



Localism Bill: enforcement package  
**Impact assessment**



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January 2011  
Department for Communities and Local Government

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<b>Title:</b> Localism Bill: enforcement package  <b>Lead department or agency:</b> Department for Communities and Local Government  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> DCLG 0060
	<b>Date:</b> January 2011
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary legislation
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## Summary: Intervention and Options

### What is the problem under consideration? Why is government intervention necessary?

The planning system works on the principle that development should be allowed where it is reasonable to do so and within the parameters set by planning controls. Local planning authorities have powers to take enforcement action where there have been breaches of planning control. However, certain areas have been identified where the present planning system makes it difficult to take enforcement action or enables those in breach of planning controls to frustrate or evade the enforcement process. In other areas it is considered that the consequences of breaching planning controls could be made tougher to deter potential offenders. These weaknesses in the system can only be remedied by legislative means.

### What are the policy objectives and the intended effects?

The package of enforcement measures in the Localism Bill will empower local authorities to take tougher action, and will send a strong message to unscrupulous developers that they will no longer be able to exploit the system to their advantage. This aims to increase confidence in local planning authorities and the planning enforcement system.

### What policy options have been considered? Please justify preferred option (further details in Evidence Base)

- Do nothing
- Option 1: A package of measures including:
  1. to create a power for local authorities to take enforcement action against certain breaches from the date on which they are discovered, rather than the date on which they occurred; and to increase the level of fine that can be incurred for failing to comply with Breach of Condition Notices;
  2. to limit the use of retrospective planning applications;
  3. to ensure that people who deliberately deceive the local planning authority about the nature of their intended development, or who conceal it until the window for enforcement action is past, are no longer able to profit from this practice;
  4. to extend the enhanced controls over advertisements that apply in London to enforcement authorities throughout the rest of England, in order to strengthen the enforcement system and improve consistency across the country.

<b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>	It will be reviewed
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes

**SELECT SIGNATORY Sign-off** For final proposal stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.*

Signed by the responsible Minister: Greg Clark..... Date: January 2011 .....

# Summary: Analysis and Evidence

# Policy Option 1

Description: A package of enforcement measures outlined above.

Price Base Year 2010	PV Base Year 2010	Time Period Years 2010	Net Benefit (Present Value (PV)) (£m)		
			Low: £0.5m	High: £2.1m	Best Estimate: £1.3m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		£0.4m	£3.8m
High		£3.2m	£27.3m
Best Estimate		£1.8m	£15.6m

### Description and scale of key monetised costs by 'main affected groups'

Small administrative burden for local planning authorities given that it will be easier to enforce against breaches, there could be greater scope for enforcement action; small administrative costs in checking duplication of retrospective planning applications and enforcement appeals.

Increased fines for offenders.

The Planning Inspectorate: administrative costs of checking duplication of retrospective planning applications and enforcement appeals.

### Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		£0.5m	£4.3m
High		£3.4m	£29.4m
Best Estimate		£2.0m	£16.9m

### Description and scale of key monetised benefits by 'main affected groups'

Local planning authorities: easier to enforce against offenders and prosecute. Reduced administrative burden in no longer having to determine when breach occurred; avoiding duplication of work; potential reduction in the number of breaches of conditions; reduction in the number of enforcement appeals.

Increase in fine income to the public purse.

The Planning Inspectorate: cost savings due to a reduced number of appeals.

### Other key non-monetised benefits by 'main affected groups'

Improving environmental amenity, deterring potential offenders and increasing confidence in local planning authorities and the planning enforcement system.

Stronger powers against deliberate deception and over advertisement control.

**Key assumptions/sensitivities/risks** **Discount rate (** 3.5 per

Enforcement action is discretionary for local planning authorities. Given that these policies make it easier for local planning authorities to enforce against breaches, it will be for a local planning authority to decide whether to exercise powers.

See Evidence Base for costs and benefits by policy measure.

The assumptions are based on data where available. Otherwise, an illustrative range is provided based on informal consultation with partners, such as local planning authorities, enforcement officers, HM Courts Services and the National Association for Planning Enforcement (NAPE).

