

NORTH DEVON COUNCIL – WORKS IN DEFAULT POLICY

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1. Introduction

- 1.1 One of the primary aims of North Devon District Council is to protect public health and to improve the quality of life and wellbeing of residential occupiers. This is done by ensuring compliance with the legislative framework within which the Council operates so that consumers, businesses, employees, individuals and the environment are protected. Fair, proportionate, targeted and effective enforcement is essential to protect the health, safety and economic interests of all concerned. There is a range of tools available to the Council to achieve this, including carrying out works in default, a process which arises where a person fails to comply with a notice issued by the Council to carry out works.
- 1.2 Works in default (WID) may be carried out where one of the following applies:
 - 1.2.1 There is no prospect of the person responsible carrying out the work, e.g. the person is absent or otherwise unable to act because of medical or mental incapacity
 - 1.2.1 There is a continuing risk to the occupants of any building and their visitors
 - 1.2.3 There is an imminent risk to public health
 - 1.2.4 A prosecution is not appropriate
 - 1.2.5 A prosecution has been brought and works have still not been carried out
 - 1.2.6 It is appropriate for a public health nuisance to be abated quickly.
- 1.3 Where a decision is made that works in default will be carried out, the Council will seek to recover all the costs incurred from the responsible person. The costs which may legitimately be claimed comprise not only the work itself and any contractor fees, but also items such as officer and administrative costs, expenses for preliminary inspections and consultant fees, and VAT (if so advised by the VAT Officer of Financial Services).
- 1.4 Interest will be added to outstanding debts for works in default at the rate of 8%.
- 1.5 The Council is not obliged to carry out works and reserves the right not to do so:
 - 1.5.1 Where the cost of the works is likely to be very high
 - 1.5.2 Where there are likely to be difficulties in recovering the costs

- 1.5.3 An alternative regulatory option, such as a prosecution, or the imposition of a civil penalty is deemed more appropriate.
- 1.6 When recovering the costs the Council will use the full range of recovery powers available including enforced sale of property if necessary. The process is set out in Appendix E. Officers should work closely with the Legal Team in undertaking this process.

2. The Scope of the Works in Default Procedure

- 2.1 This policy sets out the general procedure for carrying out works in default as part of, or instead of, other Council enforcement functions. The general procedure may, if deemed necessary, be followed by sub-procedures specific to individual pieces of legislation.
- 2.2 Works in default by local authorities are authorised under a variety of statutory provisions. A list of the more commonly utilised provisions can be found at Appendix B in this policy document; it is not intended that the list is exhaustive, and this policy applies equally to all circumstances where the carrying out of works in default is authorised by legislation. The legislation will detail where there is a requirement to record the Notice as a Land Charge.

3. Responsibilities

In pursuance of this policy, it is envisaged that responsibilities will fall on officers as set out below:

3.1 Case Officer

- Ensure correct service of notices; obtain quotes and instruct contractors
- Ensure works carried out fulfil the notice requirements to an appropriate standard
- Agree contractor invoices
- Issue comprehensive billing details to financial services
- Issue comprehensive details to Legal Services
- Liaise with responsible parties.

3.2 Heads of Service

- Agree works in default policy and procedures.
- Agree payment schemes with finance and responsible parties.
- Determine recovery of the cost procedures with legal and financial services
- Authorise the carrying out of works in default in individual cases.

3.3 Financial Services

- Establish sundry debtor arrangements and issue invoices to responsible parties
- Agree payment schemes with Officers and responsible parties
- Collection and recovery of debts with guidance from Legal Services
- Monitoring and reporting outstanding debts.
- Implementing recovery procedures
- Flagging up non-payment or under-payment and liaising with others
- Recording actions to secure payment of the debt.

3.4 Legal services

- Advising on correct service of Notices
- Advising on recovery methods including enforced sale
- Implementing recovery procedures as appropriate.
- Approving regulatory options
- Advising on Court and legal processes.

3.5 Land Registry/Local Land Charge Service

- If Legal advise it is appropriate then recording Notice as Land Charge
- Monitoring and reporting on removal/cancellation of charges.

