

# Defacement Removal Notices



Guidance on Sections 48 to 52 of the Anti-social  
Behaviour Act 2003 as amended by the Clean  
Neighbourhoods and Environment Act 2005

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- Dog Control Orders
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- Abandoned Shopping and Luggage trolleys
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[www.cleanersafergreener.gov.uk](http://www.cleanersafergreener.gov.uk)

[www.together.gov.uk](http://www.together.gov.uk)

# Overview

1 Sections 48, 49, 50, 51 and 52 of the Anti-social Behaviour Act 2003 ('the Act') (as amended by section 31 of, and paragraphs 16–19 of Schedule 4 to, the Clean Neighbourhoods and Environment Act 2005) enable a local authority to serve a 'defacement removal notice' on the owners, occupiers, operators (such as telecommunication companies and outdoor advertising companies) of 'relevant surfaces' (including street furniture), statutory undertakers and educational institutions whose property is defaced with graffiti and / or fly-posting.

2 In relation to fly-posting, defacement removal notices may be used to deal with old posters and remnants of fly-posting but where new cases occur, action should be taken against the offender, wherever possible, using the Town and Country Planning Act 1990 (TCPA 1990) to pursue the beneficiaries or those responsible for the fly-posting (further information is given at paragraphs 13–18 below).

3 This guidance is issued (insofar as it is for the purposes of sections 48 and 49) under section 50(1) of the Act and covers the operation of these sections in England. Section 50(3) states that local authorities must have regard to the guidance issued under section 50(1) when exercising powers under the Act.

4 This document has been developed following commencement of the powers in 12 local authority areas on a pilot basis in April 2004 in relation to graffiti only, and subsequent consultation on the implementation of section 31 of the Clean Neighbourhoods and Environment Act 2005.

5 Upon commencement, it is anticipated that there will be significant interest in the new powers on the part of local authorities. It is important that local authorities are patient in undertaking the initial processes required by the statutory guidance before issuing a notice.

Local authorities should also have regard for, and be sympathetic to, the demands which are likely to be placed on national companies owning significant amounts of property vulnerable to graffiti which may receive very many requests to enter into voluntary partnership arrangements with local authorities. Likewise, property owners should have regard for, and be sympathetic to the demands and pressures placed on local authorities from the public's desire to live in clean and safe communities and endeavour to respond to requests in a reasonable manner.

# General Principles

## Partnership forming

6 Local authorities are required to make reasonable attempts to enter into partnerships with property owners. All parties should work in constructive partnership to remove graffiti and fly-posting within agreed times and minimise the need for removal notices, for example in easy-to-access busy areas removal may be carried out more quickly, whereas on land requiring specialist access removal may require a longer planning time. It should be remembered that property owners are the victims of graffiti and fly-posting too and the cost of its removal, extrapolated across the UK, can run to millions of pounds. Therefore, requests for graffiti and fly-posting cleaning should be necessary and proportionate. Nevertheless, property owners should remember that graffiti and fly-posting blight communities and contribute to people's fear of crime. Therefore, as a matter of best practice, maintenance programmes will usually factor-in graffiti and fly-posting removal. Through the formation of partnerships and development of arrangements issuing Defacement

Removal Notices should be a last resort measure. Working in partnership with owners and occupiers responsible for affected surfaces is the ideal and preferred option.

7 It is important to note that there are no prescribed models for the development of partnership arrangements. Arrangements are developed voluntarily and their existence and nature will vary based on local circumstances and the scale of the problem caused by graffiti and / or fly-posting.

8 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 Electronic Communications Code (Telecommunications Act 1984 Schedule 2, as amended by Schedule 3 to the Communications Act 2003), and must be maintained (under the New Roads and Streetworks Act 1991) in the interest of public safety.





The increasing roll-out of Broadband Internet services will see an increasing demand upon the equipment housed within street cabinets, as Service Providers 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 Service Providers' customers are also Local Authorities' residents. As made clear in the protocols covering access to land and property, under no circumstances should these powers be exercised in a manner which endangers the safety, security or reliability of the transport network.