<b>Impact on admin burden (AB) (£m):</b>	N/A	<b>Impact on policy cost savings (£m):</b>	<b>In scope</b>
<b>New AB:</b>	<b>AB savings:</b>	<b>Policy cost savings:</b>	N/A
	<b>Net:</b>		

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England				
From what date will the policy be implemented?	2011				
Which organisation(s) will enforce the policy?	Local Planning Authorities				
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b>		<b>Non-traded:</b>		
Does the proposal have an impact on competition?	No				
What proportion ( per cent) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	<b>Costs:</b>		<b>Benefits:</b>		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b>	<b>&lt; 20</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the Evidence Base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>1</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	14
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	14
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	14
<b>Environmental impacts</b>		
Greenhouse gas assessment	No	14
Wider environmental issues	No	14
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	14
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	14
Justice system <a href="#">Justice Impact Test guidance</a>	Yes	14
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	15
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	15

<sup>1</sup> Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	The Coalition: Our Programme for Government (May 2010) <a href="http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf">http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf</a>
2	Planning Statistics, collated by DCLG (June 2010) <a href="http://www.communities.gov.uk/publications/corporate/statistics/planningapplicationsq12010">http://www.communities.gov.uk/publications/corporate/statistics/planningapplicationsq12010</a>
3	<a href="http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=2252029">http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=2252029</a>
4	Enforcement Statistics, collated by DCLG / Planning Inspectorate

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>										
Annual recurring cost	£1.8m	£1.8m	£1.8m	£1.8m	£1.8m	£1.8m	£1.8m	£1.8m	£1.8m	£1.8m
Total annual costs	£1.8m	£1.8m	£1.8m	£1.8m	£1.8m	£1.8m	£1.8m	£1.8m	£1.8m	£1.8m
<b>Transition benefits</b>										
Annual recurring benefits	£2.0m	£2.0m	£2.0m	£2.0m	£2.0m	£2.0m	£2.0m	£2.0m	£2.0m	£2.0m
Total annual benefits	£2.0m	£2.0m	£2.0m	£2.0m	£2.0m	£2.0m	£2.0m	£2.0m	£2.0m	£2.0m

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet

# Evidence Base

## Problem under consideration

Many types of development require planning permission. Other development may be permitted automatically, as long as it takes place within certain limits in terms of size, location or intensity of use. Developers who fail to obtain any necessary planning permission, breach the terms of their planning permission or exceed the permitted development limits are liable to enforcement action. However, existing planning law can make it difficult for local authorities to take enforcement action against certain breaches of planning control, with the result that some unscrupulous developers are able to 'play' the system to their personal or economic advantage.

The Government is keen to strengthen local authorities' enforcement powers, and is proposing four measures in the Localism Bill that will do so. These are:

- 1 – increase penalties for certain breaches of planning control, and amend time limit for prosecuting certain others
- 2 – limit the use of retrospective planning applications
- 3 – stronger powers against deliberate deception
- 4 – stronger controls over advertisements

The four measures are explained separately below.

## **1 Amend the time limit for prosecuting certain breaches and increase penalties for failing to comply with Breach of Condition Notices**

### **Policy objectives and rationale for intervention**

There are two parts to this proposal: lifting the time limit for certain enforcement actions, and increasing the maximum fine for offenders in certain enforcement cases.

#### *Lifting the time limit*

Where it appears to the local planning authority that there has been a breach of planning control, it may serve an enforcement notice on an owner or occupier. This requires the owner or occupier to take specified steps to remedy the breach, within a specified deadline. The local planning authority can then monitor whether or not the offender has complied with the notice. The notice must be issued within 6 months of the breach occurring.

However, there is a particular problem for breaches which are 'immediate' offences, such as erecting unauthorised advertisements or causing damage to protected trees. Although prosecution of these offences must be brought within 6 months of the breach occurring, these activities are not monitored by local planning authorities so may not be discovered immediately and the local planning authority may not know when they were committed. If the local planning authority cannot prove the date on which the breach occurred, it cannot be sure when the 6 month prosecution window begins (or ends). This can make it impossible to prove whether or not the local planning authority is still entitled to prosecute, with the result that these types of breaches are very difficult to control.

**Objective 1.1:** the Government wants to create a power for local planning authorities to prosecute from the date on which certain breaches are discovered.

#### *Increased fines*

When a local authority grants planning permission for a specified development, it may attach a set of 'conditions'. If used properly, conditions can enhance the quality of a development and enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission.



