



BARROW BOROUGH COUNCIL

TOWN HALL
DUKE STREET
BARROW-IN-FURNESS

7th October, 2014

To: The Members of Barrow Borough Council

Madam Mayor, Ladies and Gentlemen

You are hereby summoned to attend a meeting of BARROW BOROUGH COUNCIL to be held in the COUNCIL CHAMBER at the TOWN HALL, BARROW on WEDNESDAY the 15th day of OCTOBER, 2014 COMMENCING AT 5.30 PM for the transaction of the business specified below.

Executive Director

Prior to the business of the meeting, Prayers will be offered.

Business

1. DECLARATIONS OF INTEREST.

To receive declarations by Members and/or co-optees of interests in respect of items on this Agenda.

Members are reminded that, in accordance with the revised Code of Conduct, they are required to declare any disclosable pecuniary interests or other registrable interests which have not already been declared in the Council's Register of Interests. (It is a criminal offence not to declare a disclosable pecuniary interest either in the Register or at the meeting).

Members may however, also decide, in the interests of clarity and transparency, to declare at this point in the meeting, any such disclosable pecuniary interests which they have already declared in the Register, as well as any other registrable or other interests.

2. MINUTES. To confirm the Minutes of the Council's proceedings held on 22nd July and the Extraordinary meeting held on 30th September, 2014.
3. TO RECEIVE APOLOGIES FOR ABSENCE.

To expedite the business of the meeting, Members are requested to give the Executive Director adequate notice of any Amendment which they propose to raise.

4. ANNOUNCEMENTS – To receive any announcements from the Chairman, Leader or Head of Paid Service.

5. (A) TO RECEIVE REPORTS FROM THE FOLLOWING COMMITTEES AND CONSIDER RECOMMENDATIONS:-

- (1) Planning
- (2) Licensing Regulatory
- (3) Licensing
- (4) Executive
- (5) Audit

(B) QUESTIONS TO THE LEADER OF THE COUNCIL

Council has agreed that time be set aside for questions to the Leader of the Council.

Standing Order 10.2 and 10.4 set out the procedure for questions to the Leader and the notice period required.

The Leader will also take any questions without notice relevant to the reports and minutes detailed on the agenda.

6. COUNCILLOR J R RICHARDSON - NON ATTENDANCE AT COUNCIL AND COMMITTEE MEETINGS.

7. REVIEW OF CONSTITUTION.

8. REVIEW OF ENFORCEMENT POLICY FOR ENVIRONMENTAL HEALTH (STAGE 1).

9. TO PASS THE FOLLOWING RESOLUTION, THAT IS TO SAY:

That the Council authorises the fixing of its Common Seal to any documents to give effect to the Minutes and proceedings of the Committees submitted to or approved by this meeting and any other matters dealt with at this meeting.

To expedite the business of the meeting, Members are requested to give the Executive Director adequate notice of any Amendment which they propose to raise.

COUNCIL	Agenda Item 5(A)(1)
Date of Meeting: 15th October, 2014	
Reporting Officer: Executive Director	
<p>REPORT OF THE PLANNING COMMITTEE (Report of the meetings held on 12th August, 9th September and 7th October, 2014.</p> <p>Recommendations:</p> <p>There were no recommendations referred to Council from the above meetings.</p> <p>If necessary an addendum to this report will deal with any recommendations from the Planning Committee to be held on 7th October, 2014.</p> <p><u>Delegated Decisions</u></p> <p>The matters determined by the Planning Committee in exercise of the powers which have been delegated to the Committee will be detailed in the Minutes of the meetings noted above reproduced in Volume 2 2014/15 of the printed Minutes.</p>	

COUNCIL	Agenda Item 5(A)(2)
Date of Meeting: 15th October, 2014	
Reporting Officer: Executive Director	
<p>REPORT OF THE LICENSING REGULATORY COMMITTEE (Report of the meetings held on 24th July and 4th September, 2014)</p> <p>Recommendations:</p> <p>There were no recommendations referred to Council from the above meetings.</p> <p><u>Delegated Decisions</u></p> <p>The matters determined by the Licensing Regulatory Committee in exercise of the powers which have been delegated to the Committee will be detailed in the Minutes of the meetings noted above reproduced in Volume 2 2014/15 of the printed Minutes.</p>	

COUNCIL	Agenda Item 5(A)(3)
Date of Meeting: 15th October, 2014	
Reporting Officer: Executive Director	
REPORT OF THE LICENSING COMMITTEE	
The meetings to be held on 24th July and 4th September, 2014 were cancelled.	

COUNCIL	Agenda Item 5(A)(4)
Date of Meeting: 15th October, 2014	
Reporting Officer: Executive Director	
<p>REPORT OF THE EXECUTIVE COMMITTEE (Report of the meetings held on 30th July and 10th September, 2014)</p> <p>Recommendations:</p> <p>The following recommendations have been referred to Council.</p> <p><u>Executive Committee – 30th July, 2014</u></p> <p>1.0 IT Services Strategic Plan 2014-2015</p> <p>1.1 The Committee considered the IT Services Strategic Plan 2014-2015 which covered key issues such as the internal IT Service provision, its fit within the corporate framework and the Council's IT Development Framework.</p> <p>1.2 Recommendation:-</p> <p>To recommend the Council to approve the IT Services Strategic Plan 2014-2015.</p> <p>2.0 Local Council Tax Reduction Scheme 2015-2016</p> <p>2.1 The Director of Resources reported that the Local Council Tax Reduction Scheme 2015-2016 must be adopted by January 2015. There were consultation requirements if changes were to be made to the existing scheme.</p> <p>2.2 Recommendation:-</p> <p>To recommend the Council that the existing Scheme be continued for 2015/16.</p>	

3.0 Universal Credit

3.1 The Committee considered a detailed report of the Director of Resources regarding Universal Credit. She informed the Committee that DWP had approached the Council in order to propose a Local Authority Delivery Partnership Agreement. That was an Agreement where the Council would provide parts of the Universal Credit journey to claimants and would receive some grant towards that. Further reports would be submitted in order to inform the committee's decision on whether to sign up to the Agreement.

3.2 Recommendation:-

To recommend the Council to delegate the signing of the Local Authority Delivery Partnership Agreement to the Executive Director, should the Executive Committee agree to sign up.

4.0 Regrading Applications

4.1 The Director of Resources reported that Management Board had met on 13th June, 2014 to consider regrading applications.

4.2 Recommendation:-

To recommend the Council:-

- (i) **To agree that post numbers DES192, DES193, DES194 and DES195 be re-graded to Scale 2-3 (£14,880 to £16,998), and that the CEO's salary be increased to £16,215 per annum (Spinal Point 15) with effect from 29th March, 2014; and**
- (ii) **To agree that post number CTS020 be re-graded to PO10; £35,784 with effect from 29th May, 2014.**

Executive Committee – 10th September, 2014

5.0 2013-2014 Outturn and the Budget Strategy

5.1 The Director of Resources submitted a detailed report regarding the outturn for 2013-2014 revenue, capital and treasury together with the position on the Council's financial reserves. The report also contained the subsequent revisions to the Medium Term Financial Plan, reserves and balances, and the Capital Programme. The new Reserves and Balances Policy which had been used to assess the financial reserves had also been included along with an update on the Budget Strategy position at the end of year two of the four-year plan.

5.2 Recommendation:-

To recommend the Council:-

- (i) To note the outturn for 2013-2014;**
- (ii) To approve the 2013-2014 final budget as £13m;**
- (iii) To approve the Medium Term Financial Plan revisions;**
- (iv) To approve the removal of the budget support required from reserves for 2014-2015;**
- (v) To note the Budget Strategy update;**
- (vi) To approve the Annual Treasury Management Review;**
- (vii) To approve the Capital Programme for 2014-2015 to 2016-2017, including the projects added from the release of reserves;**
- (viii) To note the amounts written off under delegation in relation to 2013-2014;**
- (ix) To approve the Reserves and Balances Policy and the General Fund balance contained therein; and**
- (x) To approve the grouping/classification of financial reserves as set out in Section G of the report in accordance with the Reserves and Balances Policy.**

6.0 Lowsy Point Beach Huts and Piel Island Cottages

6.1 The Director of Resources reported that there were a small number of properties with particular characteristics where the Council awarded a discretionary discount of 50%. The discretionary discount was awarded on an annual basis.

6.2 Recommendation:-

To recommend the Council that for 2015-2016 the Council awards the 50% discretionary discount to the properties set out in the report.

7.0 War Pensions Disregard

7.1 The Director of Resources reminded the Committee that Local Authorities could disregard up to 100% of war pension payments when calculating entitlement to Housing Benefit and the Council Tax support; the first £10 was statutorily disregarded for Housing Benefit. That included all War Disablement Pensions, War Widow's Pensions, Armed Forces Compensation Scheme payments and any corresponding pensions payable to a widower or a surviving civil partner.

7.2 Recommendation:-

To recommend the Council:-

- (i) To approve the disregard of war pensions up to 100% for Housing Benefit for 2015/16; and**
- (ii) To approve the policy of disregarding of war pensions at 100% for Council Tax support.**

8.0 Employer Pensions Discretions

8.1 The Director of Resources informed the Committee that each pension scheme employer must formulate and keep under review their policy concerning the exercise of their functions in awarding additional pension to members and in operating early retirement and flexible retirement provisions including those related to redundancy and compensatory payments.

8.2 Recommendation:-

To recommend the Council to approve the Employers Discretions Statement of Policy.

9.0 Administration of Re-grading Policy

9.1 The Committee considered a report regarding the administration of Re-grading Policy. It was proposed that the approval was moved from full Council to the Executive Committee. That would significantly reduce the time from the employee applying for re-grading and the implementation of the re-grade. Where appeals were decided by the appeals panel, the date of action would be the next Executive Committee to maintain the consistent treatment of re-grades.

9.2 Recommendation:-

To recommend the Council to approve the delegation of approving re-grading applications to the Executive Committee.

10.0 Cumbria Housing Partnership

10.1 The Committee considered a detailed report from the Executive Director that explained the Cumbria Housing Partnership and the Council's current relationship. The report proposed that the Council becomes a full member of the Partnership and sets out the considerations that it involved.

10.2 Recommendation:-

To recommend the Council:-

- (i) To agree that the Council becomes a full member of the Cumbria Housing Partnership; and**
- (ii) To agree that the Housing Maintenance Manager be appointed to represent the Council as a Director on the board of the Cumbria Housing Partnership.**

11.0 The Council Plan 2014-2016

11.1 The Executive Director informed the Committee that the Council Plan 2014-2016 brought together the Council's approved corporate policies, the Council's vision policies and governance arrangements to form the Council Plan. The Council Plan was the overarching plan for the Council and sets out the focus for the priorities and direction for the use of the available resources.

11.2 Recommendation:-

To recommend the Council to approve the Council Plan 2014-2016.

12.0 Housing Service Establishment

12.1 The Executive Director informed the Committee of the proposed changes to the Housing establishment to reflect the changing housing market in which it operated.