## Dispensations

9 Certain types of property that may be affected by graffiti and fly-posting are often located at busy places. It may be difficult for contractors and staff to park nearby due to parking restrictions. Under circumstances such as these, local authorities should negotiate with property owners through the partnerships whether dispensations or other temporary parking permits can be granted to provide easy access and facilitate quicker removal.

# Definitions & Interpretation

## Land covered

10 Section 48(9) and (10) defines the surfaces covered by the new powers. Broadly these are (1) street surfaces of, or buildings and structures that are in or on, the public street, or (2) land or buildings, structures, etc. owned by a statutory undertaker or educational institution and accessible or visible to the public.

- i. Objects in or on the public street. This covers property like cable boxes, telephone kiosks, bus stops and shelters. A privately-owned building facing onto a street, such as a shop, will not normally be covered, as the land on which it is built will be adjacent to the street; it will not be 'in or on the street.' Neither will parks, open spaces and garden or other similar areas off the street be covered.
- ii. Property owned by a statutory undertaker (such as rail and tram operators, inland waterway and port operators and airport operators) or educational institution. Graffiti and fly-posting on surfaces not 'in the

street' are only covered when the surfaces are owned by organisations defined in the Act. Further, the graffiti and / or fly-posting must be on a place to which the public has access or visible from such a place. Surfaces viewed from a moving train are covered only when that property belongs to an organisation defined in the Act.

- iii. As far as roads infrastructure is concerned these powers apply only to roads which are the responsibility of local highway authorities. These powers do not cover crown land.

## NHS Hospital and other NHS Healthcare Land

11 The National Health Service (NHS) and NHS organisations, including amongst other things NHS Trusts, NHS Foundation Trusts and Primary Care Trusts, are not classed as a statutory undertaker or an educational institution to which the powers under this section apply. However, streets and pavements, which the local authority is responsible

for, may cross through or near hospital or other NHS healthcare land. Where street furniture is located within, or around the boundary of such land, partnerships should include hospital management in agreeing suitable cleaning times as early as possible. It is important that graffiti and fly-posting removal does not pose a risk to or any unnecessary interference with hospital or other NHS healthcare business or block access to emergency services.

### **Definitions of 'offensive' and 'detrimental'**

12 To qualify for removal under the Act, the defacement must be detrimental to the amenity of an area or offensive.

**'Offensive'** applies where graffiti is racially offensive (and hostile to a religious group), sexually offensive, homophobic, depicts a sexual or violent act or is defamatory. Offensive graffiti should be prioritised for speedy removal.

**'Detrimental.'** Both graffiti and fly-posting can be detrimental to the amenity of an area. Simple

'tagging', for example, can be 'detrimental' under the terms of the Act, as can remnants of old flyers and posters stuck to surfaces. Local authorities should take a proportionate view of whether a particular instance of graffiti and / or fly-posting is detrimental. Relevant factors might include: the surface area covered by the graffiti and / or fly-posting, local complaints and the degree and nature of the graffiti and / or fly-posting problem in the area.

### **Fly-posting**

13 Under the Town and Country Planning Act 1990 (TCPA 1990) local authorities can take action against those responsible for fly-posting and remove illegal posters and placards and recover the costs incurred in doing so from those who have displayed them, or caused them to be displayed. These are powers local authorities should make use of in the first instance to prosecute offenders and claim the costs of removal from the perpetrators of the crime.