4. Responsible Persons

- 4.1 Key to the WID process is the identification of the person(s) or body who is legally responsible for carrying out the works and whose failure to take action necessitates work being carried out in default. Dependent on the circumstances there may be shared responsibilities for taking action and the persons involved may be freeholders, lessees, trustees, tenants, or other occupiers.
- 4.2 The purpose of WID is to secure compliance with a legal notice issued by North Devon District Council. Ownership and the responsibilities for repair/works should be clearly established in advance of the service of the notice.

5. Summary of Process

- 5.1 Undertaking Works In Default can be used in addition to, or as an alternative option to prosecution, or the imposition of a Civil Penalty, on the person(s) responsible for non-compliance with an enforcement notice, providing that the original notice was correctly served.
- 5.2 Every item of work to be carried out in default should be specified in a notice that sets out the legislation under which the action is being taken.

- 5.3 It is only those works detailed in the notice that can be undertaken by the Local Authority.
- 5.4 If during the course of undertaking WID it transpires that extra works are required, they may be carried out with the agreement of the responsible person(s) or, in the absence of such agreement, another enforcement notice will have to be served.
- 5.5 Expenses incurred in carrying out WID are recoverable from the responsible person(s) and in some instances can be placed as a charge against the property in question. A demand notice may also be in the form of a letter detailing the action under which the demand is being made.
- 5.6 The Council will add interest to the charges and is empowered to enforce the sale of the property or goods in order to recover their costs, where appropriate.
- 5.7 The costs of the works must be justifiable and reasonable to limit the risk of successful challenge accordingly a procurement process, as appropriate to the estimated value of the proposed works, must be carried out (see paragraph 6.8 below).
- 5.8 Works in default must be carried out strictly in accordance with the powers of entry set out in the legislation relevant to the particular notice of enforcement which has been served.

6. General Procedures

Whilst the specific legislation under which WID are being instigated may vary, some basic procedures/practices are common to all cases, as set out below, when a Case Officer discovers that works to resolve or alleviate a problem are required. The process is summarised in Appendix C.

- 6.1 The responsible person(s) must firstly be established in accordance with the legislation. This could be the occupier, owner, or both, or a third party.
- 6.2 Suitable checks/enquiries should be undertaken to establish ownership and/or the responsibility for carrying out necessary works, such as:
 - 6.2.1 Enquiries of the tenant, through the lease/agreement
 - 6.2.2 Service of Notice under Section 16 of The Local Government (Miscellaneous Provisions) Act 1976
 - 6.2.3 Checks through the Council Tax and/or Business Rate records

- 6.2.4 Checks through HM Land Registry
- 6.2.5 Checks through Land Charges (if appropriate where unregistered land) and to establish if there are any extant notices.
- 6.3 An enforcement notice must then be served on the responsible person detailing precisely what the problem is, the exact actions needed to remedy it, the time period by which the actions have to be completed, and any appeal provisions that may be available
- 6.4 In the absence of any appeal by the person served with the enforcement notice, the Case Officer must establish if all the works set out in the notice have been completed within the time periods specified. This should be done by way of a full inspection of the whole property, giving a minimum of 24 hours' notice.
- 6.5 If the notice has been complied with in full, the case should, after review, be closed and the recipient(s) of the Notice and any tenants informed.
- 6.6 If the conditions of the notice have not been met, the Case Officer should prepare a report detailing the extent of compliance with the notice, the works which remain to be carried out, an estimate of the time and cost required for completion, and the extent of any mitigation on behalf of the responsible person. Details of any request for an extension of time to complete the works should also be included. The report should include the enforcement options available, and any recommendation for works in default, where the Officer feels that these are appropriate.
- 6.7 The Case Officer must present the report to the Head of Service, who will decide, in the event of a recommendation being made for works in default to be carried out, whether to authorise such works. This decision must be recorded in accordance with Regulation 7(2) of the Openness of Local Government Bodies Regulations 2014.
- 6.8 If the Head of Service authorises works in default, the Case Officer must complete a procurement process to appoint a contractor to carry out the work. This process must be carried out in accordance with the Contract Procedure Rules, which are set out in Part 4 of the Council's Constitution. **For additional guidance please see <https://insite.northdevon.gov.uk/useful-documents/contracts-and-procurement/>.**
- 6.9 The Case Officer must then serve a notice on the responsible person stating that the Council will be undertaking WID. The notice must also set out when the works will start, and their estimate cost.
- 6.10 The Case Officer should also determine which powers of entry are to be used, and whether a warrant to enter the premises may be required. In the event that a

warrant is required, the Case Officer should contact Legal Services, who can make the appropriate arrangements with the Magistrates' Court for a warrant application to be made.