12.2 Recommendation:-

To recommend the Council:-

- (i) To note the information contained in the report;**
- (ii) To agree the increase in resources and development of the Reception Service to be the first point of call for the Service;**
- (iii) To agree the introduction of generic Housing Officers in the Operational teams;**
- (iv) To agree the creation of two new posts of Senior Housing Officer (Scale 6/SO1) and Housing Assistant (Scale 2/3);**
- (v) To agree the changes of title as detailed in the report and level of reward to reflect additional duties as follows:-**
 - Re-grade of Postholder OHS 525 from Scale 1/2 to Scale 2/3;**
 - Re-grade of Postholders OHS 140 and OHS 145 from Scale 6 to Scale 6/SO1;**
 - Re-grade of Postholders OHS 270, OHS 275 and OHS 380 from Scale 5/6 Scale 6/SO1;**
 - Re-grade of Postholders OHS 300, OHS 390, OHS 470, OHS 475, OHS 290, OHS 285, OHS 263, OHS 477 and OHS 080 from Scale 2/4 to Scale 3/5;**
 - Re-grade of Postholder OHS 040 from Scale 4 to Scale 4/5;**
 - Re-grade of Postholder OHS 500 from Scale PO8 to PO14; and**
 - Re-grade of Postholder OHS 095 from PO6 to PO10.**

Delegated Decisions

The matters determined by the Executive Committee in exercise of the powers which have been delegated to the Committee will be detailed in the Minutes of the meetings noted above reproduced in Volume 2 2014/15 of the printed Minutes.

COUNCIL	Agenda Item 5(A)(5)
Date of Meeting: 15th October, 2014	
Reporting Officer: Executive Director	
REPORT OF THE AUDIT COMMITTEE (Report of the meeting held on 25th September, 2014)	
Recommendations:	
There were no recommendations referred to Council from the above meeting.	
<u>Delegated Decisions</u>	
The matters determined by the Audit Committee in exercise of the powers which have been delegated to the Committee will be detailed in the Minutes of the meeting noted above reproduced in Volume 2 2014/15 of the printed Minutes.	

COUNCIL	Agenda Item 6
Date of Meeting: 15th October, 2014	
Reporting Officer: Executive Director	
<p>Title: Councillor J R Richardson - Non Attendance at Council and Committee Meetings</p> <p>Summary and Conclusions:</p> <p>The report seeks Members' views on dispensation of Section 85 of the Local Government Act 1972 in respect of Councillor J R Richardson.</p> <p>Recommendations:</p> <p>Members' views are requested.</p>	

Report

Under the Local Government Act 1972 Section 85, Councillors who fail to attend Council meetings for a six month period are automatically removed from office. This can be waived by resolution of the Council, provided the resolution is within the six month period of non-attendance.

I have been contacted by the Conservative Group on the Borough Council requesting dispensation for non-attendance for Councillor Richardson who, due to illness, is currently unable to attend Council or other committee meetings. I have received confirmation from the Conservative Group that Councillor Richardson continues in his capacity as Leader of their Group.

I support the dispensation sought and Council's instructions are requested.

COUNCIL	Agenda Item 7
Date of Meeting: 15th October, 2014	
Reporting Officer: Executive Director	
<p>Title: Review of Constitution</p> <p>Summary and Conclusions:</p> <p>The Constitution needs to be amended to reflect changes in the management structure, current practise and changes in legislative requirements. Committee and Officer Delegations have been updated.</p> <p>Recommendations:</p> <p>Members are recommended to approve the amendments to the Constitution.</p>	

Report

The Constitution has been reviewed to reflect the changes in the management structure, current practise and changes in legislative requirements. The changes are contained in Part 3 of the Constitution (Committee and Officer Delegations) and are summarised below. Part 3 of the Constitution as amended is attached as **Appendix 1**.

The new management structure has also been inserted in Part 9 (**Appendix 2**).

1. Planning Committee – terms of reference and delegations amended to reflect Development Services functions and legislative changes.
2. Executive Directors' powers to exercise other officer delegations clarified.
3. Environmental Health Manager – delegations changed to reflect new Licensing Committee structure, legislative changes.
4. Development Services Manager and Building Control Manager – change to reflect new structure and legislative changes. Now Development Services Manager (Planning) and Development Services Manager (Building Control).
5. Amendment to Assistant Director of Regeneration and Built Environment to include delegation to act in the absence of the Development Services Manager (Planning) and (Building Control).
6. Officer Delegation Index updated.

COUNCIL		Agenda Item 8
Date of Meeting:	15th October, 2014	
Reporting Officer:	Executive Director	
<p>Title: Review of Enforcement Policy for Environmental Health (Stage 1)</p> <p>Summary and Conclusions:</p> <p>It has become necessary to review the Enforcement Policy for Environmental Health as a result of changes in National Guidance/Legislation and restructuring within the Council. Specific policies for all the work areas of the Environmental Health Department are being introduced in stages, in accordance with current best practice.</p> <p>Recommendations:</p> <p>That Members agree to:-</p> <ol style="list-style-type: none"> 1. Amend the existing Enforcement Policy for Environmental Health by:- <ol style="list-style-type: none"> a) Including a reference to the Regulators' Code which came in to force in 2014; b) Confirming its relevance to all work areas of the Environmental Health department except Food Safety and Health and Safety; and c) Confirming its relevance to enforcement work in the Property Services/Street Care departments; and 2. Adopt two new specific Enforcement Policies for the work areas of Food Safety and Health and Safety which include reference to the Regulator's Code. 		

Report

The existing Enforcement Policy for the Environmental Health Department requires updating to include reference to the Regulators' Code which came into force in April 2014. This new Code clarifies the provisions contained in the previous Regulators' Compliance Code in a shorter and more accessible format. In making these changes it is expected that regulators and those they regulate

will have a clear understanding of the services that can be expected and will feel able to challenge these if not fulfilled.

The Enforcement Policy also requires amending to confirm its relevance to all work areas of the Environmental Health Department except Food Safety and Health and Safety which will now have their own specific enforcement policy. In addition, as a result of restructuring, some enforcement responsibilities that were formerly within the Environmental Health Department are now within the Property Services and Street Care Departments. Therefore Members are being asked to confirm the Enforcement Policy's relevance to those Departments.

In line with current best practice, specific enforcement policies for all areas of work in the Environmental Health Department are being introduced in stages. Each specific policy will have a common format and will include further details on the enforcement approach for each work area.

The first two enforcement policies to be introduced relate to Food Safety (attached at **Appendix 3**) and Health and Safety (attached at **Appendix 4**). The policies have been written having regard to the Food Standards Agency's Framework Agreement, the Health and Safety Executive's guidance, the Enforcement Concordat and the Regulators' Code (2014). Officers will therefore have regard to and implement the principles of proportionality, consistency, transparency and targeting whilst enforcing legislation.

The policies will support service delivery and intervention plans and procedures, and will be actively brought to the attention of all relevant staff and stakeholders.

Part 3

Responsibility for Functions

- (1) Policy and Other Committees**
- (2) Officer Delegations**

(1) Policy and Other Committees

TERMS OF REFERENCE

Executive Committee

Terms of Reference and delegation

To discharge the following functions of the Council.

- To recommend policy and changes to policy and thereafter to oversee its implementation.
- To consult on, recommend and monitor the Annual budgets.
- To consider and make recommendations regarding the annual fees and charges.
- To enable the formation of partnerships and other agencies, the business and voluntary sectors locally in order to address local needs.
- To take any necessary decisions regarding the delivery of Council services and the discharge of Council functions, within the agreed policy and budgetary framework set by the Council, including:-
 - The formation of partnerships
 - Award of contracts in excess of £100,000
 - Sale of land, property and other assets with a value in excess of £10,000
 - Agreement of leases in excess of 10 years
- To take into account the findings of the Overview and Scrutiny Committee and to refer relevant matters to the Overview and Scrutiny Committee.
- To make recommendations regarding changes to the establishment and fundamental changes to Conditions of Service of employees of the Council.
- To make recommendations regarding Clearance Areas/Compulsory Purchase Orders and renewal areas.
- To establish a Housing Management Forum to advise on all matters pertaining to the management of Council housing and to operate under the following protocol:-

- **The Executive Committee shall automatically agree any such recommendations or refer it back for further consideration**
- **If on resubmission the Executive Committee is still unwilling to approve the recommendation, it is automatically referred to full Council for decision.**
- To establish standing and ad-hoc forums to consider and make recommendations on significant policy issues. Such forums which shall operate as working parties to be politically proportionate and to involve lay members where considered appropriate.
- To approve all matters relating to Local Development Documents in the Local Development Scheme.
- To make interim and Final Management Orders under Part 4 of Chapter 1 of the Housing Act 2004.
- To make Closing Orders and Demolition Orders under Part 1 Chapter 4 of the Housing Act 2004.

Audit Committee

Terms of Reference and delegation

Audit Activity

- To consider the head of internal audit's annual report and opinion, and a summary of internal audit activity (actual and planned) and the level of assurance it can give over the Council's corporate governance arrangements.
- To consider summaries of specific internal audit reports.
- To consider reports dealing with the management and performance of the internal audit provider.
- To consider reports from internal audit on agreed recommendations not implemented within reasonable timescale.
- To consider the external auditor's annual letter, relevant reports, and the report to the Management Board and Council.
- To consider specific reports as agreed with the external auditor.
- To comment on the scope and depth of external audit work and to ensure it gives value for money.
- To consider the appointment of the external auditor where appropriate.

Regulatory Framework

- To maintain an overview of the Council's Constitution in respect of contract standing order, financial regulations.
- To promote and maintain high standards of conduct for elected and co-opted members in accordance with the relevant provisions of the Localism Act.
- To review any issue referred to it by the Executive Director or Director of Resources, or any Council body.
- To monitor the effective development and operation of risk management and corporate governance in the Council.
- To monitor Council policies on the anti-fraud and anti-corruption strategy and the Council's complaints process.
- To approve the production of the authority's Annual Governance Statement and to recommend its adoption.
- To consider the Council's arrangement for corporate governance and agreeing necessary actions to ensure compliance with best practice.
- To consider the Council's compliance with its own and other published standards and controls.

Accounts

- To review and approve the annual statement of accounts. Specifically. To consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statement or from the audit that need to be brought to the attention of the Council.
- To consider the external auditor's report to those charged with governance on issues arising from the audit of the accounts.

Planning Committee

Terms of Reference and delegation

Functions relating to town and country planning and development control as specified in Part (a) Schedule 1 to the Local Authorities (Functions and Responsibilities)(England) Regulations 2000/SI12853

- All building regulation matters unless otherwise delegated.
- The functions relating to High Hedges under Part 8 of the Anti-Social Behaviour Act 2003.

For avoidance of doubt, these powers and functions include power in respect of any approval, consent or other matter for which the Committee is responsible:

- To impose any condition, limitation or other restriction or other terms
- To determine whether and in what manner to enforce any failure to comply with the same
- To amend, vary, modify or revoke the same or any condition, limitation or term thereof.

Delegations:

Officers as detailed in Part 3(2) of The Constitution

Licensing Regulatory Committee

Terms of Reference and delegation

To deal with private hire, hackney carriage and other licensing and registration functions (other than Licensing Act 2003 and Gambling Act 2005 functions designated to be the responsibility of the Licensing Committee by virtue of the implementation of relevant legislation). This will include all functions under all legislation details in Part B of Schedule 1 to the Local Authorities (Functions and Responsibilities)(England) Regulations 2000 as amended (other than the Licensing Act 2003 and Gambling Act 2005 functions) and all other Licensing functions for which the Council may be responsible. This includes all powers in respect of any approval, consent, licence, permission or registration for which the Committee is responsible including, but not limited to: -

- a) To grant, vary, alter, amend, suspend or revoke any approval, consent, licence, permission or registration;
- b) To impose any condition, limitation or other restriction or other terms on any approval, consent, licence, permission or registration;
- c) To determine whether and in what manner to enforce any failure to comply with any approval, consent, licence, permission or registration and;
- d) To amend, vary, modify or revoke any condition, limitation or term imposed on any approval, consent, licence, permission or registration.

