

## Flood and Water Management Enforcement Protocol – March 2015

### 1. Introduction

This document provides supplemental guidance to the IW Council's [policy on enforcement](#) and is provided in the context of specific requirements arising from the [Flood and Water Management Act 2010](#) and the [Land Drainage Act 1991](#).

The Flood and Water Management Act 2010 introduced a new role of Lead Local Flood Authority (LLFA) and this duty has been conferred on the Isle of Wight Council.

This protocol and guidance note has been adapted from best practice identified within local authorities in England and is in line with the local government concordat on Good Enforcement. It is intended for use as guidance by Risk Management Authorities, developers and landowners.

### 2. Justification for Enforcement Protocol

The Lead Local Flood Authority has powers under the Land Drainage Act 1991 to take enforcement action in relation to watercourses where they are not Environment Agency designated main rivers.

The LLFA will take a risk-based approach to enforcement action under the Land Drainage Act 1991, taking into account the location and nature of any nuisance caused by:

- The failure to repair or maintain watercourses, bridges or drainage works
- Un-consented works
- Impediments to the proper flow of water.

This approach will take into account whether the contraventions have or are likely to increase flood risk and what the consequences of any increase in risk may be. Where works are un-consented, the Lead Local Flood Authority would require the landowner, person and/or Risk Management Authority responsible for works to prove that the un-consented works would not cause a nuisance or increase flood risk.

With regard to the nuisances described above, the Lead Local Flood Authority has powers under Sections 21, 24 and 25 of the Land Drainage Act 1991 to serve notices on individuals who have caused contraventions.

In issuing a notice the Lead Local Flood Authority may set out the works required to resolve the contravention to an acceptable standard and the date by which the works should be completed.

If the works are not completed by the date set out in the notice the Lead Local Flood Authority may take direct action to remedy the effect of the contravention or failure and seek to recover the costs incurred as well as pursue any necessary prosecution.

### Relevant sections of the Land Drainage Act

Section 14: Power for a local authority to perform works for the prevention or mitigation of flooding risk other than in connection with a main river or the banks.

Section 25: The power to serve notice on persons requiring them to carry out necessary works to maintain the flow of any watercourse and the power to carry out works in default and recover its reasonable expenses should the riparian owner fail to carry out their responsibility.

The powers that the IW Council has as a land drainage authority are permissive; therefore the IW Council does **NOT** have a duty to carry out works or to take enforcement action for every land drainage complaint. Enforcement under the Land Drainage Act 1991 will be carried out using the guiding principles as set out in the remainder of the document.

#### 4. Enforcement Process

Enforcement will be carried out using the following guiding principles:

- **Standards:** Provide/publish clear and published standards setting out the level of service provided by the council.
- **Openness:** Provision of information and advice in plain language about how we will carry out our work.
- **Helpfulness:** Provision of advice and assistance on compliance in a courteous, efficient and prompt manner.
- **Proportionality:** Action taken to be proportional to the risks.
- **Consistency:** Carried out in a fair, equitable and consistent manner and with arrangements in place to promote consistency.
- **Transparency:** Access to information regarding regulatory procedures to be freely available.
- **Accountability:** The IW Council will be accountable for the efficiency and effectiveness of its regulatory activities.
- **Targeting:** Regulatory activities should be targeted only at cases in which action is needed.

It is recommended that initial advice is sought from the Lead Local Flood Authority before undertaking works on ordinary watercourses, to ensure that landowners do not contravene ordinary

watercourse regulation requirements. Further information is available from the IW Council's website.

### **Initial Response**

Where the Lead Local Flood Authority received a watercourse enquiry, officers will log the enquiry and will carry out an initial assessment.

### **Initial Assessment**

The Lead Local Flood Authority will take enforcement action where there is, or has been, a risk to life or serious injury, internal flooding of residential or commercial properties and flooding impacting on critical services. An initial assessment will be based on the Lead Local Flood Authority's impact criteria.

In cases where there is a need for evidence of flooding the submission of one or more of the following types of evidence is required:

- i. An insurance claim
- ii. Records of emergency services and utility companies i.e. fire brigade attending to pump out a property
- iii. Dated photos of the event

The Lead Local Flood Authority may close an enforcement case file, where there is a lack of physical evidence to corroborate the impact of a flood event, or may keep the case file open and undertake further investigation at a later date.

The initial assessment will also consider the on-site conditions, any available historical data and high level indicators of potential risk, such as Environment Agency (EA) Flood Zone maps and the EA Susceptible to Surface Water Flooding (AStSWF) maps. It will also consider any other status of land e.g. conservation designations.

