

Preparation and Service of Notices

HELA PROCEDURES

1. Purpose of this document

- 1.1. To ensure the consistent application of the Council's *Occupational Health and Safety Enforcement Policy* in the preparation and service of notices.
- 1.2. To ensure that enforcement action involving notices is proportionate to the health and safety risks arising from the matter under consideration and the seriousness of the consequences of non-compliance with minimum statutory requirements.

2. Scope of this document

- 2.1. The procedure covers all aspects of serving a notice under the Health & Safety at Work, etc. Act 1974 ("the 1974 Act"), including the assembling of sufficient evidence, the preparing and serving of the notice, follow up, extensions and withdrawals, and responding to formal appeals.
- 2.2. A **prohibition notice** is a statutory notice that meets the conditions described in Sections 22 and 23 of the 1974 Act.
- 2.3. An **improvement notice** is a statutory notice that meets the conditions described in Sections 21 and 23 of the 1974 Act.
- 2.4. Section 23 is reproduced at [Appendix C](#).

3. Consideration of a notice

- 3.1. Notices may only be served where the circumstances set out in the relevant sections of the 1974 Act are met and where there is sufficient evidence successfully to defend the notice on appeal at an Employment Tribunal.
- 3.2. In the event that sufficient evidence is not available, further investigations must be carried out to obtain that evidence.
- 3.3. An **immediate** prohibition notice should be served where there is risk of serious personal injury and the inspector is of the opinion that the activity should be stopped immediately.
- 3.4. Where an activity cannot be stopped immediately without giving rise to further risks, a **deferred** prohibition notice should be served taking account of safe shut-down of the relevant activity or process.
- 3.5. An improvement notice should be served where there is, or has been, a legal contravention and that contravention is likely to continue or recur.
- 3.6. The different types of notices are compared at [Appendix B](#).

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4. Primary Authority

4.1. No notice may be served on a site where the dutyholder has a Primary Authority agreement without consultation with the Primary Authority. In such cases, the inspector shall liaise with the Lead EHO (Health & Safety and Service Support) about the matters of concern identified at the site.

5. Discussing the notice with the dutyholder

5.1. Enforcement action is more likely to be effective and the resultant change to be lasting where that action is taken in consultation with the dutyholder. The purpose of discussing the proposed action with the dutyholder is to ensure their understanding of the action and to determine their intention and capacity to comply.

5.2. It is essential to ensure that the correct dutyholder(s) is/are identified. These will be the legal persons having liability under the Act for the contravention in question. Care must be taken in cases of partnerships, shared occupancy of sites or where contractors are involved. Wherever possible, documentary evidence identifying the dutyholder(s) and the address(es) for the service of notices shall be obtained. The registered office of registered companies can be checked on the Companies House website (www.companieshouse.gov.uk) and for Scottish charities at the website of the Office of the Scottish Charity Regulator (www.oscr.org.uk).

5.3. Wherever possible, the proposed notice should be discussed with the dutyholder, or an authoritative representative of the dutyholder, prior to its service. The following points should be covered in that discussion:

- Explain why a notice is considered justified
- Explain its legal status
- Explain the acceptable remedies and try to resolve points of disagreement, including, where applicable, a realistic timescale
- Advise on a right of appeal to an employment tribunal and the procedure for granting a time extension (if an improvement notice)
- Explain the procedure for checking compliance and the consequences of non-compliance