The Licensing Regulatory Committee shall consist of 12 Members.

Delegations:

Officers as detailed in Part 3(2) of The Constitution

Licensing Committee

Terms of Reference and delegation

To deal with all functions relating to licensing and registration set out in the Licensing Act 2003 and Gambling Act 2005 and any amendments thereof or regulations made thereunder insofar as they are not specifically designated in the Act as being the function of the Council or some other body. For the avoidance of doubt this includes setting the amount of any charges to be made.

Note: For the avoidance of doubt, the Licensing Committee will be empowered (as far as it is legally able to do so) to form such sub-committees as it thinks fit to deal with any matter which the Committee itself is empowered to deal with.

The Licensing Committee shall consist of 12 Members.

Delegations:

Officers as detailed in Part 3(2) of The Constitution and also the Licensing Sub-Committee as laid down in the recommended delegation of functions in the Licensing Act 2003 and Gambling Act 2005 policies

Housing Management Forum

Terms of Reference and delegation

To consider and make recommendations to the Executive Committee on all matters pertaining to the management of the Council's housing stock (see Executive Committee for protocol).

(2) Officer Delegations

INDEX

<u>Delegated Officer</u>	<u>Section</u>
Executive Director	A
Director of Resources	B
Assistant Director of Regeneration and Built Environment	C
Assistant Director Community Services	D
Assistant Director Housing	E
Monitoring Officer	F
Development Services Manager (Planning)	G
Development Services Manager (Building Control)	H
Environmental Health Manager	I

EXECUTIVE DIRECTOR

General Management Responsibilities of Directors

1. The day to day management of buildings under their control.
2. To incur revenue expenditure within the Council's budgets subject to compliance with Standing Orders, Financial Regulations and any Council policy for the time being in force.
3. To manage all establishment and staffing matters within their Departments provided that manpower budgets are not exceeded and approved staffing establishments are not varied and in compliance with any Council policy for the time being in force.
4. To deal with all operational matters within their areas of responsibility to ensure compliance with Council Policy and any relevant legislation.

General Management Responsibility

The Executive Director has, subject to compliance with standing orders, financial regulations and any Council policy for the time being in force, responsibility for the control of the day to day management of the authority through the Management Board.

Civic Matters

To deal with matters concerned with civic and ceremonial occasions together with civic hospitality.

Exercising of Other Delegations

To exercise a power delegated to any Officer (other than where legislative restrictions apply. This includes the S151 Officer and Monitoring Officer).

Health and Safety at Work etc Act 1974

To oversee the discharge of the Employer's responsibilities associated with the safety, health and welfare of the Council's employees and the safety, health and welfare of persons not in the Council's employment who may be placed at risk by the operations of the authority.

Appointment of Staff

Delegated authority to appoint staff as Duly Authorised Officers and Inspectors of the Council and suitably competent individuals not in the employ of the Council, in appropriate circumstances.

To authorise minor changes to the establishment that have no budgetary implications.

Car Parking Operations

Cancellation of excess charge notices in accordance with the guidelines laid down.

Reduction in Hire Charges for Council Buildings

Determination of any applications from individuals and or organisations using the facilities in consultation with the Chairman and Vice-Chairman of the Executive Committee, Opposition Group Spokesperson.

Flying of Union Jack: Barrow Town Hall

Authorised at his discretion or on direction from the Executive Committee to arrange for the flying of the Union Flag on such occasions as may be appropriate and which are not among those presently specified.

Official Spokespersons

To approve attendance by Official Spokespersons at future training development events linked to their speciality and the payment of travelling and subsistence.

Essential User Car Status

Delegated authority to Management Board for the granting of essential user status and decisions to be subsequently reported to the Executive Committee for information (Minute No. 28 Personnel Sub-Committee, 13th October, 1992 refers).

DIRECTOR OF RESOURCES

General Management Responsibilities

1. The day to day management of buildings under their control.
2. To incur revenue expenditure within the Council's budgets subject to compliance with Standing Orders, Financial Regulations and any Council policy for the time being in force.
3. To manage all establishment and staffing matters within their Departments provided that manpower budgets are not exceeded and approved staffing establishments are not varied and in compliance with any Council policy for the time being in force.
4. To deal with all operational matters within their areas of responsibility to ensure compliance with Council policy and any relevant legislation.

Financial Regulations

The Council's Financial Regulations are determined by the Director of Resources and set out in more detail the statutory powers of the Director of Resources and the rules within which the financial affairs of the Council are administered.

Financial Administration

The Director of Resources is the statutory officer responsible for the administration of all aspects of the Council's financial affairs.

The Director of Resources is delegated to exercise all of the Council's powers and duties in respect of:

- (a) Revenue Budgets; preparing the annual budget for the General Fund and the Housing Revenue Account. Estimating the Medium Term Financial Plan for the Council.
- (b) Incur lawful expenditure on behalf of the Council and collect all monies due the Council; accounting for all transactions in accordance with the relevant Codes of Practice and Regulations.
- (c) Treasury Management; borrowing, investing and financing activities.
- (d) Capital Finance; preparing the Capital Programme, Capital Funding and calculating the Capital Financing Requirement.
- (e) Council Tax; setting the Council Tax base, calculating the Council Tax Requirement and the Council Tax. Billing and collecting the Council Tax due.

- (f) NNDR; dealing with all matters relating to the agency arrangements, including billing, collecting and the award of discretionary relief.
- (g) Housing Benefit and Council Tax support; all determinations, assessments, awards and payments.

Representation in the Magistrates Court

To make future changes to the list of Liberata employees representing the Council in the Magistrates Court as Section 151 Officer to deal with local taxation matters.

Waiving Repayments of Discount under the Housing Act 2004

To ensure applications to waive repayment of the discount under the Right to Buy are dealt with expediently and in a confidential matter, the Assistant Director Housing and Director of Resources be delegated to consider and decide on such application after consultation with the Chairman of the Executive Committee.

Miscellaneous Corporate Matters

The Director of Resources is authorised to institute legal proceedings in respect of any matter relating to the functions of the Council (including the service of any notice or order, the exercise of any power of entry and engaging the Council's solicitors) in any case where such action is necessary to give effect to decisions of the Council (including for the avoidance of doubt decisions of the executive, any executive member or any committee or officer acting under delegated powers) or in any case where the Director of Resources considers that such action is necessary to protect the Council's interests.

To initiate and (where appropriate) conduct proceedings in the appropriate Courts for the recovery of National Non-Domestic Rates, Community Charge, Council Tax and any indebtedness to the Council and also to take any necessary action under the Housing Benefit Counter Fraud Regulations, including the giving of formal cautions.

To witness the affixing of the Common Seal of the Council to all documents where necessary to give effect to any act or decision expressly or impliedly authorised by the Council or any of its Committees or Senior Officers acting under delegated authority.

ASSISTANT DIRECTOR OF REGENERATION AND BUILT ENVIRONMENT

General Management Responsibilities of Assistant Director

1. The day to day management of buildings under their control.
2. To incur revenue expenditure within the Council's budget subject to compliance with Standing Orders, Financial Regulations and any Council policy for the time being in force.
3. To manage all establishment and staffing matters within their Departments provided that manpower budgets are not exceeded and approved staffing establishments are not varied and in compliance with any Council policy for the time being in force.
4. To deal with all operational matters within their areas of responsibility to ensure compliance with Council policy and any relevant legislation.
5. Responsible for the preparation of the Council's Corporate Asset Management Plan for presentation to and approved by Members and submission to the Department of Communities and Local Government or the relevant Government Department.
6. Responsible for the proper management of all the general Property and Facilities used by the Council in connection with the carrying out of its functions and all other land and property owned by the Council.

Delegation Agreement with Regard to Estate Matters

7. Granting New Leases (with the exception of Council owned shops and garages)

Authority to enter into new leases under the Landlord and Tenant Acts up to a period of five years and a value of £10,000.

Leases for a period of anything under ten years and/or with a value exceeding £10,000 can be agreed in consultation with the Chairman and Vice-Chairman of the Executive Committee.

8. Disposals of Land

Authority to sell, in accordance with the Council's Code of Practice for the sale or disposal of land, property and other interests in land (1) all agreed surplus land and property and (2) other land and property with a value less than £10,000.

9. Licences

Authority to enter into licences in respect of land and property owned by the Council.

10. **Housing Renovation Grants**

Renovation Grants

In consultation with the Renovation Grants Panel the Property Services Group Manager be authorised to process and approve applications for housing renovation grants as follows Renovation Grants, Disabled Facilities Grants and Home Repair Assistance Grants.

Housing Renovation Grants - Revised Approvals

Delegated Authority to the Property Services Group Manager to authorise revised approvals subject to reporting back to the next subsequent meeting of the Renovation Grants Panel.

11. **Housing Act 2004**

Delegated authority for those matters listed below in relation to Mandatory Licensing of Houses in Multiple Occupation and taking enforcement action under the Housing Health and Safety Rating Scheme:-

- making and serving, varying and revoking of notices and orders;
- requisitions for documentation;
- powers to take emergency remedial action and prohibition, powers of entry, seeking warrants to enter;
- applications for Rent Repayment Order.

Delegated authority to agree that the decision and all reasonable enquiries to facilitate that decision to grant, refuse, revoke or vary a licence and the length of licence and charge for a licence in relation to Mandatory Licensing of Houses in Multiple Occupation and, that any person who is not satisfied with any decision may take the matter before the Residential Property Tribunal in the manner prescribed by the Act.

12. **Legal Notices in Respect of Obtaining Information**

Obtaining of information under Section 330 of the Town and Country Planning Act 1990, or any amendment or re-enactment thereof, as to interests in land – authority in respect of both the service of any such notices and subsequent enforcement action for non-compliance.

The obtaining of particulars of persons interested in land under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976, or any amendment or re-enactment thereof – authority in respect of both the service of any such notices and subsequent enforcement action for non-compliance.

Exercising of Other Delegations

To exercise a power delegated to the Development Services Manager (Development Control and the Development Services Manager (Building Control)

ASSISTANT DIRECTOR COMMUNITY SERVICES

1. The day to day management of buildings under their control.
2. To incur revenue expenditure within the Council's budget subject to compliance with Standing Orders, Financial Regulations and any Council policy for the time being in force.
3. To manage all establishment and staffing matters within their Departments provided that manpower budgets are not exceeded and approved staffing establishments are not varied and in compliance with any Council policy for the time being in force.
4. To deal with all operational matters within their areas of responsibility to ensure compliance with Council policy and any relevant legislation.
5. Authority to serve and revoke Statutory and Fixed Penalty Notices and to take appropriate enforcement action in the event of non-compliance in accordance with the duties imposed by the following legislation.

Environmental Protection Act (Part X111) Control of Stray Dogs

- i) Functions imposed or conferred by section 149 (1) on the Assistant Director - Community Services delegated to the Streetcare Manager and team.
 - ii) Authority for the Assistant Director - Community Services to waive kennelling fees, either in part or in full, where appropriate, after consideration of the social implications of each case.
6. Delegation agreement with regard to Estate Matters
 - 1) Landlord and Tenant Act

Authority to deal with all matters related to the Landlords and Tenant Act regarding Barrow Market, including rent reviews and variations, lease renewals, notices to quit and landlords approvals, where appropriate.
 7. Management and enforcement of Market Tenancy conditions including use of legal remedies to deal with breaches by current and former tenants.
 8. Authority to enter into licenses in respect of allotments, garage bases, fun fairs and ice cream vending on an annual basis.
 9. To authorise Covert Surveillance under the Regulation of Investigatory Powers Act and within the Council's adopted policy.