As part of this process the Lead Local Flood Authority may consult with a number of organisations including Island Roads, Environment Agency, Southern Water, Natural England, as appropriate.

Where the Lead Local Flood Authority is made aware of breaches to other legislation it will advise the appropriate authorities.

### **Information and advice to individuals and owners**

The Lead Local Flood Authority will inform and advise individuals or their riparian ownership responsibilities and of the route for appeal against other riparian owners where appropriate. This will include, where appropriate, referring the riparian owners to the [Upper Tribunal \(Lands Chamber\)](#) who may be able to undertake action.

Advice regarding the work required will be given at any time and will take account of local issues that may legitimately cause delays. The advice will be confirmed in writing, if not given in writing in the first instance.

### **Achieving resolution by negotiation**

Every effort will be made by the Lead Local Flood Authority to resolve the situation by means of negotiation with the person responsible and obtain compliance with a request to satisfactorily undertake the work required.

### **Achieving resolution by correspondence**

Where it is considered that further action needs to be taken by the relevant landowner, person and/or Risk Management Authority responsible, the following steps will be taken:

- The person responsible will be contacted by the Lead Local Flood Authority, the problem explained and remedial action requested. Details of the salient points of the matter will be provided in writing by letter from the Lead Local Flood Authority. The letter will be drafted in accordance with the Land Drainage Act 1991 and will explain the problem and the reason for the action being required, as well as detailing the remedial work needing to be carried out.
- For straightforward matters the aim will be to ensure that remedial work is carried out within the timeframe specified in the letter (between 7 and 21 days of the date of the letter). However, there will be occasions when it is necessary to extend the period of compliance for more complex matters and/or to accommodate exceptional circumstances e.g. weather, flood conditions, etc. The time allowed will be reasonable in the circumstances. The extent of the work required will be proportionate to the scale of the problem.

In certain circumstances practicalities may not allow for works to be done within the timeframe specified in the letter. The Lead Local Flood Authority will assess the circumstances with regards to enforcement and whether any works need to be deferred or amended to take into account the impacts of any works on wildlife. Examples where this may occur include:

- Seasonal farming practices and Environmental Schemes can restrict access or time schedules to carry out works;
- The nesting season for some birds occurs between the 1 March and 31 August and works might cause disruption if nests are present;
- Presence of protected species will influence when it is most appropriate to carry out work.

### **Serving notices under the Land Drainage Act 1991**

If a positive response to the Lead Local Flood Authority's letter is not received within the timescale specified and on inspection, no work has been satisfactorily undertaken as required, a notice under the relevant section of the Land Drainage Act, 1991 will be prepared. The notice will include the nature of the work to be carried out and any relevant right of appeal to the magistrates court within 21 days of service of notice. Notice under the Land Drainage Act 1991 is a legal document formally requesting specific work to be carried out within a set timescale.

A letter will accompany the notice and inform the responsible person that in the event of their failure to satisfactorily undertake the work, the Lead Local Flood Authority may carry out the work itself and recover from the person responsible the expenses reasonably incurred in doing so which will include the costs of pursuing the case.

### Enforcement of notices

Following service of the notice, depending on the powers available, one of four things will happen:

- The responsible person will carry out the work to the satisfaction of the council.
- The responsible person may appeal, or challenge the legality of the notice.
- The responsible person will fail to carry out the work to the satisfaction of the Lead Local Flood Authority and the Lead Local Flood Authority will arrange for the work to be completed and decide on the level of charges to be made for the work.
- The Lead Local Flood Authority will, where appropriate, decide whether to take a prosecution against the responsible person, in addition to carrying out the work and seeking to recover the costs of that work.

### Completion of proceedings

If the responsible person complies with the notice and completes the work to the satisfaction of the Lead Local Flood Authority, the Lead Local Flood Authority will write to the Responsible Person confirming the closure of the case and the end of the action.

### No action

The Lead Local Flood Authority may take no action where:

- There is currently (as of the date of the investigation/consideration of the case) no actual or potential risk to properties or infrastructure; and/or
- That the matter complained of is not currently (as of the date of the investigation/consideration of the case) the cause of the drainage problem; and/or
- The matter is trivial in nature.

If this is the case, the complainant will be advised accordingly and a written communication will be sent to the complainant explaining the reason why no action is to be taken. The complainant will also be referred, where appropriate to the [Upper Tribunal \(Lands Chamber\)](#) who may be able to undertake action. The riparian owner will also be informed, as appropriate.

Examples of matters not requiring action may include minimal silting of the watercourse, slight vegetation overgrowth, the accumulation of a small quantity of debris etc.