postal service provider is treated as being the occupier of any plant or apparatus that consists of a universal postal service letter box or a universal postal service pouch-box belonging to it.

(11) This subsection applies to a surface if the surface abuts on, or is one to which access is given directly from, either—

(a) a street; or

(b) any place, other than a street, to which the public have access as of right.

(12) In this section—

"dwellinghouse" does not include a building containing one or more flats, or a flat contained within such a building;

"flat" means a separate and self-contained set of premises constructed or adapted for use as a dwelling and forming part of a building from some other part of which it is divided horizontally;

"premises" means building, wall, fence or other structure or erection, or apparatus or plant;

"sign"—

(a) includes any writing, letter, picture, device or representation, but

(b) does not include an advertisement;

"statutory undertaker" does not include a relevant airport operator (within the meaning of Part 5 of the Airports Act 1986);

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"street" includes any highway, any bridge carrying a highway and any road, lane, mews, footway, square, court, alley or passage, whether a thoroughfare or not;

"universal postal service letter box" has the meaning given in section 86(4) of the Postal Services Act 2000;

"universal postal service pouch-box" has the meaning given in paragraph 1(10) of Schedule 6 to that Act.

225G **Notices under section 225F in respect of post boxes**

(1) The local planning authority may serve a notice under section 225F(2) on a universal postal service provider in respect of a universal postal service letter box, or universal postal service pouch-box, belonging to the provider only if—

(a) the authority has served on the provider written notice of the authority's intention to do so; and

(b) the period of 28 days beginning with the date of service of that notice has ended.

(2) In this section—

"universal postal service letter box" has the meaning given in section 86(4) of the Postal Services Act 2000;

"universal postal service pouch-box" has the meaning given in paragraph 1(10) of Schedule 6 to that Act.

225H **Section 225F powers as respects bus shelters and other street furniture**

(1) The local planning authority may exercise the power conferred by section 225F(6)(a) to remove or obliterate a sign from any surface on a bus shelter, or other street furniture, of a statutory undertaker that is not situated on operational land of the statutory undertaker only if—

(a) the authority has served on the statutory undertaker notice of the authority's intention to do so;

(b) the notice specified the bus shelter, or other street furniture, concerned; and

(c) the period of 28 days beginning with the date of service of the notice has ended.

(2) In this section "statutory undertaker" does not include an airport operator (within the meaning of Part 5 of the Airports Act 1986).

225I **Right to appeal against notice under section 225F**

(1) A person on whom notice has been served under section 225F(2) may appeal to a magistrates' court on any of the following grounds—

(a) that the sign concerned is neither detrimental to the amenity of the area nor offensive;

(b) that there has been some informality, defect or error in, or in connection with, the notice;

(c) that the time within which the sign concerned is to be removed or obliterated is not reasonably sufficient for the purpose;

(d) that the notice should have been served on another person.

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(2) The occupier or owner of premises which include a surface to which a notice has been fixed under section 225F(3) may appeal to a magistrates' court on any of the following grounds—

(a) that the sign concerned is neither detrimental to the amenity of the area nor offensive;

(b) that there has been some informality, defect or error in, or in connection with, the notice;

(c) that the time within which the sign concerned is to be removed or obliterated is not reasonably sufficient for the purpose.

(3) So far as an appeal under this section is based on the ground mentioned in subsection (1)(b) or (2)(b), the court must dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

(4) If an appeal under subsection (1) is based on the ground mentioned in subsection (1)(d), the appellant must serve a copy of the notice of appeal on each person who the appellant considers is a person on whom the notice under section 225F(2) should have been served.

(5) If—

(a) notice under section 225F(2) is served on a person, and

(b) the local planning authority bring proceedings against the person for the recovery under section 225F(6)(b) of any expenses,

it is not open to the person to raise in the proceedings any question which the person could have raised in an appeal under subsection (1).

225J **Remedying defacement at owner or occupier's request**

(1) Subsection (2) applies if—

(a) premises in England include a surface that is readily visible from a place to which the public have access;

(b) there is a sign on the surface; and

(c) the owner or occupier of the premises asks the local planning authority to remove or obliterate the sign.

(2) The local planning authority may—

(a) remove or obliterate the sign; and

(b) recover expenses reasonably incurred by the local planning authority in doing that from the person who asked the local planning authority to do it.