ASSISTANT DIRECTOR HOUSING

Delegated authority for the management of all stock within the Council's Housing Revenue Account to be exercised in accordance with all relevant legislation and the Council's agreed policy with particular reference to:-

- Allocation of residential property and garages.
- Estate management of Council estates including public areas provided in conjunction with the residential accommodation.
- Management and enforcement of tenancy conditions including use of legal remedies to remedy breaches.
- Action to recover debts outstanding with regards to former Council tenants including use of legal redress.
- Adaptations for disabled tenants up to the Council agreed limit - currently £10,000 (Minute No. 65, Environmental Health and Housing Committee, 3rd December, 1999).
- Action to defend the Council against any legal claims made against it in connection with the management of the Council's housing stock, for example disrepair.
- That the Assistant Director Housing be authorised to progress such sales so long as it does not form part of a communal area around properties such as flats, where individual gardens do not currently exist; and has a boundary which is adjoining an existing garden area belonging to the prospective purchaser. Should a request be declined, the prospective purchaser would have the opportunity to appeal through the Housing Management Forum.
- Authority to enter into new leases for Council owned shops and garages up to a period of 5 years and a value of £10,000. Leases for a period of anything under ten years and/or with a value exceeding £10,000 can be agreed in consultation with the Chairman of the Housing Management Forum.

Fulfilment of the Council's statutory duties with regards homeless persons.

Waiving Repayments of Discount under the Housing Act 2004

To ensure applications to waive repayment of the discount under the Right to Buy are dealt with expediently and in a confidential manner, the Assistant Director Housing and Director of Resources be delegated to consider and decide on such application after consultation with the Chairman of the Executive Committee.

MONITORING OFFICER

As Monitoring Officer to have responsibility as Statutory Officer under Section 5 of the Local Government and Housing Act 1989.

DEVELOPMENT SERVICES MANAGER (PLANNING)

The Development Services Manager (planning) be authorised to carry out the Assistant Director of Regeneration and Built Environment's functions as follows:-

- (A) To determine all planning applications, applications for advertisement consent, listed building consent, Screening Opinions as submitted under the EIA Regulations, Larger Home Extension applications, and applications for all applications pertaining to Prior Approvals and Prior Notifications, and to make observations on all statutory and other notifications including consultations on County Matter applications except:-
- (a) Where the determination or observation would be contrary to current National Guidance, the provisions of an approved development plan or other stated Council policies.
 - (b) Where the determination or observation would be contrary to a recommendation of a Statutory Consultee.
 - (c) Where the proposals or applications generate written planning comment from neighbours or other interested parties prior to determination or within 21 days of their publication in the press or the despatch of a written consultation which would be contrary to the prospective decision.
 - (d) Where any Member notifies the Assistant Director of Regeneration and Built Environment or Case Officer in writing within 21 days of the despatch of the weekly list of planning applications that he or she wishes the application to be referred to the Planning Committee for determination, unless the Member is satisfied by attending the Planning Panel and considering the Officer recommendations. (A pro forma is provided for this purpose with each copy of the weekly list of planning applications).
 - (e) Where the Assistant Director of Regeneration and Built Environment is of the view that the application or matter should be referred to the Planning Committee for determination.
- (B) To take, after consultation with the Planning Panel any necessary enforcement action including the service of a stop notice or a Temporary Stop Notice under Section 171E of the Planning Act 1990 where such development is in the process of being carried out and is considered to be unacceptable.
- (C) To determine minor issues falling within the Case Priority Assessment List Level 4 of Council's Enforcement Policy Guidance which in the professional judgement of the Assistant Director of Regeneration and Built Environment.

- (D) To determine any matters when reserved or made the subject of conditions, in a Planning Consent, or any material or non-material amendments to that consent.
- (E) To determine applications for Certificates of Lawfulness.
- (F) To exercise the powers and duties of the Council under Sections 211 to 214 of the Town and Country Planning Act, 1990 insofar as they relate to responding to notifications of intention to fell trees in Conservation Areas and to compiling a register under Section 214 of the said Act.
- (G) To determine applications for works to trees including felling, pruning and requirements to replant in respect of trees subject to Tree Preservation Orders and to confirm unopposed Tree Preservation Orders.
- (H) All decisions in line with Code of Conduct.
- (I) To exercise the authority's functions under Section 225 of the Planning Act 1990.
- (J) To deal with all except the most serious cases, which fall into case priority assessment list level 1 of the revised Planning Enforcement Policy.
- (K) To approve within budget provision, work on agreed enhancement schemes.
- (L) To determine, in consultation with the Planning Panel, the issue of remedial notices and to take any necessary action arising therefrom in relation to high hedges under Part 8 of the Anti-Social Behaviour Act 2003.

DEVELOPMENT SERVICES MANAGER (BUILDING CONTROL)

The Building Control Manager be authorised to carry out the Assistant Director of Regeneration and Built Environment's functions as follows:-

- A. To be the Council's representative and to take decisions on behalf of the Council under the Safety of Sports Grounds Act, 1975.
- B. To deal with all matters (including the servicing of notices and the institution of legal proceedings) under the provisions of the Building Act, 1984 Section 77 (Dangerous Structures) and Section 78 (Dangerous Structures – Emergency Measures).
- C. To deal with all matters (including the servicing of notices and the institution of legal proceedings under the provisions of the Building Act, 1984 Sections 80, 81 and 82 (Local Authorities' powers concerning demolition).
- D. To deal with all Building Regulation applications and matters (including the service of notices and the institution of legal proceedings) subject to reporting on action taken to the relevant Committee on a quarterly basis in relation to any rejection of plans, refusal and/or approval or relaxations.
- E. To deal with the setting of charges with respect to the Building Regulation chargeable functions under the provisions of The Building (Local Authority Charges) Regulations 2010.
- F. To deal with Re-naming and numbering of existing individual properties and naming of new streets under the Town Improvement Clauses Act 1847.

ENVIRONMENTAL HEALTH MANAGER

Taxi, Gaming, Food, Miscellaneous Licensing and registration functions (other than functions under the Licensing Act 2003 and Gambling Act 2005)

Except where objections have been received;

To grant or renew (but not refuse) any licence, registration, permission or consent for which the Licensing Regulatory Committee is responsible.

To suspend private hire and hackney carriage drivers and operators who contravene the conditions of licence or other relevant legislation until the next meeting of the Licensing Regulatory Committee.

To institute, defend or participate in any action or legal proceedings in respect of any matter relating to the functions (including, where not delegated to any other officer, the service of any notice or order or the exercise of any power of entry) in any case where such action is necessary to give effect to decisions of the Licensing Regulatory Committee or any officer acting under delegated powers in consultation with the Director of Resources.

Functions under the Licensing Act 2003 and Gambling Act 2005.

Powers under the Licensing Act 2003

To determine applications for a personal licence where no Police objection is made.

To determine applications for a premises licence and a club premises certificate where no relevant representation is made.

To determine applications for a provisional statement where no relevant representation is made.

To determine applications to vary a premises licence or a club premises certificate where no relevant representation is made.

To determine applications to vary premises licence/club premises certificate by way of a minor variation in all cases.

To determine applications to vary the designated premises supervisor in cases where there is no Police objection.

To determine all requests to be removed as a designated premises supervisor.

To determine applications for the transfer of a premises licence where no Police objection is made.

To determine applications for interim authorities where no Police objection is made.

To determine whether a complaint is irrelevant, frivolous, vexatious etc.

To make representations as a Responsible Authority, where appropriate, in response to applications

To institute, defend or participate in any action or legal proceedings in respect of any matter relating to the functions (including, where not delegated to any other officer, the service of any notice or order or the exercise of any power of entry) in any case where such action is necessary to give effect to decisions of the Licensing Regulatory Committee or any officer acting under delegated powers in consultation with the Director of Resources.

Powers under the Gambling Act 2005

To determine applications for premises licences where no representations have been received or any representations made have been withdrawn.

To determine applications for a variation to a licence where no representations have been received or any representations made have been withdrawn.

To determine applications for the transfer of a licence where no representations have been received from the Commission.

To determine applications for a provisional statement where no representations have been received or any representations made have been withdrawn.

To determine applications for club gaming/club machine permits where no representations have been received or any representations made have been withdrawn.

To determine applications for other permits (up to 4 machines).

To cancel licensed premises gaming machine permits.

To consider any Temporary Use Notice

To institute, defend or participate in any action or legal proceedings in respect of any matter relating to the functions (including, where not delegated to any other officer, the service of any notice or order or the exercise of any power of entry) in any case where such action is necessary to give effect to decisions of the Licensing Regulatory Committee or any officer acting under delegated powers in consultation with the Director of Resources

Additional Meetings of Licensing Committee and Licensing Regulatory Committee

The Environmental Health Manager is authorised to arrange special meetings of the Licensing Committee and Licensing Regulatory Committee if appropriate in each cycle.

Other delegations

To exercise any function including the service of any notice or order, the exercise of any powers of entry and the taking of any other action or proceedings under any relevant legislation or otherwise (after consultation with the Director of Resources in respect of any proposal to institute court proceedings) in respect of matters relating to:

- (i) contaminated land
- (ii) the control of pollution or the management of air quality
- (iii) the inspection of the authority's area to detect any statutory nuisance and the investigation of any complaint as to the existence of a statutory nuisance including the service of any abatement notices.
- (iv) functions relating to health and safety including, without prejudice to the generality of the foregoing, the service of any Improvement or Prohibition Notices,
- (v) functions relating to smoke free premises, places and vehicles for which the Licensing Regulatory Committee is responsible, without prejudice to the generality of the foregoing, the power to enforce offences relating to the display of no smoking signs; offences relating to smoking in smoke free places; offence of failing to prevent smoking in smoke free places; and, power to transfer enforcement functions to another enforcement authority all such functions being pursuant to the Health Act 2006 and ancillary Regulations.

All Environmental Health Officers employed by the Council shall be appointed as inspectors under Health and Safety at Work Act Etc 1974 and be empowered to serve Improvement and Prohibition Notices and to institute proceedings for an offence under the same legislation.