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- Obtain the dutyholder's views on the proposed action and their intention and capacity to comply within the proposed timescale
- 5.4. Employees have a right to be informed of enforcement action taken by the Council and steps should be taken to advise them of the action, wherever possible prior to service of a notice. Where a Safety Representative has been appointed or a Representative of Employee Safety has been elected, that person is the has the right to consult with inspectors. Safety Representatives have the additional right to receive information from inspectors.
- 6. Preparation of notices**
- 6.1. Notices shall be prepared using forms issued by the Regulatory Services Manager under this procedure.
- 6.2. Separate contraventions shall be the subject of separate notices.
- 6.3. Except in the case of urgency, all notices shall be discussed and agreed with the inspector's line manager in consultation, where necessary, with the Lead EHO (Health & Safety and Service Support).
- 6.4. Due care shall be taken to ensure that notices are legally correct.
- 6.5. Where a notice is likely to affect means of escape in case of fire, the Fire and Rescue Authority shall be consulted.
- 6.6. The timescale for an improvement notice is at least 21 days but is set as short as possible consistent with the practicalities of achieving compliance.
- 6.7. All notices shall bear a unique reference number. Operational managers may determine their own referencing system subject to the Regulatory Services Manager prescribing a referencing system.
- 6.8. In addition to the copy/ies to be served, at least one copy of the notice shall be prepared for the information of employees. One hard copy of each notice served shall be signed and retained for the site file and to be scanned into Civica.
- 6.9. A final quality check shall be made to ensure the details are correct, all the copies are legible, and they are signed and dated.
- 6.10. Notices shall be accompanied by a covering letter confirming any discussion or advice relating to the notice, but that letter shall not re-interpret the

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requirements of the notice. The letter shall ask that the inspector be notified when the remedial measures have been completed.

7. Service of notices

- 7.1. Notices shall be served in accordance with section 46 of the 1974 Act, which is reproduced at [Appendix D](#).
- 7.2. Notices may be served by hand, or by recorded delivery to the proper address of the dutyholder.
- 7.3. Notices to be served by hand shall be served by the inspector signing the notice, or another inspector who has read the notice.
- 7.4. When a notice is served by hand, the inspector shall record in their notebook the time of service and the name of the person upon whom service has been effected.
- 7.5. When a notice is served by recorded delivery, the inspector shall retain the recorded delivery slip and obtain proof of service from Royal Mail for the file.
- 7.6. Where the notice is served on an employee or a branch site, then a letter with a copy of the notice should be sent to the registered office to ensure they are aware the notice has been served.
- 7.7. A copy shall be sent to the employees or their representative of any notice that affects their health, safety and welfare following service on the dutyholder.
- 7.8. The leaflet T432 (“Making an appeal to an Employment Tribunal against an improvement, prohibition or enforcement notice in Health and Safety related matters”) shall be given out or sent with the notice. This leaflet includes the form for submitting an appeal. The reference to the appeal process needs to be carefully explained / worded as some dutyholders think they need to appeal to have a notice ‘lifted’.

8. Extension of notices

- 8.1. A dutyholder may request the extension of a notice at any time subject to no appeal being pending. Such a request shall be made in writing, setting out the reasons for the request and why compliance is not possible within the original time period. It is not appropriate for an inspector to offer the extension of a notice in the absence of a written request from the dutyholder.

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- 8.2. Requests for extensions which are made outwith the period for compliance shall generally be refused, unless there are compelling reasons. Dutyholders who fail to comply with a notice during the compliance period and who fail to ask for an extension are liable to be reported for prosecution.
- 8.3. Any request must be reasonable and justified and the inspector shall discuss the request with the dutyholder to determine the circumstances of the request.
- 8.4. The inspector's line manager shall be consulted on all requests for extension, or, in their absence, another Area Environmental Health Manager or the Regulatory Services Manager.
- 8.5. If an extension is granted, the inspector shall write to all recipients of the original notice setting out the period of the extension.
- 8.6. If an extension is not granted, the inspector shall write to the dutyholder(s) informing them of the decision.
- 8.7. In all cases, a proper note shall be made and kept of the date of the request, the reasons for it and the reasons for granting or not granting the request.
- 9. Determining compliance with notices**
- 9.1. The inspector serving the notice shall make arrangements to revisit the site to determine compliance as soon as possible after the date for compliance of the notice and in no case later than ten working days after that date.
- 9.2. Where a prohibition notice has been served, the inspector shall consider whether or not revisits are necessary to ensure compliance with the requirements of the notice.
- 9.3. Compliance with some notices can be determined without making a revisit, for instance where the notice requires production of documents and the inspector can verify compliance from the documentation provided.
- 9.4. When a notice has been complied with, written confirmation shall be given to all persons on whom notices were served and to employees or their representatives who received a copy of the notice.
- 9.5. When a notice has not been complied with, the inspector shall obtain and preserve sufficient evidence to prove the related breach on the day of the visit

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and/or non-compliance with the notice, with a view to recommending prosecution.