14 Under section 224 TCPA 1990 it is immediately an offence to display an advertisement in contravention of regulations made under section 220 TCPA 1990, and a person found guilty of this offence may be fined up to level 4 (currently £2,500) in a magistrates' court, with the possibility of further daily fines of up to one tenth of that level for each subsequent day in the case of a continuing offence. The Clean Neighbourhoods and Environment Act 2005 has amended the defence in section 224 so that someone upon whose land an unlawful advertisement is displayed or whose goods or business was the subject of such an advertisement and charged with the offence of displaying an illegal advertisement has to prove either that the advertisement was displayed without his knowledge; or that he took all reasonable steps to prevent the display, or subsequently, to secure its removal. This makes it more difficult for the beneficiaries of fly-posting to avoid prosecution simply by claiming that they never consented to the advertisement.

15 Cost recovery provisions in the TCPA 1990 have also been introduced by the Clean Neighbourhoods and Environment Act 2005. These costs are recoverable from the person who displayed the poster or placard, or caused it to be displayed, or, if they are not able to be identified, from the persons whose goods, services or concerns are publicised. In order to protect the rights of property owners and those advertising legally there is an additional provision in the section relating to compensation for damage caused as a result of the removal process and / or the removal of a poster which was displayed legitimately.

16 **Defacement removal notices are not intended to be used to deal with new cases of fly-posting.** In such cases use of the TCPA 1990 to pursue the beneficiaries or those responsible for the fly-posting will be more appropriate, more effective and quicker. Rather, they are meant to enable local authorities to address situations in which relevant surfaces are defaced both by graffiti and fly-posting, in particular, the remains of old flyers.



However, removal notices can be used where defacement is caused solely by fly-posting; for example, by a build up of flyers and stickers over time; or solely for graffiti.

17 Additionally, where the question of 'unlawfulness' turns on the interpretation of deemed consent under the TCPA 1990, local authorities should not use removal notices as a way of by-passing the provisions of the TCPA 1990.

18 The display of advertisements relating to prostitution on or in the vicinity of a public telephone is an offence under section 46 of the Criminal Justice and Police Act 2001. The removal notice provisions do not relate to offences under this legislation, and local authorities should seek to prosecute offenders accordingly.

### **London Local Authority Acts 1995 and 2004**

19 London Boroughs have their own 'removal notice' powers for dealing with graffiti under sections 12-13 of the London Local Authorities Act 1995 as read with sections 13-14 of the London Local Authorities Act 2004. These powers must **ONLY** be exercised in compliance with the Graffiti Code of Practice published on 21 July 2005 by the Association of London Government's Transport & Environment Joint Committee. The Code is available on the ALG's website at [www.alg.gov.uk](http://www.alg.gov.uk).

# Procedure

## Initial process

20 All parties should act with reference to the principle that graffiti and fly-posting should be removed as soon as possible through good partnership working and a defacement removal notice should only be issued as a last resort.

21 Before starting to use the powers, the local authority should identify the local companies to be affected and make contact with them to inform them. The local authority and each company involved should then nominate a single point of contact. Together, contact points should identify who owns which property in the vicinity.

22 A local authority should only consider issuing a notice where it can demonstrate that it has made reasonable attempts to both contact the owner of the affected property and enter into a voluntary partnership agreement. It is clear that 'reasonable attempts' would mean more than one letter or one phone call.

However, if a company fails to respond to such approaches or nominate a contact point, after several attempts to make contact, the local authority may proceed to issue notices if necessary.

23 The Government expects local authorities to afford companies sufficient time to consider any proposals to enter into a voluntary partnership arrangement, in particular where such companies are national bodies owning a significant amount of property vulnerable to graffiti and / or fly-posting. Likewise the Government would expect companies to respond to such proposals promptly.





### Process for issuing a notice

24 Before issuing a notice a local authority should have alerted the company whose property has been subject to graffiti and / or fly-posting and grant it a reasonable opportunity to remove the defacement first. If a notice has to be issued, it must be issued according to the procedure set out in the Act which, in the case of a company, requires serving on the Company Secretary at the registered office address. However, a copy of the notice should also be sent to the locally-nominated contact, if one has been provided.

25 The notice period of not less than 28 days' notice should start on the date on which it is served. Local authorities should take a reasonable approach to requests for an extension from companies.

