



ENVIRONMENTAL SERVICES DIRECTORATE

ENFORCEMENT SERVICE

ENFORCEMENT POLICY

ENFORCEMENT POLICY

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ENFORCEMENT POLICY

Section 1

Introduction, Aims of Good Enforcement and Purpose

It is recognised that the primary responsibility for compliance with the law lies with businesses and individuals and their need to recognise their responsibility. Any enforcement authority must, however, play its part in providing equal and clear consistent advice and enforcement. For this reason there is a clear need to prepare, consult on and adopt policies on enforcement functions.

This document sets out what businesses and others being regulated can expect from enforcement by our Officers. It commits us to good enforcement policies and procedures. It may also be supplemented by additional statements of enforcement policy.

The primary function of central and local government enforcement work is to protect the public, the environment and groups, such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. We are committed to these aims and to maintaining a fair and safe trading environment.

The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those regulated. We recognise that most businesses want to comply with the law. We will, therefore, take care to help businesses and others to meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens will reap the benefits of this policy through better information, choice, and safety.

We have therefore adopted the Central and Local Government Concordat on Good Enforcement. Included in the term 'enforcement' are advisory visits and assisting with compliance as well as licensing and formal enforcement action. By adopting the concordat we commit ourselves to the following policies and procedures, which contribute to best value, and will provide information to show that we are observing them.

PRINCIPLES OF GOOD ENFORCEMENT: POLICY

- **Standards**

In consultation with business and other relevant interested parties, including technical experts where appropriate, we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards and our annual performance against them. The standards will be made available to businesses and others who are regulated.

- **Openness**

We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open as to how we set about our work, including any charges that we set, consulting business, voluntary organisations, charities, consumers and workforce representatives. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

- **Helpfulness**

We believe that prevention is better than cure and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice/information from us. Applications for approval of establishments, licenses, registrations, etc, will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

- **Complaints about service**

We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

- **Proportionality**

We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account, when considering action, of the circumstances of the case and the attitude of the operator or person not complying with requirements.

We will take particular care to work with small businesses and voluntary and community organisations so that they can, where practicable, meet their legal obligations without unnecessary expense.

- **Consistency**

We will carry out our duties in a fair, equitable and consistent manner. While officers are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency. These will include effective arrangements for liaison with other authorities and enforcement bodies through schemes, such as those operated by the Local Authorities Co-ordination of Regulatory Services (LACORS) and the Local Authority National Type Approval Confederation (LANTAC).

- **Shared Enforcement**

The service will continue to engage in and develop extensive and wide-ranging partnership arrangements with other council regulatory services and other agencies. In appropriate circumstances, shared or complimentary enforcement initiatives and operations will be encouraged.

The Enforcement Co-ordination Group provides a regular forum for the various enforcement partners to raise and discuss issues of general concern and common interest.

- **Information Sharing Protocols [“ISP”]**

The ISP acts as an invitation to all signatories to participate in the exercise of obligations placed upon the council under the Crime & Disorder Act 1998, namely to bring together and implement a crime reduction strategy. It is a structured procedure with in-built safeguards to allow the council to monitor and consider each application for information on its merits, and with indemnities for the council and its officers. The ISP, to which many agencies would have signed up to by the beginning of May 2005, will apply to any exchange of information that is intended to support action under any provision of that Act.

The service will fully support the development and operation of the ISP and initiatives of the Safer Communities Partnership as an essential tool in the prevention and detection of enviro-crime and various environmental health offences.

- **Particular interests of consumers**

The service will endeavour to make provision for the particular interests of the consumer, including business owners, employees, residential property landlords, tenants, and the public at large, where it is reasonable to do so.

The service is committed to addressing,

- Particular needs of businesses that mainly operate outside of normal office hours and also general customers essentially requiring delivery of service during similar periods.
- The provision of advisory leaflets and material with regard to key issues under required standards and practices, especially where English is not the first language. Special attention is given to new businesses by providing a start-up pack that sets out and advises on priority matters for early attention.
- The need for adequate training of catering staff and employees generally. The service is equipped to provide training courses in respect of both food safety and health and safety at work fields.
- Concerns as to tenants' security of tenure, especially when enforcement action is undertaken, by joint-working with other services and agencies.

PRINCIPLES OF GOOD ENFORCEMENT: PROCEDURES

Advice from an officer will be given clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety, environmental protection, or to prevent evidence from being destroyed).

Where immediate action is considered necessary, an explanation of why such action is required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken. Whenever possible, this advice will be issued with the enforcement notice.

PURPOSE OF THIS ENFORCEMENT POLICY

This Policy sets out to inform and describe the ways in which decisions are made for enforcement work.

The Policy:

- Prioritises enforcement actions according to the health, danger or nuisance risk of the environmental activities covered by our service.
- Communicates this information to all sectors of the community establishing the level of service the Council will aim to deliver.
- Provides the background against which we will monitor our enforcement activities, measure our performance and make continual improvement in the future.

Section 2 Enforcement Options

RECEIVING INFORMATION THAT MAY REQUIRE AN ENFORCEMENT ACTION

There are various ways by which we receive information or witness situations and events. Such information may bring forward an enforcement issue and once we are aware of the facts and have evidence as necessary, actions will be taken in line with this Enforcement Policy. We can receive information in the following ways ;

- > A referral , complaint or request for service
- > Notifications & Applications made to the Service
- > Visits , inspections & audits of residential and business premises and associated activities
- > As part of initiatives , projects & special investigations by the Service
- > Events occurring & notification through the Emergency services , such as fatal workplace accidents or building collapses

We remain committed to developing & improving the methods by which residents , businesses & others communicate with us.

The present methods of personal visit , telephone, letter , fax & e- mail will be enhanced in the move towards 'electronic' or e -government. We are also committed to developing our consultation processes to ensure wide participation & comment in our Service policies & delivery.

SUMMARY OF ENFORCEMENT OPTIONS

Listings give an account of the various means by which information is received by the service that may necessitate the subsequent taking of enforcement action. Also included is a summary of the types of enforcement action available to the service.

General options

- > Information & advice , verbal & written
- > Report of investigation, visit or inspection
- > Verbal & written warnings
- > Conditions on licences or approvals
- > ' Informal notices'
- > Formal statutory notices requiring action
- > Work in default of a notice recipient
- > Placing a legal charge on property
- > Formal legal cautions
- > Prosecution

Additional Commercial options

- > Refusal or withdrawal of licences
- > Detention & seizure of items
- > Exclusion of persons to prevent risk
- > Voluntary closure of a business/activity
- > Prohibition of a dangerous activity
- > Formal closure of a business/activity

Additional Housing options

- > Recovery of grant awarded
- > Closure of residential accommodation
- > Taking control of multiple occupation houses
- > Demolition/clearance of unfit properties
- > Compulsory purchase orders

Additional Environmental options

- > Fixed Penalty Notices

Section 3

Enforcement Standard

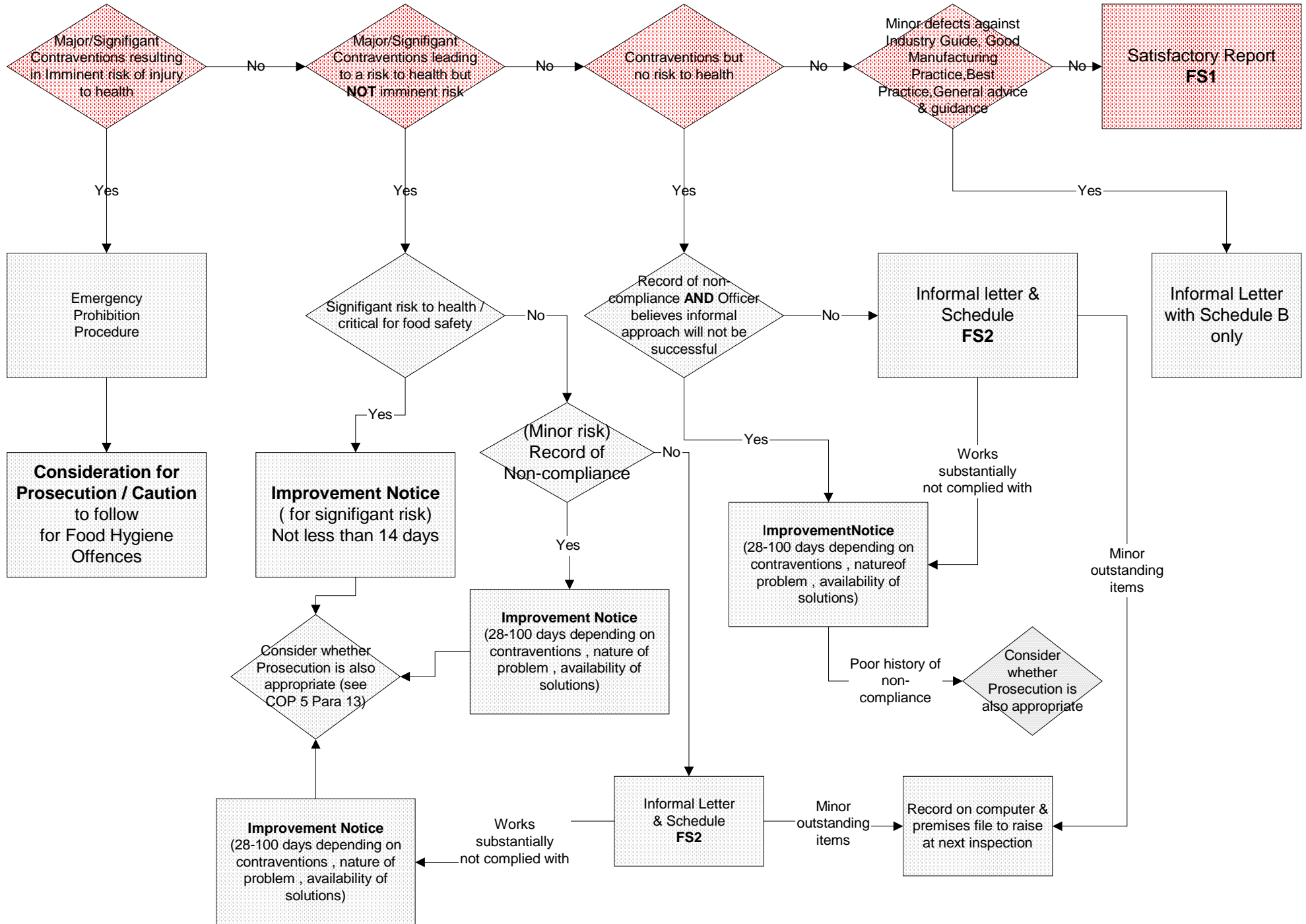
The standard for enforcement activities within the Enforcement Service is described in the following flow diagrams for each area of work. Each diagram describes the various enforcement options, and prioritises these options depending on the risk to health, danger or nuisance from a particular situation. The diagrams are as follows:

