

# AGENDA

## Regulatory Committee

Date: **Tuesday 21 February 2012**

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Time: **11.00 am**

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Place: **The Council Chamber, Brockington, 35 Hafod Road,  
Hereford**

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Notes: Please note the **time, date** and **venue** of the meeting.

For any further information please contact:

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If you would like help to understand this document, or would like it in another format, please call Pete Martens, Committee Manager Planning & Regulatory on 01432 260248 or e-mail [pmartens@herefordshire.gov.uk](mailto:pmartens@herefordshire.gov.uk) in advance of the meeting.

# Agenda for the Meeting of the Regulatory Committee

## Membership

<b>Chairman</b>	<b>Councillor JW Hope MBE</b>
<b>Vice-Chairman</b>	<b>Councillor RC Hunt</b>
	<b>Councillor CM Bartrum</b>
	<b>Councillor PL Bettington</b>
	<b>Councillor BA Durkin</b>
	<b>Councillor Brig P Jones CBE</b>
	<b>Councillor PJ McCaull</b>
	<b>Councillor C Nicholls</b>
	<b>Councillor FM Norman</b>
	<b>Councillor GA Powell</b>

## GUIDANCE ON DECLARING PERSONAL AND PREJUDICIAL INTERESTS AT MEETINGS

### What is a personal interest?

You have a personal interest in a matter if that matter affects the well-being or financial position of you, your relatives or people with whom you have a close personal association more than it would affect the majority of other people in the ward(s) to which the matter relates.

A personal interest can affect you, your relatives or people with whom you have a close personal association positively or negatively. If you or they would stand to lose by the decision, you should also declare it.

You also have a personal interest in a matter if it relates to any interests, which you must register.

### What do I need to do if I have a personal interest?

You must declare it when you get to the item on the agenda headed "Declarations of Interest" or as soon as it becomes apparent to you. You may still speak and vote unless it is a prejudicial interest.

If a matter affects a body to which you have been appointed by the authority, or a body exercising functions of a public nature, you only need declare the interest if you are going to speak on the matter.

### What is a prejudicial interest?

You have a prejudicial interest in a matter if;

- a) a member of the public, who knows the relevant facts, would reasonably think your personal interest is so significant that it is likely to prejudice your judgment of the public interest; and
- b) the matter affects your financial interests or relates to a licensing or regulatory matter; and
- c) the interest does not fall within one of the exempt categories at paragraph 10(2)(c) of the Code of Conduct.

### What do I need to do if I have a prejudicial interest?

If you have a prejudicial interest you must withdraw from the meeting. However, under paragraph 12(2) of the Code of Conduct, if members of the public are allowed to make representations, give evidence or answer questions about that matter, you may also make representations as if you were a member of the public. However, you must withdraw from the meeting once you have made your representations and before any debate starts.

## AGENDA

	Pages
<p><b>1. APOLOGIES FOR ABSENCE</b></p> <p>To receive apologies for absence.</p>	
<p><b>2. NAMED SUBSTITUTES (IF ANY)</b></p> <p>To receive details any details of Members nominated to attend the meeting in place of a Member of the Committee.</p>	
<p><b>3. DECLARATIONS OF INTEREST</b></p> <p>To receive any declarations of interest by Members in respect of items on the Agenda.</p>	
<p><b>4. MINUTES</b></p> <p>To approve and sign the Minutes of the meeting held on 15th November 2011.</p>	1 - 2
<p><b>5. SINGLE ENFORCEMENT AND PROSECUTION POLICY</b></p> <p>To consider the adoption of a Single Enforcement and Prosecution Policy for all relevant activities undertaken by Herefordshire Council.</p>	3 - 8
<p><b>Single Enforcement and Prosecution Policy</b></p>	9 - 18
<p><b>Housing and Council Tax Benefits Supplementary Enforcement Policy</b></p>	19 - 24
<p><b>Building Control Supplementary Enforcement Policy</b></p>	25 - 28
<p><b>Planning Supplementary Enforcement Policy</b></p>	29 - 38
<p><b>Public Rights of Way Supplementary Enforcement Policy</b></p>	39 - 48
<p><b>Revised Public Sector Housing Enforcement Policy</b></p>	49 - 68
<p><b>6. DATE OF NEXT MEETING</b></p> <p>To note that the next meeting is likely to be on Tuesday 8th May, 2012.</p>	



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- Attend all Council, Cabinet, Committee and Sub-Committee meetings unless the business to be transacted would disclose 'confidential' or 'exempt' information.
- Inspect agenda and public reports at least five clear days before the date of the meeting.
- Inspect minutes of the Council and all Committees and Sub-Committees and written statements of decisions taken by the Cabinet or individual Cabinet Members for up to six years following a meeting.
- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting. (A list of the background papers to a report is given at the end of each report). A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
- Access to a public Register stating the names, addresses and wards of all Councillors with details of the membership of Cabinet and of all Committees and Sub-Committees.
- Have a reasonable number of copies of agenda and reports (relating to items to be considered in public) made available to the public attending meetings of the Council, Cabinet, Committees and Sub-Committees.
- Have access to a list specifying those powers on which the Council have delegated decision making to their officers identifying the officers concerned by title.
- Copy any of the documents mentioned above to which you have a right of access, subject to a reasonable charge (20p per sheet subject to a maximum of £5.00 per agenda plus a nominal fee of £1.50 for postage).
- Access to this summary of your rights as members of the public to attend meetings of the Council, Cabinet, Committees and Sub-Committees and to inspect and copy documents.

### **Public Transport Links**

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- The nearest bus stop to Brockington is located in Vineyard Road near to its junction with Old Eign Hill. The return journey can be made from the same bus stop.

## **HEREFORDSHIRE COUNCIL**

**BROCKINGTON, 35 HAFOD ROAD, HEREFORD.**

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You should then proceed to Assembly Point J which is located at the southern entrance to the car park. A check will be undertaken to ensure that those recorded as present have vacated the building following which further instructions will be given.

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HEREFORDSHIRE COUNCIL

**MINUTES of the meeting of Regulatory Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Tuesday 15 November 2011 at 2.30 pm**

**Present:** Councillor JW Hope MBE (Chairman)  
Councillor RC Hunt (Vice Chairman)

Councillors: PL Bettington, Brig P Jones CBE, PJ McCaull, C Nicholls,  
FM Norman and GA Powell

**12. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors CM Bartrum and BA Durkin.

**13. NAMED SUBSTITUTES (IF ANY)**

There were no named substitutes present at the meeting.

**14. DECLARATIONS OF INTEREST**

Councillor GA Powell declared a prejudicial interest in agenda item 6 and left the meeting when this item was considered.

**15. MINUTES**

**RESOLVED:** That the Minutes of the meeting held on 5th July, 2011 be approved as a correct record and signed by the Chairman.

**16. REVIEW OF HACKNEY CARRIAGE AND PRIVATE HIRE POLICY. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 AND TOWN POLICE CLAUSES ACT 1847**

A report was presented by the Licensing Officer about proposed changes to the Council's hackney carriage & private hire licensing policy. She said that since the report had been prepared, additional representations had been received from the Herefordshire Taxi Association. She therefore suggested that consideration of the report should be deferred to enable the licensing section to consider these representations and undertake any further consultation that was necessary.

In view of this, the Committee was agreeable to the suggestion of the Licensing Officer

**RESOLVED THAT**

**Consideration of the report about the proposed amendments to the Council's hackney carriage & private hire licensing policy be deferred to enable the Licensing Officer to consider additional representations received from the Herefordshire Taxi Association and to undertake any further consultation found to be necessary.**

**17. REVIEW OF HACKNEY CARRIAGE FARES FOR 2011/2012**

The Licensing Officer presented a report about proposed increases to the hackney carriage fares set by the Council, following a request from the local trade. The Licensing Officer said

that the fares had last been increased in 2008 and she provided the Committee with details of the increase in operating, fuel and insurance costs the trade had been faced with since that time. She said that the proposed increase had been advertised in accordance with the requirements of the appropriate legislation and that no objections had been received.

The Committee approved the proposed increase.

**RESOLVED THAT**

**the increase to the hackney carriage fares set out in the report of the Licensing Officer be approved for implementation on 17th November, 2011.**

**18. REGULATORY ACTIVITY OF ENVIRONMENTAL HEALTH & TRADING STANDARDS**

The Licensing Officer presented a report about the main regulatory activities of Environmental Health & Trading Standards service for the period April to September 2011 and outlined the salient points.

The Acting Head of Environmental Protection and Licensing outlined the recent investigation of the death of a cow near to Bartonsham Farm, Hereford which had originally been suspected to have been caused by anthrax. This had created a considerable amount of out of hours work by the department but fortunately the investigations revealed that anthrax had not been the cause of the mortality and the all-clear had been given.

A question was asked by Councillor C Nicholls about the impact of a high leylandii hedge on the amenity of the owner of a property in his area. The Acting Head of Environmental Protection and Licensing explained the steps that could be taken and asked Councillor Nicholls to contact him after the meeting about the matter.

Councillor PJ McCaull expressed his appreciation for the speedy action carried out by the Gypsy Team regarding a matter in his Ward.

**RESOLVED THAT**

**The report be received and noted and that the team be thanked for the important work they were undertaking.**

**19. UPDATE ON ACTIVITY OF COMMUNITY PROTECTION TEAM**

The Committee Manager presented an information report about the main activities of the Community Protection Team for the period June to August 2011.

Members asked about 'fly posting' and the Acting Head of Environmental Protection and Licensing provided details about the Council's enforcement policy for the Community Protection team and the Environmental Health and Trading Standard Department to deal with this matter.

The Committee expressed concerns about the advertising of events and other matters which appeared on the roadside, junctions and roundabouts. Concerns were also expressed about the advertising of private motor vehicles on the highway and car parks. The Committee Manager said that he would take this up with the appropriate departments.

**RESOLVED THAT**

**The report of the community Protection Team be received and noted and that the team be thanked for the important enforcement work they were undertaking.**

The meeting ended at 3.40 pm

**CHAIRMAN**



<b>MEETING:</b>	<b>REGULATORY COMMITTEE</b>
<b>DATE:</b>	<b>21 FEBRUARY 2012</b>
<b>TITLE OF REPORT:</b>	<b>SINGLE ENFORCEMENT AND PROSECUTION POLICY</b>
<b>REPORT BY:</b>	<b>CHRIS CHAPMAN – ASSISTANT DIRECTOR LAW AND GOVERNANCE</b>

**CLASSIFICATION:** Open

### **Wards Affected**

County-wide

### **Purpose**

To gain the Regulatory Committee's support for the adoption of a Single Enforcement and Prosecution Policy for all relevant activities undertaken by Herefordshire Council and to endorse same.

### **Recommendation(s)**

**THAT:**

- (a) the principle of a Single Enforcement and Prosecution Policy is supported;**
- (b) the detail contained within a Single Enforcement and Prosecution Policy is supported**

### **Key Points Summary**

- HPS has listed 'cutting bureaucracy' (inc. less regulation and red tape) as one of their 'principles for the future'
- Reducing bureaucracy, simplifying rules and regulations, and supporting business by being more 'business friendly' will benefit those who live and work in Herefordshire
- Enforcement policies and practices have a significant effect on the ways enforcement activities are undertaken across a varied range of services throughout the County
- Being transparent about how we approach enforcement and, where necessary, prosecute individuals and businesses is important in giving assurances to those who have duties to comply with the law and those who are protected by the law.
- Whilst there is a wide ranging spectrum of enforcement activities across the organisation, nevertheless there is a need to ensure that the principles that apply to all enforcement are visible and applied appropriately and consistently across the County.

- All of the Council’s enforcement activities operating to and within one single policy is not only in line with good practice but will help boost confidence amongst the public, business and members.

## Alternative Options

1. Do not support the principle i.e. continue to operate at least five separate policies, and/or amend the detail

## Reasons for Recommendations

2. To give Cabinet a clear message that this Committee supports the principle and detail of a Single Policy.

## Introduction and Background

3. The government set a clear aim: to leave office having reduced the overall burden of regulation. Furthermore they said, with more than 21,000 regulations active in the UK today, it was not going to be an easy task. They are determined to cut red tape.
4. Nationally, a number of steps to reduce regulatory burden have been started including:
  - The introduction of the Red Tape Challenge, which gives the public and business an opportunity to review the entire stock of regulations
  - The One-in One-out process and the Statement of New Regulation, both introduced to restrict the volume of new regulation
  - The creation of the Reducing Regulation Committee (RRC)
  - Commitment for the implementation of Lord Young’s proposals to reform the enforcement of health and safety law
  - A consultation paper produced by the Department for Business, Innovation and Skills (BIS) on the subject of transforming regulatory enforcement.
5. Locally, Herefordshire Council has listed ‘cutting bureaucracy’ (inc. less regulation and red tape) as one of their ‘principles for the future’.
6. Activity to underpin such a principle was the setting up of ‘Reducing Red Tape’ project in 2011. Its brief was:
  - a) To consider ways in which the regulatory burden for people and business in Herefordshire may be reduced and efficiency savings or other improvements may be made
  - b) To revisit enforcement practice across the authority and make recommendations for any changes required to introduce a “light touch” approach.
  - c) To recommend changes to existing byelaws and local legislation which eliminate obsolete provisions and produce a set of relevant provisions which are no more than are required to ensure the quality of life for Herefordshire residents, reflecting the principle of Reducing Red Tape.
  - d) To recommend any changes to how regulatory functions are currently managed across

the Council to improve co-ordination, communication and overall efficiency.

7. A report was presented to HPS Leadership Team in October 2011, and all recommendations were agreed.
8. In order to implement that recommendation relating to a Single Policy, the Policy itself should be brought before Regulatory Committee and Planning Committee before being signed off by Cabinet.
9. Most enforcement-related activity is undertaken by services that report to either the Regulatory Committee or Planning Committee. Both Committees have responsibilities with respect to the overseeing of enforcement-related activity and periodically receive reports on such activity.
10. Whilst Policy on enforcement is an Executive function, the governance of enforcement lies with the Committees and therefore it is appropriate to consult with these Committees and gain their support for the Policy. This report is also being presented to the Planning Committee.
11. The decision of these Committees will be reported to Cabinet when they consider the forthcoming recommendation to implement the Single Policy.