10. Appeal of notices

- 10.1. Any notice of appeal received from the Employment Tribunal shall be brought to the attention of the inspector's line manager immediately.
- 10.2. The inspector's line manager shall consult with the Lead EHO on appropriate steps to take to respond to the appeal. Reference on this point shall be made to HSE's operational guidance (see references).

11. Register of notices

- 11.1. The Lead EHO (Health & Safety and Service Support) shall maintain a register of all enforcement notices served under the 1974 Act and the outcome of those notices.
- 11.2. Inspectors shall notify the Lead EHO of notices served immediately upon service and of the case reference in Civica under which the document has been stored.
- 11.3. Inspectors shall notify the Lead EHO of the outcome of notices served.

12. Further reading

- 12.1. HSE's *Enforcement Guide* provides useful additional reading on the use of notices.
www.hse.gov.uk/enforce/enforcementguide/notices/index.htm
- 12.2. HSE's operational guidance circular OC130/14 provides further guidance on effective drafting and service of notices.
www.hse.gov.uk/foi/internalops/ocs/100-199/130_14.htm

13. References

- 13.1. Health and Safety at Work etc. Act 1974
- 13.2. Safety Representatives and Safety Committees Regulations 1977
- 13.3. Health and Safety (Consultation with Employees) Regulations 1996
- 13.4. Argyll and Bute Council's *Occupational Health and Safety Enforcement Policy*
- 13.5. HSE's *Enforcement Guide (England and Wales)*,
www.hse.gov.uk/enforce/enforcementguide/notices/index.htm
- 13.6. HSE's Internal Operational Procedures for Notices,
www.hse.gov.uk/foi/internalops/og/ogprocedures/notices/index.htm