- 1 Food Premises
- 2 Food Standards & Safety
- 3 Health & Safety
- 4 Infectious Disease Control
- 5 Trading Standards
- 6 Building Control (now part of Planning Environmental Policy & Performance Service)
- 7 Entertainment Licensing & Night Cafe Registration
- 8 Street Trading
- 9 Miscellaneous Licensing
- 10 Houses in multiple occupation, Single family occupation dwellings & Empty properties
- 11 Grant aided assistance & conditions
- 12 General Public Health matters
- 13 Noise
- 14 Animal Welfare & Control
- 15 Environmental Response [Waste enforcement] - Public land
- 16 Environmental Response-[Waste enforcement] - Private land
- 17 Duty of care

For each diagram, the levels of risk are shown along the top with the enforcement actions detailed underneath. The actions are proportionate to the risk and generally allow for informal warning before formal action, unless there is a risk to health, safety or environmental protection. The principles of good enforcement detailed in the Enforcement Concordat will be followed.

"The operational process of authorising enforcement action and establishing the accountability of officers as to decision-making within the service is controlled by the document " Enforcement Action Decision-making & Offences, etc. Reporting - Procedure and Guidance notes."

**COMMERCIAL GROUP ENFORCEMENT
FOOD PREMISES DECISION TREE
(7.2.F1.6)**

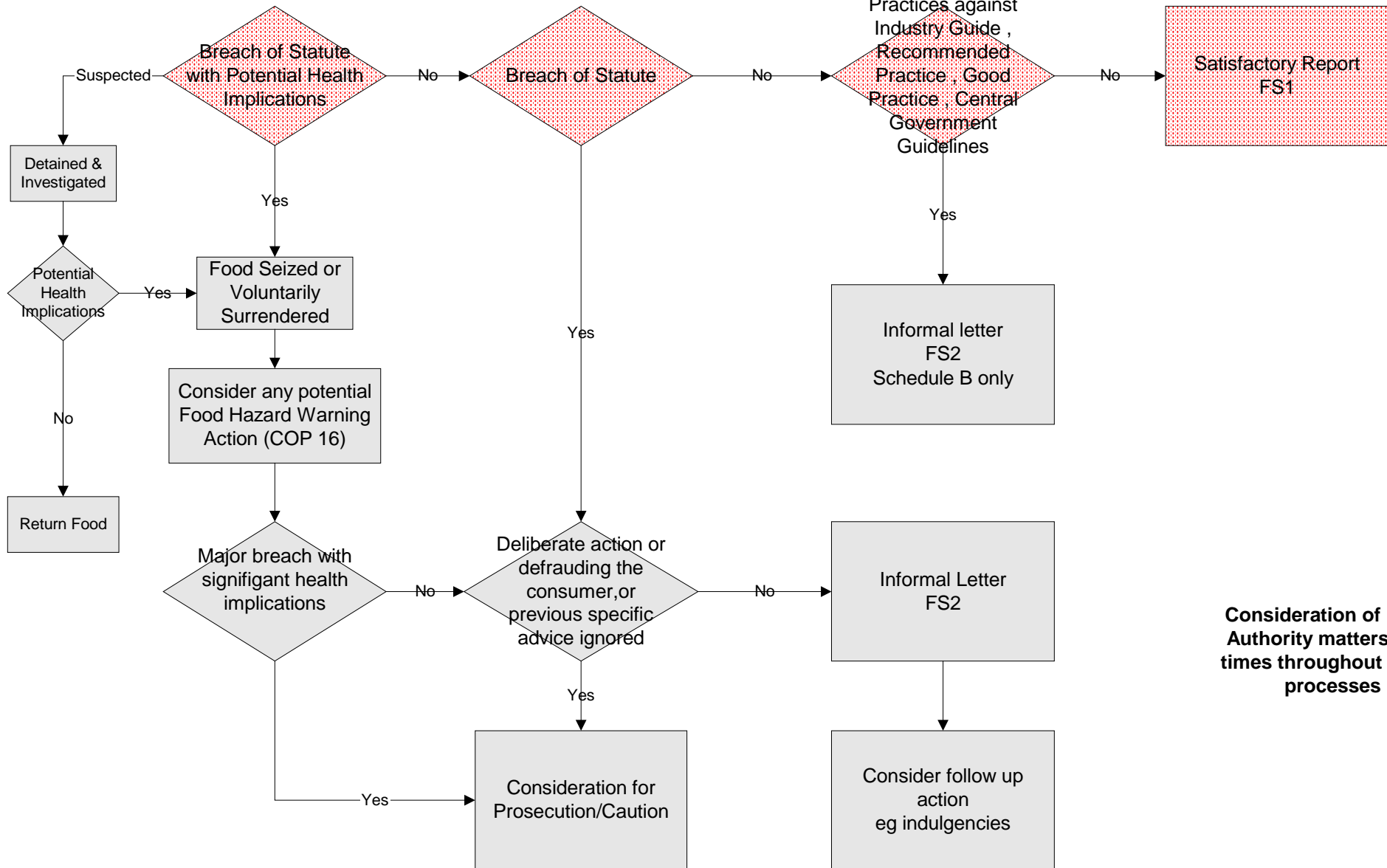


(Arising from visits & inspections , sampling , complaints & Home Authority matters)

ENFORCEMENT OF FOOD STANDARDS & FOOD SAFETY REQUIREMENTS

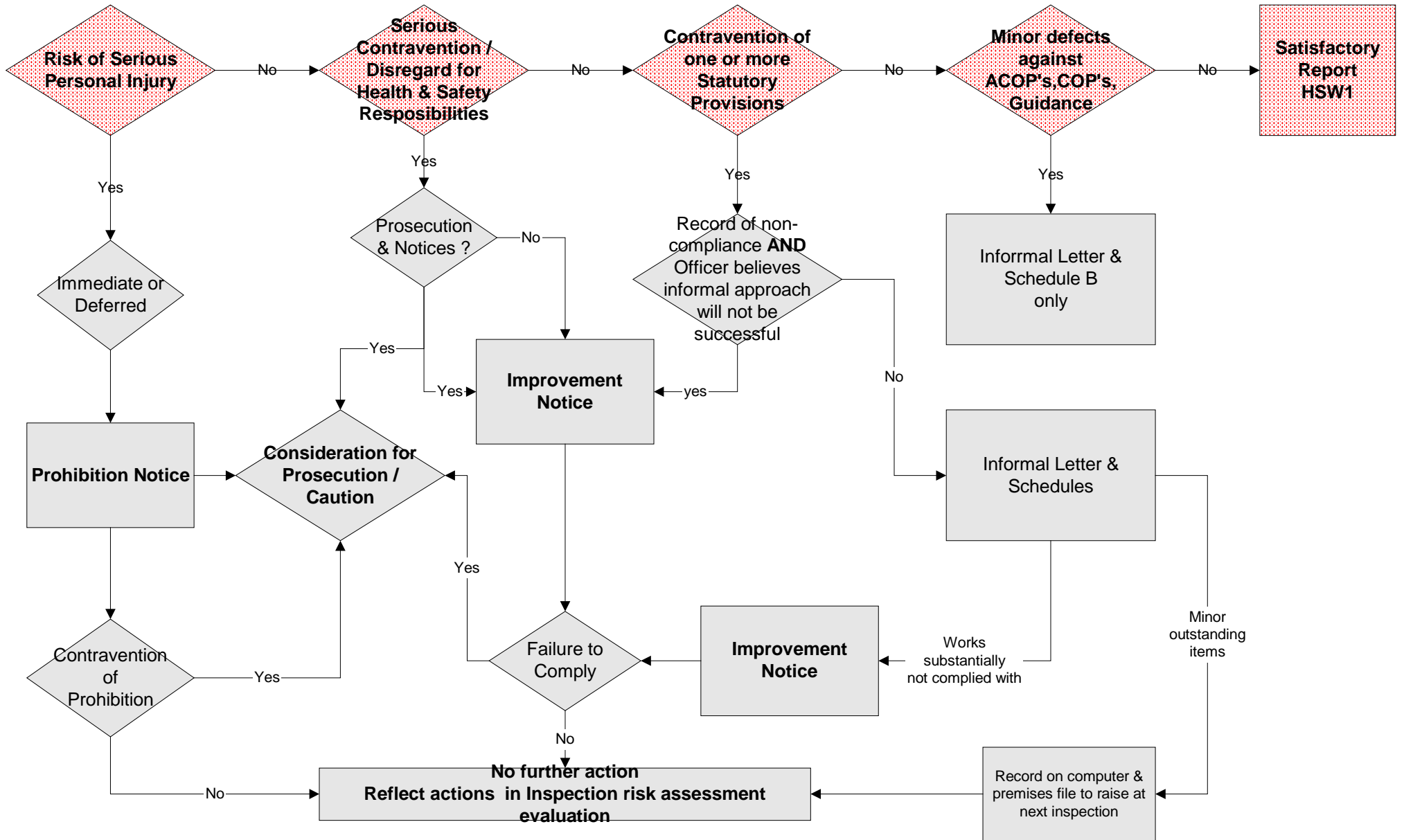
(Food Standards are the legal requirements covering Quality , Composition , Labelling , Presentation & Advertising of food & food contact materials)