26 Local authorities should act consistently and impartially with the property owners with whom they have dealings.

27 The notice should require removal of the defacement, which, in the case of graffiti may involve repainting the whole surface or just the area covered by graffiti. Repainting should aim to restore the surface's original appearance as far as possible, but any requirement to repaint must be proportionate. In cases where complete repainting is likely to damage electrical equipment, only the area directly affected should be repainted.

### Enforcement

28 Local authorities and, where practicable, owners should co-operate in prosecuting vandals and be vigorous in taking enforcement action.

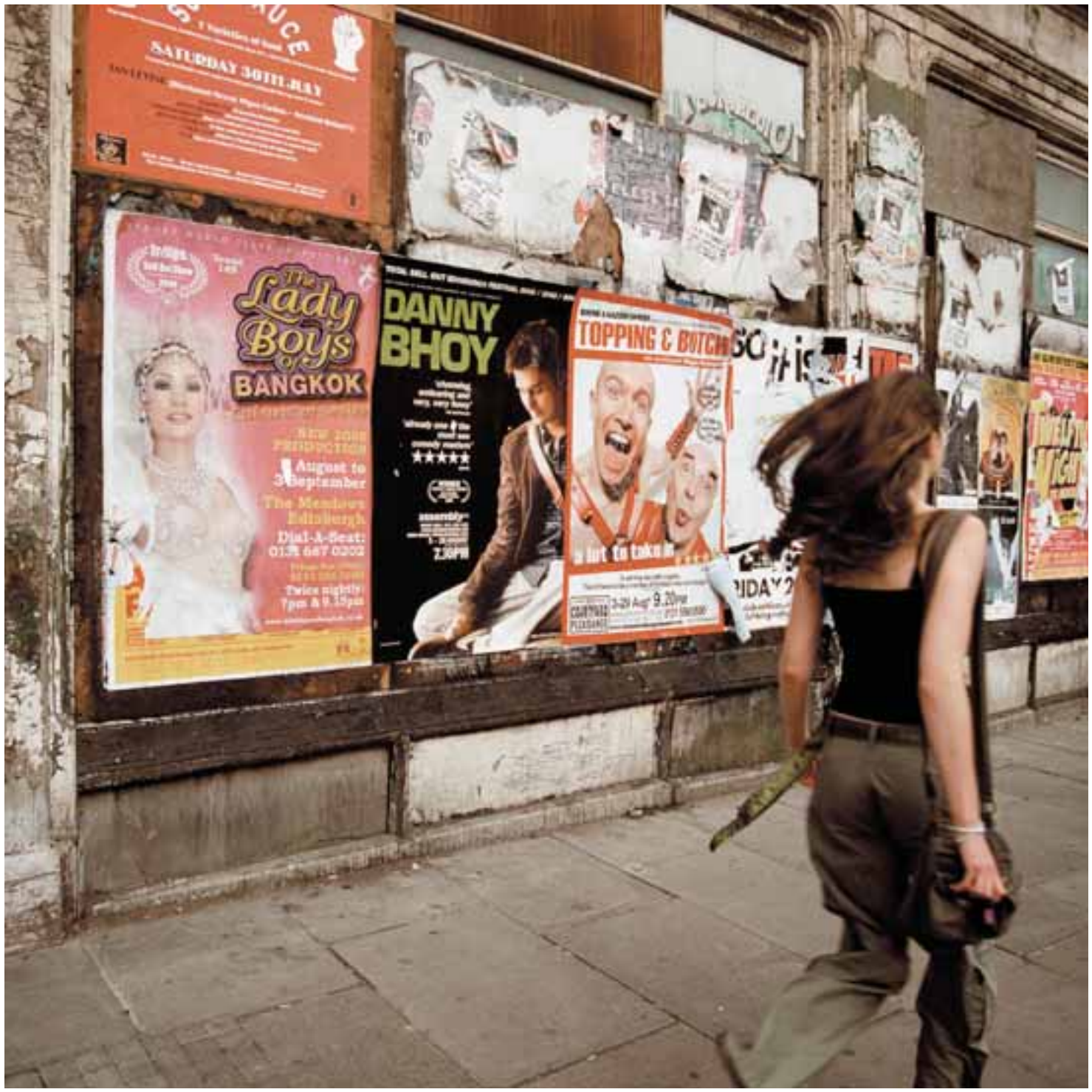
### **Procedures for dealing with repeat defacement**