- 6.11 Once a contractor has been identified following the procurement process as referred to in paragraph 6.8 above, the Case Officer must make suitable arrangements for the contractor to access the site, and must agree suitable start and finish times with the contractor and the owner and occupants.
- 6.12 The Case Officer should ensure that he/she is on site at the start of the WID, that the works are undertaken properly, by regular visiting if necessary, and that the site is left clean and tidy when work is complete. Before and after photographs should be taken whenever possible for reference in case of a dispute.
- 6.13 Once the works are complete, the Case Officer is responsible for obtaining an invoice from the contractor which sets out the costs involved in the WID.
- 6.14 The Case Officer must also calculate the administration costs involved, and any additional expenditure relating to the WID
- 6.15 The Case Officer must then raise a Sundry Debt instruction, as set out in Appendix A to allow Debtors to issue a demand to the person responsible.
- 6.16 If a warrant of entry has been executed, the Case Officer must ensure that the executed warrant is returned to the Magistrates' Court, together with a covering letter or statement explaining that the warrant has been executed, if so required by the Magistrates Court when issuing a Warrant. In the event that there was no need to execute the warrant, the officer must still endorse the warrant with the fact that it was not executed and the justification for not doing so and return it to the Magistrate's Court with a covering letter.

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- Appendix B – Legislative background
- Appendix C – Process flow chart
- Appendix D – North Devon Council Debt Recovery Routes
- Appendix E – Guidance on enforced sales

APPENDIX A - Sundry Debt Instruction

1. Originating service

For example, Environmental Health and Housing.

2. Origination unit

For example, Housing Standards or Private Sector Housing.

3. Case Officer

This is the person responsible for the works in default being carried out:

- Name
- Designation
- Telephone number
- Email.

4. Debtor's details

- Full name
- Postal address and post code
- Email address
- Telephone numbers (landline and mobile)
- Date of birth (if known).

5. Debtor's status

- Freeholder
- Owner occupier
- Leaseholder
- Lessee
- Tenant
- Occupier agent
- Other.

6. Power under which works in default was carried out

For example, Housing Act 2004, schedule 3.

7. Details of legal notice served requiring the works to be carried out

- M3 worksheet reference number
- full postal address of premises where work was required
- date when notice was served
- Section and Act.

8. Description of works in default carried out

Specify any variations to the works in the original notice – anything omitted or added together with the reason for the addition or omission (e.g. for reasons of safety, or work found to be unnecessary).

9. Date works in default completed

10. Calculation of demand for payment

Total amount to be demanded from the Debtor:

Cost of works, officer time, proportion of cost (if split between responsible parties), VAT – if advised following a check with the VAT Officer of Financial Services

11. Copy of invoice attached

To include Council reference number (M3 worksheet)

Preferred payment option

- Single payment in full
- Payment plan and number of instalments
- Charge on property
- Other Agreement.

12. Supplementary information

- Links to other WID demands
- Related Council debts
- Previous payment history
- etc.

13. WID file reference

If different to Environmental Services file.

APPENDIX B – Legislative Background

Enforcement

Typically, works in default are authorised under the following legislation, but this is not an exhaustive list. Assistance with legislation can be sought through Legal Services.

Housing Act 2004, section 31 and Schedule 3

Public Health Act 1936, sections 290 to 295

Public Health Act 1961, section 17 (4)

Local Government (Miscellaneous Provisions) Act 1976, section 35 (2) and (3)

Building Act 1984, section 99

Local Government (Miscellaneous Provisions) Act 1982, section 29 (9)

Prevention of Damage by Pest Act 1949, sections 5 and 7

Environmental Protection Act 1990, section 81 (3) and (4)

Antisocial Behaviour Crime and Policing Act 2014, section 47(2)

Town and Country Planning Act 1990, sections 178 and 215.