The term Health Implication will be those conditions defined in the Food Safety Act 1990 Section 8 (2)



Consideration of Home Authority matters at all times throughout these processes

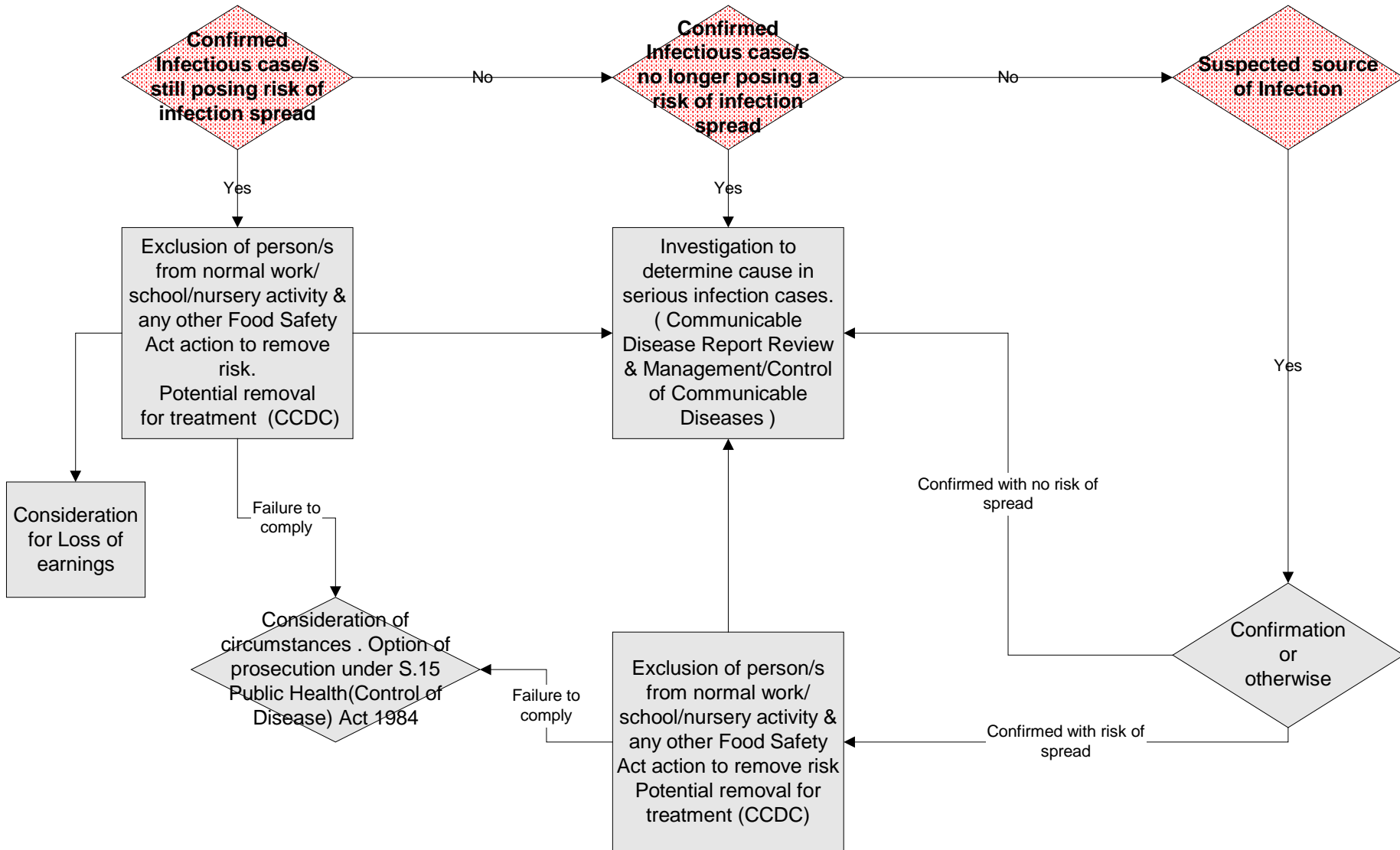
**COMMERCIAL GROUP ENFORCEMENT
HEALTH & SAFETY DECISION TREE
(7.3. S3.1)**



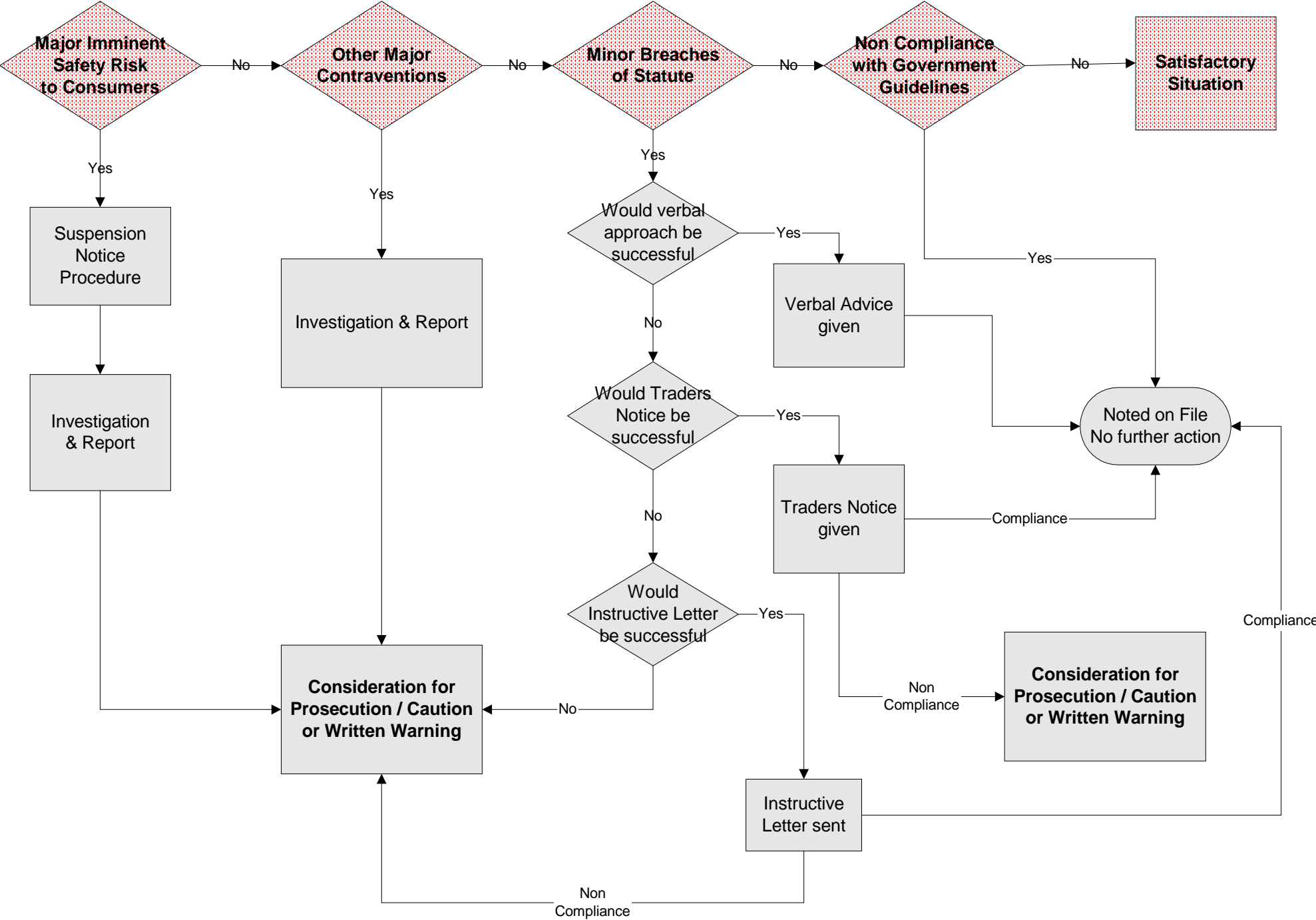
(Notifications can be received from various sources - see procedure 7.2.F3)