## Key Considerations

12. Part of the second task of the 'Reducing Red Tape Project' was to gain understanding of enforcement practice. It was evident that there were a number of policies followed in various parts of the organisation that whilst not necessarily inconsistent, made it confusing to the public and business.
13. The following is taken from the Project Report:

*"Any 'enforcement' should be targeted, proportionate, risk-based, transparent, and consistent. It should aim at achieving the following: Helping Businesses and Others to Compliance thus Supporting Economic Progress; Openness through Clear Accessible Advice and Guidance, and Helpfulness through Clear Accessible Guidance. This can be better achieved by Working with Other Enforcement Agencies, and Adopting Good Enforcement Procedures*

*Council service areas which are responsible for enforcement activities frequently need to demonstrate that the actions they take are consistent with legal requirements, public interest and government guidance. Enforcement Policies have been used to provide a decision making framework that enables officers to consider issues in an effective way.*

*Guidance on prosecution such as the Code for Crown Prosecutors has existed for some time. Successive governments and their various departments have produced more and more guidance for regulatory and enforcement services to follow, particularly those dealing with businesses. The Enforcement Concordat and Regulatory Code are examples of these.*

*Latterly, the Department for Business, Innovation and Skills (BIS) has proposed drawing any separate policies together and removing the duplicated information. This has the advantage of simplicity, consistency and easier management.*

*Within the Council each individual service area has historically had its own enforcement policy. This was primarily driven by the need of each service area to demonstrate to its stakeholders that the issue had been addressed. This has resulted in a total of six area specific enforcement policies being used by the Council - Planning Enforcement, Building Control, Private sector housing, Public rights of way, Environmental Health & Trading Standards (inc. Community Protection), and Housing & Council Tax Benefit.*

*The opportunity now therefore exists for a single Herefordshire Enforcement and Prosecution Policy containing, where necessary, service specific appendices to give service area specific information and guidance where required. By introducing an overall enforcement and prosecution policy it is felt that consistency in enforcement within service areas and across the different service areas will improve."*

14. A single, overarching Enforcement and Prosecution Policy would not only bring this organisation into line with most other local authorities and mean that we are following best practice, but give the public and business a clearer view of the principles that underpin our decision making as it relates to enforcement and prosecution. The Policy is at Appendix 1.
15. Visibility and understanding of the Policy is key to assisting the Committee in discharging some of its responsibilities with respect to 'regulation'. Consistency and fairness across all enforcement activities whether the responsibility of this or any other Committee, is essential.
16. Whilst the Single Policy will be a more condensed and thorough document than its predecessors nevertheless it is recognised that a further simplified summary document aimed at the public would be helpful and, to that end, a summary will be published and available.

## **Community Impact**

17. It is envisaged that greater openness will result from the adoption of a single, more transparent approach. In addition, any such improvement in openness should facilitate greater adherence to a better 'level playing field' environment for business regulation and support. This supports many of the issues highlighted as being in need of change to reduce burden but improve regulation when it is needed.

## **Equality and Human Rights**

18. Adopting a Single Policy improves transparency, constancy and will reduce the risk of not fulfilling our public sector equality duty.

## **Financial Implications**

19. Any costs associated with the adoption and implementation of a single Enforcement and Prosecution Policy will be insignificant and will be part of 'business as usual'.

## **Legal Implications**

20. Any changes from current Enforcement and/or Prosecution Policies to a consolidated single Policy will need to be supported by changes (if any) to processes and procedures followed by the various parts of the organisation.

## **Risk Management**

21. No risks associated with supporting the recommendations have been identified.

## **Consultees**

22. The Policy was formulated with the help of and is supported by senior officers who sat on the working group that looked at "reducing red Tape".
23. At the conclusion of the 'reducing red tape' project a report was submitted to HPS Leadership Team where the support for a single enforcement and prosecution policy was noted.

24. In December 2011 the single enforcement and prosecution policy was submitted to the Council's consultation team. The policy was circulated to the readers panel to ensure that it was clear and precise. The policy was also hosted on the Council's e-consult pages to enable the public an opportunity to comment on the policy based on the following criteria:
- Is the Enforcement and Prosecution Policy easy to understand?
  - Does the Policy appear to reflect a fair approach?
  - Does the Enforcement and Prosecution Policy make sense when linked to the service specific policies?
  - Does it help manage expectations for those initiating enforcement (e.g. complainants) and those who are the subject of enforcement?
  - Do you think there is anything we can do to make the policy better?
25. Other agencies that are responsible for regulation/enforcement in the County have had the opportunity to consider and comment upon the Policy.

## **Appendices**

26. Appendix 1 - The Single Enforcement and Prosecution Policy

## **Background Papers**

Report to HPS Leadership Team, 12<sup>th</sup> October 2011

20111011 - Cutting Red Tape in Herefordshire – Report



# **Herefordshire Council**

## **Enforcement and Prosecution Policy**

**January 2012**

# Contents

- 1. Introduction**
- 2. Principles of enforcement – Policy**
  - 2.1 Supporting Economic Progress through Compliance
  - 2.2 Openness through Clear Accessible Advice and Guidance
  - 2.3 Helpfulness through Clear Accessible Guidance
  - 2.4 Targeted, Proportionate and Risk-based Enforcement
  - 2.5 Consistent Enforcement
  - 2.6 Working with Other Enforcement Agencies
  - 2.7 Adopting Good Enforcement Procedures
  - 2.8 Complaints about Service
- 3 Principles of Enforcement – Procedures**
- 4 Investigation**
- 5 Enforcement Options**
- 6 Prosecution**
  - 6.1 General Principles
  - 6.2 The Decision to Prosecute
  - 6.3 The Evidential Test
  - 6.4 The Public Interest Test
  - 6.5 Diversion from Prosecution
- 7 Publicity**
- 8 Review**
- 9 Appendices**



## 1. Introduction

- 1.1 This policy sets out the general principles that Herefordshire Council will follow in relation to regulation, enforcement and prosecution. In particular it sets out what businesses, individuals and the community as a whole can expect from the council's regulatory services and its enforcement/investigation officers.
- 1.2 The policy may be complemented, where appropriate, by service area specific policy or procedure.
- 1.3 The primary function of the council's regulatory and enforcement work is to protect the public, public funds, the environment and groups such as consumers, residents and tenants, workers and businesses. At the same time, carrying out such activity in an equitable, practical and consistent manner helps to maintain a level playing field for local businesses, individuals and our other service users. Good regulation and enforcement will help to promote a thriving local economy.
- 1.4 This policy has been developed with due regard to the 'Principles of Good Enforcement' set out in the following guidance documents:
  - Central and Local Government Enforcement Concordat
  - The Regulators' Compliance Code issued under the Legislative and Regulatory Reform Act 2006
  - The Code for Crown Prosecutors issued by the Director of Public Prosecutions under the Prosecution of Offenders Act 1985.
- 1.5 In certain circumstances we may conclude that a provision contained in one or more of the above-mentioned documents is either not relevant or is outweighed by another provision or relevant factor. We will ensure that any decision to depart from policy guidelines is properly reasoned and based on material evidence.
- 1.6 For the purposes of this policy the following definitions are given to the terms 'regulatory' and 'enforcement':
  - 'Regulatory' encompasses the council's numerous powers and duties enabling the behaviour of individuals and/or organisations to be controlled in the public interest.
  - 'Enforcement' includes any action carried out in the exercise of, or against the background of, statutory powers and duties of regulation. This is not limited to formal enforcement action such as prosecution in the criminal Courts or the giving of Statutory Notices. It also includes, among other things, the inspection of premises for the purpose of checking compliance with regulations and conditions, the imposition of conditions on any licence, consent or similar formal permission, the issue of fixed penalty notices, the giving of cautions and the making of applications to the Courts for Orders to control the conduct of individuals and/or organisations.
- 1.7 All enforcement activities, including investigation and formal actions, will always be conducted in compliance with the council's statutory obligations. Council enforcement officers should act within the scope of their delegated authority and with due regard to the provisions of the Police and Criminal Evidence Act 1984, the Criminal Procedures and Investigation Act 1996, the Human Rights Act 1998, the Data Protection Act 1998,

the Regulation of Investigatory Powers Act 2000, the Legislative and Regulatory Reform Act 2006, and any other legislation relevant to specific service areas and legislation designed to tackle discrimination and promote equality.

## **2. Principles of enforcement – Policy**

### **2.1 Supporting Economic Progress through Compliance**

The effectiveness of legislation in protecting consumers, other businesses and the community depends crucially on the compliance of those regulated. We recognise that most people and most businesses want to comply with the law. We will, therefore, take care to help businesses and others meet their legal obligations without unnecessary expense.

We will strive to ensure that when information is needed from businesses that it is assessed to avoid duplication of requests and amended where necessary. We aim to seek feedback on the forms we use to collect information from business.

Whenever practicable we will promote positive incentives for businesses that comply, such as ‘Scores on the Doors’.

### **2.2 Openness through Clear Accessible Advice and Guidance**

2.2.1 We will provide information and advice in plain language on the legislation that we enforce and disseminate this as widely as possible, through information leaflets, newsletters, training schemes and on the Council website at [www.herefordshire.gov.uk](http://www.herefordshire.gov.uk).

2.2.2 Within any limits imposed by law, we will be open about how we carry out our work, including any charges that we make for services. We will make a point of seeking appropriate consultation with business, voluntary organisations, charities, landlords, tenants, consumers and workforce representatives about the services that we provide and about our enforcement policies and procedures. We will discuss general issues, specific compliance failures or problems with those experiencing difficulties.

### **2.3 Helpfulness through Clear Accessible Guidance**

2.3.1 We believe that it is in the interests both of regulated businesses and the wider public to get things ‘right first time’, and that therefore our enforcement role should involve actively working with all those subject to regulation, especially small and medium sized businesses, to guide and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name and carry proof of their identity. We will provide a contact point and telephone number for further dealings with us and we will encourage businesses and others to seek guidance or information from us. All requests for service, including applications for approval of establishments, licences, registrations, etc, will be dealt with efficiently and promptly within the resources available. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays. This reflects our approach to delivering services in an efficient way.

### **2.4 Targeted, Proportionate and Risk-based Enforcement**

2.4.1 We will minimise the costs of compliance by ensuring that any action we require is proportionate to the risks. We will adopt a risk-assessment approach to target resources where most needed. In line with the codes referred to above, we will take account of the

circumstances of the case and the response of those subject to regulation when considering action. We will take particular care to work with small businesses and with voluntary and community organisations, to help them meet their legal obligations without unnecessary expense. At the same time we will use intelligence and direct resources to identify those who flout the law or act irresponsibly and take firm action against them, including prosecution where appropriate.

## **2.5 Consistent Enforcement**

2.5.1 We will carry out our duties in a fair, equitable and consistent manner. While officers are expected to exercise judgement in individual cases and to treat each case on its own merits, we will have arrangements in place to promote consistency. We support and will promote arrangements for effective liaison with other authorities and enforcement bodies through schemes such as the Home Authority principle, the Lead Authority principle and the Primary Authority Principle.

## **2.6 Working with Other Enforcement Agencies**

2.6.1 Some regulatory activity involves consultation with other agencies before deciding on the most appropriate course of action. Sometimes there is more than one agency that can act in response to a problem. If there is a shared enforcement role with other agencies, whenever possible our enforcement activities will be co-ordinated with these agencies in order to minimise unnecessary duplication or delays and to increase our overall effectiveness. For example, joint working may be carried out with the Police, Fire Service, Health and Safety Executive, Office of Fair Trading, Environment Agency, Revenue and Customs other local authorities and government departments. Persistent offenders may also be reported, for example, to the Office of Fair Trading for further action. Equally, there are instances when more than one part of the Authority may have enforcement options in respect of the same issue. We will ensure that appropriate liaison occurs and that the 'best option' for enforcement is taken.

- Wherever we have a statutory duty to report regulatory matters to another body or agency, we will have procedures in place to ensure that this happens;
- If we become aware of an enforcement issue that would be of legitimate interest to, or more properly be dealt with by, another enforcement agency, we will ensure that the information is passed to that agency in good time.
- Occasionally an offence can be dealt with under more than statute. In these cases a decision will be made between officers as to which is the most effective course of action.

## **2.7 Adopting Good Enforcement Procedures**

2.7.1 Guidance from an officer will be put clearly and simply, explaining why any remedial work or action is considered to be necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice. Such guidance will be usually be confirmed in writing.

## **2.8 Complaints about service**

2.8.1 We provide a dedicated Customer Insight Unit to help with any complaint about council services. This team can be contacted by telephone on 01432 260535 or by email at [feedback@herefordshire.gov.uk](mailto:feedback@herefordshire.gov.uk).

### **3. Principles of Enforcement - Procedures**

- 3.1 Wherever possible officers will provide an opportunity to discuss the relevant circumstances before any decision to take formal enforcement action is made. Examples of where it may not be appropriate to discuss the matter may include cases where immediate action is required in the interests of health and safety or environmental protection, or cases where it is necessary to prevent evidence being destroyed.
- 3.2 Where immediate action is considered necessary, an explanation of why such action is required will be given at the time and where reasonable confirmed in writing within 5 working days.
- 3.3 Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with any enforcement notice).

### **4. Investigation**

- 4.1 The council will carry out risk assessments to ensure that our regulatory efforts are targeted where they would be most effective. Inspections and other visits will be in accordance with the risk assessment, except where visits are requested, or we are required to investigate.
- 4.2 All Officers will have regard to the principles contained in this policy when making enforcement decisions. Regard will also be had to any approved statutory, governmental or other national guidance, and to any internal quality procedures.

### **5. Enforcement options**

- 5.1 There are a variety of enforcement actions available to the council:
  - compliance advice and support
  - review of any licence and/or licence conditions
  - written warning
  - legal enforcement notice
  - fixed penalty notice
  - work in default/cost recovery action
  - seizure/application for forfeiture
  - the issue of a caution
  - administrative penalty
  - prosecution or other legal proceedings including injunctive action
  - Proceeds of Crime Act confiscation proceedings
  - Community resolution
- 5.2 This is not an exhaustive list and other options may be available under legislation relevant to specific areas.
- 5.3 In choosing which enforcement option(s) to take the council will aim to change the inappropriate behaviour causing the problem and to deter future non-compliance. The enforcement option(s) chosen will be proportionate to the nature of the non-compliance/alleged offence and the harm caused by it, and appropriate to the individual or business which the action is taken against. Enforcement action will be followed

up as appropriate and may result in further enforcement options being pursued if the initial action has not achieved the appropriate result.

- 5.4 In some circumstances matters may be referred to another agency for enforcement action, or officers may liaise and take joint action with other council departments and/or external organisations in order to achieve enforcement aims.