Power of Entry

Housing Act 2004, s.239 (1)

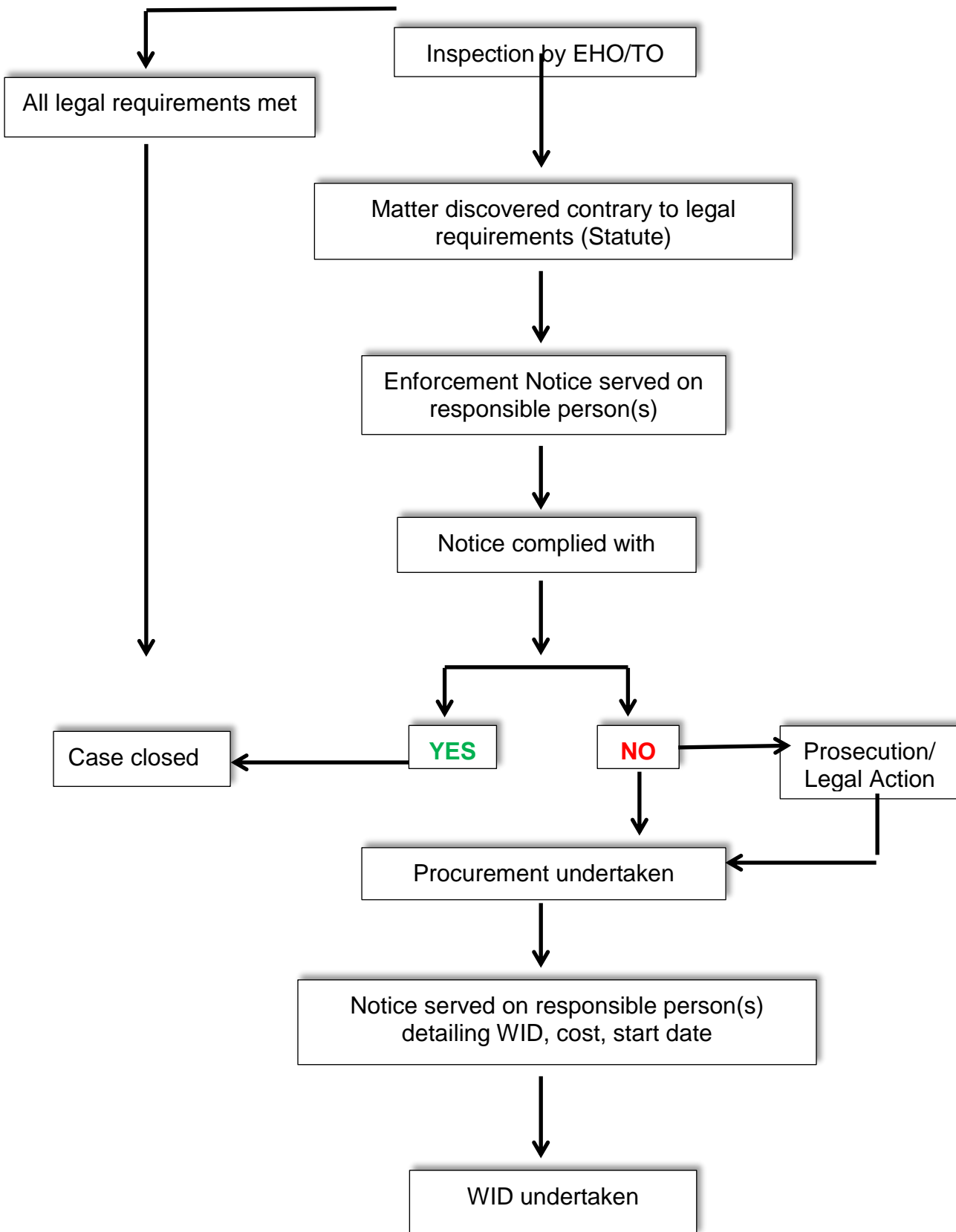
Public Health Act 1936, section 287

Building Act 1984, section 95

Prevention of Damage by Pest Act 1949, section 22

Environmental Protection Act 1990 Schedule 3.