**COMMERCIAL GROUP
ENFORCEMENT
INFECTIOUS DISEASE
DECISION TREE**

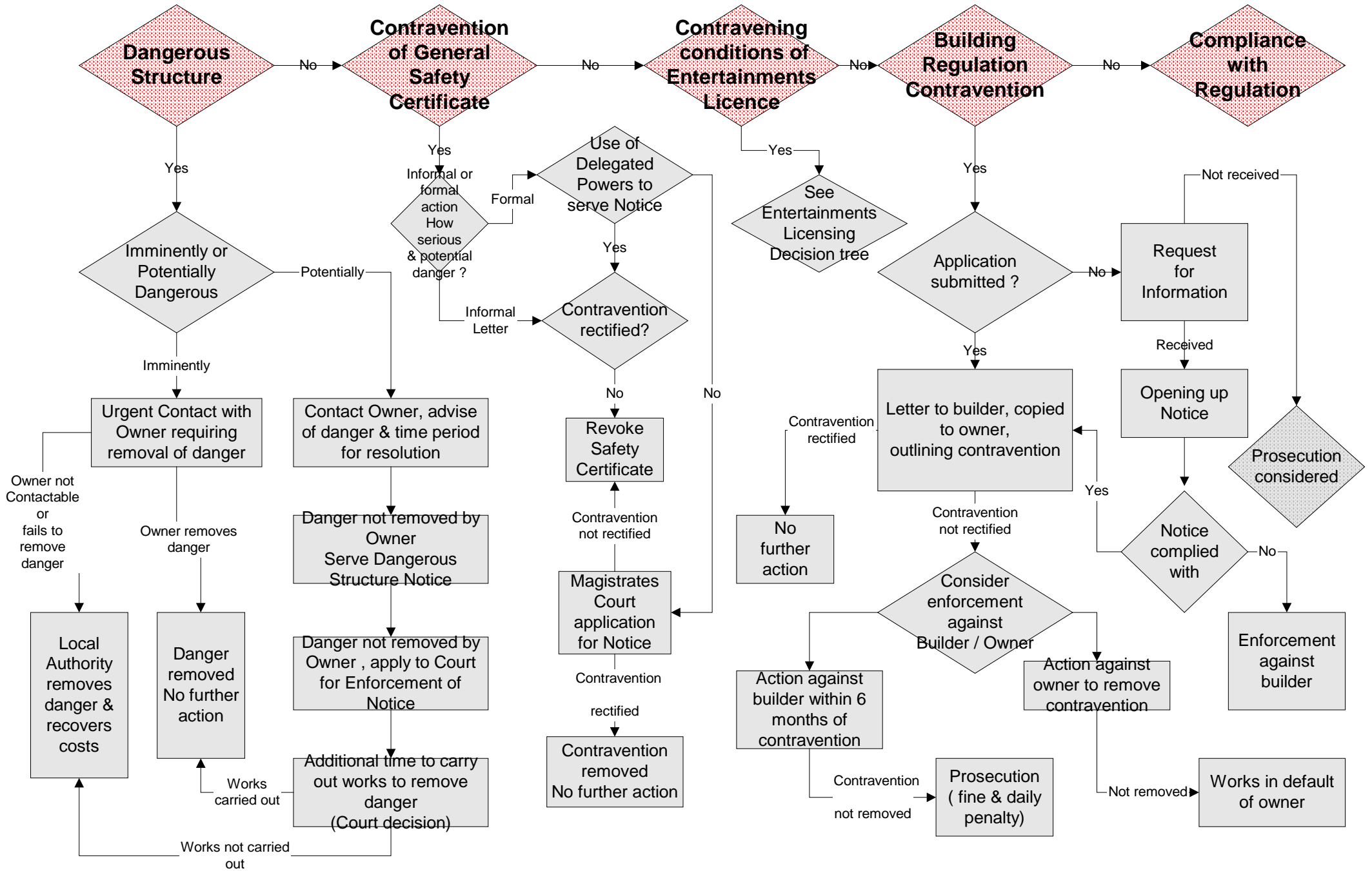
(Cases can be isolated or as outbreaks involving two or more cases)
Decision Tree applicable to those infections transmitted by Food & Water



**COMMERCIAL GROUP ENFORCEMENT
TRADING STANDARDS DECISION
TREE**

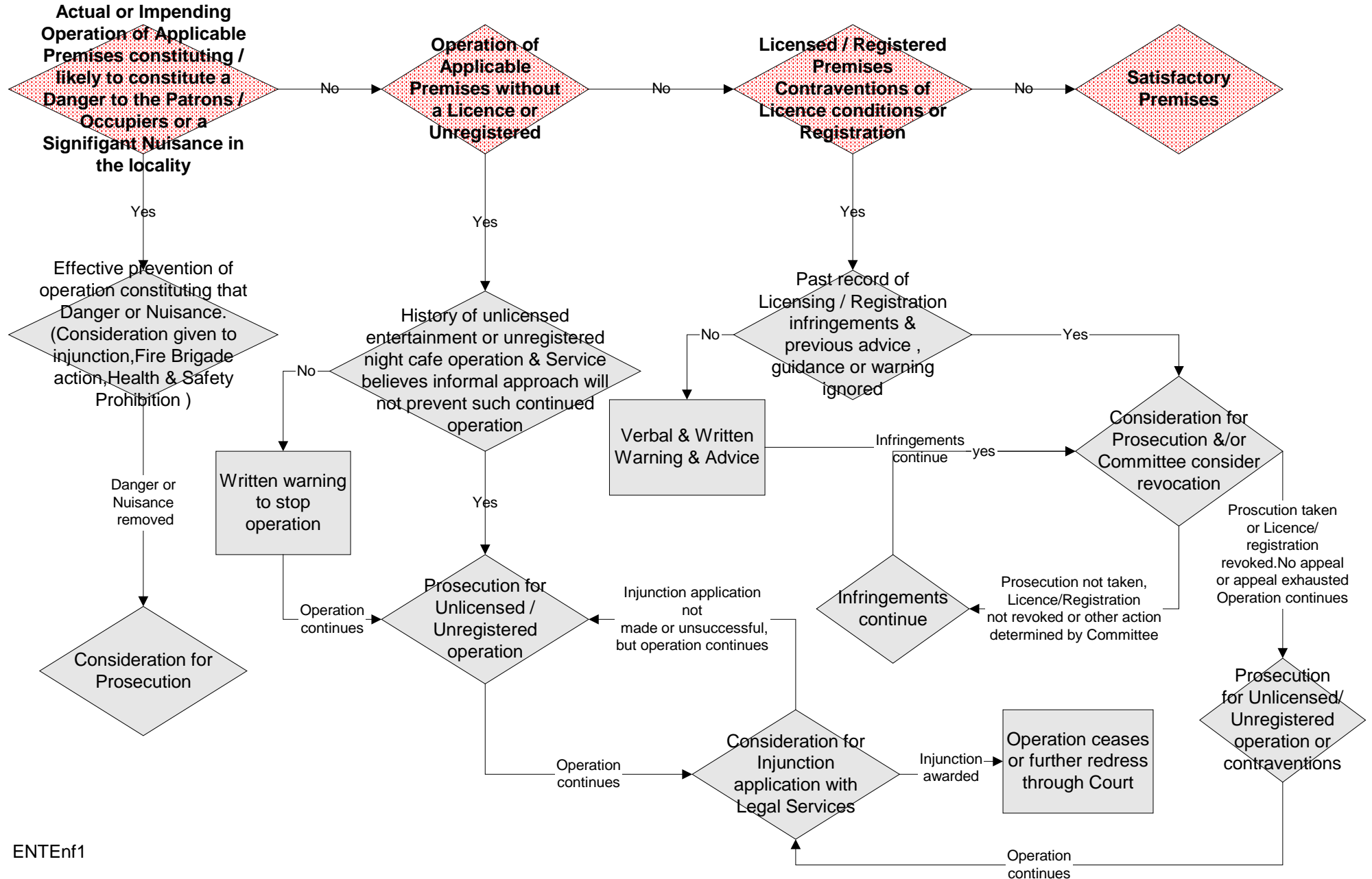


BUILDING CONTROL ENFORCEMENT DECISION TREE



Applicable Premises are those premises where activities would require an Entertainments Licence or Night Cafe Registration