## **6. Prosecution**

- 6.0.1 The Attorney General's guidelines on criteria for prosecution endorsed the principle that suspected criminal offences should not automatically be the subject of prosecution.
- 6.0.2 Herefordshire Council acknowledges that the decision to prosecute a business or an individual is serious. The policy is designed to ensure that the council makes fair and consistent decisions about prosecutions. In doing so it will pay full regard to the criteria set out in The Code for Crown Prosecutors issued by the Director of Public Prosecutions.
- 6.0.3 A decision to prosecute will only be made by an officer not involved with the investigation, and authorised in such a capacity in line with the council's scheme of delegation.
- 6.0.4 Council officers charged with investigating alleged offences must give due regard to the provisions of this policy when making recommendations to authorised officers.

### **6.1 General Principles**

- 6.1.1 Whilst each case is unique and will be considered on its own facts and merits, there are certain general principles that authorised officers will follow in their approach to every case.
- 6.1.2 They will be fair, independent and objective. They will not let any personal views about a suspect's, victim's or witness's ethnic or national origin, disability, sex, religious beliefs, political views, or sexual orientation influence their decisions.
- 6.1.3 Authorised officers have a responsibility to ensure that the right person is prosecuted for the right offence. They will always act in the interests of justice and not solely for the purpose of obtaining a conviction.

### **6.2 The Decision to Prosecute**

- 6.2.1 In making a decision on prosecution the authorised officer will apply two tests. Application of these tests will ensure that all relevant factors are considered and that fair consistent decisions are made about each potential prosecution.
- 6.2.2 The first test is consideration of the evidence. If the case does not pass the evidential test a prosecution must not go ahead no matter how serious the case is. If the evidential test is satisfied the authorised officer will consider if it is in the public interest to prosecute. A prosecution will only be taken if both tests are satisfied.

### **6.3 The Evidential Test**

6.3.1 Authorised officers must be satisfied that there is sufficient admissible reliable evidence to provide a realistic prospect of conviction.

#### **Sufficient**

6.3.2 There is only sufficient evidence to provide a realistic prospect of conviction if, when presented with that evidence, a jury or bench of Magistrates properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is an objective test and when applying it to the case the authorised officer will aim to be completely impartial. They will also have regard to any statutory defence that is available

#### **Admissible**

6.3.3 There are legal rules which might not allow evidence that appears relevant to be given at a trial. If the authorised officer believes that some of the evidence falls within this category, he/she will satisfy him/herself that there is enough other evidence for a realistic prospect of conviction.

#### **Reliable**

6.3.4 Evidence may be regarded as unreliable for a number of reasons. It may be affected by factors such as age, intelligence or level of understanding, by the background of the witness, for example, a motive that may affect his or her attitude to the case, or a relevant previous conviction, or a general concern over the accuracy or credibility of the evidence.

6.3.5 Where there are such concerns, authorised officers will not ignore the evidence, but will look at it closely in conjunction with the other evidence to decide whether there is a realistic prospect of conviction.

### **6.4 The Public Interest Test**

6.4.1 The general principle of this policy is that a prosecution will usually take place unless the public interest factors against prosecution clearly outweigh those in favour of prosecution, or it appears more appropriate in the circumstances to divert the defendant from prosecution.

6.4.2 The public interest factors will vary from case to case. Not all factors will apply to each case and there is no obligation to restrict consideration just to the factors listed.

#### **Public Interest Factors in Favour of Prosecution**

6.4.3 The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:

- a) a conviction is likely to result in a significant sentence;
- b) a conviction is likely to result in a confiscation or any other order;
- c) a weapon was used or violence was threatened during the commission of the offence;
- d) the offence was committed against a person serving the public;

- e) the risk presented to the public, trade or environment by the commission of the offence was serious or widespread;
- f) the defendant has failed to comply, in part or in full, with a statutory notice;
- g) the defendant acted fraudulently, wilfully or negligently;
- h) harm was caused to human health, animal health or the environment;
- i) the defendant was in a position of authority or trust;
- j) the evidence shows that the defendant was a ringleader or an organiser of the offence;
- k) there is evidence that the offence was premeditated;
- l) there are grounds to believe that the defendant was motivated solely by personal gain;
- m) there is evidence that the offence was carried out by a group;
- n) the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;
- o) the offence was motivated by any form of discrimination against the victim's ethnic or national origin, disability, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- p) there is a marked difference between the actual or mental age of the defendant and the victim, or if there is any element of corruption;
- q) the defendant is alleged to have committed the offence whilst under an order of the court;
- r) the offence was committed in the presence of or in close proximity to a child;
- s) the defendant's previous convictions or cautions are relevant to the present offence;
- t) there are grounds for believing that the alleged offence is likely to be continued or repeated;
- u) the offence, although not serious in itself, is widespread in the area where it was committed;
- v) a prosecution would have a significant positive impact on maintaining community confidence;
- w) the outcome of the prosecution might establish an important precedent or draw public attention to national or local campaigns or issues.

### **Public Interest Factors against Prosecution**

#### 6.4.4 A prosecution is less likely to be needed if:

- a) the alleged offence was committed as a result of a genuine mistake or misunderstanding of the circumstances or of the law;
- b) the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- c) the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution simply because they have offered compensation);
- d) there has been a long delay between the alleged offence taking place and the decision made to prosecute, unless:-
  - i) the alleged offence has only recently come to light;
  - ii) the offence is serious;
  - iii) the complexity of the offence has meant that there has been a long investigation;
  - iv) the delay has been caused in part by the defendant;
- e) the Court is likely to impose a very small or nominal penalty;
- f) a prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;
- g) the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health;
- h) details may be made public that could harm sources of information, international relations or national security.

#### 6.4.5 Deciding on the public interest is not simply a matter of adding up the number of factors on each side as some factors will be more important than others. As such authorised officers will 'weight' factors in making an overall assessment.

## 6.5 Diversion from Prosecution

- 6.5.1 When deciding whether a case should be prosecuted authorised officers will consider the alternatives to prosecution in pursuit of the aim to change inappropriate behaviour and to deter future non-compliance.
- 6.5.2 A conviction can have wide ranging and long lasting effects, and particular care will be taken when deciding whether it is in the public interest to prosecute in cases involving a young person. For the purposes of this policy a young person is someone under the age of 18 years.

## 7. Publicity

- 7.1 In order to deter others the council will aim to publish any prosecution or other enforcement action.

## 8. Review

- 8.1 This policy will be reviewed annually, or sooner if necessary to reflect statutory changes or national guidance.

## 9 Appendices

Appendix A – Housing and Council Tax Benefits Supplementary Enforcement Policy

Appendix B – Building Control Supplementary Enforcement Policy

Appendix C – Planning Supplementary Enforcement Policy

Appendix D – Public Rights of Way Supplementary Enforcement Policy

Appendix E – Public Sector Housing Supplementary Enforcement Policy

### Version Log

<i>Version</i>	<i>Status</i>	<i>Date</i>	<i>Description of Change</i>	<i>Reason for Change</i>	<i>Pages</i>
1.0	Draft	May 2011	Document Creation		
2.0	Draft	June 2011	Various content	Comments from EHTS and Housing & Council Tax Benefit	All
3.0	Draft	July 2011			
4.0	Draft	August 2011	Various Content	Review of Regulatory Burden	All
5.0	Draft	January 2012	Various Content	Consultation with Cabinet Members	4,



## **Appendix A**

### **Housing and Council Tax Benefit**

### **Supplementary Enforcement Policy**

**September 2011**

# 1. Introduction

- 1.1 This document should be read in conjunction with Herefordshire Council's overarching 'Enforcement and Prosecution Policy'.
- 1.2 Herefordshire Council is committed to taking a proactive approach to preventing and reducing the level of Housing and Council Tax Benefit fraud. This policy reflects the Council's vision to reduce the levels of fraud and error and in particular to take a zero tolerance approach to benefit fraud. The Council has a duty to protect the public funds it administers from abuse and is aware of the risks within the benefits system for fraud, error or other irregularity. In carrying out this duty, the authority may use legally obtained information provided for the purpose of the prevention and detection of fraud. It may also share information with other bodies administering public funds solely for these purposes where a legal gateway exists.
- 1.3 Wherever possible, effective internal controls will be incorporated to minimise the risk of fraud occurring. However, despite this, fraud can be perpetrated and appropriate procedures need to be in place.
- 1.4 This policy outlines the approach to be followed with regard to the sanction and prosecution of benefit offences perpetrated for example by benefit claimants, landlords, employers, contractors, or Members. This list is not prescriptive. It will serve as a policy statement and will support an operational guide for Benefit Fraud Officers. This will ensure that offences are dealt with consistently in line with best practice.
- 1.5 It is clear that some people will attempt to deliberately obtain benefit to which they are not entitled. Where an investigation provides evidence of such an offence the Council will consider if criminal proceedings are appropriate.
- 1.6 Where it is decided that criminal proceedings are appropriate but the offence(s) involved are considered to be minor, the Council will consider the offer of a formal caution or administrative penalty as an alternative to proceedings. The policy on formal cautions is included at **Section 3** and the policy on administrative penalties is at **Section 4** of this policy statement.
- 1.7 All sanctions will be authorised by the Benefit Fraud & Interventions Manager following consideration of the evidential and public interest tests outlined in the council's 'Enforcement and Prosecution Policy'..
- 1.8 The policy will be reviewed annually to take account of any legislative changes and to provide assurance that the policy is being correctly followed.
- 1.9 Wherever possible the Council will work jointly with the 'Department for Work and Pensions (DWP) Counter Fraud Investigation Service (CFIS)'. In these cases the combined overpayment from both DWP and Herefordshire Council will determine the appropriate sanction. Where appropriate the Council will authorise the DWP to carry out prosecution on its behalf.

## **2. Courts**

2.1 Where a decision is made that prosecution is the most appropriate sanction, the majority of cases will be dealt with at Magistrates Court. However, in more serious benefit fraud cases, trial at Crown Court will be considered. When considering Crown Court the following criteria will be applied:

- i) The benefit claim was fraudulent from the outset
- ii) The fraud was sophisticated in concept or execution
- iii) The fraudulent overpayment in most cases exceeds £20,000

***Every case will be considered on the known facts and the appropriate jurisdiction will be recommended as appropriate.***

## **3. Local Authority Formal Caution**

3.1 A formal caution is a written warning given to a person who has committed an offence as an alternative to prosecution. It may not be made conditional upon the satisfactory completion of a specific task such as reparation or payment of compensation.

3.2 Before a formal caution can be offered the evidential test must be satisfied, the offence must have been admitted at an interview under caution and informed consent from the person being cautioned must be obtained. A formal caution is a deterrent, and does not affect the recipient unless they re-offend when it may be cited in Court on conviction. Where a caution has been declined the case must then be referred for criminal proceedings.

3.3 Other considerations to be taken into account before offering a formal caution is:

- i) what action the Department for Work & Pensions is taking on any part of the benefit it administers
- ii) all public interest criteria

3.4 For an effective regime of sanctions to be successful it is essential that accurate records of all convictions, administrative penalties and formal cautions are maintained. This will enable the correct decisions to be made, taking full account of the defendant's background. Therefore, it is important that an acceptance record of each is maintained.

3.5 The 'Benefit Fraud & Intervention Manager' in consultation with the 'Benefit Fraud Officer' will determine whether a formal caution is appropriate.

## **4. Administrative Penalty**

4.1 Section 15 of the Social Security Administration (Fraud) Act 1997 inserted Section 115a into the Social Security Administration Act 1992 introducing administrative penalties as an alternative to prosecution. A financial penalty amounting to 30% of the adjudicated overpayment can be offered in a fraud case if the following conditions are met:

- i) There is a recoverable overpayment of benefit under, or by virtue of, Section 75 or 76 of the Social Security Administration Act 1992
- ii) the cause of the overpayment is attributed to an act or omission on the part of the defendant; and

- iii) there are grounds for instituting criminal proceedings for an offence relating to the overpayment upon which a penalty is based

4.2 Other considerations to be taken into account before offering an administrative penalty are:

- iii) what action the Department for Work & Pensions is taking on any part of the benefit it administers
- iv) all public interest criteria
- v) the ability of the claimant to pay the penalty.

4.3 The offer of the penalty must be by written notice in accordance with Section 115A (2)(a) and (2)(b). If the offender declines the offer of an administrative penalty or the offender withdraws his agreement to pay the penalty the case must be considered for prosecution.

4.4 The Benefit Fraud Officer in consultation with the Benefit Fraud & Interventions Manager will determine whether an administrative penalty is appropriate having regard to the amount of fraudulent overpayment.

## **5. Alternatives to Prosecution – the Exceptions**

5.1 Sanctions are broadly based on financial losses that have been incurred as a result of a fraud.

5.2 In exceptional cases the Benefit Fraud & Interventions Manager may decide that none of the sanctions options of Administrative Penalty, Formal Caution or Prosecution, set out in the policy, are appropriate. In such cases where the Benefit Fraud & Interventions Manager considers the sum overpaid is insufficient to warrant the sanctions referred to above and there is little or no evidence to suggest that the commission of the offence was committed knowingly or dishonestly, the following options may be considered:-

- i) an informal caution sent by letter; or
- ii) no further action be taken

5.3 As a general rule the following cases should not be considered for an alternative to prosecution:

- i) the defendant is a Council Member, employee or contractor of the Council at the time of the offence.
- ii) the defendant has declined to accept, or has withdrawn from their agreement to accept, an administrative penalty
- iii) the defendant has declined a formal caution
- iv) the defendant has already received an administrative penalty or formal caution for a previous offence
- v) the amount of the fraudulent overpayment is greater than £2,000
- vi) the defendant has previous convictions for similar offences

## **6. Publicity**

6.1 It is the Council's intention to positively promote this policy as well as the outcome of any prosecutions, which should deter others from fraudulent activity.

- 6.2 The Council will promote this policy and benefit fraud prosecutions both internally across the Council and externally. In addition, the **Benefit Fraud Hotline Tel. 0800 592 953** and an on-line fraud referral form on the Herefordshire Council website will be available for people to make referrals.

## **7. Diversity**

- 7.1 Herefordshire Council recognises its moral and statutory obligation to meet the needs of a diverse population and to supply a service that embraces these values. All fraud cases are assessed on their individual merits based upon the prosecution criteria outlined within this policy document and adopts Herefordshire Council's diversity policy.

## **8. Recovery**

- 8.1 In appropriate Crown Court cases the Council will seek to apply the 'Proceeds of Crime Act 2002'.
- 8.2. In all other cases recovery of fraudulent overpayments will be pursued through the civil courts.