Some conditions are precedent, e.g. ‘development not to start until drainage installed’ or ‘development not to be occupied until landscaping or access roads completed’. Others are continuing, e.g. ‘height of scrap metal in yard not to exceed 5m’ or ‘machinery not to be operated outside the hours of 7am to 6pm Monday-Friday’ or ‘no more than 10 lorry movements a day’. Developers and occupiers who breach these conditions can cause a great deal of inconvenience and distress for neighbours (especially where the breach relates to a continuing condition).

If a condition is breached, the local authority is entitled to take enforcement action by serving a Breach of Condition Notice. Failure to comply with a Breach of Condition Notice can result in prosecution in the Magistrates Court. The maximum fine for this offence is currently Level 3 (up to £1,000), although Magistrates have the discretion to impose less than the maximum if they consider it appropriate. The Government considers that a higher penalty would be more appropriate. Level 4 fines (currently up to £2,500) already apply to the offences of displaying an illegal advertisement and non-permanent damage to a protected tree, which are comparable in scale/severity.

**Objective 1.2:** the Government wants to increase the level of fine that can be incurred for failing to comply with a Breach of Condition Notice

Policy: costs and benefits

Policy	Costs	Benefits
1.1 – <i>Lifting the time limit</i> -start the 6 month period for prosecution from the date when breach is discovered, irrespective of when it actually occurred for advertisement and non-fatal tree offences.	More scope for prosecution of these immediate offences would lead to:- - increased admin costs for local planning authority - costs (intended) to the unauthorised advertiser or tree-damager through compliance and payment of fine	Easier prosecution of unauthorised advertisers and those who damage protected trees. Deterrent effect of enhanced enforcement. Increased confidence in the local planning authority and the planning enforcement system. Improving environmental amenity. Revenue to public purse from fines.
1.2 – <i>Increased fines</i> -increase the maximum fee for failure to comply with Breach of Condition Notices	Higher costs only to proven offenders (as intended)	No additional admin cost for local planning authority (they would have prosecuted anyway)  Deterrent effect of enhanced enforcement. Increased confidence in the local planning authority and the planning enforcement system. Improving environmental amenity. Revenue to public purse from fines, which would be a saving to the taxpayer.
Option 2 – Do nothing	Does not achieve policy aim	No additional expenditure by Government

## 1.1 – *Lifting the time limit*

### **Assumptions:**

The analysis is based on the following evidence and assumptions:

Number of enforcement actions:

- The current number of enforcement actions against offences relating to protected trees (other than the wilful destruction of protected trees) is estimated based on an illustrative range from 1 – 2 per cent of Tree Preservation Orders: 1,000 – 2,000. Latest data shows the number of Tree Preservation Orders at 96,342 in 2005.
- The current number of enforcement actions relating to advertisement offences is estimated based on an illustrative range from 1,000 to 1,500.

Administration by enforcement officers:

- The average time taken to investigate necessary enforcement action relating to trees is estimated based on an illustrative range from 5 – 6 hours.
- The average time taken to investigate necessary enforcement action relating to advertisement offences is estimated based on an illustrative range from 3.5 – 7 hours.
- The hourly wage of an enforcement officer is estimated at an up-rated wage of £37.18 per hour.<sup>2</sup> This hourly wage rate is up-rated to account for additional costs of employment, such as pensions and also overheads, such as building and equipment costs, rent and other expenses incurred.

Fine levels:

- Fines for contraventions to protected trees are based on 25 per cent - 75 per cent of the maximum fine (£2,500): £625 - £1,875.
- The fine level for advertisement offences is based on 25 per cent - 75 per cent of the maximum fine (£2,500): £625 - £1,875.
- It is estimated that based on an illustrative range from 30 per cent - 70 per cent of breaches are prosecuted; of which 90 per cent are successful prosecutions.

The policy:

- Given that the local planning authority no longer needs to prove the date on which the breach occurred, it is assumed that the time saved investigating when it took place is based on an illustrative range from 3 – 5 hours.
- Previously, the proportion of breaches for which a local planning authority had to investigate and prove the date on which the breach occurred is estimated based on an illustrative range from 20-30 per cent.
- Given that local planning authorities would no longer need to prosecute within 6 months of breaches being discovered, enforcement action and, thus, successful prosecution, could increase by 10 – 20 per cent.

### **Costs**

To local planning authority:

- An increase in enforcement action is estimated to result in average annual costs in administration ranging from: £32,000 - £167,000.  
This is based on the additional 10 per cent - 20 per cent enforcement action due to the policy, with enforcement officers investigating offences charged at their hourly wage.