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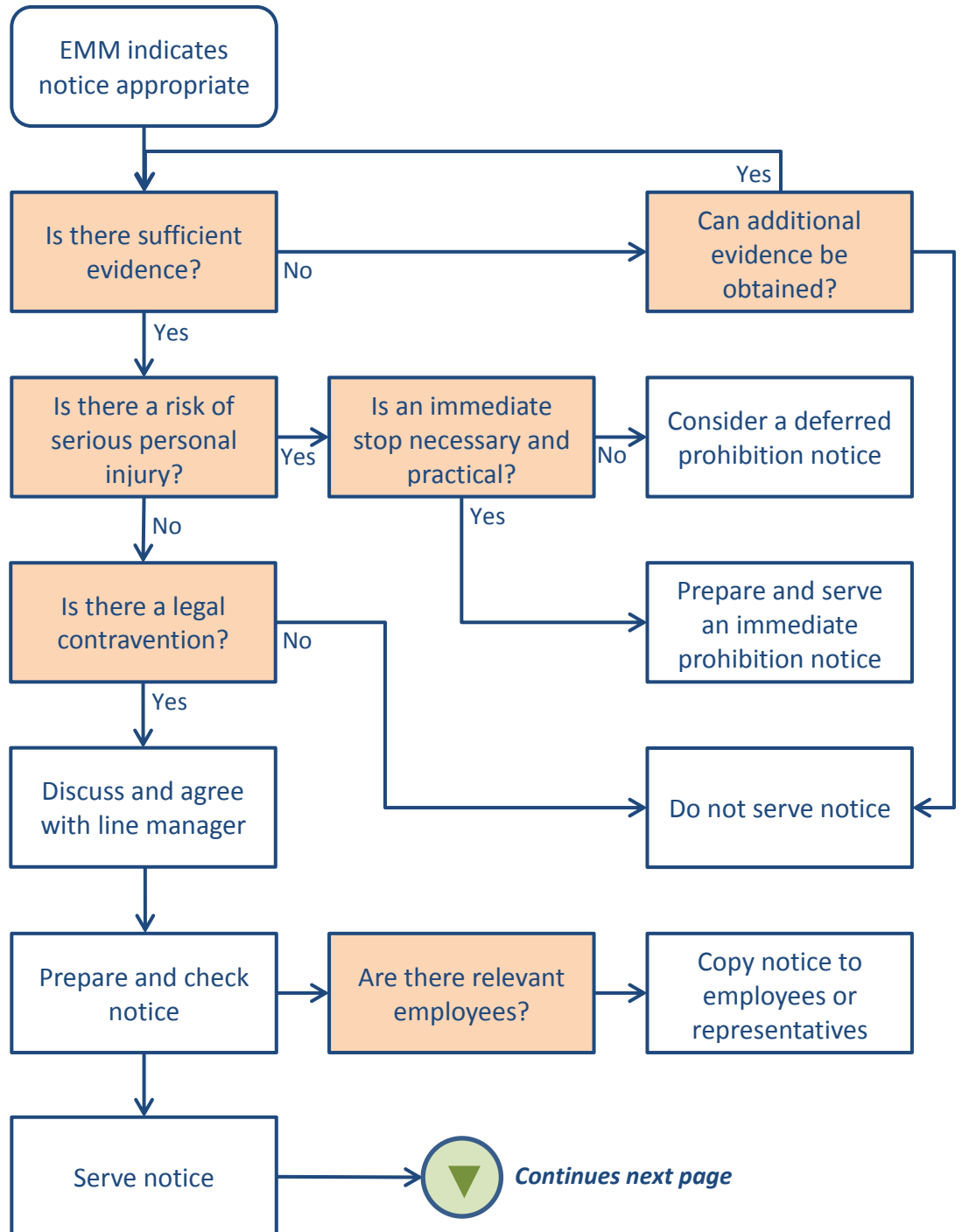
- 13.7. *Improvement and prohibition notices – effective drafting and service*, OC130/14
version 1, HSE, 15/03/2013