## Version Log

<i>Version</i>	<i>Status</i>	<i>Date</i>	<i>Description of Change</i>	<i>Reason for Change</i>	<i>Pages affected</i>
1.0	First final version	May 09		Annual review	
1.1	Final version	Sep 11	Revised in accordance with the introduction of the Council's overarching enforcement policy	Removal of duplication	

## **Appendix B**

### **Building Control**

### **Supplementary Enforcement Procedure**

**September 2011**

## **1. Introduction**

- 1.1 This procedural document should be read in conjunction with Herefordshire Council's 'Enforcement and prosecution Policy'

## **2. What is Enforcement?**

- 2.1 It is a formal procedure available to Local Authorities which enables them to ensure that building work complies with the national Building Regulations.
- 2.2 Section 91 of the Building Act 1984 requires the local authority to carry out its duties to enforce the Building regulations.
- 2.3 Sections 35 and 36 contain the powers for Local Authority Building Control to take enforcement action.

## **3. When are these procedures used?**

- 3.1 When an inspecting Building Control Surveyor sees that either work carried out does not comply with the Building Regulations or work, which would normally be required to be inspected at specified stages has been covered over without the Council having been given the opportunity to inspect the work at that stage.

## **4. How do the procedures work?**

- 4.1 In the majority of cases, the inspecting Building Control Surveyor will try and solve the problem informally with your builder if you have employed one or with you personally if you are organising or doing the work yourself. This will usually involve having the incorrect work already done altered or, if an inspection has not been carried out when it should have been due to a failure to give the Council the necessary notice, it will mean that the work not inspected will need to be opened up for an inspection. These informal methods usually mean that the problem is sorted out within two or three days.
- 4.2 If these informal methods are unsuccessful, the inspecting Building Control Surveyor will issue on site to your builder a list of the offending items and the builder will be given a period of time to rectify the offending work or open up work as necessary. You will automatically be given a copy, a further copy is placed upon the Council's file and a fourth copy is held by a more senior member of the Building Control team. His job is to regularly monitor the progress being made to put the work right.
- 4.3 Irrespective of whether or not the Council decides to invoke statutory enforcement procedures, the existence of such a list of unresolved outstanding work on the file will mean that a Completion Certificate will not be issued.

## **5. What could happen next?**

- 5.1 Depending upon the nature of the outstanding work, the Council has a discretion to use powers contained in an Act of Parliament called The Building Act 1984. Two options are available:
- Any contravention of Building Regulations is a criminal offence. Under section 35 of The Building Act 1984, the Council can prosecute anyone who fails to comply with the regulations. This could be your builder, or even you as the owner, particularly if you are organising the work yourself using different sub-contracted trades.. Anyone convicted of contraventions of Building Regulations will usually be fined and the



Court can also order that that person pay a fine for each day that passes following conviction until the work is put right.

- Even if the Council doesn't prosecute anyone for the contravention, it can also serve a formal notice under section 36 of The Building Act 1984 upon you as the building owner. This notice specifies the extent of the offending work and the timescale within which it must be put right.

## **6. What sort of contraventions of Building Regulations could lead to the Council serving a notice on me under section 36 of The Building Act 1984?**

6.1 Each building project is different and so it is difficult to be completely specific about a full list of circumstances where a Notice would be served. However, as a general rule, they would be used as a tool of last resort where:

- The building was structurally defective.
- Means of escape and other fire safety precautions were defective.
- Where relevant, if sound insulation was inadequate, and
- Where relevant, suitable access and facilities for disabled people have not been provided.

## **7. What happens if I don't put the work right within the time allowed by the Council?**

7.1 The Council may choose to do the work itself. It doesn't have to, but if it does do the work, it will then send you a bill for it.

## **8. Are there any ways to question what the Council is doing?**

8.1 Yes. At any stage in the process you are entitled to use the Council's complaints procedures, details of which are available on-line. If the problem gets to the stage where a notice under section 36 of The Building Act 1984 is served on you, you can challenge the Council by obtaining a specialist report to try and demonstrate that the Council was wrong in serving the Notice on you in the first place. The way of doing this is specified in section 37 of The Building Act 1984.



## **Appendix C**

### **Planning**

### **Supplementary Enforcement Policy**

**September 2011**

## **1. AIMS OF POLICY**

- 1.1 To control unauthorised development, works and operations and ensure effective compliance with planning permissions, listed building and other related consents and regulations through an approach to enforcement that is proportionate, targeted, consistent and clear.
- 1.2 This document should be read in conjunction with Herefordshire Council's overarching 'Enforcement and Prosecution Policy'.

## **2. ENFORCEMENT POWERS**

- 2.1 There are several tools available to the Council to deal with breaches of planning control under the Town and Country Planning Acts.
  - Requisition for Information - often served to gather information on ownership of land or buildings prior to serving one of the notices listed below.
  - Planning Contravention Notice - can be served where it appears that there may have been a breach of planning control and the Council requires information about activities on the land or nature of the occupier's interest in the land.
  - Breach of Condition Notice - can be served where there is a failure to comply with any condition or limitation imposed on the grant of planning permission.
  - Enforcement Notice - can be served to remedy an actual breach of planning control by requiring an unauthorised use to stop or building works to be removed. A notice can also be served to restrict or condition a particular operation, which is otherwise unacceptable. There is a right of appeal against the notice.
  - Stop Notices - can be served in conjunction with an Enforcement Notice to require unauthorised activities to cease before the Enforcement Notice comes into effect. In practice the threat of claims for compensation are a real deterrent to serving this type of notice.
  - Temporary Stop Notices - can be served to require unauthorised activities to cease for 28 days, they are not required to be served with an enforcement notice.
  - Injunctions - can be sought in the County Court or High Court to restrain any actual, or expected, breach of planning control.
- 2.2 The Council may initiate a prosecution in all cases where the requirements of a notice or injunction are not met in the stated timescale.
- 2.3 In addition to the powers outlined above, Planning Services is also responsible for investigating and controlling the following:
  - Unauthorised works to Listed Buildings - It is an offence to carry out unauthorised works to a Listed Building or demolish it without consent. Prosecution can be pursued under Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Alternatively the Act also includes the power to serve a Listed Building Enforcement Notice to which there is a right of appeal.

- Unauthorised works to protected trees - It is an offence to carry out unauthorised work to trees protected by a Tree Preservation Order. Works to trees in a Conservation Area should be notified to the Local Planning Authority in advance. In both instances the Council has power to prosecute offenders and require the planting of replacement trees.
- Unauthorised removal of hedgerows - Under the Hedgerow Regulations 1997, the Council is responsible for protecting 'important' hedgerows. It is an offence to remove a rural hedgerow if the owner has not served a Hedgerow Removal Notice on the Council or where the Council has served a 'Hedgerow Retention Notice'. Enforcement of the Regulations may involve prosecution, requiring the planting of a replacement hedgerow or the service of an injunction to restrain any actual or apprehended offence.
- Unauthorised advertisements - The Council may prosecute any person who displays an advertisement in contravention of the Advertisement Regulations.
- Land adversely affecting amenity - Section 215 of the Town and Country Planning Act 1990 enables a Local Planning Authority to serve a notice requiring steps to be taken to remedy the condition of land where it is not being suitably maintained and is an eyesore as a result. There is a right of appeal to the magistrates' court.
- Contraventions of Hazardous Substances Control - It is a criminal offence under the Planning (Hazardous Substances) Act 1990 to exceed controlled quantities of hazardous substances or fail to comply with a condition on Hazardous Substances Consent. Prosecution is through the Magistrates Court. The Council can also serve a contravention notice and apply for an Injunction.
- Within Hereford Area of Archaeological Importance it is an offence to undertake any operations which disturb the ground, flood or tip without giving 6 weeks notice to the Council who are the administering authority.
- The Council also has powers to carry out works to protect listed buildings under Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

### **3. ENFORCEMENT PRACTICE IN HEREFORDSHIRE**

- 3.1 A wide variety of enforcement enquiries are received by the Council each year. Many of these are dealt with quickly as investigation reveals there is either no breach of control, or a minor technical breach is discovered which can be easily resolved. More serious cases may require formal enforcement action.
- 3.2 The types of enforcement cases encountered in Herefordshire vary widely. They include breaches of planning conditions, unauthorised development and changes of use such as the siting of mobile homes on agricultural land.
- 3.3 The Council is also responsible for taking action against unauthorised works to listed buildings, works to or the removal of protected trees without consent, the removal of hedgerows in contravention of the Hedgerow Regulations, and contravention of procedures that operate within Hereford Area of Archaeological Importance.

- 3.4 The Enforcement Team is based in the Development Management team. It investigates cases from initial complaint through to the service of formal notices, appeals and court action. Historic Buildings Officers are closely involved in cases involving unauthorised works to Listed Buildings.
- 3.5 Other officers in the Service take the lead where the unauthorised removal of trees and hedgerows are involved.
- 3.6 The Enforcement team and other officers also work closely with the Building Control team who inform them when work has started on site and make an initial check on whether development is proceeding in accordance with the approved plans.
- 3.7 The Legal Practice Manager and senior officers in the Service have powers delegated by the Planning Committee to make decisions on whether to take enforcement action. In addition, the decision to prosecute rests with the Legal Practice Manager. The Council's Legal Services team provides legal advice on cases as required and handle the serving of Enforcement Notices and prosecutions.

## **4. ENFORCEMENT STRATEGY**

- 4.1 Public confidence in the development management process is quickly undermined if unauthorised development is allowed to proceed without any apparent attempt by the local planning authority to intervene before serious harm to amenity results from it.
- 4.2 The Council has discretion to take enforcement action when it regards it as expedient. In taking action the Council will be guided by the following considerations that are set out in Planning Policy Guidance Note 18.
- The Council has the primary responsibility for taking whatever enforcement action is necessary in the public interest.
  - The Local Government Ombudsman may find 'maladministration" If the Council fails to take effective enforcement action which is plainly necessary within a reasonable timescale.
  - In considering any enforcement action under the Planning Acts the decisive issue should be whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest.
  - Enforcement Action should always be commensurate with the breach of planning control to which it relates. For example, It is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site.
  - The local planning authority will normally make an initial attempt to seek a negotiated solution by persuading the owner or occupier of the site to make an application and/or cease work. However, negotiations will not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop.
- 4.3 Early identification of breaches of planning control is important to ensure that in the longer term as little potentially abortive work as possible is undertaken. This means that

potential remedies are less costly to the contravener and use less officer time and hence make best use of available resource. To this end upon commencement of development, as notified by the Building Control team, planning file will be checked for compliance with conditions. Any found to be outstanding will result in an initial letter seeking resolution of those breaches. Failure to take action within the prescribed period could result in the service of breach of condition notices and against which there is no appeal.

- 4.4 Enforcement action under the Hedgerow Regulations and within Hereford Area of Archaeological Importance will be pursued in accordance with Government guidance and accepted best practice. All officers will continue to work together to ensure a unified approach to planning enforcement matters.

## **5. ASSESSING THE NEED FOR ENFORCEMENT ACTION OR PROSECUTION**

In deciding whether enforcement action or prosecution is expedient the Council will take the following steps:

- 1 Establish the facts - to find out what is happening on a site or in a building, to establish the identity of the owner/occupier and the relevant planning history of the site.

In doing this the Enforcement Officer may do any or all of the following:

- Visit the site. This will usually be unannounced and photographs may be taken. Where circumstances require it the site visit may be done under warrant.
- Interview the owner and/or occupier. Such interviews are used to obtain information about the alleged breach of planning control and to give information about the enforcement process and options available.
- Occasionally, in serious cases where an offence may have been committed, it may be necessary to conduct an interview under caution as required by the Police and Criminal Evidence Act 1984.
- Issue of Planning Contravention Notice or other statutory request for information.
- Check the Council's files for planning permission, planning conditions or other correspondence, which may be relevant to the alleged breach of planning control.
- Make enquiries with other statutory bodies and enforcement agencies to co-ordinate action.

2. Analyse the information gathered - Enforcement officers will discuss their findings with planning officers, Historic Buildings Officers and other professionals as appropriate.

The Enforcement Officers will consult relevant legislation and the development plan for Herefordshire to establish the degree of harm to interests the Council has a duty to protect.

In addition, before any formal enforcement action is taken the provisions of the Human Rights Act 1998 will be taken into account Essentially this will involve

consideration of whether taking action, or not taking action, will interfere with one of the convention rights. The rights of both the complainant and the offender have to be taken into account.

3. Decide which of the following categories the breach of control falls into:-
  - a) Development that does not constitute a breach of planning control.
  - b) Development that is permitted development and therefore does not require a planning application
  - c) Development that is exempt from enforcement action due to the passage of time and is considered lawful.
  - d) Development or works judged to be of a type or degree that it would not be expedient to take enforcement action.
  - e) Development or work that requires permission or consent and there is a reasonable chance that permission or consent will be granted
  - f) Development or unauthorised works that require enforcement action or prosecution (in appropriate cases) to be commenced immediately.
  - g) Development or works that appear to fall within the remit of another enforcing agency will be referred to the agency concerned.
4. Prepare a report - Where it is decided to take action a report will be written for consideration by a named senior officer who has delegated powers to authorise enforcement action or prosecution. A report is also prepared where a breach has occurred but it is not considered expedient to take formal action.

## **6. Service Standards**

- 6.1 The following service standards and priorities are set for dealing with complaints.
  - a) In general, complaints will be accepted by telephone, via the Council's website or directly by email, via the Info shops, or in writing and recorded on a Complaints Form. There are occasions when the complainant will be requested to submit their complaint in writing particularly where it is anticipated that a serious breach has occurred. Anonymous calls and letters will be dealt with at the discretion of the Enforcement Officer in consultation with the Team Leader and/or Development Manager.
  - b) The Enforcement Officers will endeavour to acknowledge written complaints within 5 working days, where appropriate in a manner consistent with the Council's published customer standards, which apply across all services.
  - c) Complainants will normally be informed of progress in writing, by email or by telephone within 10 working days of the alleged breach being reported. They will be updated as appropriate and informed of proposed action, if any, within 10 working days of a decision on the case being made. In protracted cases the case officer/enforcement officer will keep the complainant advised of progress at



appropriate intervals, and which in any event should not be greater than 3 calendar months.

- d) Local Members will be notified by e-mail of investigations being undertaken within their Ward and advised of progress at appropriate intervals.
- e) The Council will not divulge the details of the complainant to any person against whom the complaint is lodged. There may however be cases where the complainant's evidence will be crucial to successful enforcement action and an approach will be made to request that they act as a witness.