29 Where the same property is repeatedly targeted, partnerships may wish to engage with crime and disorder reduction partnerships to consider the problem of graffiti and fly-posting in the wider context of anti-social behaviour. This approach may provide more effective means of detection and enforcement action than issuing further notices.

30 If partnerships do not consider it necessary to involve CDRPs, where the same piece of property repeatedly requires graffiti and / or fly-posting removal, the local authority should work with the owner to identify alternatives to the use of repeated notices. Alternatives could include additional enforcement action to target perpetrators, such as surveillance, or by designing out the crime such as relocating the property or through the use of anti-graffiti paint / anti-fly-posting coatings e.g. stippled surfaces.

31 In all circumstances, local authorities, owners and the police should share information and best practice on any enforcement action undertaken. This is particularly the case with fly-posting which can often be the result of organised crime.

32 Local authorities should retain dated photographic evidence of each case of graffiti and / or fly-posting that is the subject of a removal notice. This should be shared with the owner in the case of any dispute.



# Cleaning

33 The powers of the local authority following non-compliance with a defacement removal notice are restricted to actions to 'remove, clear, or otherwise remedy the defacement'. No other interference with the property is permitted. When removing graffiti and / or fly-posting, employees of local authorities must use accredited / approved contractors and materials that comply with COSHH – Control of Substances Hazardous to Health. Specifically they:

- must not use high-pressure jet washers or steam cleaners due to the sensitivity of the electronic equipment within cabinets.
- must not use paint or sealant that may restrict or block the flow of ventilating air to equipment, or seize locks or hinges.
- must use paint types with acceptable specification.
- 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'.

## Telecomms Cabinets and payphones

34 All cleaning materials must meet COSHH regulations and COSHH specification sheets should be available to support this. All materials carried must be appropriately labelled, and should be approved by the cabinet owner prior to use. Any proposed changes to materials used must be notified to the cabinet owner with a minimum of one month's notice.

35 In order to prevent damage to anti-corrosive (anti-rusting) and thermal characteristics of cabinets, the use of abrasive cleaning materials or fluids is not to be permitted on cabinets.

36 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

37 When cleaning payphones, it is particularly important that care is taken to ensure the prevention of water from entering the terminal box, light fittings or payphone mechanism.

38 Local Authorities must consult with companies on the approval or appointment of contractors.

# Access and Safety

39 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.

## Access to track / rail property

40 The removal of graffiti and / or fly-posting from surfaces belonging to statutory undertakers operating railways may require the carrying out of special safety procedures including temporary track closures ('possessions').

## 41 Any work may need to be co-ordinated with other activities in order to avoid excessive costs.

Accordingly, local authorities must consult with statutory undertakers as to what would be a reasonable period of time for compliance prior to service of a defacement removal notice. If the local authority still views the serving of a notice as appropriate, then the period of time for compliance within such notices should reflect those consultations.

42 In the case of railway land, local authorities **must not** under any circumstances enter nor purport to authorise entry by any person.

Only the railway undertaker concerned is in a position to authorise entry by persons in possession of appropriate railway safety certification meeting the requirements of undertakers' Railway Safety Cases approved under the Railways (Safety Case) Regulations 2000 (S.I. 2000/2688, as amended). 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

43 Access to ports and airports is strictly controlled because of the risks to safety and security; in particular access to the airside at commercial airports is subject to stringent security checks. All UK port facilities handling international traffic are subject to the International Ship and Port Facility Security Code as enforced by The Ship and Port Facility (Security) Regulations 2004 (S.I. 2004/1495, as amended). This international security



framework implemented on 1 July 2004, requires port facilities to control access into any areas that have been designated as Restricted Areas by the Department for Transport. Access control may include, but is not limited to staff and visitor pass systems and a documentation, person, baggage and vehicle search regime.