To take action in accordance with the powers contained in:

- (i) The Public Health Act 1936, Section 84 and 85 (Cleansing or destruction of filthy or verminous premises, clothing and articles),
- (ii) The Public Health Act 1961, Section 37 (Disinfection of verminous articles offered for sale),
- (iii) The Public Health (Control of Diseases) Act 1984, Sections 48 (removal of dead bodies), 61 and 62 (powers of entry)
- (iv) The Health Protection (Notification) Regulations 2010, Regulations 2 (Duty to notify suspected disease, infection or contamination in patients) and 3 (Duty to notify suspected disease, infection or contamination in dead bodies).
- (v) Public Health (Ships) (Amendment) (England) Regulations 2007

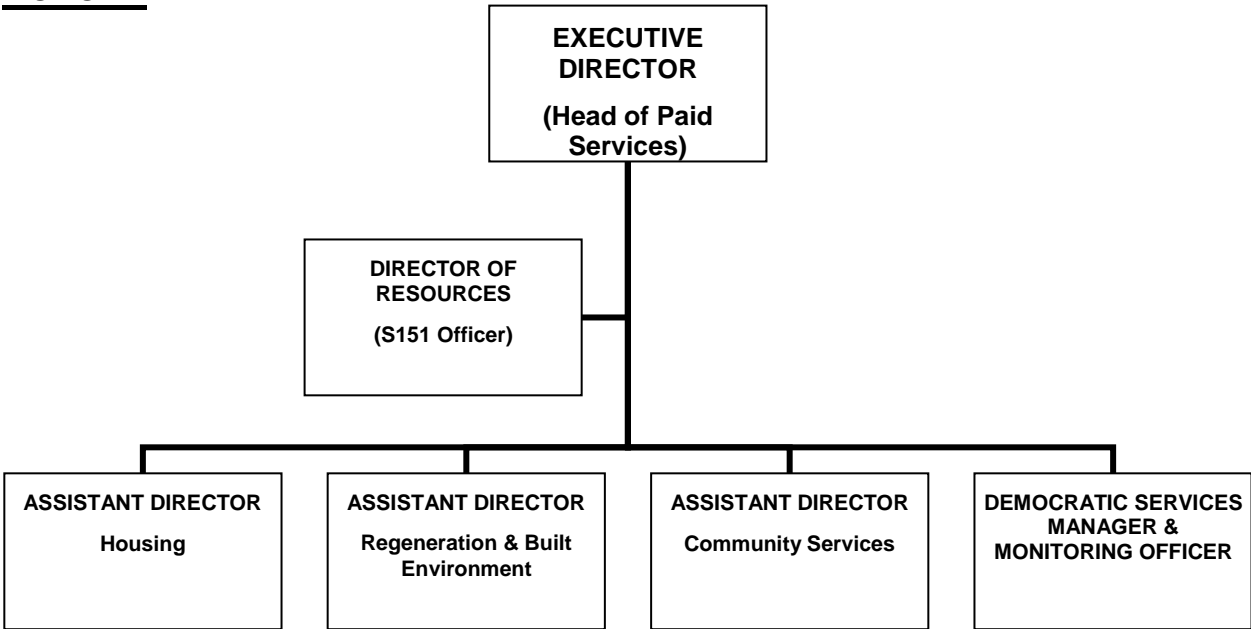
- (vi) Prevention of Damage by Pests Act 1949
- (vii) Public Health (Control of Disease) Act 1984
- (viii) Housing Act 1985
- (ix) Building Act 1984
- (x) Public Health Act 1936
- (xi) Public Health Act 1961
- (xii) Control of Pollution Act 1974
- (xiii) Local Government (Miscellaneous Provisions) Act 1976
- (xiv) Local Government (Miscellaneous Provisions) Act 1982
- (xv) Public Health (Control of Diseases) Act 1984
- (xvi) Environmental Protection Act 1990
- (xvii) Clean Air Act 1993

Part 9

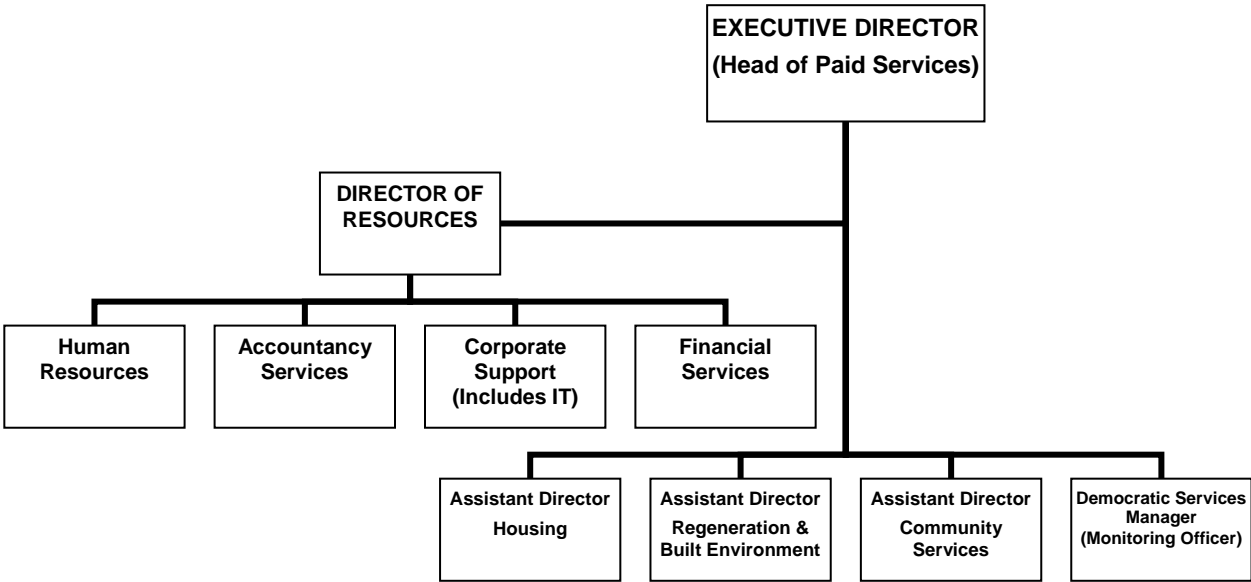
Management Structure

**BARROW BOROUGH COUNCIL
ORGANISATIONAL STRUCTURE FROM 1ST APRIL
2014**

Level 1



Level 2



BARROW BOROUGH COUNCIL

Environmental Health Department

Food Safety Enforcement Policy



1. Purpose

This document establishes the Food Safety Enforcement Policy of Barrow-in-Furness Borough Council.

2. Application

This policy will be implemented and supported by Authorised Officers within the Environmental Health Department.

3. References

Food Law Code of Practice	[April 2014]
Food Law Practice Guidance	[FSA – October 2012]
Regulators Code	[BRDO – 2013]
Legislative and Regulatory Reform Act 2006	
Food Safety Act 1990	
Food Safety and Hygiene (England) Regulations 2013	
Barrow Borough Council Food Procedures	[2014]

4. Policy

Barrow-in-Furness Borough Council has a statutory objective to protect public health and consumers' other interests in relation to food and drink. However, we are aware that excessive or unclear regulations can place a burden on business and civil society groups (such voluntary groups, charities and not for profit organisations) and so hinder effective delivery of the intended benefits. The aim of this policy

- To ensure a consistent approach to food related enforcement within the district;
- To provide officers with guidelines to enable them to make decisions in the field, consistent with current Government advice;
- To inform the public and food businesses of the principles by which enforcement action is taken.

5. Procedures

In relation to Food Safety it is the Council's aim to protect the general public from the health risks associated with poor food hygiene and also the sale of food which fails to meet food safety requirements. It will achieve this by education, providing advice and by regulating the activities of duty holders to manage and control risks effectively. An important part of this is to use the full range of enforcement powers to secure compliance with legal requirements.

Enforcement applies to all dealings between enforcing authorities and those upon whom the law places duties.

The purpose of enforcement is to: -

- Ensure that duty holders take action to deal immediately with serious risks,
- Promote and achieve sustained compliance with the law,
- Ensure that duty holders who breach food safety requirements, and directors or managers who fail in their responsibilities may be held to account, which may include bringing alleged offenders before the courts.

Intervene to assess, promote and ensure compliance with the law, to deal immediately with serious risk.

Investigate after an incident to identify underlying causes and the lessons to be learned, prevent recurrence, detect breaches and take appropriate action.

Approval to ensure that appropriate Approvals are in place where the law requires close control of those activities where the potential for significant health impairment is high.

Taking Action to ensure that action is taken that is proportionate to the risk.

The term enforcement has a wide meaning and applies to all dealings between the Council and those upon whom food safety legislation places duties.

Authorised officers seek to secure compliance with the law and to ensure a proportionate response to criminal offences. Officers may offer duty holders advice and support, both face to face and in writing. This may include warning a duty holder that in the opinion of the officer, they are failing to comply with the law. Where appropriate, officers may serve Hygiene improvement Notices, Emergency Hygiene Prohibition Notices, or Remedial Action Notices, in addition they may detain and/or seize food. Further action may involve the issue simple cautions or prosecution.

The appropriate use of enforcement powers is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failure to maintain appropriate food safety standards.

Authorised officers, when judging compliance with the law, take into account relevant case law, codes and guidance, use sensible judgement about the extent of the food safety risks and the effort that has been applied to prevent them.

6. The Principles of Enforcement

The Council believes in firm but fair enforcement of food safety legislation. We shall follow the principle of proportionality in applying the law, securing compliance, and will be consistent in approach and targeting of enforcement action.

We operate in a transparent manner and are accountable for our actions.

6.1 Proportionality

Proportionality means relating enforcement action to the risks. Those whom the law protects and those upon whom it places duties expect that action taken by enforcing authorities to achieve compliance or bring duty holders to account for non-compliance should be proportionate to any risks to food safety, or to the seriousness of any breach, which includes any actual or potential harm arising from a breach of the law.

We will take particular account of how far the duty holder has fallen short of what the law requires and the extent of the risks to people arising from the breach.

Where published guidance exists we will expect that guidance to be followed. Where guidance is not followed, or where guidance does not exist we will expect the duty holder to be following procedures based on independent robust scientific data.

As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action, in effect how far the duty holder has fallen short of what the law requires and the extent of the risks to people arising from the breach.

6.2 Consistency

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

Duty holders managing similar risks expect a consistent approach from enforcing authorities in the advice tendered the use of enforcement notices, approvals etc., and decisions on whether to prosecute and in the response to complaints.

We recognise that in practice consistency is not a simple matter. Officers are faced with many variables including the degree of risk, the attitude and competence of management, any history of incidents or breaches involving the duty holder, previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law. Decisions on enforcement action are discretionary, involving judgement by the enforcer.

The Council has arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities.

6.3 Transparency

Transparency means helping duty holders to understand what is expected of them and what they should expect from enforcing authorities. It also means making clear to duty holders not only what they have to do but also, where this is relevant, what they don't. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.

6.4 Targeting

Targeting means making sure that interventions are targeted primarily on those whose activities give rise to the most serious risks to food safety, or where risks are the least well controlled; and that action is focused on the duty holders who are responsible for the risk and who are best placed to control it.

The Council have systems for deciding which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of risks posed by a duty holder's operations.

The confidence in the duty holder's management is important, because a site that present a lower food safety hazard but poorly managed can entail greater risk to the public than a higher hazard site where proper and adequate risk control measures are in place.

Any enforcement action will be directed against the Food Business Operator. Where several duty holders have responsibilities, such as shared facilities, the Council may take action against more than one when it is appropriate to do so in accordance with this policy.

When officers issue Food Hygiene notices, issue simple cautions or prosecute, we will ensure that a senior officer of the duty holder concerned, at board level, is also notified.

The Council follows a national priority rating system for inspections and interventions, and guidance issued by the Food Standards Agency (Food Law Practice Guidance, 2012) and by the Government (Food Law Code of Practice, 2014).

6.5 Accountability

Authorised officers are accountable to Elected Members, the public and Parliament for their actions. We have policies and procedures against which we can be judged, and an effective accessible mechanism for dealing with comments and complaints.

7. Enforcement Options

The Council authorises officers to carry out the inspections and investigations it has decided they are trained and competent to do. Current legislation and technical guidance will be available for reference.

The council will use its discretion in deciding whether food safety complaints or alleged cases of ill health should be investigated. This is detailed in our departmental plan.

We investigate to determine:

- Causes
- Whether action has been taken or needs to be taken to prevent recurrence and to secure compliance with the law
- Lessons to be learnt and to influence the law and guidance
- What response is appropriate to any breach of the law.

7.1 Food Safety Enforcement

An officer will consider the most appropriate course of action during routine inspections or following a food complaint.

