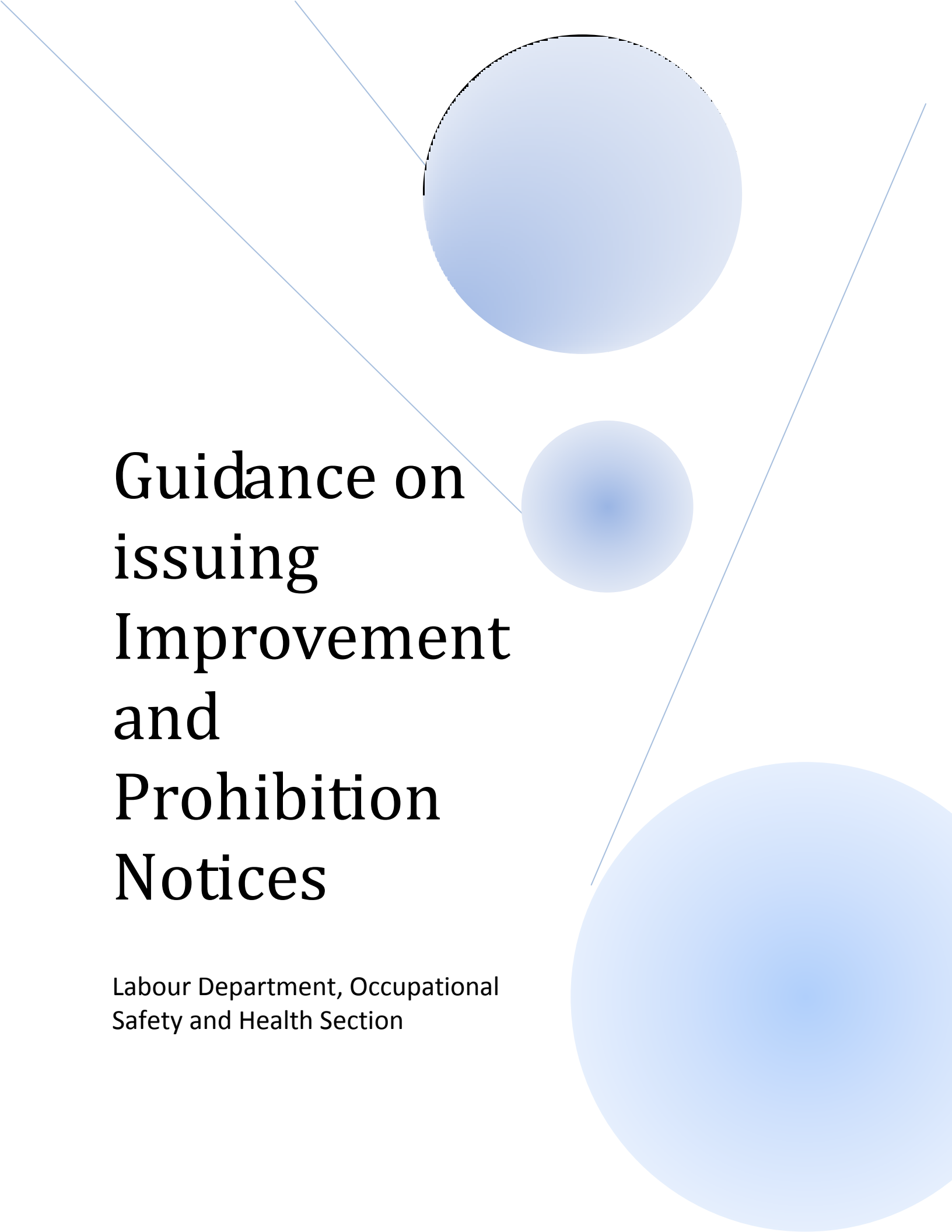




Guidance on issuing Improvement and Prohibition Notices

Labour Department, Occupational
Safety and Health Section

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Introduction

These guidelines are intended to provide a standard operating procedure for the administration of Improvement and Prohibition notices by the Safety and Health Section under sections 112-118 of the Safety and Health at Work Act, Cap 356. These tools are intended to provide the enforcement powers to:

- Secure compliance with the law; and
- ensure that duty holders may be held accountable for failure to safeguard health, safety and welfare; and that action can be taken immediately to deal with serious risks;

Methods of enforcement

The Safety and Health Officers have a range of tools at their disposal in seeking to prevent harm, deal with serious risk and secure compliance with the law and to ensure a proportionate response to criminal offences. Officers may offer dutyholders information, and advice, both face to face and in writing. This may include:

- warning the dutyholder that in the opinion of the officer, he is failing to comply with the law.
- an officer issuing a written statement that the dutyholder has committed an offence for which there is a realistic prospect of conviction.
- serving Improvement and Prohibition notices,
- withdrawing approvals, varying license conditions or exemptions (e.g. in relation to quarries),
- and informing the dutyholder that the Labour Department may prosecute.