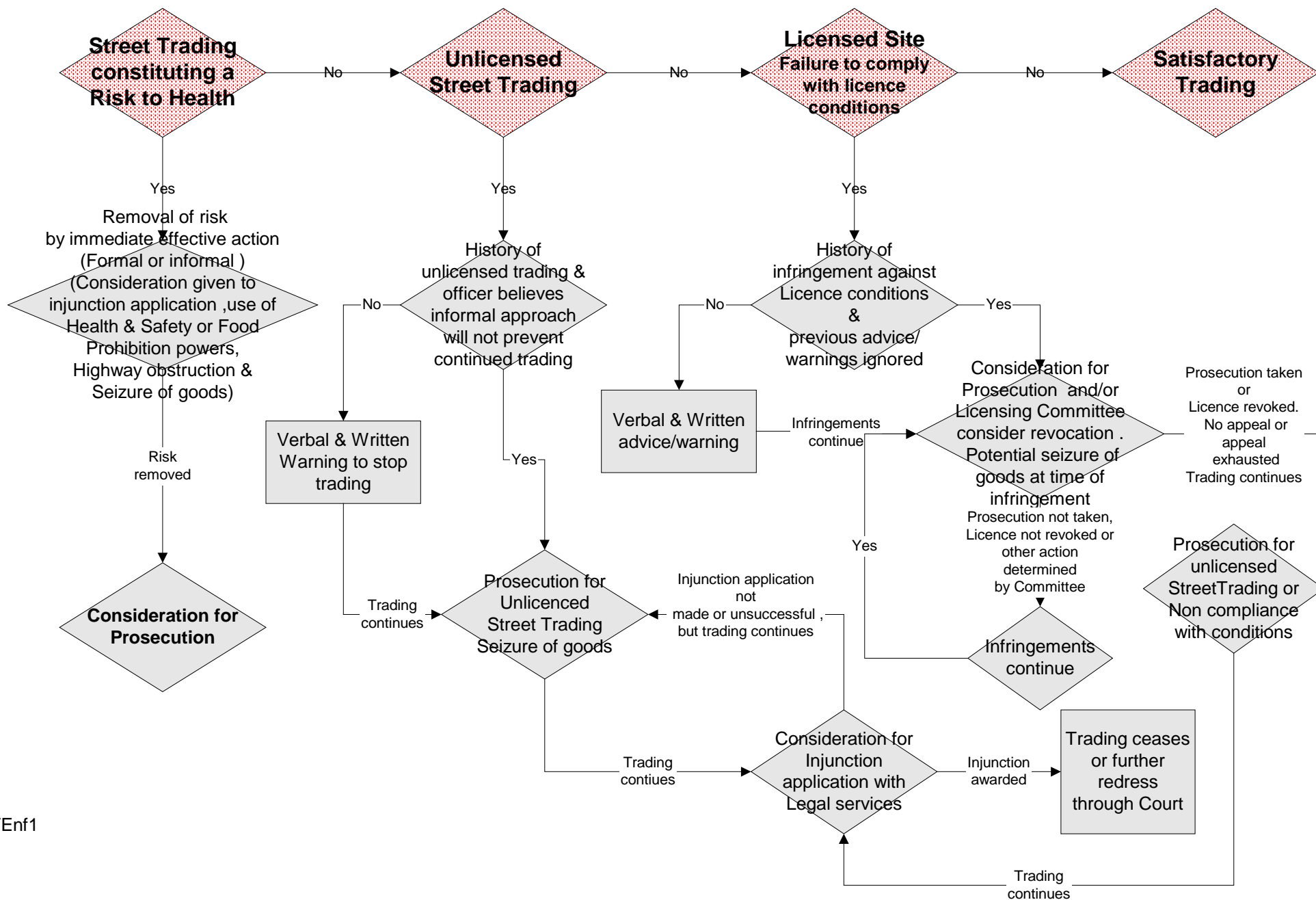
ENTERTAINMENTS LICENSING & NIGHT CAFE REGISTRATION ENFORCEMENT DECISION TREE



Risk to health can be created by obstruction of the road or pavement, or matters relating to the structure or operation of the trading in question

STREET TRADING ENFORCEMENT DECISION TREE

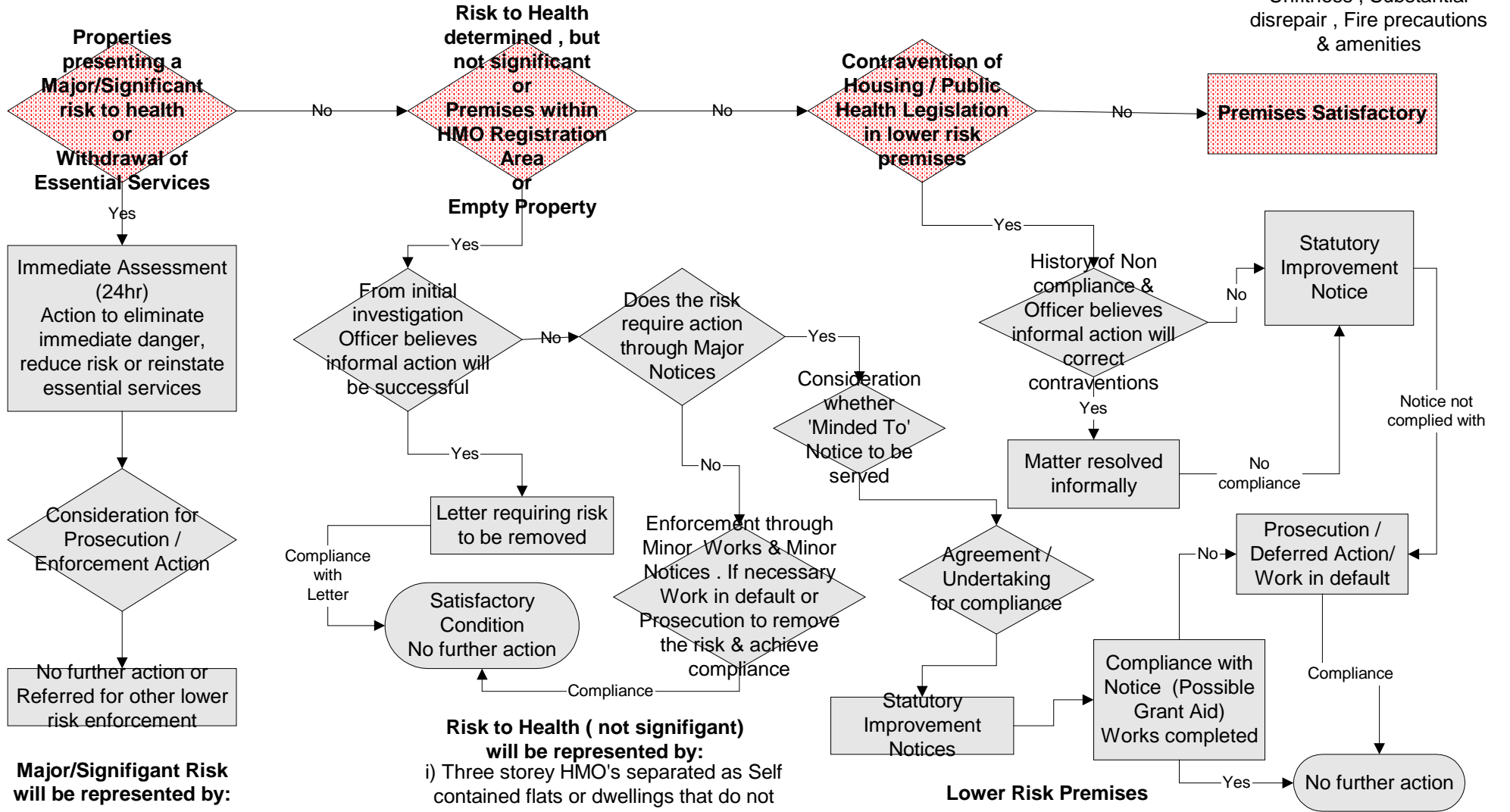
Street Trading will be as defined in the London Local Authorities Act 1990 Part III (as amended)



Enforcement Policy

Houses in Multiple Occupation , Single Family Occupation & Empty Properties

Major Notices are those in respect of
Unfitness , Substantial disrepair , Fire precautions & amenities



Major/Significant Risk will be represented by:

- i) Matters presenting immediate danger in all properties
- ii) All four storey HMO's & three storey Bedsit type HMO's

Withdrawal of Essential Services

Electricity , Gas & Water disconnections

Risk to Health (not significant) will be represented by:

- i) Three storey HMO's separated as Self contained flats or dwellings that do not meet adequate fire standards
- ii) Two storey HMO's with serious management or occupation defects
- iii) Single family dwellings where interim works can safeguard occupants

Properties vacant for greater than 5 years & properties within prioity areas

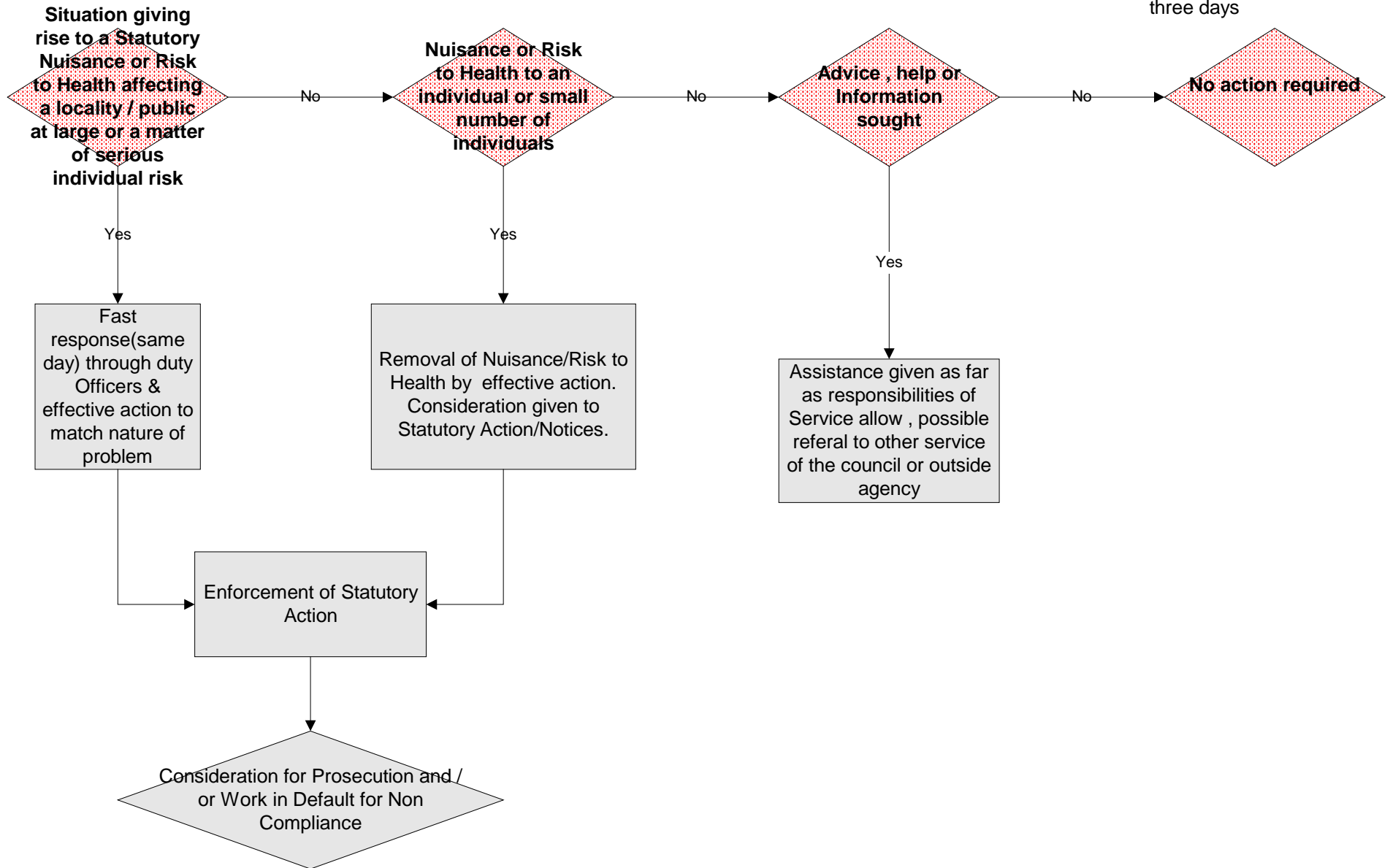
Lower Risk Premises

- i) Properties converted under Building Regs.
- ii) Two storey HMO's with good management
- iii) Properties already subject to enforcement issues & minor defects only
- iv) Vacant properties of less than 5 years & not in priority area