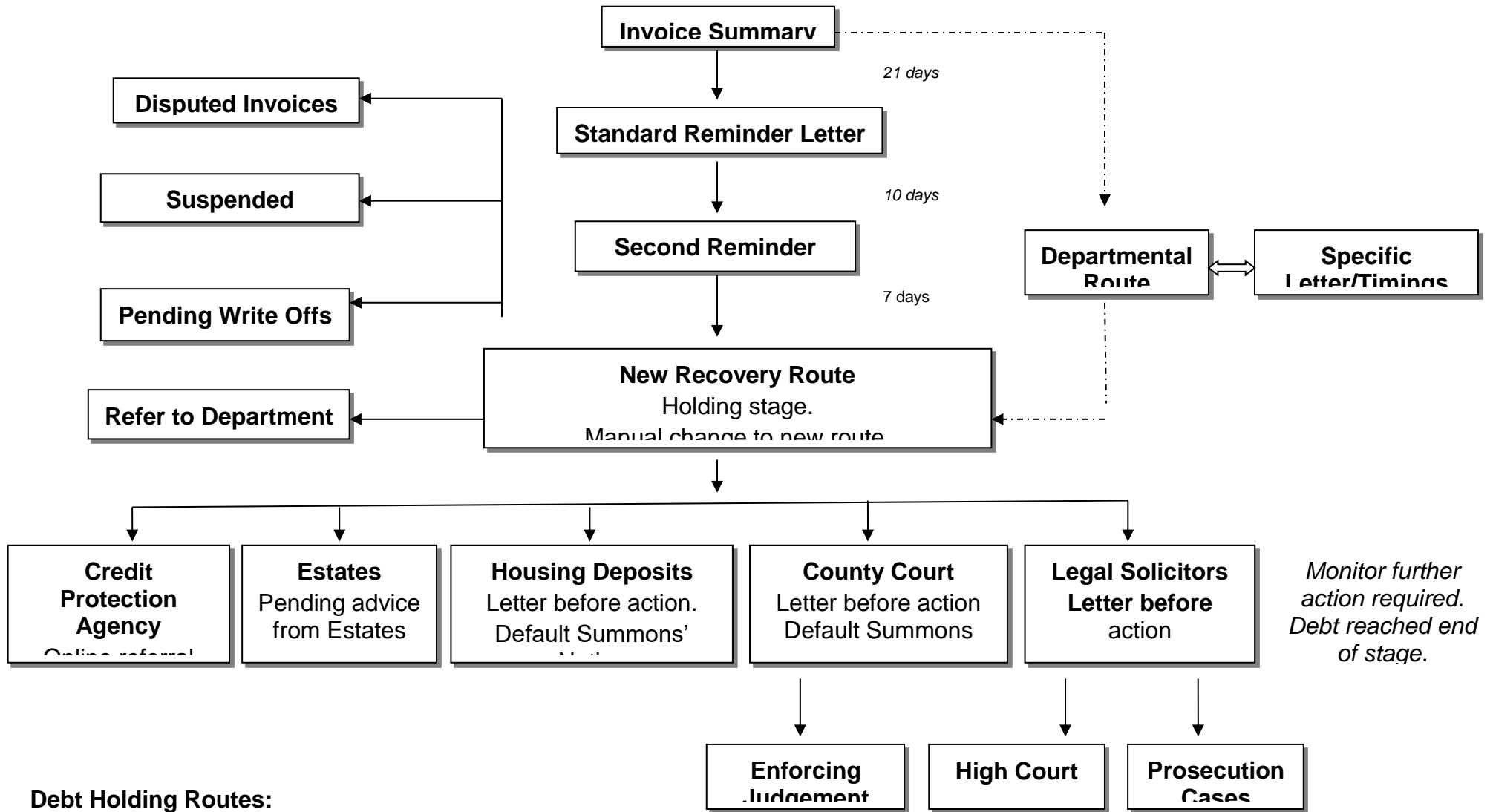
APPENDIX C – Process Flow Chart





Local Authority seeks to
recover costs

APPENDIX D – North Devon Council Debt Recovery Routes



Windup for
bankruptcy

Charging Order

Warrant of
Execution

Attachment of Earnings
(AEO)

Third Party Debt
Order

APPENDIX E – Guidance on Enforced Sales

1. Introduction

Where a local authority has the right to carry out works in default and recover the costs, some statutes provide that the cost of carrying out the works in default may be a charge on the property. The local authority may exercise the power of sale conferred by the charge to recover the money it is owed for carrying out the work in default by taking the relevant Court action immediately upon non-payment.