44 Additionally ports and airports generally cover an extensive area and may have complex and heavily used traffic routes. Contractors and staff carrying out work at ports and airports should contact the harbour authority or airport authority responsible for the site to arrange access before carrying out any work. To ensure that contractors and staff do not stray into areas where they could be endangered by aircraft or heavy plant machinery, they **MUST** be escorted to the place where they need to work.

45 When working airside at airports contractors and staff 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.

### Dealing with electrical and traffic control equipment

46 Street cabinets are essential to the provision of communication services and traffic control. They both house critical electrical and electronic equipment, and serve as access points for key maintenance. The avoidance of the effects of dampness or water penetration is imperative, and common to all Service Providers' and traffic street furniture. Each type of cabinet has 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, etc. 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



- In the case of telecommunications, 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, or traffic control systems
  - There may be different network architectures in a particular local authority – as point of reference the historical Cable TV industry (now substantially ntl/Telewest) 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
- 47 In consideration of the above points it is essential that Service Providers, transport managers and local authorities work closely together and agree the following points:
- Need for accreditation by owners of third parties working on equipment
  - Method Statements to be adopted by the local authorities
  - 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
- 48 No third parties shall work on equipment without the owners' permission.



# Expenditure

## Recovery of expenditure

49 Local authorities may only recover those costs they have incurred in cleaning the property concerned and should not include any other overheads. These costs should normally roughly correspond to the unit cost of cleaning their own property – unless a good explanation for additional expense incurred can be demonstrated.

**50 Local authorities should not seek to use these powers as a means of raising additional revenue.** The local authority will invoice the company for the amount due and payment should be made in 60 days.

## Use of expenditure

51 In situations where local authorities take action in default following non-compliance of a defacement removal notice, cost-recovery is restricted to costs to achieve removal and does not include any measure to prevent.

52 In some situations, the cost of removal (and the basic repainting/repair) may be the same cost as repainting with a preventative coating (for the first time). However, in circumstances when acting

in default following non-compliance with a defacement removal notice it is recommended that work undertaken relates to removal (and the basic repainting / repair) only and does not include recoating with new preventative measures. An exception to this may be in circumstances where existing partnership arrangements have clearly stated that the new coatings of preventative paints is the preferred option for all work undertaken.

## Fixed Penalty Notices – Use of Receipts

53 Receipts from fixed penalty notices for graffiti and fly-posting under section 43 of the ASB Act 2003, can be used for enforcement or prevention activities, such as further issuing of fixed penalty notices, the use of preventative recoatings, educational campaigns and promotions, or other appropriate functions. In areas where there is a persistent problem with fly-posting or graffiti, local authorities can use and are encouraged to use these receipts to step up enforcement activities against those causing or benefiting from the graffiti or fly-posting, rather than relying on the issuing of further defacement removal notices.

# Appeals

54 The right of and grounds for appeal are as set out in section 51 of the Act. Only the organisation served with a notice has the right of appeal against that notice. Appeal is to a magistrates' court and must be made within 21 days of the notice being served. Magistrates' courts should consider this guidance in any proceedings. Those contemplating appeal should attempt to negotiate the terms of the notice with the local authority before making a formal appeal.

The relevant local authority must be informed as soon as appeal against a notice is made. When an appeal is lodged, the effect of the notice is suspended pending the outcome of that appeal. If the appeal is lost, the magistrates will set a time for removal as part of their ruling.



Statutory guidance for local authorities on the operation of sections 48 to 52 of the Anti-social Behaviour Act 2003  
(as amended by the Clean Neighbourhoods and Environment Act 2005)



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