Statutory Nuisance is as defined in the Environmental Protection Act 1990

ENFORCEMENT POLICY GENERAL RESPONSE TO PUBLIC HEALTH MATTERS

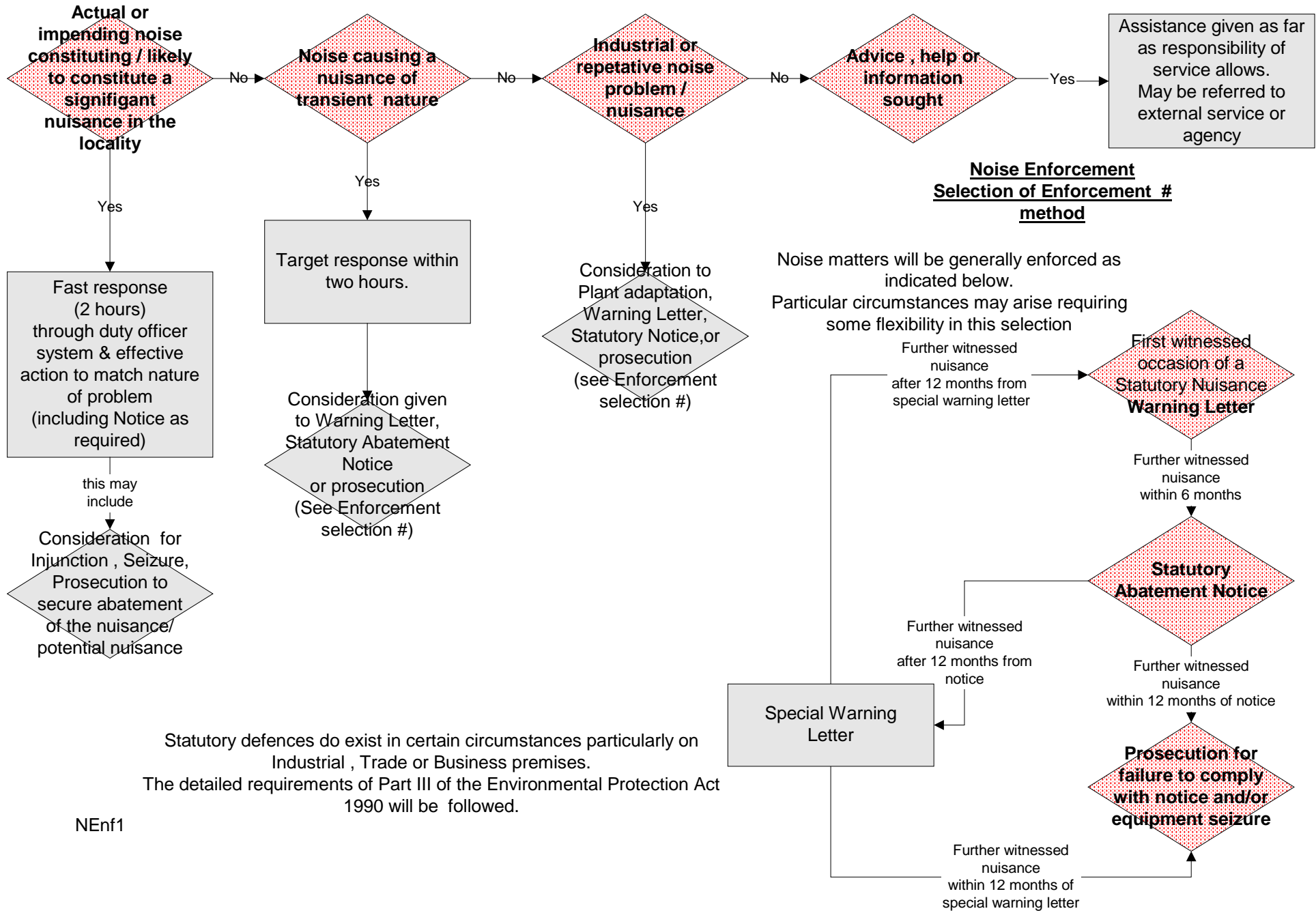
The target for **all** referrals / requests for service coming into the Direct Response Team will be to have a response within three days



Statutory Nuisance is as defined in the Environmental Protection Act 1990

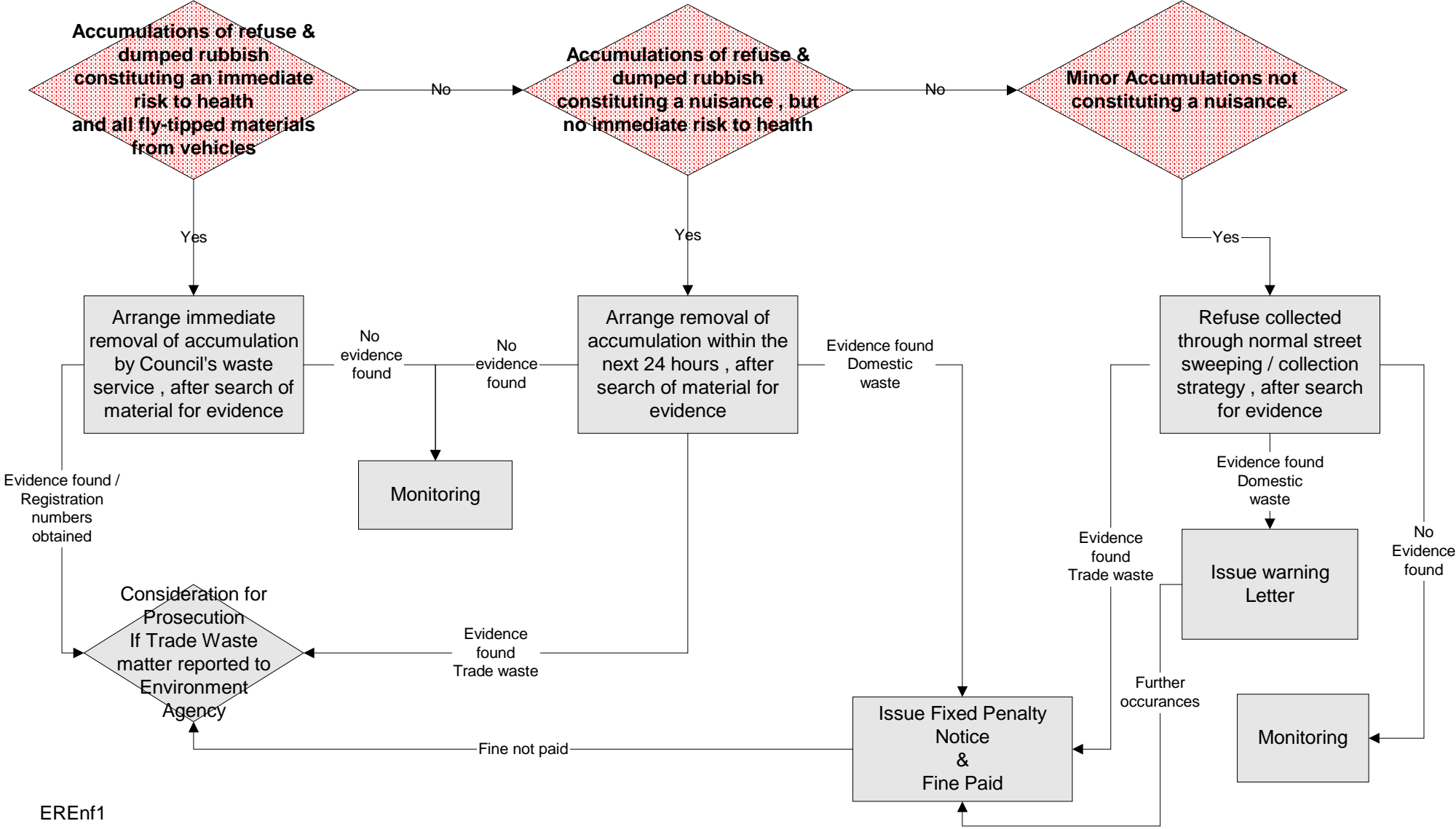
ENFORCEMENT POLICY NOISE

Response priority is given to serious nuisance or transient matters (target 2 hours)
 Other noise situations will come within the target response time for all referrals which is three working days.