2. The relevant statutes

The following are examples of the most common statutory provisions that enable the enforced sale procedure to be used:

- Section 4 of the Prevention of Damage by Pests Act 1949 (requiring land to be kept free from rats and mice)
- Section 79 Building Act 1984 (ruinous and dilapidated buildings)
- Section 80 Environmental Protection Act 1990 (abatement of statutory nuisance)
- Section 215 Town and Country Planning Act 1990 (detrimental condition of land and buildings)
- Sections 11 and 12 Housing Act 2004 (dealing with category 1 or 2 hazards in residential premises)
- Section 55 Planning (Listed Buildings and Conservation Areas Act) 1990 (urgent works to a listed building).

3. The charge

Each of the relevant statutes sets out when the charge has arisen – this may be immediately the works in default have been carried out, as in the case of section 215 of the TCPA 1990, or may be following service of a demand, as in the case of sections 11 and 12 of the Housing Act 2004. When the charge has arisen, it should be recorded appropriately following the appropriate legal process. The charge may take effect as if created by a deed of charge by way of legal mortgage, within the meaning of the Law of Property Act 1925 – this provides the power of sale.

4. The process

When the enforced sale process is to be exercised, the following steps should be taken:

- Check that the original notice was properly drawn up and served.
- Check the current ownership of the relevant property, in case it has recently changed, through the Land Registry.
- Check whether the charge has been paid off.

- If the charge is unpaid, write to the current owner, informing them of the existence of the charge, and that if it is not paid off the Council will be taking steps to sell the property – the letter should have attached the original notice, and give the owner a period of 28 days to pay.
- If there are other mortgages on the property, notify the mortgagor of the proposal to sell the property if the debt is not paid.
- If there is no response to the letter, serve a notice under section 103 of the Law of Property Act 1925, as required before a power of sale under a mortgage/charge can be exercised – this notice explains that money is owed under a mortgage/charge and that if it is not paid off within 3 months, the Council may sell the property to recover the money. A copy of the notice should be served on any mortgagor that has an existing mortgage over the property.
- If the section 103 notice is ignored, and the property is registered at the Land Registry, prepare and seal a declaration which sets out the service of the original notice, the carrying out of works in default, the registration of the Notice as a local land charge if the legislation allows such recording and the service of the section 103 notice.
- Apply to the land registry where applicable to have the charge noted on the registered title – Legal Services to advise.
- If the property is unregistered, the same information as above will need to be included in a statutory declaration sworn by the lead officer in the enforced sale process.
- Once the charge is registered with the Land Registry or the statutory declaration is sworn, write to the owner and any bank or building society with an existing charge to tell them that the Council will now be selling the property.
- The property can then be sold – this should be by auction, although the Council has a duty to ensure that the best price is obtained, enforcement may require Legal Services to take legal action.

5. Settling the account

When the property has been sold, the balance is handed over to the owner once the following have been deducted from the sale proceeds:

- The costs of the original works in default
- The legal costs in undertaking the enforced sale procedure
- Conveyancing costs in connection with the sale
- Auctioneer's or other marketing costs
- Officer time in relation to the enforced sale process
- Other debts owing to the Council.

6. Practicalities

- Whilst the enforced sale procedure can be used where a property is occupied, the Council would, in addition to the sale procedures, have to apply to the county court for a possession order – this would be particularly problematic if the property was being used for residential purposes.
- The enforced sale process will come to an end if the owner of the property pays the amount of money owed – therefore, it is inappropriate to use the process to enforce the payments of small debts.
- Additionally the enforced sale process is a draconian step to enforce small debts, and should only be contemplated where the debt exceeds £5,000.