In line with this policy the officer will use his judgement on what action to take that is namely:

- No action
- To give verbal and written warnings
- Serve hygiene improvement notices
- Serve emergency hygiene prohibition notices
- To detain or seize any food
- Any combination of the above
- Serve a simple caution
- To prosecute

7.2 No Action

There will be occasions when it is appropriate to take no further action on completion of an inspection or investigation. A report of the inspection will be left on-site or sent soon after the inspection highlighting that the standards of compliance are satisfactory.

7.3 Verbal Advice and Letters

The circumstances when it is appropriate to use verbal advice and written warnings are: -

- The risk gap is minor
- The act or omission is not serious enough to warrant formal action
- From the individuals/business previous compliance it can be reasonably expected that the warning will achieve compliance
- There is no deliberate economic advantage being sought
- Confidence in the management is high
- The consequence of non-compliance will not pose a significant risk to health and safety
- Even where some of the above criteria are not met, there may be circumstances in which a warning will be more effective than a formal approach

The officer will tell the Food Business Operator what to do to comply with the law, explain why and distinguish legal requirements from best practice.

The officer will agree a timescale for compliance.

A written inspection report will be left at the premises detailing any verbal warnings. The premises will be written to confirming any warnings given and the steps required to achieve compliance.

7.4 Hygiene Improvement Notices

Hygiene Improvement Notices may be appropriate in any of the following circumstances or a combination thereof:

- There are significant contraventions of the legislation.
- There is a lack of confidence that the Food Business Operator will respond to an informal approach.
- There is a history of non-compliance with informal action or formal letters and
- Standards are generally poor with little management awareness of the statutory requirements.
- The consequences of non-compliance could be potentially serious to public health.
- Effective action needs to be taken as quickly as possible to remedy conditions, which are serious, or deteriorating, even though it is intended to prosecute.

The officer will advise the Primary Authority, where one exists, of any actions intended and seek written agreement.

The use of Hygiene Improvement Notices will be related to the risk to health and they will not be used for minor contraventions of the legislation. They will not be used where the contraventions might be a continuing one or in transient situations.

Officers issuing Hygiene Improvement Notices will discuss with the Food Business Operator the works to be undertaken and the realistic time limits for the completion of the works. The Officer shall consider alternative solutions of equal effect put forward by the Food Business Operator.

Failure to comply with Hygiene Improvement Notice will generally result in the instigation of legal proceedings.

The Officer will consider all reasonable written requests for an extension of time of the Notice where these are made within the existing time scale.

7.5 Hygiene Emergency Prohibition Procedures

Hygiene Emergency Prohibition Procedures should be used if an authorised officer has evidence that the health risk condition is fulfilled. They may be used to prohibit the use of premises (or part of), equipment, or processes.

If the appropriate evidence is found, a Hygiene Emergency Prohibition Notice may be served on the food business operator, followed by an application to a Magistrates' Court for a Hygiene Emergency Prohibition Order.

The following are examples of circumstances that may show that the health risk condition exists i.e. there is an imminent risk of injury to health, and where an authorised officer may therefore consider the use of such prohibition powers. These examples are not exhaustive and are for illustrative purposes only.

- Infestation by rats, mice, cockroaches, birds or other vermin, serious enough to result in the actual contamination of food or a significant risk of contamination
- Very poor structural condition and poor equipment and/or poor maintenance, or routine cleaning and/or serious accumulations of refuse, filth or other extraneous matter, resulting in the actual contamination of food or a significant risk of food contamination.
- Drainage defects or flooding of the establishment, serious enough to result in the actual contamination of food, or a significant risk of food contamination.
- Premises or practices which seriously contravene food law and have been, or are implicated, in an outbreak of food poisoning.
- Any combination of the above, or the cumulative effect of contraventions which, taken together, represent the fulfilment of the health risk condition.

Health risk conditions where the prohibition of equipment may be appropriate

- Use of defective equipment, e.g. a pasteuriser incapable of achieving the required pasteurisation temperature.
- Use of equipment for the processing of high-risk foods that has been inadequately cleaned or disinfected or which is grossly contaminated and can no longer be properly cleaned.
- Dual use of complex equipment, such as vacuum packers, slicers and mincers for raw and ready – to – eat foods
- Use of storage facilities or transport vehicles for primary produce where the storage facilities or transport vehicles have been inadequately cleaned or disinfected.

Health risk conditions where prohibition of a process may be appropriate

- Serious risk of cross contamination.
- Failure to achieve sufficiently high processing temperatures.
- Operation outside critical control criteria, for example, incorrect pH of a product which may allow *Clostridium botulinum* to multiply.
- The use of a process for a product for which it is inappropriate.

Once a Hygiene Emergency Prohibition Notice has been served the Officer will make application to the Magistrate's Court to have a Hygiene Emergency Prohibition Order issued.

If it is satisfied that the health risk condition no longer exists the Food Authority should issue a certificate to the food business operator within three days rescinding any Hygiene Emergency Prohibition Notices or subsequent Orders.

If the food business operator applies for such a certificate, the Council will determine the position as soon as is reasonably practicable and within fourteen days.

7.6 Voluntary Closure

There may be occasion where an authorised officer is satisfied that grounds for Hygiene Emergency Prohibition Notice exist, but where the proprietor of the food business offers to close voluntarily until the health risk is removed.

Such an offer will only be accepted if the authorised officer is satisfied that there is no likelihood of the premises being used as a food business, or of the use of equipment, or of a process without the express agreement of the food authority.

When considering such an offer it shall be ensured that the person making the offer is aware that in closing voluntarily they are relinquishing the rights to compensation for unjustified action contained in formal Hygiene Emergency Prohibition Notice procedure.

7.7 Detention and Condemnation of Food

Authorised Officers will use powers to inspect, detain, seize, and arrange for the condemnation of food if they have reasonable grounds that the food does not comply with the Food Safety Requirements in the Food Safety Act 1990 and EC Regulation 178/2002 Article 14.

The procedure for detaining, seizing and arranging for the condemnation of food will be in accordance with the Food Law Code of Practice [April 2014] and practical guidance.

A person in charge of food that has been detained or seized for the purpose of condemnation by a Magistrate may be eligible for compensation if:

- The detention of food Notice is withdrawn;
- The Magistrate fails to condemn the food;
- And the food had deteriorated in value resulting from the action.

8. Action by the Courts

The Food Safety Act and supporting regulations gives the courts considerable scope to punish offenders and to deter others, including imprisonment for some offences.

The Council when appropriate during a prosecution will draw the court's attention to the Court of Appeals guidance on the factors which should inform sentencing in Food Safety cases, that fines must be large enough to reflect the seriousness of the offence.

Where the case is of sufficient seriousness, the Council will indicate to the magistrates that the offence is so serious that they may refer it to be heard or sentenced in the higher court where higher penalties can be imposed. We will have regard to the Court of Appeal guidance before asking for a referral.

8.1 Prosecution

While the primary purpose of the Council is to ensure that duty holders manage the food safety risks, prosecution is an essential part of enforcement.

The Council will use discretion in deciding whether to bring a prosecution. Where the circumstances warrant it and evidence to support a case is available, the Council may prosecute without prior warning and recourse to alternative sanctions.

The decision to prosecute must have regard to the evidential and public interest tests set down in England and Wales by the Director of Public Prosecutions in the Code for Crown Prosecutors. Prosecutions will only be considered when there is sufficient evidence to provide a realistic prospect of conviction and that prosecution would be in the public interest.

Subject to these tests the Council will normally prosecute where one or more of the following apply: -

- There has been reckless disregard of the food safety requirements.
- There have been repeated breaches, which give rise to significant risk or persistent and significant poor compliance.
- There has been a failure to comply with Food Hygiene Notice or there has been a repetition of a breach that was subject to a simple caution.
- Inspectors have been intentionally obstructed in the lawful course of their duties.

Furthermore the Council will consider prosecution where, following an investigation or other regulatory contact, the following apply:

- The prosecution is a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law.
- A breach which gives rise to significant risk has continued despite relevant warnings from employees or from others.
- Ill health or death was a direct result of a breach of the legislation.

Where authorised officers are threatened or assaulted police assistance will be required, with a view to the prosecution of offender. We may request the Police to arrest individuals for obstruction or perverting the course of justice in relation to an investigation.

Prosecution files will be considered by the Food Team Leader and Service Manager who will issue the decision to proceed. Before such action due consideration will be given to any legal advice received.

8.2 Prosecution of an Individual

Subject to the above the Council will identify and prosecute individuals if they consider that a conviction is warranted and can be secured. We will consider the management chain and the role played by individual directors and managers and will take action against them where it can be shown that the offence was committed with their consent or connivance or to have been attributable to neglect on their part.

8.3 Simple Caution

A simple caution may be used in cases involving first time less serious offences where the public interest can be met by a caution.

We will consider whether a caution is appropriate to the offence and the offender, and whether a caution is likely to be effective in the circumstances.

Should a simple caution not be accepted by the offender then the case shall be authorised for prosecution and therefore the case will be suitable for prosecution in all other respects

9. Working with others

9.1 Regulators

There may be situations where deficiencies in food safety is regulated by other authorities. We will, in accordance with the Regulators Code and the regulatory principles required under the Legislative and Regulatory Reform Act (2006), try to ensure that, wherever practicable, enforcement action by food enforcing authorities is effectively co-ordinated with that of other, relevant enforcing authorities to minimize unnecessary overlaps and time delays.

9.2 Other agencies/stakeholders

We will liaise with and bring areas of concern to the most appropriate body for advice and/or enforcement. Such bodies may include the County Council, Food Standards Agency, Public Health England, Cumbria Police, OFSTED, Care Quality Commission, DEFRA.

We will also liaise with other Council departments such as Licensing, Planning, and Building Control as necessary.

Where there is a Primary Authority we will contact and liaise with them before taking formal enforcement action or considering prosecution against a participating organisation, except;

- Where there is clear evidence that food fails to meet to Food Safety Requirements
- After serving an Emergency Hygiene Prohibition Notice. However consultation will be undertaken as soon as is practicable after service.

10. Enforcement in Premises Which the Council Own Under a Separate Food Business Operator

The council cannot take action against itself nor should it be called upon to do so. In respect of premises the Council owns, but within which there is a separate Food Business Operator, we shall:

- Carry out our enforcement policy and practice in exactly the same way we do in all our premises.
- Ensure that the attention received is in accordance with the criteria applied to other duty holders.
- Where there is a potential conflict of interest we will discuss the matter with the Food Standards Agency to determine the appropriate course of action.

11. Enforcement in Premises Within Which the Council is the Food Business Operator

The council cannot take action against itself nor should it be called upon to do so. In respect of premises within which the Council is the Food Business Operator, we shall:

- Carry out our enforcement policy and practice in exactly the same way we do in all our premises.
- Ensure that the attention received is in accordance with the criteria applied to other duty holders.

12. Reviewing the Policy

The Food Safety Enforcement Policy will be reviewed every 5 years or earlier if necessary.

BARROW BOROUGH COUNCIL

ENVIRONMENTAL HEALTH DEPARTMENT

HEALTH AND SAFETY ENFORCEMENT POLICY



1. Purpose

To provide in a single document the Health and Safety Enforcement Policy of Barrow Borough Council.

2. Application

This policy will be implemented and supported by authorised officers within the Environmental Health Department.