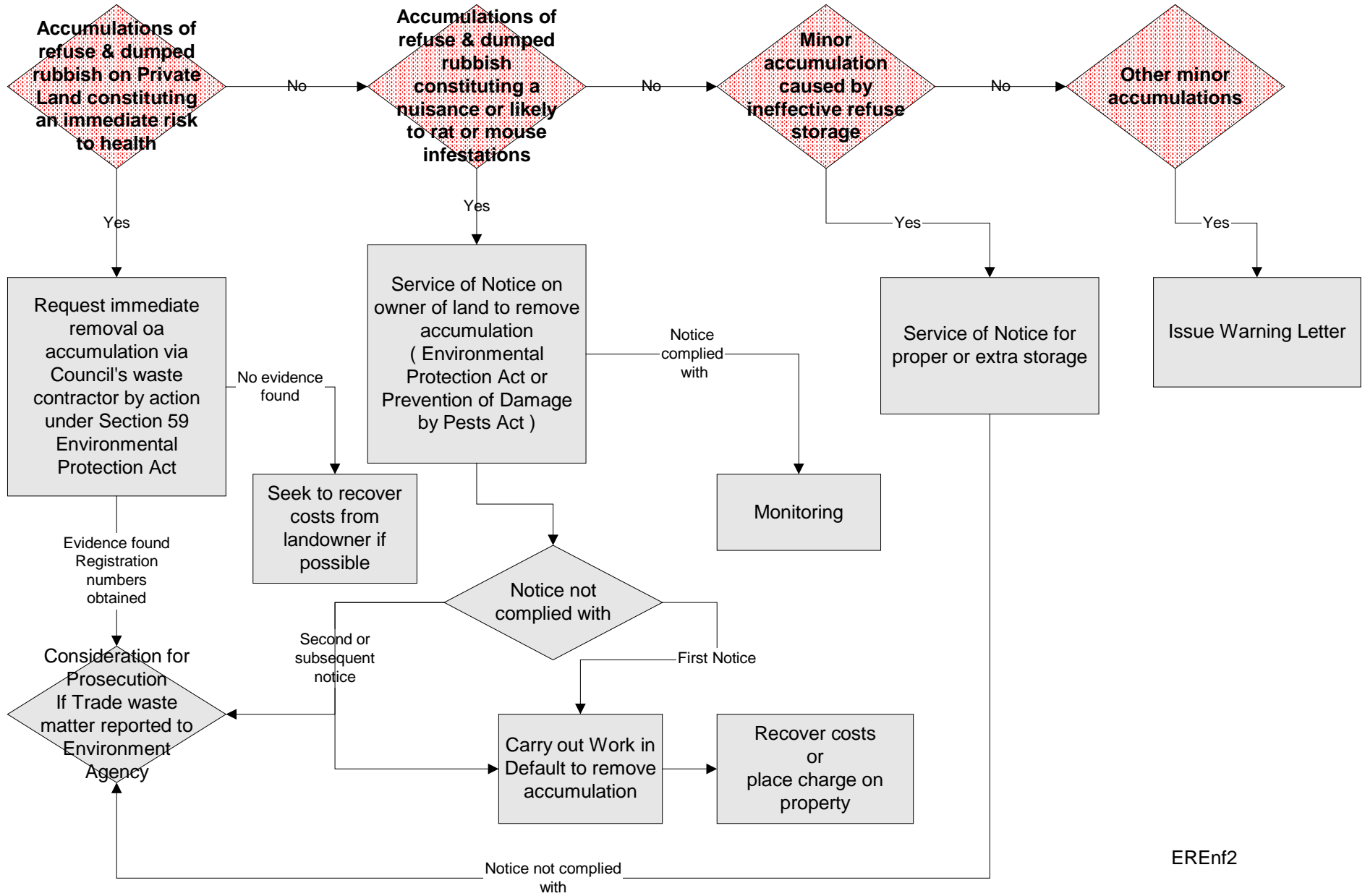


Statutory defences do exist in certain circumstances particularly on Industrial, Trade or Business premises.
 The detailed requirements of Part III of the Environmental Protection Act 1990 will be followed.

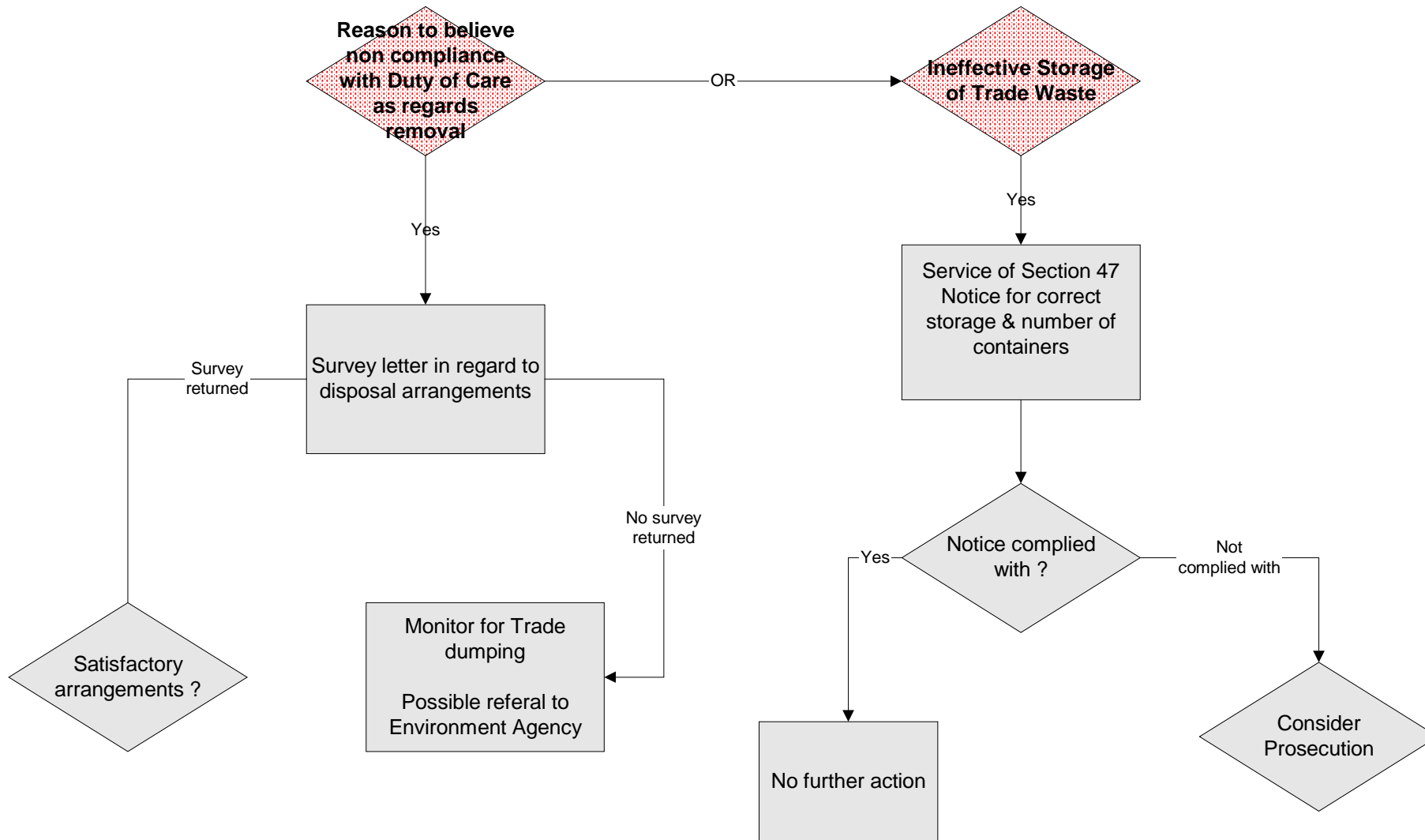
**ENFORCEMENT POLICY
ENVIRONMENTAL RESPONSE
PUBLIC LAND**



**ENFORCEMENT POLICY
ENVIRONMENTAL RESPONSE
PRIVATE LAND**



ENFORCEMENT POLICY
ENVIRONMENTAL RESPONSE
DUTY OF CARE - TRADE WASTE



Section 4

Prosecution , Human rights & Legal provisions

The Public Interest Test

Aim: A prosecution will be considered unless there are Public Interest factors tending against prosecution which clearly outweigh those tending in favour. The factors for and against must be balanced together.

Examples of factors for & against prosecution:

The factors that apply will depend on the circumstances of each case. You must decide on the importance of each factor in the case.

For Prosecution	Against Prosecution
A conviction is likely to result in a significant sentence / fine	The court is likely to impose a nominal penalty
The seriousness of the offence. The defendant was in a position of trust	The offence was committed as a result of a genuine mistake or misunderstanding
Evidence of premeditation, group action or organised activity	The loss or harm can be described as minor and was the result of a single incident, particularly if this was a result of a misjudgement
Victims were vulnerable, or suffered damage or disturbance. Offence motivated by discrimination	Delay in bringing the case unless caused by the defendant (must be balanced against the seriousness of the case). Elderly or poor physical / mental health
The defendant's previous convictions or cautions are relevant to the present case.	Corrective action taken by the defendant.
There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct.	
The offence although not serious in itself is widespread in the area where it was committed.	

Human Rights

Introduction

The European Convention on Human Rights was incorporated into domestic law under the Human Rights Act 1998. This Act makes it unlawful for a public authority, such as Haringey Council, to act in an incompatible way with those rights. Human rights cover matters in this policy, including drafting rules & regulations, decision & policy making, administrative procedures and interaction with the public or business community.

Impact on Enforcement work

It is considered that the following matters under the Human Rights Act are pertinent to this Enforcement Policy:

- Article 6 The right to a fair trial or hearing.

Anyone charged with a criminal offence has the minimum rights of

- (i) Being informed promptly in a language understood, the nature & cause of the accusations
- (ii) Having adequate time & facilities to prepare a defence
- (iii) Defending in person or with self chosen assistance, free if necessary when the interests of justice so require
- (iv) Having witnesses for the defence & to examine or have examined witnesses for the prosecution under the same conditions
- (v) Having the assistance of interpretation if the language used in court cannot be understood

- Article 8 Respect for private & family life.