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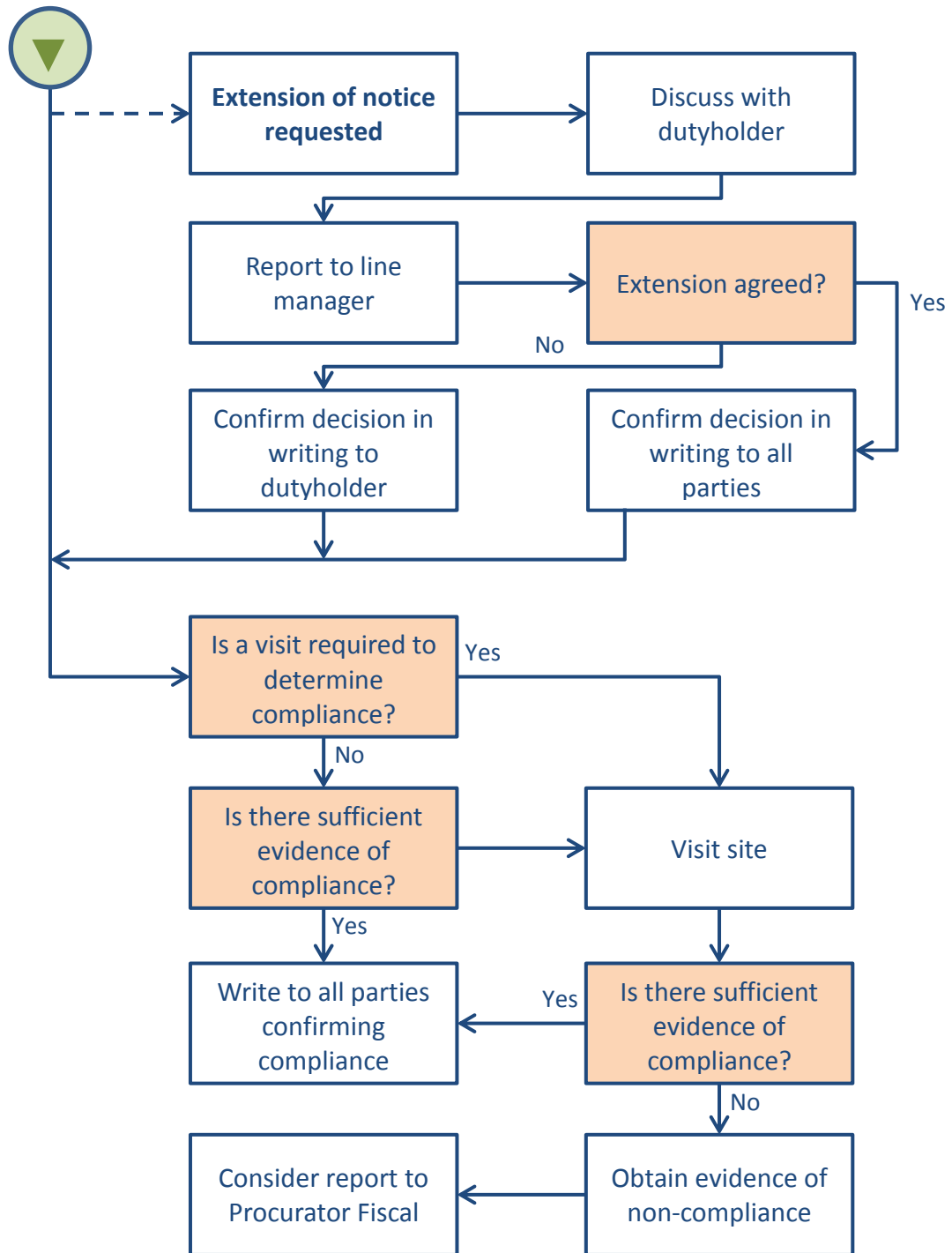
Appendix A – Preparation and Service of Notices Flowchart



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Appendix B – Notice Types

Type of Notice	Is a legal contravention necessary?	The necessary risk	Notice takes effect	Effect of appeal	Statutory bar or condition	Person on whom notice may be served
Improvement (section 21)	There must be a contravention (or have been one) and it is likely that it will be continued or repeated	No risk specified and covers circumstances where there is no risk	When specified but not earlier than 21 days after issue	Suspension of notice until appeal is determined	See s.23(3), (4) and (6)	Person contravening provision
Prohibition (immediate) (section 22)	Not necessary	Risk of serious personal injury or activities subject to the relevant statutory provisions likely to be carried out and, if so, there will be risk of serious personal injury (see definition of personal injury in s.53)	Immediately	No suspension of notice unless the Employment Tribunal rules accordingly	s.23(4)	Person under whose control activity is carried on or by whom it is carried on
Prohibition (deferred) (section 22)	Not necessary	Risk of serious personal injury or activities subject to the relevant statutory provisions likely to be carried out and, if so, there will be risk of serious personal injury (see definition of personal injury in s.53)	At any time specified	Ditto	Ditto	Ditto

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Appendix C – Section 23 of the 1974 Act (amended for the case of Scotland)