To unauthorised advertiser/ tree-damager:

- Given that there is an increase likelihood of being prosecuted, offenders will be paying greater fines. The average annual fines incurred to offenders are estimated: £171,000 - £2.4m.  
This is based on the fine amount (£625 - £1,875) multiplied by the proportion of enforcement actions that would now be successfully prosecuted.

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<sup>2</sup> This is based on public sector wage data for 2010/11 (including local government) from the ONS Survey Control Unit.

## Benefits

To local planning authority:

- Given that the local planning authority no longer needs to prove the date on which the breach occurred, time saved investigating when it took place is estimated to generate average annual savings of: £45,000 - £195,000.  
This is based on enforcement officers spending 3 – 5 hours investigating when the breach took place at an hourly wage of £37.18, assuming 20 per cent – 30 per cent of current enforcement actions need an enforcement officer to discover the date of the breach.
- The key benefit is the deterrent effect of enhanced enforcement. This benefit has not been monetised.
- Other benefits include increased confidence in the local planning authority and the planning enforcement system. These policy changes make it easier to prosecute unauthorised advertisers and those who damage protected trees. There are also benefits in terms of improving environmental amenity. These benefits have not been monetised.
- Any revenues raised from the penalties designed to ensure enforcement can be used to fund this enforcement activity, helping to reduce the financial burden on general council tax payers of such activity. So an increase in enforcement action may lead to an increase in fine income although there is uncertainty around the extent of the income. Based on the assumptions set out below the impact assessment estimates a range of average annual benefits from: £171,000 - £2.4m. This is equivalent to the increased fines paid by offenders. It is a transfer from offenders to the public purse.

It is important to note that the aim of the policy is to make it easier to prosecute unauthorised advertisers and those who damage protected trees, therefore, increasing the deterrent effect of enhanced enforcement. However, it has not been possible to monetise these benefits.

**Table 1: Total costs and benefits (£)**

	Average Annual Costs (Constant Price)	Average Annual Benefits (Constant Price)	Total Cost (10 yrs) (Present Value)	Total Benefit (10 yrs) (Present Value)	Net Present Value
Low	£203,000	£216,000	£1.7m	£1.9m	£0.11m
High	£2.6m	£2.6m	£22.1m	£22.4m	£0.24m
Best Estimate	£1.4m	£1.4m	£11.9m	£12.1m	£0.18m

### 1.2 – Increased fines

#### Assumptions:

It is assumed that:

- The total number of Breach of Condition Notices issued is based on an illustrative range from 1,000 – 1,500. This is based on a 10 year average of Breach of Condition Notices approximately equal to 1,200 for district/ unitary authorities and counties.<sup>3</sup>
- Penalties are for offenders who fail to comply with Breach of Condition Notices. The proportion of Breach of Condition Notices where there is failure to comply is estimated based on an illustrative range from: 30-40 per cent.

<sup>3</sup> <http://www.communities.gov.uk/documents/statistics/xls/1520431.xls>

- The level of fines will rise from Level 3 (up to £1,000) to Level 4 (up to £2,500). This represents the maximum fee that can be imposed.
- The administrative time taken to process Breach of Condition Notices that are not complied with for the local planning authority is estimated illustratively at 5 hrs.
- Given that fines are higher, this could encourage people to remedy their breaches of conditions before the case goes to court, thus reducing the proportion of Breach of Condition Notices where there is failure to comply, estimated based on an illustrative range from 20-30 per cent. The number of Breach of Condition Notices issued by local authorities does not necessarily reduce.

**Costs:**

To offender:

- The offender would incur higher fines, given that Magistrates can now levy higher penalties for offenders who fail to comply with Breach of Condition Notices. The average annual costs to offenders range from: £200,000 - £525,000. This is based on the number of Breach of Condition Notices that are not complied with multiplied by the fines increasing from Level 3 (up to £1,000) to Level 4 (up to £2,500).