3. References

Health & Safety Executive (HSE) Enforcement Policy Statement
 HSE Enforcement Management Model (EMM)
 HSE National Local Authority (LA) Enforcement Code
 HSE Section 18 Guidance
 Legislative and Regulatory Reform Act 2006
 Regulators Code 2013
 The Enforcement Concordat
 The Work Related Death Protocol
 Corporate Manslaughter of Health & Safety Offences Causing Death – Definitive Guidance February 2010

4. Policy

It is the Council's policy to ensure its approach to enforcement is consistent with HSE Statement on Enforcement Policy. This statement sets out the general principles and approach, which the Executive expects, enforcing authorities to follow. This Policy has been written having regard to the Enforcement Concordat and the Regulator's Code. Officers will therefore have regard to and implement the principles of proportionality, consistency, transparency and targeting.

5. Procedures

In relation to health and safety it is the Council's aim to protect the health, safety and welfare of people at work, and to safeguard others, mainly members of the public who may be exposed to risk from the way work is carried out. It will achieve this by education, providing advice and by regulating the activities of duty holders to manage and control risks effectively. An important part of this is to use enforcement powers to secure compliance with legal requirements.

Enforcement applies to all dealings between enforcing authorities and those on whom the law places duties.

The purpose of enforcement is to: -

- Ensure that duty holders take action to deal immediately with serious risks
- Promote and achieve sustained compliance with the law
- Ensure that duty holders who breach health and safety requirements, and directors or managers who fail in their responsibilities may be held to account, which may include bringing alleged offenders before the courts

Intervene – to assess, promote and ensure compliance with the law, to deal immediately with serious risk and to prevent accidents and ill health from occurring.

Investigate – after an incident to identify underlying causes and the lessons to be learned, prevent recurrence, detect breaches and take appropriate action.

Permission – to ensure that appropriate licenses are in place where the law requires close control of those activities where the potential for significant health impairment is high.

Taking action – to ensure that action is taken that is proportionate to the risk.

Enforcement of criminal law is distinct from civil claims for compensation. Although enforcement action may not be taken civil claims may be appropriate. Enforcement is not intended to assist claims for compensation.

The term enforcement has a wide meaning and applies to all dealings between the Council and those on whom health and safety law places duties, employers, the self-employed, employees and others.

Authorised officers (sometimes referred to as inspectors) seek to secure compliance with the law and to ensure a proportionate response to criminal offences. Inspectors may offer duty holders advice and support, both face to face and in writing. This may include warning a duty holder that in the opinion of the inspector, they are failing to comply with the law. Where appropriate officers may also serve improvement and prohibition notices, issue simple cautions and they may prosecute.

The appropriate use of enforcement powers is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failure to safeguard health, safety and welfare.

Authorised officers when judging compliance with the law take into account relevant case law, codes and guidance, use sensible judgement about the extent of the risks and the effort that has been applied to prevent them.

6. The Principles of Enforcement

The Council believes in firm but fair enforcement of health and safety law. We shall follow the principle of proportionality in applying the law, securing compliance, and will be consistent in approach and targeting of enforcement action.

We operate in a transparent manner and are accountable for our actions.

6.1 Proportionality

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

We will take particular account of how far the duty holder has fallen short of what the law requires and the extent of the risks to people arising from the breach.

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

Deciding what is reasonably practicable to control risks involves the exercise of judgement. Where duty holders must control risks so far as is reasonably practicable, we will when considering protective measures taken by duty holders take account of the degree of risk and the sacrifice needed whether in money, time or trouble on the measures necessary to avert the risk. Unless it can be shown that there is gross disproportion between these factors and that the risk is insignificant in relation to the cost, the duty holder must take measures and incur costs to reduce the risk.

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

Some irreducible risks may be so serious that they cannot be permitted irrespective of the consequences.

As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action, in effect how far the duty holder has fallen short of what the law requires and the extent of the risks to people arising from the breach.

6.2 Consistency

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

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

We recognise that in practice consistency is not a simple matter. Officers are faced with many variables including the degree of risk, the attitude and competence of management, any history of incidents or breaches involving the duty holder, previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law. Decisions on enforcement action are discretionary, involving judgement by the enforcer.

The Council has arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities.

6.3 Transparency

Transparency means helping duty holders to understand what is expected of them and what they should expect from enforcing authorities. It also means making clear to duty holders not only what they have to do but also, where this is relevant, what they don't. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.

Transparency also involves the enforcing authorities in having arrangements for keeping employees, their representatives, and victims or their families informed. These arrangements must have regard to legal constraints and requirements.

6.4 Targeting

Targeting means making sure that contacts are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled; and that action is focused on the duty holders who are responsible for the risk and who are best placed to control it.

We have systems for deciding which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of risks posed by a duty holder's operations.

The duty holder's management competence is important, because a relatively low hazard site poorly managed can entail greater risk to workers or the public than a higher hazard site where proper and adequate risk control measures are in place.

Any enforcement action will be directed against duty holders responsible for a breach. This may be an employer in relation to workers or others exposed to risks, the self-employed, owners of premises, suppliers of equipment, designers or clients of projects, or employees themselves. Where several duty holders have responsibilities, enforcing authorities may take action against more than one when it is appropriate to do so in accordance with this policy.

When officers issue improvement or prohibition notices, issue simple cautions or prosecute, we will ensure that a senior officer of the duty holder concerned, at board level, is also notified.

We will ensure resources are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled. Action will be focused on the duty holders who are responsible for the risk and who are best placed to control it – whether employers, manufacturers, suppliers or others.

The Council follows a national priority rating system for inspections and interventions, and the HSE Local Authority (LA) Enforcement Code.

6.5 Accountability

Authorised officers are accountable to Elected Members, the public and Parliament for their actions. We have an effective accessible mechanism for dealing with comments and complaints.

6.6 Investigation

The Council authorises officers to carry out the duties it has decided they are trained and competent to do. Current legislation, approved codes of practice and technical guidance will be available for reference.

The Council will use National Guidance and local priorities in deciding whether incidents, cases of ill health or complaints should be investigated.

We investigate to determine:

- Causes
- Whether action has been taken or needs to be taken to prevent recurrence and to secure compliance with the law
- Lessons to be learnt and to influence the law and guidance
- What response is appropriate to a breach of the law using the HSE Enforcement Management Model for serious breaches of legislation

To maintain a proportionate response it is neither possible nor necessary for the purposes of the HSW Act to investigate all issues of non-compliance with the law, which are uncovered in the course of preventative inspection or in the investigation of reported events.

We will carry out a site investigation of a reportable work related death, unless there are specific reasons for not doing so, in this instance the reasons for the decision will be recorded.

6.7 Prosecution

While the primary purpose of the enforcing authorities is to ensure that duty holders manage and control risks effectively, thus preventing harm, prosecution is an essential part of enforcement.

Enforcing authorities must use discretion in deciding whether to bring a prosecution. Where the circumstances warrant it and evidence to support a case is available, enforcement authorities may prosecute without prior warning and recourse to alternative sanctions.

The decision to prosecute should have regard to the evidential and public interest tests set down in England and Wales by the Director of Public Prosecutions in the Code for Crown Prosecutors.

Prosecutions will only be considered when there is sufficient evidence to provide a realistic prospect of conviction and that prosecution would be in the public interest.

Subject to these two tests the Council will normally prosecute where one or more of the following apply: -

- Death was a result of a breach of the legislation.
- The alleged offence was extremely serious. This will take into account the seriousness of any actual or potential harm, and the general record and approach of the offender.
- There has been reckless disregard of health and safety requirements.
- There have been repeated breaches, which give rise to significant risk or persistent and significant poor compliance.
- A duty holder's standard of managing health and safety is found to be far below what is required by health and safety law and to be giving rise to significant risk.
- Work has been carried out without or in serious non-compliance with an appropriate licence or safety case.
- There has been a failure to comply with an Improvement or Prohibition Notice or there has been a repetition of a breach that was subject to a simple caution.
- Inspectors have been intentionally obstructed in the lawful course of their duties.
- False information has been wilfully supplied, or there has been intent to deceive, in relation to a matter which gives rise to significant risk.

Furthermore the Council will consider prosecution where, following an investigation or other regulatory contact, the following apply:

- The prosecution is a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law.
- A breach which gives rise to significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity.

If resources are limited the above have been placed in order of priority for action.

Where authorised officers are threatened or assaulted police assistance will be required, with a view to the prosecution of offender. We may request the Police to arrest individuals for obstruction or perverting the course of justice in relation to an investigation where there has been a death or serious major injury.

6.8 Prosecution of an Individual

Subject to the above the Council will identify and prosecute individuals if they consider that a conviction is warranted and can be secured. We will consider the management chain and the role played by individual directors and managers and will take action against them where it can be shown that the offence was committed with their consent or connivance or to have been attributable to neglect on their part. Where appropriate, disqualification of directors will be sought under the Company Directors Disqualification Act 1986.

6.9 Simple Caution

A simple caution may be used in cases involving first time low-level offences where the public interest can be met by a caution.

We will consider whether a caution is appropriate to the offence and the offender, and whether a caution is likely to be effective in the circumstances.

6.10 Death at Work

Where there has been a breach of the law leading to a work related death, we will consider whether the circumstances of the case might justify a charge of manslaughter or corporate manslaughter.

Our decisions on investigation and prosecution will follow the 'Work Related Deaths: A Protocol for Liaison' document.

This protocol has been agreed between the Health and Safety Executive (HSE) the Association of Chief Police Officers (ACPO) and the Crown Prosecution Service (CPS). It sets out the principles for effective liaison between the Agencies in relation to work related deaths.

The police are responsible for deciding whether to pursue a manslaughter or corporate manslaughter investigation and whether to refer a case to the CPS to consider possible manslaughter charges. They may involve the support of the Council and/or the HSE in the investigation.

We are responsible for investigating possible health and safety offences. If in the course of our investigation we find evidence to suggest manslaughter or corporate manslaughter it will be forwarded to the police. If the police or CPS decide not to pursue a manslaughter or corporate manslaughter case, we will normally bring a health and safety prosecution in accordance with this policy.

7.0 Publicity

Arrangements are in place on the HSE website for the publication annually of the names of all the companies and individuals who have been convicted in the previous 12 months of breaking health and safety law. The Council will normally issue a press statement following conviction and inform the HSE.

We will keep a register of all Improvement and Prohibition notices which have been issued.

8.0 Action by the Courts

Health and safety law gives the courts considerable scope to punish offenders and to deter others, including imprisonment for some offences.

The Council when appropriate during a prosecution will draw the court's attention to the Court of Appeals guidance on the factors which should inform sentencing in health and safety cases, that fines must be large enough to reflect the seriousness of the offence (R v F Howe and Son (Engineers) Ltd [1999] 2 ALL ER).

Where the case is of sufficient seriousness, the Council will indicate to the Magistrates that the offence is so serious that they may refer it to be heard or sentenced in the higher court where higher penalties can be imposed. We will have regard to the Court of Appeal guidance before asking for a referral.

In our judgement Magistrates should always think carefully before accepting jurisdiction in health and safety work cases, where it is arguable that the fine may exceed the limit of their jurisdiction or where death or serious injury has resulted from the offence.

9.0 Section 3 of the Health and Safety at Work etc Act 1974

Section 3 of the HSW Act places general duties on employers and the self-employed towards people other than their employees. We will:

- Enforce section 3 in the key areas identified in our departmental plan and incident selection criteria

- Take account of HSE's priorities and, generally, give less priority to the enforcement of section 3 in areas outside these priorities.

10.0 Working with others

10.1 Regulators

There are many situations where work activities that may give rise to risks to health and safety are regulated by other authorities using legislation that may address circumstances which are also relevant to health and safety at work issues.

- We will, in accordance with the Regulators Code and the regulatory principles required under the Legislative and Regulatory Reform Act (2006), try to ensure that, wherever practicable, enforcement action by the health and safety enforcing authorities is effectively co-ordinated with that of other, relevant enforcing authorities to minimize unnecessary overlaps and time delays.