(3) In this section “premises” means building, wall, fence or other structure or erection, or apparatus or plant.

(4) In this section “sign”—

(a) includes—

(i) any writing, letter, picture, device or representation, and

(ii) any advertisement, but

(b) does not include an advertisement for the display of which deemed or express consent has been granted under Chapter 3.

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CHAPTER 5

APPLICATION OF PROVISIONS OF CHAPTERS 3 AND 4 TO STATUTORY UNDERTAKERS

225K **Action under sections 225A, 225C and 225F: operational land**

(1) This section applies in relation to the exercise by the local planning authority of—

(a) power conferred by section 225A(1), or section 324(3) so far as applying for the purposes of section 225A(1), to—

(i) enter on any operational land of a statutory undertaker, or

(ii) remove a display structure situated on operational land of a statutory undertaker;

(b) power conferred by section 225C(10)(a), or section 324(3) so far as applying for the purposes of section 225C(10)(a), to—

(i) enter on any operational land of a statutory undertaker, or

(ii) carry out any measures to prevent or reduce the frequency of the display of unauthorised advertisements on a surface on operational land of a statutory undertaker; or

(c) power conferred by section 225F(6)(a), or section 324(3) so far as applying for the purposes of section 225F(6)(a), to—

(i) enter on any operational land of a statutory undertaker, or

(ii) remove or obliterate a sign on a surface of premises that are, or are on, operational land of a statutory undertaker.

(2) The authority may exercise the power only if—

(a) the authority has served on the statutory undertaker notice of the authority's intention to do so;

(b) the notice specified the display structure, surface or sign concerned and its location; and

(c) the period of 28 days beginning with the date of service of the notice has ended.

(3) If—

(a) a notice under subsection (2) is served on a statutory undertaker, and

(b) within 28 days beginning with the date the notice is served, the statutory undertaker serves a counter-notice on the local planning authority specifying conditions subject to which the power is to be exercised,

the power may only be exercised subject to, and in accordance with, the conditions specified in the counter-notice.

(4) The conditions which may be specified in a counter-notice under subsection (3) are conditions which are—

(a) necessary or expedient in the interests of safety or the efficient and economic operation of the undertaking concerned; or

(b) for the protection of any works, apparatus or other property not vested in the statutory undertaker which are lawfully present on, in, under or over the land upon which entry is proposed to be made.

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(5) If—

(a) a notice under subsection (2) is served on a statutory undertaker, and

(b) within 28 days beginning with the date the notice is served, the statutory undertaker serves a counter-notice on the local planning authority requiring the local planning authority to refrain from exercising the power,

the power may not be exercised.

(6) A counter-notice under subsection (5) may be served only if the statutory undertaker has reasonable grounds to believe, for reasons connected with the operation of its undertaking, that the power cannot be exercised under the circumstances in question—

(a) without risk to the safety of any person; or

(b) without unreasonable risk to the efficient and economic operation of the statutory undertaker's undertaking.

(7) In this section "statutory undertaker" does not include an airport operator (within the meaning of Part 5 of the Airports Act 1986)."

(3) In section 324(3) of the Town and Country Planning Act 1990 (power of entry where necessary for purposes of section 225) after "225" insert " , 225A(1), 225C(10)(a) or 225F(6)(a) ".

(4) In the London Local Authorities Act 1995 (c. x) omit sections 11 to 13 (provision as respects London which is generally superseded as a result of the provision as respects England made by the preceding provisions of this section).

(5) In section 11 of the London Local Authorities Act 2007 (c. ii) after subsection (10) insert—

"(11) The definition of "an advertising offence" given by section 4 of this Act applies for the purposes of subsection (10) above with—

(a) the omission of paragraphs (a) and (b), and

(b) in paragraph (d), the substitution of " paragraph " for "paragraphs (a) to"."

Commencement Information

I7 S. 127 in force at 6.4.2012 by S.I. 2012/628, **art. 8(b)** (with arts. 9, 12, 13, 16, arts. 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 158(8)-(9B) substituted for s. 158(8)(9) by 2016 c. 22 s. 121(2)(e)
- s. 202(3A) inserted by 2023 c. 55 s. 176(2)