6.2 Where a breach of planning control has taken place it will be dealt with in accordance with the priorities set out in Section 7 of this Policy.

## 7. Priorities for Action

**Level 1 - High priority** where there is a serious and urgent risk that the breach will result in irreversible damage to material planning interests. A site visit and investigations will be commenced within 1 working day for:

- Breaches of Listed Building control where demolition or alterations are taking place which are known to detract severely from the special architectural and historic interest of the listed building.
- Breaches of planning control in Conservation Areas or AONBs where there is clear evidence that immediate, irreparable and significant damage would be caused to the character or appearance of the Conservation Area, or the special landscape character of an AONB.
- Removal of hedgerows, works to trees protected by a Tree Preservation Order and works to trees in Conservation Areas, where these hedges or trees make a major contribution to the County's natural heritage and are under immediate threat.
- Breaches of control or conditions causing significant irreversible damage to the environment.
- Breaches of planning control which are resulting in serious damage to the biodiversity of a site in an area subject to special protection such as an SSSI, SAC or SWS.
- Breaches of Planning Control which are resulting in permanent and serious damage to the archaeological interest of a site, especially where it is a Scheduled Ancient Monument.

**Level 2 - Medium priority** for breaches involving building operations. A site visit and investigations will usually be commenced within 5 working days for:

- Breaches of planning control involving building work which would be significantly contrary to landscape and conservation policies set out in the development plan.
- Breaches of planning control or conditions which results in serious harm or loss of amenity or nuisance to a neighbourhood.

**Level 3 - Low priority** where investigations and, if necessary, a site visit will be commenced within 10 working days for:

- Breaches of Advertisement control
- Development involving small domestic structures such as sheds or fences.
- Breaches of control where the use is likely to be temporary and capable of being resolved without formal action.
- Breaches not included in levels 1 and 2 above.

Following the initial investigation it is possible that individual cases will be re-classified to a different priority level and the programme of action adjusted accordingly.

## **8. Monitoring of Planning Conditions and Legal Agreements**

- 8.1 Monitoring planning conditions is an integral part of a pro-active enforcement policy. Enforcement Officers will monitor conditions on planning permissions and other consents and approvals to ensure they are complied with in consultation with Building Control Surveyors and officers from the Conservation section.
- 8.2 The increasing use of legal agreements under section 106 of the Town and Country Planning Act and section 278 of the Highways Act is generating significant work in monitoring their implementation. Agreements may require work to be carried out within a specific timescale, control occupancy, make financial contributions or involve the provision of facilities such as open space.
- 8.3 Monitoring is an important function in the Council's role in development management. Within the resources of the team the investigation of reported breaches of planning control will be dealt with in line with the priorities set out above. In some cases the 'development team' approach, involving officers from outside the Planning Service and project management techniques will be used to ensure the proposed scheme is implemented in accordance with the approved plans and agreements.

## **9. Case Management**

- 9.1 All complaints will be recorded on the Council's Civica computer system. Action will follow the steps set out in this Policy. The Enforcement Officer will investigate, consider and make a recommendation on each case. The decision whether or not to take action will be made by the Enforcement Officer in consultation with the appropriate senior officer and recorded on the Civica system. All current cases will be reviewed with the Enforcement Team Leader on a regular basis.
- 9.2 In cases where action is proposed a review of the case will be set out in a report and signed by an officer named in the Council's Scheme of Delegation in order that the action is properly authorised. Where an Enforcement Notice or prosecution is involved the case is sent to Legal Services for the appropriate notice or summons to be issued.
- 9.3 Enforcement appeals will be dealt with jointly by enforcement officers and the case officer for any related planning application or such other planning officer as allocated by the Enforcement Team Leader.

9.4 The enforcement officers will also work in partnership with officers from Environmental Health and Community Protection where direct action is required to deal with fly posting and other unauthorised advertisements.

## **10. Information and Publicity**

10.1 Complainants will be informed of any action, or otherwise, the Council is proposing to take in accordance with this policy.

10.2 Where appropriate, publicity will be given to cases where enforcement appeals have been successful or have resulted in a successful prosecution.

## **11. Performance Monitoring**

11.1 A report setting out enforcement statistics will be submitted to the Planning Committee every six months. Reports will include:

- Numbers of complaints received
- Number and types of notices issued
- Details of outcomes of cases
- Results of enforcement appeals



## **Appendix D**

### **Public Rights of Way**

### **Supplementary Enforcement Procedure**

**September 2011**

## 1. Enforcement Procedures – General

- 1.1 This procedural document should be read in conjunction with Herefordshire Council's overarching 'Enforcement and Prosecution Policy.
- 1.2 Keeping rights of way open and unobstructed is a vital element in ensuring that paths are well used and enjoyed by all. Much of the legal responsibility for keeping the paths clear of various obstructions rests with the occupiers over whose land the rights of way pass. Unfortunately certain occupiers do not fulfil their responsibilities with a result that many rights of way in the county are obstructed despite there being adequate furniture and waymarking.
- 1.3 In order to ensure that Herefordshire Council is seen to be dealing with breaches of legislation in a fair and open manner, it is important to set out the Council's approach to enforcement. It is also important to ensure that this approach is widely communicated to occupiers so there can be no confusion or doubts.
- 1.4 Occupiers will generally be given the opportunity to remove obstructions from paths without recourse to enforcement action by the Council. However, Herefordshire Council have themselves a legal duty to ensure rights of way remain unobstructed and available to use and have been given the tools to carry out this duty. These tools are a wide variety of enforcement powers which allow the Council to serve notice, re-claim costs for direct action and to prosecute.
- 1.5 There are two offences which occur regularly within the county; these are ploughing and cropping of rights of way. A more robust approach to enforcement is required if the cycle of repeated non-compliance and requests for improvement is to be broken.
- 1.6 The following procedures set out the way breaches of legislation will be dealt with and provide a timescale for doing so. It is important to recognise that it may not be possible to strictly adhere to these timescales due to the circumstances of some cases, factors beyond the Council's control and resources.

## 2. Procedures for dealing with various obstructions

- 2.1 In most cases, the occupier will be requested to remove an obstruction within two weeks or a time agreed with the officer dealing with the case. If, after the expiry of that period, the obstruction still remains, the occupier will generally be served a notice or the matter will be referred to the magistrate's court depending on the type of offence. The following are the procedures that will be applied to number of common offences.

### OVERHANGING HEDGES, TREES OR SHRUBS

- 2.2 In the event of the landowner not carrying out the work as requested, the following will normally apply. If a hedge, tree or shrub (commonly referred to as vegetation) overhangs a right of way to such an extent that it obstructs or endangers users such that an offence is committed under **section 154 of the Highways Act 1980**, the occupier of the land from which the offending vegetation is growing will be required, by notice, to cut back as much of the vegetation as is required to allow for free passage. In the event of non-compliance the Council can arrange to have the work carried out and recover the costs incurred from the occupier.

## FENCES

- 2.3 New fences constructed across a right of way can only be authorised by the Council where they are required for stock control purposes. A fence will be regarded as being new if it is not shown on the current 1989 definitive map. If an occupier wishes to erect a new fence and it is for the purpose of stock control, they should apply to the Council for authority to erect the fence under **section 147 of the Highways Act 1980**. If the Council is satisfied that the fence is required for stock control purposes, they may authorise the fence line. This will generally be on the condition that a gate, provided by the occupier, is erected on the legal line. Stiles will only be authorised in exceptional circumstances and following consultation with a senior rights of way officer. Any unauthorised fences will be regarded as an unauthorised structure (see 2.10 below)

## FALLEN TREES

- 2.4 Generally trees that fall across rights of way belong to the occupier of the land adjoining the right of way. The occupier will normally be requested in writing to remove the tree within 14 days. If the occupier subsequently fails to comply, the matter will be regarded as an unlawful deposit (see 2.9 below)

## DAMAGE TO THE SURFACE

- 2.5 Damage caused to the surface of a right of way that causes an inconvenience to users is an offence under **section 131A of the Highways Act 1980**. The person responsible will normally be asked to make good the damage within 14 days. If the person responsible fails to comply, the Council will consider a prosecution.

## MISLEADING SIGNS

- 2.6 A person who erects a sign on or adjacent to a public right of way, aimed at deterring users, or provides misleading information, is committing an offence under either **section 132 of the Highways Act 1980**, or **section 52 of the National Parks and Access to the Countryside Act 1949**, depending on the circumstances. The occupier on whose land the notice is erected will in most cases be required to remove the notice within 14 days. If the occupier fails to comply the Council will consider arranging for the notice to be removed within a further 14 days after a notice **under section 69 of the Road Traffic Regulations Act 1984** has been served. Costs will be recovered from the occupier.

## DANGEROUS ANIMALS

- 2.7 Any reports of dangerous animals or attacks on users of a right of way by dangerous animals will be either reported to the Police to be dealt with or passed on to the Health and Safety Executive.

## BULLS

- 2.8 Any reports of bulls at large in a field that is crossed by a right of way will normally be followed up within 2 working days to ascertain if an offence has been committed. Bulls are permitted in the following circumstances:

All breeds less than 10 months old, alone or with others.

Non-dairy breeds over 10 months accompanied by cows or heifers.

The following are not permitted:

Dairy breeds over 10 months alone or with others  
Non-dairy breeds over 10 months alone

Upon identification, or following discussion with the occupier, the occupier will be advised of the legislation and requested to comply. A letter will be sent confirming the discussion and advising the owner that any further offences will be reported to the Health and Safety Executive for action. If the landowner cannot be contacted, the matter will be referred directly to the Health and Safety Executive.

### **UNLAWFUL DEPOSIT**

- 2.9 In the event of report being received of something having been deposited on a right of way, which is considered a danger to users, the Council will remove it immediately. If they consider it has been deposited deliberately or as a result of neglect, they may seek to reclaim the costs involved. In most other circumstances the occupier will be requested to remove the deposit within two weeks. In the event of the deposit not being removed, the Council will seek to serve notice under either **sections 149 or 150 of the Highways Act 1980**. Costs will be recovered from the occupier of the land

### **UNAUTHORISED STRUCTURE**

- 2.10 In the event of a report being received of some form of structure being set up on a right of way and causing an obstruction, the occupier will be asked to remove the structure within 14 days. In the event of non-compliance the Council will serve a notice under **section 143 of the Highways Act 1980**. If the structure remains after one month time the Council will carry out the work and recover the costs from the occupier.

### **DAMAGED OR INOPERABLE STILE AND GATES**

- 2.11 In the event of the occupier being requested to install the furniture the following will apply. The occupier will be requested to make appropriate repairs within a reasonable time agreed with the warden / officer but not more than 4 weeks. If the occupier fails to carry out the work, the Council may serve notice under **section 146 of the Highways Act 1980** on the occupier requiring them to comply within 14 days. Non-compliance will result in the Council carrying out the work and recovering costs and **may result in the Landowner losing the opportunity to claim the minimum 25% grant.**

### **DANGEROUS SITUATIONS**

- 2.12 If Herefordshire Council considers an obstruction on a rights of way an immediate danger to the public, or it considers that something adjoining a right of way is a danger to users of the right of way, it reserves the right to remove of the source of danger immediately and claim the costs for doing so from the occupier.

### **OTHER TYPES OF OBSTRUCTION**

- 2.13 Other obstructions will be dealt with in accordance with the general procedures set out in paragraph 2.1 and in line with statutory legislation and guidance notes.



### **3. Ploughing and cropping offences**

- 3.1 A large proportion of the Herefordshire countryside is cultivated and planted with various types of crops. All crops across a right of way have the effect of deterring users, causing an inconvenience and in many cases a total obstruction. It is for this reason the government issued legislation in 1990 to provide local authorities with the ability to deal with the problem. Experience has identified that many occupiers will not comply with the legislation until requested to do so by the Council. The Council takes the issue of ploughing and cropping rights of way seriously and land occupiers should be in no doubt that a robust and consistent approach to keeping rights of way clear will be taken. The essence of the procedure set out below is that occupiers will normally be given two warnings and then may be prosecuted without prior notice on the third breach of legislation.

#### **First Breach of Legislation**

- 3.2 If it is the occupier's first breach of legislation they will be asked to reinstate the path both verbally (if possible) and in writing, advised of their legal obligations and issued details of Herefordshire Council's Enforcement and Prosecution Policy and any associated procedures. If they comply, no further action will be taken. Note: - In the case of ploughing, an occupier will be deemed to have been advised even if they receive appropriate paper work from the Council before the statutory 14 days allowed to reinstate the path expires.

#### **Second breach of legislation**

- 3.3 If the occupier has been advised, in writing, of their legal responsibilities in relation to a breach of legislation once in the past 5 years, they will automatically be served a notice under schedule 12a of the Highways Act 1980.

#### **Third breach of legislation**

- 3.4 If the occupier has been advised of their legal responsibilities at least twice in writing or has been served a schedule 12a notice in the past 5 years, evidence will be gathered with a view to prosecuting the occupier or issuing a formal caution. This applies regardless of whether the occupier has complied with any paper work that has been served on them in the past.
- 3.5 In some cases, particularly where the path in question is a field edge path, the occupier may be advised at the second breach of legislation stage that the matter will be referred to the County Secretary and Solicitor for consideration to prosecute, rather than serve a notice.

### **4. Procedures for dealing with Ploughing and Cropping Offences**

#### **Initial action**

- 4.1 Upon receipt of a reported breach of legislation, the report will be logged onto the database. If the report is by letter, email or fax the report should be acknowledged and the reportee advised of the defect number.