What is an Improvement Notice

Where an officer is of the opinion that a person is contravening one or more of the relevant statutory provisions, or has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated, he may serve an Improvement Notice.

What is a Prohibition Notice

An officer serves a Prohibition Notice on a person if he is of the opinion that an activity carried on (or likely to be carried on) by or under the control of that person involves (or will involve) a risk of serious personal injury or endanger health.

Enforcement Principles

Investigating the circumstances encountered during inspections or following incidents or complaints is essential before taking any enforcement action. In deciding what resources to devote to these investigations, the Labour Department should have regard to the principles of enforcement (proportionality, targeting, consistency, and transparency).

Proportionality

Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties (dutyholders) expect that action taken by the Labour Department to achieve compliance or bring dutyholders to account for non-compliance should be proportionate to any risks to health and safety, or to the seriousness of any breach, which includes any actual or potential harm arising from a breach of the law.

In practice, applying the principle of proportionality means that the Labour Department should take particular account of how far the dutyholder has fallen short of what the law requires and the extent of the risks to people arising from the breach.

Some health and safety duties are specific and absolute. Others require action so far as is reasonably practicable. The Labour Department should apply the principle of proportionality in relation to both kinds of duty.

Deciding what is reasonably practicable to control risks involves the exercise of judgement. Where dutyholders must control risks so far as is reasonably practicable, the Labour Department considering protective measures taken by dutyholders must take account of the degree of risk on the one hand, and on the other the sacrifice, whether in money, time or trouble, involved in the measures necessary to avert the risk. Unless it can be shown that there is gross disproportion between these factors and that the risk is insignificant in relation to the cost, the dutyholder must take measures and incur costs to reduce the risk.

The Labour Department will expect relevant good practice to be followed. Where relevant good practice in particular cases is not clearly established, health and safety law effectively requires dutyholders to establish explicitly the significance of the risks to determine what action needs to be taken. Ultimately, the courts determine what is reasonably practicable in particular cases.

Targeting

Activities that give rise to the most serious risks or where the hazards are least well controlled are targeted. The action is focused on the dutyholders who are responsible for the risk and who are best placed to control it – whether employers, manufacturers, suppliers, or others.

Wherever several duty holders have responsibilities, officers may take action against more than one when it is appropriate to do so in accordance with this policy.

Consistency

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

Dutyholders managing similar risks expect a consistent approach from officers in the advice tendered; the use of enforcement notices, approvals etc; decisions on whether to prosecute; and in the response to incidents.

The selection of the enforcement tool is to be made on a case by case basis. The officer should consider:

- the degree of risk,
- the attitude and competence of management,
- any history of incidents or breaches involving the dutyholder,
- previous enforcement action, and
- the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law.

Decisions on enforcement action are discretionary, involving judgement by the enforcer.

Transparency

Transparency means helping dutyholders to understand what is expected of them and what they should expect from the officer. It also means making clear to dutyholders not only what they have to do but, where this is relevant, what they don't. Therefore when officers offer dutyholders information, or advice, face to face or in writing, including any warning, officers will provide the dutyholder with guidance on how to comply with the law, and explain why. Inspectors will, if asked, write to confirm any advice, and to distinguish legal requirements from best practice advice.

Steps in issuing improvement and prohibition notices

1. It is vital that records in the Labour Department be up to date. These include inspection reports, correspondence to the company from the Labour Department, accident reports, minutes from safety committee meetings, certificates of examination of vessels, cranes, hoists, and elevators.
2. Research on the safety technology/procedure available in the specific industry should be done to become informed about reasonably practicable remedial options available.