**Benefits:**

To the local planning authority:

- It could be argued that a higher maximum fine could encourage people to remedy their breaches of conditions before they go to court. There could be a reduced number of cases where there has been failure to comply with Breach of Condition Notices for the local planning authority to process. Therefore, there could be administrative savings to local planning authorities. Average annual costs savings are estimated at: £19,000.
- The key benefit is the deterrent effect of increased fines. This benefit has not been monetised.
- Other benefits include increased confidence in the local planning authority and the planning enforcement system. These policy changes make it easier to prosecute unauthorised advertisers and those who damage protected trees. There are also important benefits in terms of improving environmental amenity. These benefits have not been monetised.
- Additional revenue to the public purse from fines, which would be a saving to the taxpayer. Additional annual revenue is estimated to range from £200,000 to £525,000.

It is important to note that the aim of the policy is to reduce the number of those who fail to comply with Breach of Condition Notices, by raising the fine level paid therefore increasing the deterrent effect. However, it has not been possible to monetise these benefits.

**Table 2: Total costs and benefits (£)**

	Average Annual Costs (Constant Price)	Average Annual Benefits (Constant Price)	Total Cost (10 yrs) (Present Value)	Total Benefit (10 yrs) (Present Value)	Net Present Value
Low	£200,000	£219,000	£1.7m	£1.9m	£0.16m
High	£525,000	£544,000	£4.5m	£4.7m	£0.16m
Best Estimate	£362,500	£381,000	£3.1m	£3.3m	£0.16m

**2 Limit the use of retrospective planning applications**

Policy objectives and rationale for intervention

Development which requires planning permission should not normally proceed until this permission has been granted. However, in exceptional circumstances it is possible to seek permission retrospectively, by submitting a retrospective planning application. This is typically done where a developer did not realise that permission would be required, and the local planning authority considers that the development is acceptable. If a retrospective planning application is refused, the developer may appeal. This further extends the period during which time the development remains in situ.

If the local authority considers that the unauthorised development is unacceptable, it may serve an enforcement notice on the developer. This can require him/her to stop using the building, to use it less intensively, to make it smaller or in some cases to demolish it altogether. Developers are entitled to appeal against this enforcement notice (by lodging an 'enforcement appeal'). Whilst the appeal is being determined, the developer is not required to comply with the restrictions in the enforcement notice. There are a number of grounds for appealing, one of which (a "ground (a)" appeal) is that the development ought to have planning permission. Currently a deemed planning application arises (provided the appellant pays the prescribed fee) regardless of the grounds under which an appeal is made. The Government sees no reason why there should be a deemed planning application where an appeal is made on grounds other than "ground (a)", and therefore wishes to limit the appeals which give rise to deemed applications to those made on "ground (a)". Furthermore, given the existence of a deemed planning application for "ground (a) appeals", the Government sees no reason why, for such an appeal, it should be possible to make a retrospective planning application. At present appellants can drag out the appeal process by making a retrospective planning application whilst continuing their enforcement appeal, and making a further appeal against refusal of the retrospective planning application.

**Objective 2:** the Government wants to limit the use of retrospective planning applications, by making those who carry out unauthorised development choose either to submit a retrospective planning application or to lodge an appeal against the enforcement notice under ground (a) if they want the unauthorised development to have planning permission.

Policy and other options considered: costs and benefits

Option	Costs	Benefits
1 Prevent: developer from- (i) submitting retrospective planning application where ground (a) appeal against enforcement notice is already underway;	Small administrative cost for local planning authority (checking whether or not an enforcement appeal is already underway before it validates the retrospective planning application).	Large administrative saving for local planning authority which no longer has to deal with duplication of effort (processing both retrospective planning application and enforcement appeal).
(ii) – making ground (a) appeal against enforcement notice if a retrospective planning application has also been submitted.	Small admin cost for the Planning Inspectorate (checking whether or not retrospective planning application was submitted to local planning authority before it validates the appeal).	Large admin saving for the Planning Inspectorate who no longer has to deal with duplication of effort (processing both retrospective planning application and enforcement appeal).  Deterrent effect of enhanced enforcement. Increased confidence in the local planning authority and the planning enforcement system.
2 – abolish "ground (a)": remove the ability of a developer to appeal against an enforcement	Does not achieve policy aim.  Removal of deemed planning	Overcomes one element of duplication between retrospective planning

notice on the grounds that the development should be granted planning permission  <b>This option is not being taken forward.</b>	application associated with the enforcement appeal would mean that retrospective application would be needed in all cases for the development to be approved.	application and enforcement appeal.
3 - do nothing	Does not achieve policy aim.	No additional expenditure by Govt.