However, initial enquiries or information from other sources, may indicate that a breach of section 3 was or is the probable cause of, or a significant contributory factor to, the injury or risk complained of. In such circumstances, we and other enforcing authorities will consider investigating if:

- There was or is a high level of risk; or
- Enforcing authorities need to act/investigate in the interests of justice.

10.2 Other agencies/stakeholders

We will liaise with and bring areas of concern to the most appropriate body for advice and/or enforcement. Such bodies would include the County Council, the Health Protection Agency, fire service, adventure activities, licensing, OFSTED, Care Quality Commission, Defra and children's services.

When there is a lead or primary authority we will contact and if necessary, liaise with them:

- We will liaise before taking formal enforcement action, i.e. issuing notices, such as an improvement notice, or considering prosecution against a participating organisation, except -
- In the case of immediate danger
- After serving a prohibition notice - consultation will be as soon as is practicable after service
- When significant shortcomings are identified in a participating organisation's agreed policies or procedures which the Enforcing Agency believe ought to be challenged at a national level
- Following any on-site investigation of any death, major injury, work related ill health or dangerous occurrence reportable under RIDDOR 2013.

11.0 Deciding which authority will lead an investigation

There may be, however, a relevant health and safety interest in some aspects of a work activity covered by specific legislation when we would seek to agree with other authorities who should take the lead on an investigation (to avoid unnecessary overlaps and time delays) and where there may be a need to act alongside each other, which activities are most appropriately dealt with by each authority.

The following principles will be considered on who is best to lead on an investigation:

- Effectiveness: Which authority is best equipped, including appropriate powers to investigate the alleged risks?
- Capability: Is the other body capable of ensuring public safety? Does it have the enforcement powers necessary to do so?
- Health and safety expertise: Which body knows most about the risks concerned and the effective control measures?
- Economy: Is either body already inspecting/visiting the premises or activity in question? Can duplicate visits be avoided?
- Efficiency: Is health and safety enforcing authority involvement a good use of resources when considered against the scale of risk or level of public concern?

12.0 Scope and Application of Section 3 HSWA

12.1 For section 3 to apply:

- There must be a duty holder, either an employee or a self-employed person; and
- There must be a risk to the health or safety of a person who is not the employee of the duty holder or the self-employed duty holder themselves; and
- That risk must arise from the conduct of the duty holder's undertaking. An 'undertaking' means 'enterprise' or 'businesses'. NB: Whether a particular activity is part of the conduct of the undertaking is determined by the facts of each case [R v Associated Octel Co Ltd (1996) 4 ALL ER 846]. Although not decisive in every case, whether the duty holder can exercise control over both the conditions of work and where the activity takes place is very important.

12.2 HSWA section 3 does not apply to:

- Welfare issues (such as the provision of toilets)
- Nuisance or amenity issues that have no health or safety implications (such as unpleasant smells arising from work activities)
- Poor workmanship, where trading standards or contractual remedies may exist, unless it has demonstrably compromised health and safety.

Generally we will not get involved in what may be essentially contractual or civil disputes except in cases where death or serious injury has occurred and initial enquiries, or information from other sources, indicate that a breach of section 3 HSWA was the probable cause or significant contributory factor. In such cases:

- Our established complaint or incident selection criteria should be used to determine if an investigation is required
- Inspectors should take into account the length of time since the work activity took place. Though it should not of itself deter inspectors from investigating, in practice the longer the time lapse, the more difficult it can be to collect evidence and the public interest arguments for action, weaken.

13.0 Enforcement in premises which the council own but do not occupy

The council cannot take action against itself nor should it be called upon to do so. In respect of premises in which we own but do not occupy:

- Carry out our enforcement policy and practice in exactly the same way we do in all our premises
- Ensure that the attention received is in accordance with the criteria applied to other duty holders.
- Where there is a potential conflict of interest we will discuss the matter with the HSE to determine the appropriate course of action.

14.0 Health and Safety Enforcement

At a visit an officer may leave a copy of 'what to Expect when a Health and Safety Inspector Calls'. This information is also available on the HSE website www.hse.gov.uk

An officer will consider the most appropriate course of action during routine inspections or following incidents/accidents or complaints.

In line with the policy and having regard to the Enforcement Management Model (<http://www.hse.gov.uk/enforce/emm.pdf>) the officer will use his judgement on what action to take that is namely:

- No action
- To give verbal and written warnings
- Serve improvement or prohibition notices
- Serve a simple caution
- To prosecute
- To seize an article or substance
- Any combination of the above

An officer, when using their judgement, will have regard to the legal requirement.

Sometimes the law is prescriptive – spelling out in detail what must be done. However, much of modern health and safety law is goal setting – setting out what must be achieved, but not how it must be done. Advice on how to achieve the goals is often set out in Approved Codes of Practice (ACOPs).

These give practical advice on compliance and have a legal status. If someone is prosecuted for a breach of health and safety law and did not follow the relevant provisions of an ACOP, then the onus is on them to show that they complied with the law in another way. Advice is also contained in other HSE or industry guidance material describing good practice. The HSE also have web-based tools to help businesses comply with the law. Following this guidance is not compulsory, but doing so is normally enough to comply with the law.

Neither ACOPs nor guidance material are in terms which necessarily fit every case. In considering whether the law has been complied with, inspectors will need to take relevant ACOPs and guidance into account, using sensible judgement about the extent of the risks and the effort that has been applied to counter them.

15.0 Information Given to Employees

The officer will consult and notify employees on matters that affect their health and safety and welfare. This information shall be factual and detail the action taken by the officer; it will not divulge confidential matters or trade secrets.

16.0 Verbal Advice and Letters

The circumstances when it is appropriate to use verbal advice and written warnings are: -

- The risk gap is minor
- The act or omission is not serious enough to warrant formal action
- From the individuals/business compliance it can be reasonably expected that the warning will achieve compliance
- There is no deliberate economic advantage being sought
- Confidence in the management is high

- The consequence of non-compliance will not pose a significant risk to health and safety
- Even where some of the above criteria are not met, there may be circumstances in which a warning will be more effective than a formal approach

A record will be made on file of verbal warnings or on the report of visit form.

The officer will tell the duty holder what to do to comply with the law, explain why and distinguish legal requirements from best practice. Inspectors will, on request, confirm any advice or legal requirements in writing detailing the above.

An officer will not specify a lower standard than that prescribed by legislation.

The officer will agree a timescale for compliance at the visit or will put a timescale for compliance in the letter.

17.0 Serving Notices and Prosecutions

Both taking a prosecution and serving a notice may be appropriate when:

- (a) A situation may be so hazardous that even with a prohibition notice, prosecution may result.
- (b) Prosecution is taken owing to the circumstance of an accident; a notice may be used to enforce the remedy.

Information will not be laid until after the appeal period for a notice has passed and any appeal has been heard.

17.1 Improvement Notices

Served when an authorised officer is of the opinion that there is a contravention of the law at the time of the visit or that there had been a contravention and that it is likely that the contravention will continue or be repeated.

An officer will consider: -

- The risk gap assessment.
- The seriousness of the legal contravention.
- Whether the employer appears deliberately unwilling to recognise their responsibilities and those who may be affected by their actions.
- Whether the duty holder has a history of non-compliance with verbal and written warnings.

- Whether deliberate economic advantage has been sought.

The officer will discuss the notice and if possible, resolve points of difference before serving it. The notice will say what needs to be done, why and by when. Timescales will be realistic.

Improvement notices will be served by authorised officers based on their opinion.

Failure to comply with the notice will generally result in court proceedings.

17.2 Prohibition Notices

These can only be issued when the authorised officer is of the opinion that there is or will be a risk of serious personal injury, which includes risk to health. They can be issued to have immediate or deferred effect.

There does not have to be a breach of a statutory requirement before a prohibition notice can be issued but an officer who thinks there has been should specify it in the notice.

In circumstances when a Prohibition Notice would be necessary but the person in control of the activity has assured the officer that he will remove the risk, this will be sought in writing.

The officer will, where practicable, discuss why he is serving the notice and take the employer's views into account. The legal implications of non-compliance will be explained. Where the notice is issued the officer will provide a written explanation of the reasons for the action.

17.3 Appeals

Every Notice will have written advice about how an appeal can be made and explains the time limits for appealing. It will also explain that an Improvement Notice is suspended pending the hearing of the appeal by an Employment Tribunal and that application may be made to the Tribunal for a Prohibition Notice to be suspended pending the outcome of an appeal.

18.0 Public Register

An electronic public register will be kept and maintained by the Council of notices served which affect the public who are not employees of that workplace in accordance with the Environment and Safety Information Act 1988.

Entries will be made 14 days after the time limit for appeal of the notice has passed providing no appeals have been made or 14 days after an appeal that has determined that the notice should not be cancelled.

19.0 Penalties for Health and Safety Offences (Appendix 1)

20.0 Power to Deal with any Article or Substance which is a Cause of Imminent Danger

Articles or substances may be seized and rendered harmless if an Authorised Officer is of the opinion that it was the cause, or there is likely to be an immediate danger of serious personal injury.

21.0 Reviewing the Policy

The Health and Safety Enforcement Policy will be reviewed every 5 years or earlier if necessary.

22.0 Feedback and continual improvement

If you have comments that this policy has not been followed you can contact the Environmental Health Manager. If you are still not satisfied you can use the local authority's formal complaint procedure.

Appendix 1

Penalties for Health and Safety Offences*

The Health and Safety at Work etc Act 1974 (the HSW Act), Section 33 (as amended) sets out the offences and maximum penalties under health and safety legislation.

Failing to comply with an Improvement or Prohibition Notice, or a Court Remedy Order (issued under HSW Act, Sections 21, 22 and 42 respectively):

Lower Court Maximum £20,000 and/or 12 months imprisonment*

Higher Court Maximum Unlimited fine and/or 2 year's imprisonment

*The sentencing option of 12 months applies in Scotland but will only apply in England and Wales when section 154(1) of the Criminal Justice Act 2003 is enacted.

Breach of Sections 2-6 and 8 of the HSW Act, which set out the general duties of employers, self-employed persons, persons who have control of premises, or manufacturers and suppliers to safeguard the health and safety of workers and members of the public who may be affected by work activities:

Lower Court Maximum £20,000 and/or 12 Months imprisonment*

Higher Court Maximum Unlimited fine and/or 2 year's imprisonment

Breach of section 7 of the HSW Act covers duties of employees:

Lower Court Maximum Fine not exceeding statutory maximum and/or 12 months imprisonment

Higher Court Maximum Unlimited fine and/or 2 year's imprisonment

Most other breaches of the HSW Act, contravening licence requirements and breaches of all health and safety regulations under the Act. Regulations impose both general and more specific duties, such as requirements to carry out a suitable and sufficient risk assessment or to provide suitable personal protective equipment:

Lower Court Maximum £20,000 and/or 12 months imprisonment*

Higher Court Maximum Unlimited fine and/or 2 year's imprisonment

On conviction of directors for indictable offences in connection with the management of a company (all of the above, by virtue of HSWA Sections 36 and 37), the Courts may also make a disqualification order (Company Directors Disqualification Act 1986, Sections 1 & 2). The Courts have exercised this power following health and safety convictions. Health and safety inspectors draw this power to the Court's attention whenever appropriate.

Lower Court Maximum 5 year's disqualification

Higher Court Maximum 15 year's disqualification

For a complete list of penalties refer to Health and Safety (Offences) Act 2008.