3. Empirical evidence should be gathered to substantiate the opinion of the Officer including measuring factors such as dust, noise, light and the use of local and internationally recognised standards where available. Officers should also take photographs, video recordings, and possibly statements during visit(s) prior to issuing a notice.
4. Officers can also request that another officer accompany him on a site visit or that the services of an expert be acquired.
5. Where a situation appears to be hazardous and there is uncertainty about issuing an improvement or prohibition notice, contact should be made with the Senior Safety and Health Officer to seek assistance where practicable.
6. Officers shall consult the Chief Fire Officer before serving, on the occupier of premises used or about to be used as a workplace, a notice concerning the means of escape in case of a fire. Section 114 (4)
7. A copy of a notice issued under section 112 or 113 may be posted at or near the place where the contravention or risk referred to in the notice exists; or at such other prominent position at the workplace as may be determined by the Officer.
8. The Improvement/ Prohibition Notices should be numbered and made in triplicate: the original will be posted at the company premises, the first duplicate will be served to the occupier and the second duplicate will be retained by the Labour Department.
9. If there are many different contraventions throughout the factory, the Improvement and or Prohibition Notices may be posted at various locations.
10. The process of issuing Improvement/Prohibition Notices will take a natural progression: verbal advice, letter, issue of notices, extension of the terms of the notice (if necessary), and prosecution where non-compliance continues.

Differences between issuing the Improvement and Prohibition Notices

Improvement Notice

11. An Improvement Notice is not valid unless the form has been countersigned by a senior member of the Labour Department (Senior Safety and Health Officer, the Assistant Chief Labour Officer, the Deputy Chief Labour Officer, or the Chief Labour Officer).
12. The terms of the notice should be explained by the Safety and Health to the relevant person (employer, occupier, employee).

13. The notice should:

- state that Safety and Health Officer is of that opinion;
- specify the provision(s) in question;
- give particulars of the reasons why the Safety and Health Officer is of that opinion;
- the date by which compliance is required; a minimum of 21 working days. This time period allows the person to which the notice is served to appeal the notice.
- provide means by which the contraventions can be remedied and;
- require the person to remedy the contravention or the matters occasioning it .

Prohibition Notice

There are two classes of Prohibition Notices. (1) A Prohibition Notice - A notice that immediately stops the activity and (2) A Prohibition Notice – Deferred – defers prohibition to a next given date.

14. The Prohibition Notice can be issued by the officer without requiring the countersignature of a senior officer. The officer should contact a senior officer prior to or immediately after issuing the notice.
15. The Prohibition Notice – Deferred is not valid unless the form has been countersigned by a senior officer.
16. The Prohibition Notice form should:
- direct that the activity should not be carried on by or under the control of the person on whom the notice is served unless the matters giving rise to the inspector's opinion have been remedied.
17. A Prohibition Notice – Deferred can be issued in circumstances where the conditions or concerns are serious but reasonable time could be given in which to facilitate compliance.

Response to non-compliance with the Notice

After the Improvement Notice has expired and upon the follow-up visit, conditions have not been remedied to the satisfaction of the officer, but the employer has demonstrated an effort to comply with the notice, the officer can serve another improvement notice granting an extension period. The decision to grant the extension should be discussed with the Senior Safety and Health Officer.

Selection of a Notice

1. To decide which notice is appropriate an officer needs to consider the immediate effect of the process continuing, the likely severity of any injury, and the number of persons that can become harmed.
2. There is also the option of serving both notices to address the same unsafe condition. The prohibition notice will stop the activity and the improvement notice will maintain compliance.

Example, use of a defective scaffold. The prohibition notice will stop the unsafe act while the improvement notice will address any wider failings that led to the situation, such as poor maintenance procedures.

Who can be issued a notice

An Improvement and a Prohibition notice may be served on any person in control of a process or a piece of plant, subject to the relevant statutory provisions. This includes an employee who may not be aware that the activity is unsafe and is acting in accordance with his/her employer's instructions. In such circumstances, the employer should be contacted to advise them of the situation and the proposed notice. The Safety and Health Officer may consider serving a notice on both the employer and employee.

When Safety and Health Officers issue Improvement or Prohibition notices; withdraw approvals; vary license conditions or exemptions; issue formal cautions; or prosecute, Safety and Health Officers should ensure that an officer senior to the duty holder concerned is also provided a copy of the notice.

Appeal process

A person on whom a notice is served may appeal to a magistrate. On such an appeal the magistrate may either cancel or affirm the notice and, if he affirms it, may do so either in its original form or with such modifications as the magistrate may in the circumstances think fit.

(1) Where an appeal under this section is brought against a notice:

- (a) in the case of an Improvement Notice, the bringing of the appeal shall have the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal; or

- (b) in the case of a prohibition notice, the bringing of the appeal shall have the like effect if, but only if, on the application of the appellant the magistrate so directs (and then only from the giving of the direction).