### Assumptions:

The analysis is based on the following evidence and assumptions:

- Data from the Planning Inspectorate finds that the number of enforcement appeals showing as proceeding on ground (a) and as having the fee paid, or fee being exempt, at 1,721 (2009/10).
- It is estimated, based on an illustrative range, that from 10 per cent to 40 per cent of enforcement appeals have planning permission considered.
- The cost to a local planning authority of processing a retrospective planning application ranges from £250 (based on the average fee for a planning application, assuming that there is full cost recovery for local planning authorities).
- It is assumed, based on an illustrative range, that there will be a 10 per cent to 40 per cent reduction in ground (a) enforcement appeals, given that an appeal would not be allowed where a retrospective application had been submitted.
- The hourly wage of planning administrative staff is estimated at an up-rated wage of £23.63 per hour.<sup>4</sup> This hourly wage rate is up-rated to account for additional costs of employment, such as pensions and also overheads, such as building and equipment costs, rent and other expenses incurred.

### Costs:

To local planning authorities:

- There will be small administrative costs in checking whether or not an enforcement appeal is already underway before the local planning authority validates the retrospective planning application. The average annual costs are estimated to range from: £20,000 - £41,000.

To the Planning Inspectorate:

- There will be small administrative costs in checking whether or not a retrospective planning application was submitted to the local planning authority before it validates the appeal. The costs are estimated to range from: £20,000 - £41,000.

### Benefits:

To local planning authorities:

- There will be administrative savings for local planning authorities given that they no longer have to deal with duplication of effort in processing both retrospective planning applications and enforcement appeals. The average annual cost savings of no longer processing an estimated 10-40 per cent of retrospective planning applications: £43,000 - £172,000.
- There will be administrative savings given a 10-40 per cent reduction in enforcement appeals to process. The average annual cost savings are estimated to range from: £13,000 - £51,000.

To the Planning Inspectorate:

<sup>4</sup> This is based on public sector wage data for 2010/11 (including local government) from the ONS Survey Control Unit.

- There will be administrative savings for the Planning Inspectorate given a 10-40 per cent reduction in enforcement appeals to process. The average annual cost savings are estimated to range from: £13,000 - £51,000.

**Table 3: Total costs and benefits (£)**

	Average Annual Costs (Constant Price)	Average Annual Benefits (Constant Price)	Total Cost (10 yrs) (Present Value)	Total Benefit (10 yrs) (Present Value)	Net Present Value
Low	£41,000	£69,000	£0.4m	£0.6m	£0.3
High	£81,000	£274,000	£0.7m	£2.4m	£1.7
Best Estimate	£61,000	£172,000	£0.5m	£1.5m	£1.0m

### 3 Stronger powers against deliberate deception

#### Policy objectives and rationale for intervention

Under current enforcement law, development which takes place without authorisation may be considered ‘lawful’ if it remains in situ for the periods prescribed in law during which the local planning authority may take enforcement action (4 years for operational development or change of use to a single dwelling house or 10 years for other changes of use), provided the authority has taken no enforcement action during that time. This even includes cases where development has been concealed from public view until the time limit for enforcement action has passed (subject to the outcome of a case to be heard in the Supreme Court).

In addition, the Government is concerned that some applicants for planning permission are deliberately misleading planning authorities about their proposals. This can happen where, for example, development is significantly different from the development that was granted planning permission, has been disguised as a different type of development, or has been concealed completely. Two high profile cases, relating to developments in Hertfordshire and Surrey, are going through the courts at present, though both developments were built at least eight years ago. In the first, planning permission was granted for an agricultural barn but inside it was fitted out as a house, whilst in the second case the building of a 4-bedroom house was hidden behind straw bales and a tarpaulin.

The above scenarios can result in development that is not acceptable but is beyond the reach of the local planning authority’s enforcement powers to prevent or remove. Such cases are likely to be rare (by their nature it is impossible to quantify those that do not come to light) and probably amount to no more than one or two at any given time. However, once detected they can receive considerable publicity and therefore do much to undermine the importance of obtaining planning permission and to erode public confidence in the enforcement process.