23 Provisions supplementary to ss. 21 and 22

- (1) In this section “a notice” means an improvement notice or a prohibition notice.
- (2) A notice may (but need not) 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 the person on whom the notice is served a choice between different ways of remedying the contravention or matter.
- (3) Where any of the relevant statutory provisions applies to a building or any matter connected with a building and an inspector proposes to serve an improvement notice relating to a contravention of that provision in connection with that building or matter, the notice shall not direct any measures to be taken to remedy the contravention of that provision which are more onerous than those necessary to secure conformity
 - (a) to any provisions of the building standards regulations to which that building or matter would be required to conform if the relevant building were being newly erected; or
 - (b) where the sheriff, on an appeal to him under section 16 of the Building (Scotland) Act 1959—
 - (i) against an order under section 10 of that Act requiring the execution of operations necessary to make the building or matter conform to the building standards regulations, or
 - (ii) against an order under section 11 of that Act requiring the building or matter to conform to a provision of such regulations,has varied the order, to any provisions of the building standards regulations referred to in paragraph (a) above as affected by the order as so varied,unless the relevant statutory provision imposes specific requirements more onerous than the requirements of any provisions of building standards regulations as aforesaid or, as the case may be, than the requirements of the order as varied by the sheriff.

In this subsection “the relevant building”, in the case of a building, means that building, and, in the case of a matter connected with a building, means the building with which the matter is connected.
- (4) Before an inspector serves in connection with any premises used or about to be used as a place of work a notice requiring or likely to lead to the taking of measures affecting the means of escape in case of fire with which the premises are or ought to be provided, he shall consult

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- (a) where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies in relation to the premises, the enforcing authority (as defined in section 61(9) of that Act);
 - (b) in any other case, the relevant authority (as defined in section 6 of that Act) for the area where the premises are (or are to be) situated.
- (5) Where an improvement notice or a prohibition notice which is not to take immediate effect has been served—
- (a) the notice may be withdrawn by an inspector at any time before the end of the period specified therein in pursuance of section 21 or section 22(4) as the case may be; and
 - (b) the period so specified may be extended or further extended by an inspector at any time when an appeal against the notice is not pending.
- (5A) In subsection (3) above "building standards regulations" has the same meaning as in section 3 of the Building (Scotland) Act 1959.

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Appendix D – Section 46, Health and Safety at Work etc. Act 1974

46 Service of notices

- (1) Any notice required or authorised by any of the relevant statutory provisions to be served on or given to an inspector may be served or given by delivering it to him or by leaving it at, or sending it by post to, his office.
- (2) Any such notice required or authorised to be served on or given to a person other than an inspector may be served or given by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.
- (3) Any such notice may—
 - (a) in the case of a body corporate, be served on or given to the secretary or clerk of that body;
 - (b) in the case of a partnership, be served on or given to a partner or a person having the control or management of the partnership business or, in Scotland, the firm.
- (4) For the purposes of this section and of section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person on or to whom any such notice is to be served or given shall be his last known address, except that—
 - (a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body;
 - (b) in the case of a partnership or a person having the control or the management of the partnership business, it shall be the principal office of the partnership;

and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be their principal office within the United Kingdom.
- (5) If the person to be served with or given any such notice has specified an address within the United Kingdom other than his proper address within the meaning of subsection (4) above as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address shall also be treated for the purposes of this section and section 7 of the Interpretation Act 1978 as his proper address.
- (6) Without prejudice to any other provision of this section, any such notice required or authorised to be served on or given to the owner or occupier of any premises (whether a body corporate or not) may be served or given by sending it by post to him at those premises, or by addressing it by name to the person on or to whom it is to be served or given and delivering it to some responsible person who is or appears to be resident or employed in the premises.

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- (7) If the name or the address of any owner or occupier of premises on or to whom any such notice as aforesaid is to be served or given cannot after reasonable inquiry be ascertained, the notice may be served or given by addressing it to the person on or to whom it is to be served or given by the description of "owner" or "occupier" of the premises (describing them) to which the notice relates, and by delivering it to some responsible person who is or appears to be resident or employed in the premises, or, if there is no such person to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises.
- (8) The preceding provisions of this section shall apply to the sending or giving of a document as they apply to the giving of a notice.

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