#### **First stage - advisory action**

- 4.2 The Area Rights of Way Warden (the Warden) will inspect the site of the alleged breach within 10 working days of notification. If this is not possible the Warden should advise their line manager of the reasons and agree a timescale for inspection or an alternative approach.
- 4.3 Upon confirmation of a breach of legislation the Warden will ascertain the details of the occupier of the land at the date of inspection. The Warden will then ascertain whether the occupier has been informed about a breach of legislation in the past five years or if a notice has been served.
- 4.4 If it is the occupier's first offence, the Warden will try to seek a meeting with the occupier on site within 5 working days to explain the details of the offence and the occupier's obligations. A confirmation letter will be sent as soon as is practicable following any meeting, such letter to include:
- confirmation of the issues discussed at the site meeting
  - details of the offence
  - a plan showing the location of the offence
  - what is required to comply with the legislation
  - details of the Council's enforcement policy and ploughing and cropping procedures
- 4.5 The occupier will be advised, in the case of a ploughing offence, that the path should be reinstated within 14 days and in the case of a cropping offence reinstatement should be completed within 7 days
- 4.6 If the occupier has been advised of their obligations in writing in connection to a breach of legislation before within the last 5 years the matter will be considered for enforcement action
- 4.7 The Warden will re-inspect the right of way within 5 working days of the expiry of the time given to the occupier to reinstate the path. If the work has been carried out to reinstate the path in line with legislation, the Warden will write to the occupier thanking them for cooperation and advising what future action would be taken should any further breaches of legislation be confirmed on land in their occupation.
- 4.8 If no work has been carried out, the Warden will pass on the details of the case to the Area Officer

### **Second Stage – Enforcement Action**

- 4.9 The Area Officer will ascertain how many times the occupier has been contacted in writing and advised of their duties in regards to the legislation in the past.
- 4.10 If the occupier has been advised of their obligations once in the past 5 years, the Area Officer will inspect the path within ten working days. If a breach of legislation has occurred, they should write to the occupier setting out the occupier's obligations, and including a Schedule 12a Enforcement Notice. The covering letter should include details of what works are required to reinstate the path. The Enforcement Notice will set out the Council's intention to take direct action and recover costs if reinstatement works are not carried out within the specified period. The specified period will normally be 7 days. The Notice will contain the following:

- That the Council intends to enter onto the land to carry out the necessary reinstatement work.
  - The earliest date and time that the work will be undertaken.
  - The nature of the work, and the equipment to be used.
  - The lines of access that will be used (this does not have to be along the line of the right of way).
  - The final date by which the occupier can complete the work and inform the Area Officer without being liable to incur any costs. This date will be 4.00 p.m. two working days prior to the enforcement action being carried out.
- 4.11 The Area Officer will advise the occupier that the reinstatement work by the Council will only be cancelled subject to: -
- The work having been carried out to the satisfaction of the Area Officer, and;
  - The Area Officer being advised two working days prior to any enforcement action being carried out that the occupier has completed the works.
- 4.12 The Area Officer will provisionally arrange for the work team to carry out the reinstatement work, with confirmation being given the day before the works are to be undertaken. If the Area Officer is of the opinion that the occupier may cause a breach of the peace, the local police will be requested to attend. A final letter will be sent to the occupier setting out the date the Council intends to carry out reinstatement works. Ideally this will be no more than 5 days after the earliest time set out in the notice.
- 4.13 A final inspection of the right of way will be undertaken the day before the enforcement works are to be carried out to ascertain whether or not the work has been completed. In the event of the works having been completed and the Council not informed, any costs that have been incurred will be recovered from the occupier.
- 4.14 On the day of the enforcement works, if the works have been completed by the occupier to the satisfaction of the Area Officer, any costs that have been incurred will be recovered from the occupier of the land. If the works have not been completed, the Area Officer will meet the work team (and the police if requested) reasonably close to the site where the works are to be undertaken. The Area Officer will brief the work team and, if present, provide the police with copies of the appropriate information.
- 4.15 The following information will be made available: -
- A copy of the Definitive Map and Statement relating to the right of way in question.
  - Copies of the schedule 12a notice(s).
  - Copies of all other relevant correspondence.
- 4.16 Once briefed, the work team will proceed to the prearranged access point while the Area Officer and the Police, if present, visit the occupier of the land to inform them that the works are to be carried out. The work team will not enter onto the land or commence any work until authorised to do so by the Area Officer.
- 4.17 Before any works are carried out the Area Officer will mark out the line of the path to be reinstated for the work team. This will include the width to be reinstated which will be within the maximum width but no less than minimum width as set out below.

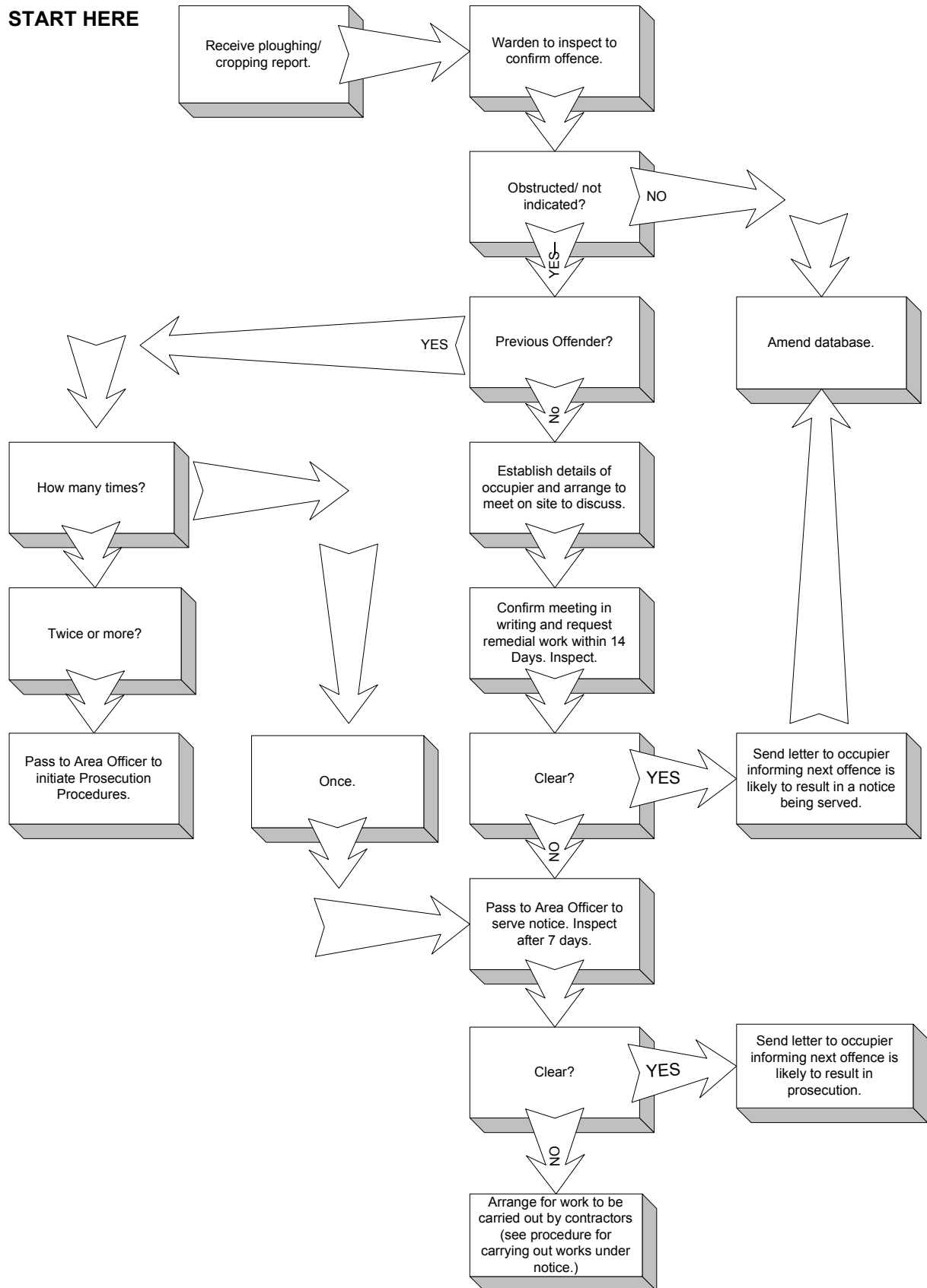
Status	Minimum width*	Maximum width*
Cross-field footpath	1.0m	1.8m
Field-edge footpath	1.5m	1.8m
Cross-field bridleway	2.0m	3.0m
Field-edge bridleway	3.0m	3.0m
*Widths as stated in Rights of Way Act 1990		

- 4.18 The Area Officer will supervise the work team at all times with particular attention being made to the correct line. In the event of any threat of violence, the Area Officer and work team will take the advice of the Police if they are present, or withdraw from the site immediately and contact the Police
- 4.19 Once the works have been carried out, a letter and bill will be forwarded to the occupier of the land who will be recharged all reasonable costs incurred. The letter will advise the occupier of the action that will be taken should the Council become aware of another breach of legislation occurring on land they occupy.
- 4.20 The actions will be recorded on the database and the case closed.
- 4.21 If the occupier has been advised of their legal responsibilities twice or more within the last five years, including the serving of a schedule 12a notice, the Area Officers will discuss the matter with the rights of way manager with a view to initiating prosecution proceedings (see section 5.0)

## **5. Responsibility for implementing policy**

- 5.1 The Head of Service is responsible for ensuring that policy and procedure is implemented and that all staff that might deal with enforcement are fully trained.
- 5.2 The service manager and Rights of Way Manager are responsible for ensuring officers wanting to carry out enforcement duties follow the procedures and appropriate Home Office guidelines.
- 5.3 Legal Services will be responsible for offering, guidance and legal representation / support to officers wishing to carry out enforcement.
- 5.4 Officers with an enforcement role must be aware of the policy and guidelines for prosecution.
- 5.5 The decision as to whether to proceed with a prosecution will be taken by the rights of way manager in consultation with the Service Manager and the County Secretary and Solicitor after full consideration of the case.
- 5.6 The decision as to whether to proceed with direct action can be made by the Area Officers.

## Ploughing and Cropping Flow Chart





## **Appendix E**

### **Private Sector Housing**

### **Supplementary Enforcement Policy**

**September 2011**

## 1.1 Introduction

Herefordshire Council carry out a wide range of legal duties under various Housing related legislation. These are applied by carrying out programmed inspections of premises, responding to complaints and offering advice.

This Policy outlines the approach we take when considering enforcement action. It is intended to ensure that we deal with everyone in a consistent way. It applies to all private rented properties including houses in multiple occupation (HMOs).

This policy should be read in conjunction with Herefordshire Council's overarching 'Enforcement and Prosecution Policy'.

## 2.0 Policy intention and purpose

The aim of the Private Sector Housing Enforcement Service is to ensure good quality, healthy housing for all residents of Herefordshire. We will do this by:-

- having a staged proportionate response to complaints and enquiries ranging from information and advice to full inspection and enforcement,
- taking action in respect of those properties which present the greatest risk to the health and safety of vulnerable occupants,
- ensuring that we enforce the law in a fair, equitable and consistent manner,
- working with landlords and other to improve housing conditions and improve the quality of housing management in Herefordshire,
- assisting landlords and others in meeting their legal obligations,
- taking firm action against those who flout the law or act irresponsibly, and
- reviewing housing conditions in the County in order to come to well informed judgements.

## 3.0 Enquiries and Inspections

### 3.1 Enquiries

The Council will not normally investigate anonymous requests for service unless there are other sources of information to indicate the likelihood of a Category 1 hazard within the dwelling or serious breaches of housing law. Enquiries will be passed through a triage system to ensure urgent action is directed to the highest risk cases.

#### 3.1.1 Emergency/Life and Limb requests:

Emergency/Life and Limb requests are usually generated where premises are rented from a private landlord\*. Private Sector Housing will endeavour to contact the complainant or person requesting assistance within 24 hours during the normal working week. Issues to be treated as an emergency include:

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\* a private landlord includes Registered Social Landlords (usually Housing Associations): In these instances Private Sector Housing will intervene on behalf of tenants if requests for repairs are unheeded.



- Collapsed ceilings
- Gas, water or electricity disconnections where the owner or agent has failed to pay the bill.
- Defective gas electrical installations
- Lack of suitable fire precautions

For the above reasons, where there is a danger to life or limb, we aim to respond by inspecting the premises or contacting the complainant as soon as possible. The response will generate the appropriate course of action for the circumstances, be it informal advice, intervention or the service of a notice. Private Sector Housing aim to respond to the request for assistance, including the service of any Notices requiring urgent works within **7 working days** of site inspection.

### 3.1.2 Non-Emergency Cases

Other requests for service emanating from premises which are rented from a private landlord\* will be responded to within triage arrangements. Less urgent enquires that require an inspection will be carried out within **20 working days**. In order to empower tenants, most non urgent cases will be sent a tenant self help pack within **5 working days**. This triage response will initially involve advice to the tenant and landlord in writing but will ultimately lead to inspection if an informal resolution is not achieved. Requests for advice will be addressed within **28 working days**.

Longer-term improvements to a property may include repairs, works for means of escape in case of fire and other fire precautions works and significant defects caused by poor management.

## 3.2 Housing Inspections

### 3.2.1 General Housing Inspections

The Housing Act 2004 introduced a new system for assessing housing conditions, known as the Housing, Health and Safety Rating System (HHSRS), which is to be used in the enforcement of housing standards in all types of residential accommodation.

The system is structured around an evidence based risk assessment procedure, which considers those hazards that may be present in a dwelling from a list of 29 hazards. The risk that any such hazards may present to the most vulnerable potential occupant of that dwelling are then used to generate a hazard score. That score is, on the basis of a numerical value, then classified as a Category 1 hazard or a Category 2 hazard. Category 1 hazards can further be sub-divided into those banded A - C. Category 2 hazards can be sub-divided into those falling within bands D – J and which reflect a lower risk.

Under the Housing Act 2004 The Herefordshire Council has a duty to take appropriate enforcement action where there is a Category 1 hazard, and has the discretionary power to take appropriate enforcement action where there is a Category 2 hazard. Therefore, to ensure a consistent approach to housing enforcement by Officers, the Council has adopted a formal policy for enforcement under the Act.

### **3.2.2 Overcrowding Inspections**

HHSRS provisions of the Housing Act 2004 includes 'crowding and space' and these will be used to determine overcrowding in preference to the statutory overcrowding standard in Part 10 of the Housing Act 1985

The HHSRS operating guide outlines the ideal conditions for space depending on age and gender mix, and the size and number of the rooms available for sleeping; these generally mirrors the bedroom standard. Unlike all other housing risks, crowding and space hazard is assessed in two stages by considering the property with and without the current occupants.

An Order prohibiting use of the property should only to be served in the event of a Category 1 hazard where there is "severe overcrowding" (the property lacks 2 or more bedrooms based on the bedroom standard) and there is a strong threat to health or safety. In these cases, action should be co-ordinated between all parties including the landlord, Homeless Prevention Team, Homepoint and Private Sector Housing to re-house affected individuals as soon as possible.

### **3.3 Inspection of Houses in Multiple Occupation (HMO)**

All Houses in Multiple Occupation (HMOs) and Flats in Multiple Occupation (FMOs) will be inspected pro-actively on the basis of risk to the occupier(s) using the Private Sector Housing's hazard ranking system.