Extracts of Relevant Sections of Safety and Health at Work Act, Cap 356

Section 112: Power of CLO to issue improvement notices

Section 113: Power of CLO to issue prohibition notices

Section 114: Provisions relating to the issuing of, and appeal against prohibition and improvement notices

Section 115: Posting of prohibition and improvement notices

Section 116: Commission of offence where notice is defaced or removed

Section 117: Compliance with notice under 112 and 113

Section 118: Fine for non-compliance with notice issued under sections 112 or 113

Section 112: Power of CLO to issue improvement notices

Where the CLO is of the opinion that a person

- (a) is contravening the provisions of this Act or the regulations; or
- (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated he may serve on that person an improvement notice stating that he is of that opinion, specifying the provision or provisions as to which he is of that opinion giving particulars of the reason why he is of that opinion, and requiring that person to remedy the contravention or, as the case may be, the matters occasioning it within such period ending not earlier than the period within which an appeal against the notice can be brought under section 114 as may be specified in the notice.

Section 113: power of CLO to issue prohibition notices

(1) Where the Chief Labour Officer is satisfied that

- (a) any part of the ways, works, machinery or plant used in a workplace is in such a condition, or is so constructed or placed that it cannot be used without risk of bodily injury;

- (b) any processor work is carried on in any workplace would cause risk of bodily injury or endanger health; or
- (c) any workplace is in such a condition, is so constructed or placed that any process or work carried on or proposed to be carried on therein, cannot be so carried on with due regard being paid to the safety, health and welfare of the persons employed in that workplace

the Chief Labour Officer may serve on the occupier a prohibition notice.

- (2) A prohibition notice shall
 - (a) specify the matters which in the opinion of the Chief Labour Officer give rise to the risk;
 - (b) shall specify the provision or provisions of the Act or regulations which are being contravened, and give particulars of the contravention; and
 - (c) shall direct that the activities to which the notice related shall not be carried on by the occupier unless the provisions of the Act or regulations which are being contravened and the risk mentioned in paragraph (a) have been remedied.
- (3) Where a prohibition notice gives a direction in accordance with subsection (2c) the direction shall take immediate effect if the inspector is of the opinion, and states that the risk of serious personal injury is or will be imminent.
- (4) In circumstances other than those specified in the preceding subsection a prohibition notice shall take effect at such time and date as specified by the notice.

Section 114: Provisions relating to the issuing of, and appeal against prohibition and improvement notices

- (2) In this section “a notice” means an improvement notice or a prohibition notice.
- (3) A notice may include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates and any such directions
 - (a) may be framed to any extent by reference to any approved code of practice; and
 - (b) may be framed so as to afford person on whom the notice is served a choice between different ways of remedying the contravention or matter.
- (4) The Chief Labour Officer shall consult the Chief Fire Officer before he serves, on the occupier of premises used or about to be used as a workplace, a notice concerning the means of escape in case of a fire.
- (5) Where a notice which is not to take immediate effect has been served
 - a. The notice may be withdrawn by the Chief Labour Officer at any time before the end of the period specified therein in pursuance of section 112 or section 113 as the case may be; and
 - b. The period specified in the notice may be extended by the Chief Labour Officer at any time when an appeal against the notice is not pending.

- (6) A person on whom a notice is served may appeal to a magistrate and on such an appeal the magistrate may either cancel or affirm the notice and, if he affirms it, may do so either in its original form or with such modifications as the magistrate may in the circumstances think fit.
- (7) Where an appeal under this section is brought against a notice
- (c) in the case of an improvement notice, the bringing of the appeal shall have the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal; or
- (d) in the case of a prohibition notice, the bringing of the appeal shall have the like effect if, but only if, on the application of the appellant the magistrate so directs (and then only from the giving of the direction).

Section 115: Posting of prohibition and improvement notices

A copy of a notice issued under section 112 or 113 may be posted by the Chief Labour Officer at or near the place where the contravention or risk to in the notice exists; or at such other prominent position at the workplace as he so determines.

Section 116: Commission of offence where notice is defaced or removed

Any person who, without lawful authority removes, defaces or in any way tampers with a notice posted under section 115 is guilty of an offence under this Act.

Section 117: Compliance with notice under 112 and 113

A notice issued under sections 112 and 113 shall subject to the provisions regarding appeal, be complied with.

Section 118: Fine for non-compliance with notice issued under sections 112 or 113

Any person who fails to comply with the requirements of a notice issued under sections 112 and 113 shall be liable, on summary conviction to a fine of \$1000 and \$100 for every day the offence continues.