- (i) Everyone has the right to respect for their private & family life, their home and correspondence
- (ii) Interference by a public authority with the exercise of this right must be in accordance with the law and in the interests of either national security, public safety, economic well-being of the country, prevention of disorder or crime, protection of health or morals, or the protection of the rights and freedoms of others

- Article 1 [1st Protocol] Peaceful enjoyment of possessions and property.

- (i) No person shall be deprived of their possessions except in the public interest and subject to the conditions provided for in law.

General Comment

Human rights matters can be raised throughout the enforcement process and this can include

- (i) At court proceedings
- (ii) Prior to any litigation during enforcement decision processes
- (iii) Both for and against a particular enforcement decision depending on the circumstances

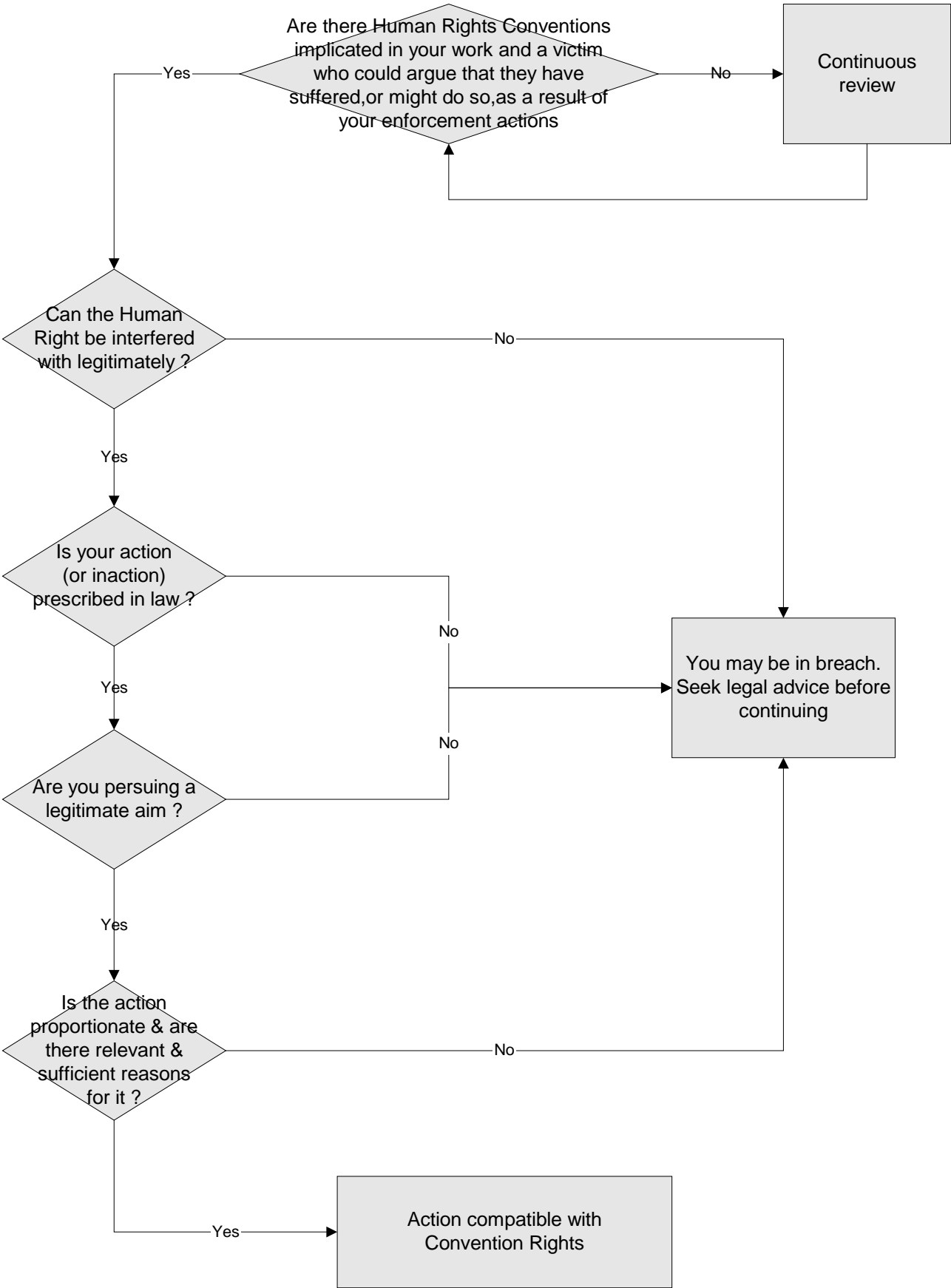
The articles listed above are not exclusive and other Articles may be discussed or used by persons affected by this Enforcement Policy. It is hoped that the effect of the Human Rights Act will become clearer over time as a result of decisions in the Courts.

Haringey Policy & Actions for Human Rights in Enforcement

- (i) All enforcement will be read & given effect in a way which is compatible with the Convention Rights. This will be across the range of Acts, Regulations, Orders & Guidance issued by Government and used by the Service.
- (ii) Close liaison with our Legal Service will ensure that any issues impacting on human rights will be picked up at an early stage, and any such matters documented during the enforcement decision-making process. (See flow diagram & Enforcement checklist).
- (iii) Our Enforcement Policy flow diagrams have been drafted so that actions are related and proportional to the risks, dangers or nuisance involved in a particular enforcement situation. Even if a particular action or policy which interferes with a convention right is aimed at pursuing a legitimate goal, the interference may not be justified if the means used to achieve the aim are excessive in the circumstances. Such interference must be carefully designed to meet the objective in question and must not be arbitrary or unfair.

Human Rights Actions Checklist

HREnf2



LEGAL PROVISIONS

The areas of enforcement work will contain specific laws relating directly to the technical aspects detailing requirements, obligations, offences, etc across many Acts, Regulations and Orders. There are also a number of legal or semi-legal provisions relating to, or having a bearing on, enforcement as a whole. Some have only a passing reference but others are fundamental and key to fair and effective enforcement. Details of these provisions are given below & include:

The Enforcement Concordat - Details of the requirements of the Concordat are given elsewhere in this policy.

The Regulation of Investigatory Powers Act 2000 - This Act deals with surveillance, and prescribes the various types together with the authorisation & conduct of each. Surveillance Commissioners appointed by the Government have the power to audit any local authority at any time on their performance against the requirements of the Act. The cornerstone of the legislation is that as a general rule, covert surveillance activities must have been authorised in writing by an entitled officer prior to taking place. For Haringey's enforcement work, officers will be authorised for this function with the necessary support documentation for each surveillance authorised.

Crown Prosecution Service Guidelines - These guidelines produced by the CPS should be used by local authorities in their determination of whether a case goes forward for prosecution. Consideration of these guidelines is given elsewhere in this policy.

Police & Criminal Evidence Act 1984 (PACE) - This Act applies equally to non- Police enforcement agencies, including local authorities. The Act details the requirements for gathering, handling & protection of evidence, including the necessary 'audit trails'. For a local authority, the Act determines the way in which they obtain and record information in areas, such as notebook cautions, prior to obtaining evidence, tape recording of interviews and secure storage of evidence obtained.

Criminal Procedure & Investigations Act 1996 - This Act details the way in which information & evidence is handled & communicated when a prosecution is being taken. It gives duties and responsibilities to persons handling evidence, such as disclosure of material, to the defence. For our enforcement function, most of the work to comply with this Act will be undertaken by our Legal Service. The main exception to this is within Trading Standards where training and experience enables this work to be completed within the section.

Human Rights Act 1998 - This Act incorporates the European Convention on Human Rights. Details of this Act and policy for the Enforcement Service is detailed elsewhere in this policy.

Data Protection Act 1998 - The requirements of this Act will apply across the work of the Service in both computerised & manual filing and recording systems. Such information must be lawfully processed and securely held, kept for limited purposes and periods, relevant to our work, and not excessive. The Service will adhere to the requirements of the Act.

(Further information available at www.homeoffice.gov.uk/ccpd/dpfacts.htm)

Other Acts and Regulations will not be detailed in this policy. These include the Local Government Act 2000, the Environmental Information Regulations 2004, the Freedom of Information Act 2000, and the Race Relations (Amendment) Act 2000.

Section 5

Monitoring & Review

The responses to requests for service, complaints and other reactive work are monitored in line with our Service Standards. These responses vary from immediate (within two hours) up to a maximum of three days. These will be contained within the Service Business Plan and are also subject to our Customer Charter.

Our monitoring will consider the following criteria to determine performance for Enforcement

Reactive work

- The number of complaints, requests for service, referrals or notifications received.
- The first response time, i.e. the time taken from receipt to first action.
- The numbers of 'resultant actions' taken, in the form of warning letters, notices, prohibitions, works in default undertaken, penalty notices, cautions and prosecutions.
- Compliance with the Enforcement Policy and deviations from it together with reasons.

Proactive work (this is work as part of an organised programme, such as Food or Health & Safety inspections)

- The number of visits & inspections undertaken compared to the number that were due to be completed.
- The enforcement actions taken as a result of those visits or inspections, similar to those detailed above
- Compliance with the Enforcement Policy together with deviations
- Compliance with guidance and instruction from outside agencies (e.g. The Food Standards Agency, Health & Safety Executive, Department. for Trade & Industry, etc.)
- Monitoring the quality of inspection and associated enforcement decisions and documentation.

In addition, the enforcement function has been reviewed for Best Value. This involved further consultation and provided an opportunity to appraise the delivery of enforcement services generally.

Review

The process of review will be ongoing throughout enforcement work. Parts of the Service are quality assured under ISO 9002, which requires a constant review of the activities. The Enforcement Best Value review took place during 2002; it enabled us to look in some depth at our services and bring forward improvements.