Proactive inspections will also be a function of the HMO Licensing scheme so that these properties comply with the Council's standards and are appropriately managed by a fit and proper person. The Council is required to inspect and address housing hazards within 5 years of issuing a HMO licence for a property.

In addition to the HHSRS, Herefordshire Council will use Management Regulations under Section 234 of the Housing Act 2004 to impose duties on Landlords and Managers in Houses in Multiple Occupation, whether or not it is subject to Licensing. Decisions as to whether it is appropriate to prosecute Landlords for breach of the Regulations will be considered in accordance with the Enforcement Policy.

## **4.0 Authority to take Action and Powers of Entry**

### **4.1 Authority to take action**

Herefordshire Council has authorised officers to carry out inspections of dwellings and HMOs using the Housing, Health and Safety Rating System and relevant housing Regulations. All officers may act on behalf of the Council where they consider housing conditions and their associated hazards impact the health and safety of occupants and visitors or that there have been breaches of relevant housing legislation.

Those officers who have successfully completed training courses accredited by the Communities and Local Government (CLG) are authorised to sign and serve notices as detailed in the Private Sector Housing authorisation document in appendix A. Where mention is made in this Policy to action by the Council, the Council will act through its officers in accordance to the level of authorisation given.

## 4.2 Powers of entry under the Housing Act 2004

Section 239 and Part 1 of the Housing Act 2004 enable the Council to carry out inspections to see if Category 1 or 2 hazards exist.

Before entering the property, 24 hours notice must be given to the owner/landlord and occupier(s). However, where the Council consider that any premises need to be entered for the purpose of ascertaining whether an offence has been committed under section 72 (HMO licensing), 95 (selective HMO licensing) or 234(3) (HMO management Regulations) no prior notice need be given.

Section 240 allows the Council to apply to a Justice of Peace for a warrant which can include forced entry.

A person exercising power of entry under the Housing Act 2004 may:

- (a) take other persons with them;
- (b) take equipment or materials with them;
- (c) take measurements or photographs or make recordings;
- (d) leave recording equipment on the premises for later collection;
- (e) take samples of any articles or substances found on the premises.

Section 235 gives the Council power to require production of documents to enable them to carry out enforcement functions.

## 5.0 Enforcement Options

Prior to any formal enforcement action, it will be necessary for Private Sector Housing to undertake a full investigation into the condition, occupation and ownership of a property in order to determine on whom a Notice should be served and copies made available. Where the Council intends to serve a Works Notice in respect of long-term improvements of a property, we shall aim to serve this within **three months** of the inspection of the property. Enforcement action will be:

- i) Proportionate to the risk to health and safety;
- ii) Applied consistently by all officers;
- iii) Targetted;
- iv) In accordance with any guidance issued by Communities and Local Government.
- v) To consult Hereford and Worcester Fire and Rescue Service as appropriate before taking enforcement action in respect of prescribed fire hazards in a House in Multiple Occupation (HMO) and in the common parts of a building containing flats. The procedure will extend to premises covered by the Regulatory Reform (Fire Safety) Order 2005 relating to fire authorities and any agreed protocol between the two authorities;
- vi) To consult Listed Buildings team as appropriate,

- vii) To ensure that inspectors follow the enforcement policy when making enforcement decisions, that variations from the policy are justifiable in terms of the risk to health and safety and are taken after full consultation with the appropriate senior officer. Ensure that all Officers are kept up to date with the requirements of the Policy;
- viii) To maintain documented policy on enforcements. The Policy will be reviewed at regular intervals and when there are relevant changes to the legislation or guidance. Any review will be considered in accordance with the Council's procedure for reviewing these Policies and will include consultation with relevant stakeholders;
- ix) To ensure that all Officers have received suitable training and are confident in carrying out their duties;
- x) To make the Housing Enforcement Policy or a summary of the Policy available to any interested parties. (i.e. web site);
- xi) To produce any further procedures that promote consistency of enforcement amongst its officers;
- xii) To produce procedures to enable persons aggrieved by officers actions to make representations to the Council;
- xiii) To consult with the owner and occupier, and any other relevant person prior to pursuing enforcement action.

It is the Policy of Herefordshire Council to ensure that enforcement action is always taken in a fair and consistent manner and in proportion to the risk to health and safety. To help achieve this, the Council will make reference to guidance from Communities and Local Government.

## **5.1 When deciding which level of enforcement to take, the Council will consider the following criteria:**

- i) The risk to health and safety
- ii) The current occupants and their views
- iii) The turnover rate of tenancies
- iv) The likelihood that the property will become occupied by a member of a group who could be at particular risk.
- v) The relevant person's attitude towards the hazards identified
- vi) The consequences of non-compliance.
- vii) The cost of compliance
- viii) The likely effectiveness of enforcement options under consideration.
- ix) The history of past compliance

For the purposes of this Policy the "relevant" person can be taken to refer to the individual or company who could be the subject of enforcement action.

## **5.2 Enforcement options available to The Herefordshire Council are:**

- i) To issue Hazard Awareness notices
- ii) To serve Improvement Notices
- iii) To serve Prohibition Orders
- iv) To take Emergency Remedial Action (not available for Category 2 hazards)
- v) To serve Emergency Prohibition Orders (not available for Category 2 hazards)
- vi) To make a Demolition Order (not available for Category 2 hazards)
- vii) To declare a Clearance Area (not available for Category 2 hazards)

The above actions are not exclusive when dealing with the same hazard in the same premises. However, the Council can take a different course of action, or the same course of action again, if the initial action has not proved satisfactory. Emergency measures are the exception to the above rule.

For example, where Emergency Remedial Action is required followed by an Improvement Notice or Prohibition Order, it is considered to be a single course of action.

When taking Enforcement Action the Council will prepare and serve with any Notice or Order under Part 1 of the Act, or any copy of a Part 1 Notice or Order, a statement of reasons for the decision to take enforcement action.

The statement will include an explanation as to why a particular course of action is taken in preference to the other forms of available action.

When enforcement action leads to the Declaration of a Clearance Area, a statement of reasons must be published after the resolution, declaring that the area will be defined as a clearance area under Section 289 of the Housing Act 1985.

A reasonably practicable, proposed enforcement action will be discussed with the relevant person prior to the service of any notice or order under Part 1 of the Act, and representations sought.

### **5.2.1 Hazard Awareness Notices (Sections 28 and 29)**

A Hazard Awareness Notice under Section 29 (notice relating to a Category 2 hazard) may be a reasonable response to a less serious hazard, where the authority wishes to draw attention to the desirability of remedial action.

A Hazard Awareness Notice under Section 28 (notice relating to Category 1 hazard, and no Management Order is in place under Part 4) may be an appropriate course of action as a means of advising the relevant person that a Category 1 hazard exists on the residential premises. This would be appropriate in circumstances where remedial action or prohibition is unreasonable or impractical.

A Hazard Awareness Notice may be the preferred course of action, instead of an Improvement Notice, where the relevant person has agreed to take remedial

action and the Council are satisfied that the work will be done within a reasonable time scale.

When taking informal action of any nature, inspectors will clearly differentiate to the alleged offender what is legally required and what is recommended as good practice.

In summary, it is The Herefordshire Council's policy that Hazard Awareness Notices will be the preferred course of action on residential premises where:

- i) the hazard(s) are all of Category 2; or
- ii) in the case of Category 1 hazards the Council is fully satisfied that the relevant person will take suitable remedial action within a suitable timescale; or
- iii) the circumstances are such that improvement or prohibition is unreasonable or impractical.

The service of a Hazard Awareness Notice does not preclude formal action, should an unacceptable hazard remain.

All Notices and accompanied documents will be sent as soon as possible.

Hazard Awareness Notices will be drafted in accordance with the relevant sections of the Housing Act 2004 as determined by the category of hazards.

### **5.2.2 Improvement Notices (Sections 11 and 12)**

An Improvement Notice under Section 11 will be an appropriate course of action where a Category 1 hazard exists in a residential premises, where no management order is in place under Part 4 of the Act. An Improvement Notice served under this section must be for a Category 1 hazard.

An Improvement Notice under Section 12 may be an appropriate course of action where a Category 2 hazard exists on residential premises, where no management order is in place under Part 4 of the Act. A Notice served under Section 12 requires the relevant person to take suitable remedial action in respect of the hazard(s).

In summary, Improvement Notices will be the preferred course of action on residential premises where:

- i) There is a Category 1 hazard(s) present
- ii) There is limited confidence that the relevant person will respond to a Hazard Awareness Notice within a reasonable time; or
- iii) There is no confidence in an unprompted offer by the relevant person to undertake necessary remedial action associated with that risk (Category 2 only); or
- iv) The relevant person will not confirm in writing their unprompted offer to undertake the necessary remedial action (Category 2 only).

Improvement Notices will be drafted in accordance with Section 13 of the Housing Act 2004.

When the Notice becomes operative there will be a Local Land Charge on the premises to which it relates. This means that it will be recorded on the Register of Local Land Charges kept by the Council. This register is public and anyone can search for entries upon payment of a fee. House purchasers will normally search this register.

Inspectors will not issue Improvement Notices unless they are confident that there is sufficient evidence to defend an appeal against the Notice.

All notices will be accompanied by information on the appeal procedure and the time limits for such an appeal.

### **5.2.3 Suspension of Improvement Notices (Section 14)**

An Improvement Notice, may, for the operation of the Notice be suspended until a time, or the occurrence of an event specified in the Notice. The purposes of suspension will normally be to allow the Council to prioritise action. Suspension of an Improvement Notice may be the preferred course of action where:

- i) It is appropriate to wait until a person of a particular description begins, or cease to occupy the premises; or
- ii) In the case of an event where a person on whom the Notice was served, does not comply with an undertaking given to the Council.

### **5.2.4 Revocation or Variation of Improvement Notices (Section 16)**

Where the Council are satisfied that the Improvement Notice has been complied with, any such Notice will be revoked. The Herefordshire Council, may also, at their discretion, revoke an Improvement Notice where it is deemed that there are special circumstances (except of a Category 1 hazard), or where (Category 2 hazard) it is considered appropriate.

In the case of a Notice that applies to more than one hazard, requirement of the preceding paragraph will apply to each of the hazards individually.

The Council may also vary Improvement Notices in the following circumstances:

- i) Where parts of a Notice, which relates to more than one hazard have been revoked, the remainder of the Notice may also be varied as considered appropriate; or
- ii) With the agreement of the person on whom the Notice was served; or
- iii) In the case of a suspended Improvement Notice, so as to alter the time or event specified that triggers the end of suspension.

### **5.2.5 Renewal of Suspended Improvement Notices (Section 17)**

Suspended Improvement Notices will be approved in accordance with Section 17 Housing Act 2004.

### **5.2.6 Prohibition Orders (Sections 21 and 22)**

A Prohibition Order made under Section 21 may be an appropriate course of action, where a Category 1 hazard exists on residential premises, where no management order is in place under Part 4 of the Act. An order made under this section may prohibit the use of part or all of the premises for some or all purposes, or occupation by a particular number or descriptions of people.

Section 22 makes an equivalent provision for a Prohibition Order to be made where a Category 2 hazard exists on residential premises, where no Management Order is in place under Part 4 of the Act.

Prohibition Orders will be the preferred course of action relevant to the actual premises where:

- i) there may be a serious threat to health and safety and remedial action is considered unreasonable or impractical, i.e. where the work cannot be carried out with the tenant in residence; or
- ii) the dwelling is overcrowded as regard space and/or amenities numbers in occupation; or
- iii) where a dwelling presents a serious threat to the health and safety to a specific group of persons, which is relatively safe for occupation; or
- iv) the relevant person will not confirm in writing the unprompted offer of voluntary prohibition (Category 2 hazards only).

Prohibition Orders will become operative in accordance with Section 22 of the Housing Act 2004.

When the Notice becomes operative there will be a local land charge on the premises to which it relates. This means it can be recorded in the Register of Land Charges kept by the Council. This register is public and anyone may search for entries in it upon payment of a fee. House purchasers will normally search this register.

Inspectors will not issue Prohibition Orders unless they are confident that they have sufficient evidence to defend an appeal against the Order.

### **5.2.7 Suspension of Prohibition Orders (Section 23)**

A Prohibition Order may, for the operation of the order, be suspended until a time when the occurrence of events specified in the order have been dealt with. Suspension of a Prohibition Order is at the discretion of the Council and it may be the preferred course of action when:

- i) it is appropriate to wait until a particular circumstance ends, or a person departs, or ceases to occupy the premises; or
- ii) in case of an event, where a prohibition notice was served, was not complied with by an undertaking being given to the Council.



### **5.2.8 Emergency Prohibition Orders (Section 43)**

If the Council are satisfied that a category 1 hazard exists on any residential premises, and that the hazard involves an **imminent risk of serious harm** to the health or safety of any of the occupiers of those or any other residential premises, then the making of an Emergency Prohibition Order is a course of action available.

An Emergency Prohibition Order imposes, **with immediate effect**, prohibition(s) on the use of any premises in a similar manner to a standard Prohibition Order.

### **5.2.9 Revocation and Variation of Prohibition Orders (Section 25)**

Where the Council is satisfied that a hazard, in respect of which a Prohibition or Emergency Prohibition Order was made, no longer exists, any such order will be revoked. The Herefordshire Council may also, at their discretion, revoke a Prohibition Order where it is deemed special circumstances exist (in respect of Category 1 hazard), or where (in the case of a Category 2 hazard) it is considered appropriate.

### **5.2.10 Emergency Remedial Action**

Where the Council is satisfied that a Category 1 hazard exists on a residential premises and is further satisfied that the hazard presents an imminent risk of serious harm to the health and safety of any occupiers, the Council will enter the premises at any time in order to take emergency remedial action.

This power will only be used where there is:

1. an imminent risk of serious harm
2. limited action that could be taken under an Improvement Notice under S.11 or an Improvement Notice that has not been complied with.

### **5.2.11 Clearance Areas**

The Council may decide to declare a clearance area where it is satisfied that:

- i) Individually, each of the residential buildings in the area contain a Category 1 hazard, and
- ii) that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area; or
- iii) the residential buildings in the area are dangerous or harmful to the health or safety of the inhabitants of the area as a result of their bad arrangement or the narrowness or bad arrangement of the streets; and
- iv) the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area.

The Council may decide to declare a clearance area where it is satisfied that:

- i) each of the residential buildings in the area contains a Category 2 hazard,

- ii) that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area.