**Objective 3:** the Government wants to ensure that people who deliberately deceive the local planning authority about the nature of their intended development, or who conceal it until the window for enforcement action has expired, are no longer able to profit from this practice. The local planning authority would have to obtain a “Planning Enforcement Order” from the Magistrates’ Court to establish deliberate deception or concealment. The Order would have to be applied for within 6 months of the deception being detected. Once an Order had been made the local planning authority would then have 12 months in which to initiate enforcement action: otherwise known as “restarting the clock”. The intention is to stop such deceptions occurring in the future by removing the incentive to deceive associated with time limits for enforcement action.

## Policy: costs and benefits

Option	Costs	Benefits
1 – restart the clock for enforcement action on date when deception is discovered	<p>This change would give local planning authorities scope for enforcement action where none previously existed. Therefore, there would be extra costs associated with enforcement (enforcement notices) as well as the cost of applying for a Planning Enforcement Order. In addition, there will be costs incurred in dealing with any subsequent appeal against the court order.</p> <p>- more expense for developer: in complying with or appealing against an enforcement notice (this is the intention).</p>	<p>Enforcement is discretionary, and therefore does not require local planning authorities to take action. However, this would enable them to take action in appropriate cases, where hitherto they could not have done so.</p> <p>Deterrent effect of enhanced enforcement. Increased confidence in the local planning authority and the planning enforcement system. Improving environmental amenity,</p>
2 – do nothing	This would not achieve the policy aim.	No additional expenditure by Government.

The costs and benefits have not been monetised. They are not possible to quantify given that the number of cases of deliberate deception is rare; one or two at any given time. Evidence of deliberate deception in the UK is limited to the two cases outlined above (i.e. house concealed by straw bales and house disguised as a barn).

## Risks and assumptions

This policy would give local planning authorities scope for enforcement action, thus additional costs would be incurred. However, it is discretionary. Cases of deliberate deception are rare and amount to one/ two at any given time. The cost of enforcement action to a local planning authority varies greatly and depends on factors such as compliance/ non-compliance with an enforcement measure, potential risk of Magistrates' Court hearing and, in extreme circumstances, the case could be heard in the Supreme Court. For example, serving an enforcement notice and potential appeals can take approximately 0.5 – 5 days of an enforcement officer's time. The fine level for non-compliance is a maximum of £20,000 and continuing non-compliance, up to £200 a day.

## 4 Stronger controls over advertisements

### Policy objectives and rationale for intervention

Unauthorised hoardings, fly-posting and the defacement of buildings can detract considerably from the quality of life in an area. The advertisement controls that currently apply in London are more stringent than those in the rest of England. This is as a result of provisions incorporated in the London Local Authorities Acts of 1995, 2004 and 2007.<sup>5</sup>

<sup>5</sup> <http://www.communities.gov.uk/documents/planningandbuilding/pdf/riacontroladvertisements.pdf>



To enhance the powers available to local planning authorities throughout England, and make them consistent with those that currently apply in London, the new provisions would enable local planning authorities to:

- remove (or require the removal of) illegal advertisement hoardings, and to recover the costs of doing so
- remove or obliterate (or require the removal or obliteration) of signs on any premises apparatus or plant that are detrimental to amenity or offensive, and recover the costs of doing so
- require site owners to take measures to prevent or reduce persistent fly-posting, and enable action to be taken by local planning authorities themselves and for them to recover costs of doing so.

**Objective 4:** The Government wants to extend the enhanced powers that apply in London to enforcement authorities throughout the rest of England, in order to strengthen the enforcement system and improve consistency across the country.

Policy: costs and benefits

Option	Costs	Benefits
1 – widen the scope of the enforcement powers granted under the London Local Authorities Acts to apply to all English local planning authorities.	Additional scope for enforcement action. - more work for local planning authorities (if they choose to do it) (but costs will be recovered) - more expense for illegal advertisers (removing or paying the local planning authority for removing the adverts), as well as any reduction in the benefits through not having the illegal advertisement etc displayed.	Prompt removal of illegal advertisements, signs; prevention of fly-posting. - non-monetised benefit of strengthening the Local Planning Authority / enforcement system - improvement of amenity - deterrence
2 - Do nothing	Does not achieve policy aim	No additional expenditure by Government

It can be assumed that local authorities exercise full cost recovery, so the additional costs of this policy will net out. Furthermore, it is at the discretion of local authorities if they want to have stronger control over advertisements. They will only do so if it is beneficial to them. This has not been monetised.

There are benefits in terms of increasing confidence in the local planning authority and the planning and enforcement system. There are also the benefits of improving environmental amenity. Anecdotal evidence suggests that a single action against an illegal operator can have a significant effect on the level of illegal advertising within an area. These benefits have not been monetised.

### The enforcement package as a whole

#### Admin burden and policy savings calculations:

This relates to the costs/ cost savings to business i.e. developers. Administrative burdens have not been monetised given that these policies in effect only apply to those businesses in breach of planning controls, and are therefore a wholly avoidable cost for business.

Furthermore, the impacts of these changes to enforcement policy relate to business and individuals, with a very low proportion of enforcement action relating to business.

**New burdens:**

Since enforcement action is discretionary, none of the new powers will impose additional costs as it will be for individual local planning authorities to decide whether to exercise the powers in any particular case, and thus incur the costs of enforcement action. Increases in fines do not give rise to extra enforcement activity. For any additional enforcement action taken in exercising the new powers there should be offsetting savings through an easier prosecution process (e.g. of 'immediate' offences) or the elimination of duplication (e.g. in having to deal with both an enforcement appeal and retrospective planning application at the same time). The deterrent effect of all the new measures should lead to some reduction in breaches and therefore in the need for enforcement activity.

The annual costs to local authorities are estimated at: £130,000 (£52,000 - £208,000); annual cost savings are estimated at: £278,000 (£119,000 - £437,000). Annual net additional costs (costs – savings) to local authorities: -£148,000 (-£67,000 to -£229,000).

**Specific impact tests***Equalities Impacts*

We do not anticipate the policy having any adverse equalities impacts. An equalities screening has been undertaken that determined an Equalities Impact Assessment is not required.

**Economic impacts***Competition*

We do not anticipate the policy having any adverse impacts on competition. Effective enforcement action helps to create a level playing field for businesses.

*Small firms*

We do not anticipate the policy having adverse impacts on small firms.

**Environmental impacts**

The policy will have no adverse environmental impacts; any additional enforcement activity will improve environmental amenity

**Social impacts***Health and well-being*

We do not anticipate the policy having any adverse impacts on health and well-being.

*Human rights*

We do not anticipate the policy having any adverse impacts on human rights.

*Justice system*

There is likely to be some ongoing impact on the courts from the enhanced scope for prosecutions resulting from lifting the time limit on 'immediate offences'. Applications to Magistrates Courts for Planning Enforcement Orders in cases of deliberate deception will also have an impact, but as such cases are likely to be rare the impact would be minimal. Increase in

finances for Breach of Condition Notices will need to be taken into account by the courts but it is a minimal impact.

#### *Rural proofing*

We do not anticipate the policy having any adverse impacts on rural areas. Any impact is likely to be a positive one, as stronger enforcement powers will reduce the scope for unauthorised development and thereby improve amenity.

#### *Sustainable development*

We do not therefore anticipate the policy having any adverse impacts on sustainable development.

### **Summary and preferred option with description of implementation plan**

It is anticipated that the new powers will come into effect by Commencement Order some two months after the Localism Bill receives the Royal Assent.

## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

### Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

**Basis of the review:** [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];  
The basis of the review is to monitor enforcement activity over the coming years.

**Review objective:** [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

To check that the legislation is operating as expected to tackle the problems of concern, and identify whether there would be merit in further action to strengthen the enforcement system

**Review approach and rationale:** [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

Informal consultation with local planning authorities.

Analysis of statistics on enforcement action.

Over the coming months, further details of any proposed research and analysis will be considered by a Localism Bill review steering group, to ensure that the methods are appropriate, proportionate, and cross-cutting where possible, so that we collect only essential information/data at both the baseline and follow-up review stages.

**Baseline:** [The current (baseline) position against which the change introduced by the legislation can be measured]

Planning statistics and enforcement action, collated by DCLG and the Planning Inspectorate: numbers of enforcement notices served, injunctions.

<http://www.communities.gov.uk/documents/statistics/xls/1627454.xls>

**Success criteria:** [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

Increased levels of successful enforcement action in some areas (e.g. in prosecutions for 'immediate' offences), together with reduced need for enforcement in other areas (e.g. deliberate deception) since incentive to deceive is being removed. This will be relative to overall development activity that will take place within the planning system (i.e. with planning permission or permitted development rights).

**Monitoring information arrangements:** [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]

**Reasons for not planning a PIR:** [If there is no plan to do a PIR please provide reasons here]

Add annexes here.