### **5.2.12 Prosecution (Section 30 and 32)**

Prosecution will (only) be considered as a course of action where there has been a failure to comply, “without reasonable excuse” with requirements of an operative improvement notice or prohibition order. The decision or timescale to prosecute may be influenced by the presence of one or more of the following criteria:

- i) where there is a history of similar offences
- ii) where as a result of failure to comply there is a risk of an accident or a case of ill-health
- iii) where there appears to be a reckless disregard for the health and safety of occupants and/or others;
- iv) false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to a serious risk;
- v) inspectors have been intentionally obstructed in the lawful course of their duties.

All evidence will be gathered in accordance with the Police and Criminal Evidence Act 1984 and associated codes of practice.

Before a decision to prosecute is taken, the officer, together with the Private Sector Housing Manager and, where necessary, the Council’s solicitor must be satisfied that both the “Evidential Tests” and the “Public Interest Tests”, as contained within the code for Crown Prosecutors, is in general terms satisfied.

When a prosecution is proposed, the case file will be submitted to the Council’s solicitor as soon as possible for consideration.

### **5.2.13 Formal Cautions**

The purpose of a caution is:

- i) To deal quickly and simply with less serious offences.
- ii) To divert less serious offences away from court
- iii) To reduce the chance of repeat offences.

The following conditions will be fulfilled before a caution is administered:

- i) There must be evidence of the suspected offenders guilt to give a realistic prospect of conviction, and
- ii) The suspected offender must admit the offence, and
- iii) The suspected offender must understand the significance of the formal caution and give an informed consent to being cautioned.

A formal Caution will not be used if there is insufficient evidence to consider taking a prosecution or where the suspected offender does not make a clear and reliable admission of the offence. There is no legal obligation for any person to accept the offer of a formal caution and no pressure will be applied to the person to accept a caution.

Formal Cautions will be used in accordance with Home Office Circular 59/1990. All Formal Cautions will be issued in accordance with the Council's scheme of delegated powers.

Where a person declines the offer of a Formal Caution, the appropriate officer will reconsider the case.

## **6.0 Works in default (Section 31, Schedule 3)**

The Council may in certain circumstances carry out works detailed in an Improvement Notice. Such action may be taken with or without the agreement of the person on whom an Improvement Notice was served.

When taking action with the agreement of the person on whom an Improvement Notice has been served, the Council may take any action that is required in relation to the Notice. However, taking action by agreement, will only generally be considered where it is felt that the relevant person is for whatever reason incapable of organising, executing and overseeing the necessary works. Any such work undertaken will be at the expense of the person on whom the Improvement Notice was served.

Taking action without the agreement of the person on whom an Improvement Notice has been served, will be considered as a course of action in any of the following circumstances:

- i) where a person has failed without "reasonable excuse" to comply with the requirements of an Improvement Notice,
- ii) reasonable progress, in relation to the requirements of the Notice is not being made

## **7.0 Power to charge for enforcement action (Section 49)**

The Housing Act 2004 allows Councils to charge for taking enforcement action. Some other legislation also allows Councils to recover costs for officer's time and expenses needed to determine what works need to be carried out in default. It will be the Policy of The Herefordshire Council to make a reasonable charge for taking enforcement action in the following circumstances:

- i) where the relevant person has failed to fulfil an undertaking to carry out the necessary works appertaining to hazard(s) (for example in a formal consultation letter) or to carry out a Prohibition which otherwise would have been the subject of formal enforcement,
- ii) where the relevant person has failed to comply, without reasonable excuse, with the requirements of an Improvement Notice, Prohibition Order or Demolition Order, or

- iii) in the case of emergency remedial action or an Emergency Prohibition Order, where matters giving rise to the hazard(s) were reasonably foreseeable and/or due to the failure to suitably manage the premises.

The Private Sector Housing Service will recover costs and fees when formal action is taken where it is reasonable to expect the owner to pay for the charges in the circumstances. Costs will be charged on the basis of the following table:

<b>Standard Charge (Per Property)</b>	
a) Single Family Dwelling (SFD) Notices	£320
b) Houses in Multiple Occupation Notices	£520

<b>Supplemental Fees</b>	
a) Prohibition or Emergency Prohibition Order Served	£100
b) Variation of a Notice	£55
c) Emergency Remedial Action	£100

<b>Fee Calculation</b>	
First Notice	Standard Charge a) or b) plus any supplements
Subsequent Notices	Supplemental fees only

There will be discretion to waive the charge when it is not reasonable to expect a person to pay for the enforcement action taken i.e. where the reason for the charge was outside of the control of the person charged or persons acting on their behalf. Where expenses are to be charged they will be made relating to all stages of enforcement as detailed in Section 49 in the Housing Act 2004.

Expenses will be recovered in accordance with Section 50 of the Housing Act 2004, by a demand for payment of the charge.

At the time that the demand becomes operative, the sum recoverable together with the interest accrued will, until recovered, be registered as a local land charge on the premises concerned. Interest will be added to outstanding charges at 4% above the current bank rate calculated on a daily basis.

## **8.0 Power to recover certain expenses (Schedule 3)**

The Council is given powers to carry out works in default where a person has been required to do works but has failed to do so. The work in default powers are provided in the legislation being used in relation to a case.

In most circumstances a person will be given notice of the Council's intention to carry out works in their default. The cost of the works will be recovered in accordance with the relevant statutory provisions. It should be noted that such charges are an addition to the administrative and other costs to be recovered as laid out above.

Expenses will be recovered by demanding a payment of the charge. At the time that the demand becomes operative, the sum recoverable together with the interest accrued will, until recovered, be registered as a local land charge on the premises concerned. Interest will be added to outstanding charges at 4% above the current bank rate calculated on a daily basis.

## **9.0 Houses in Multiple Occupation**

### **9.1 Licensing of Houses in Multiple Occupation**

Part 11 of the Housing Act 2004 covers the Mandatory and Discretionary Licensing of Houses in Multiple Occupation.

The Housing Act 2004 Section 254 provides a new definition of an HMO.

A "House in Multiple Occupation" means a dwelling, or part of a building:

- that is occupied by more than 1 household sharing an amenity such as bathroom, toilet or cooking facilities (the standard test); or
- is occupied by more than one household, which is a converted building, which does not entirely comprise self-contained flats (whether or not they are sharing amenities); (the self contained flat test) or
- comprises entirely of converted self-contained flats and the standard conversion does not meet that required by the 1991 Building Regulations and more than one third of the flats are occupied under short tenancies. (the converted building test).

### **9.2 Exemptions**

Certain types of buildings will not be HMOs. These include:

- i) Managed or owned by a public body (such as the NHS or Police) or a local Housing Authority or a Registered Social Landlord.
- ii) Where the residential accommodation is ancillary to the principal use of the building e.g. religious establishments, conference centres etc.
- iii) Entirely occupied by freeholders or long leaseholders and their households.
- iv) Occupied by no more than two households each of which comprise a single person (i.e. two person flats).

### **9.3 Licensing and the link with Housing Health and Safety Rating System**

HMO Licensing is linked to the HHSRS. Section 55 gives local authorities a duty to ensure that there are no Category 1 hazards in an HMO within 5 years of licensing.

## **9.4 HMO Declarations**

Under Section 255 where the Council is satisfied that a building or part of a building is being occupied by persons as their only or main residence which has a mixture of uses, the Council can declare the building an HMO.

## **9.5 Mandatory Licensing of HMOs**

Mandatory Licensing applies to three or more storey properties occupied by five or more persons comprising of two or more households.

Storeys include basements, attics, commercial units and mezzanine floors. Mixed used properties will be counted by storey e.g. shop ground floor with two storey HMO above equals a three storey HMO.

For the purpose of HMO Licensing, a person includes children from birth.

It is an offence, under section 72 to operate a HMO that should be licensed under the provisions of Part 2 without a licence.

## **9.6 Temporary Exemption from Licensing**

Under Section 62 the Council may grant a Temporary Exemption Notice (TEN) where it is satisfied that the owner is taking steps to stop using the property as an HMO e.g. if the owner has applied for planning permission to convert the property back into a single family dwelling.

A TEN can be granted for a maximum of three months but in exceptional circumstances may be granted for a further 3 months. No more than two consecutive TEN's can be granted.

## **9.7 Applications for Licences**

Under Section 63, a person owning or managing an HMO which is required to be licensed must apply to The Herefordshire Council for a Licence for each property.

The Herefordshire Council must grant a licence if it is satisfied that:

- The HMO is reasonably suitable for occupation by the number of persons permitted on the Licence.
- The Licence Holder is a fit and proper person.
- The proposed Licence Holder is the most appropriate person to hold the Licence.
- The proposed manager, if not the licence holder is fit and proper and the proposed management arrangements are satisfactory, including that the person involved in the management of the house is competent and the structures and fundings for the management are suitable.

## **9.8 Fit and Proper Person**

Under section 66, the local Authority has to decide whether a Licence Holder or Agent is fit and proper.

The Council must have regard amongst other matters to:

- Any previous convictions relating to violence, sexual offences, drugs or fraud.
- Whether the proposed Licence Holder has contravened any laws relating to housing or landlord and tenant issues
- Whether the person has been found guilty of unlawful discrimination practices
- Whether the person has managed HMO's otherwise in accordance with any approved Code of Practice.

Relevant convictions do not automatically mean a person cannot be deemed fit and proper. The Council must give consideration to any convictions alongside a Landlord taking training or engaging with Council initiatives.

## **9.9 Additional Licensing**

Herefordshire Council's additional licensing scheme under Section 58 of the Housing Act 2004 came to an end in April 2009.

There is every intention to reinstate additional licensing in Herefordshire pending Government review and consultation with stakeholders in 2010-2011. This will allow the continuation of good work undertaken by landlords as a result of the previous Registration Schemes, which significantly raised standards in all HMOs.

## **9.10 Refusal of Licence**

If under Section 64, the Council is not satisfied that it cannot grant a licence under the above conditions then it must refuse to grant the Licence and make an Interim Management Order. The Council must give the applicant reasons in writing and allow 14 days for representations.

## **9.11 Appeals**

All appeals against Licensing, (fit and proper person), TEN's and HMO declarations will go to the Residential Property Tribunal which is part of the Lands Tribunal.

An appeal may be made if the Council:

- Refuse to grant a licence
- Grant a licence but impose conditions
- Vary a licence
- Revoke a Licence,
- Refuse to vary or revoke a Licence.

There is a 28 day appeal period.

## **9.12 Contents of Licence**

Under Section 67 and Schedule 4 of the Housing Act 2004 an HMO Licence will specify the maximum number of occupants who may occupy the HMO.

It will always include conditions requiring the Licence Holder to:

- Produce a Gas Safety Certificate on an annual basis

- Keep electrical appliances and furniture in a safe condition and supply on demand to the Council a declaration to that effect.
- Ensure smoke alarms and any other fire detection is kept in proper working order and supply on demand a declaration as to the condition and positioning of the alarms.
- The occupiers will have a written statement of terms on which they occupy the property.

Further conditions can be attached to the Licence regarding work required within specified periods to meet the Authority's adopted standards for the number of occupants.

A Licence may also include conditions relating to:

- The management of the house, including taking such steps within reason to deal with anti-social behaviour of the occupants and people visiting the property.
- The condition of the house, its contents and the amenity standards other than those under the HHSRS.
- A requirement to carry out specific works or actions within such time as is specified in the Licence.
- A requirement for landlords to attend training courses relating to the Codes of Practice.
- Management Regulations setting out general requirements as to the management of properties.

Where there are hazards in the HMO these will be dealt with by the HHSRS provisions rather than Licensing.

### **9.13 Breaches of Licence Conditions**

Under Section 72 the Licence Holder or Manager of an HMO who allows it to be occupied by more persons than the Licence permits, commits an offence and is liable to a fine up to £20,000. Breaching Licence conditions is also an offence and fines are up to a maximum of £5,000. Prosecution of these offences is without prejudice to the Council's power to revoke the Licence.

### **9.14 Duration of Licence**

Under Section 68 a Licence will normally last for 5 years but the Council can grant a 12 month licence where there are management or structural issues to be resolved.

### **9.15 Variation/Revocation/Cessation of Licence**

Under Sections 69 and 70 variations may be done by agreement, but the Council may not impose higher or different standards than the original Licence except if new amenity standards are prescribed by regulations. Licences may be revoked by agreement and automatically cease after 5 years or within a specific period.

A Licence ceases to be in force on the death of the Licence Holder and for the first three months following their death. The HMO is not licensable within that period, the Council



can grant a TEN. After this period a new Licence application must be submitted or the Council must make an Interim Management Order.

Other than in those circumstances a licence may be revoked if:

- There has been a significant breach of Licence conditions
- Or the Licence Holder and others involved in the management of the house are no longer fit and proper persons.
- Or the property ceases to be a HMO subject to Licensing.
- Or the Council would not have granted a new Licence for the HMO at the time it terminates the Licence because of reasons relating to the structure of the HMO which would render the property unsuitable for Licensing on similar terms.

On revocation of a Licence (unless this is because the HMO no longer requires Licensing) the Council must grant another Licence or make an Interim Management Order.

On receipt of an application for a Licence for a House in Multiple Occupation, Herefordshire Council will carry out all necessary checks as soon as practicable.

## **10.0 Interim or final empty dwelling management orders and compulsory purchase**

Subject to prescribed exceptions, The Herefordshire Council may seek authority from a Residential Property Tribunal to make Interim or Final Empty Dwelling Management Orders (EDMO).

This course of action will only be pursued:

- if a dwelling has been wholly unoccupied for at least six months or such longer period as may be prescribed.
- if there is no reasonable prospect of it becoming occupied in the near future.
- if an Interim EDMO is made, there is a reasonable prospect that the dwelling will become occupied.
- if Herefordshire Council has made reasonable effort to notify the relevant owner that they are considering making an Order and to ascertain from him (if any) what action he is taking, or is intending to take, to ensure that the dwelling is occupied.
- if any prescribed requirements have been complied with.

The Council reserves the right to consider the option of Compulsory Purchase where it is appropriate to do so.

## **11.0 Environmental Protection Act 1990**

The Council will use relevant powers to deal with specific issues covered by the Environmental Protection Act 1990 under Section 79 dealing with statutory nuisances, where a premises is in such a state to be prejudicial to health or a nuisance.

## **12.0 Other Legislation**

Other housing and tenancy related legislation will be used as appropriate in accordance with the approach outlined in this Policy.