



Cambridgeshire's Flood Risk Enforcement Policy

March 2013

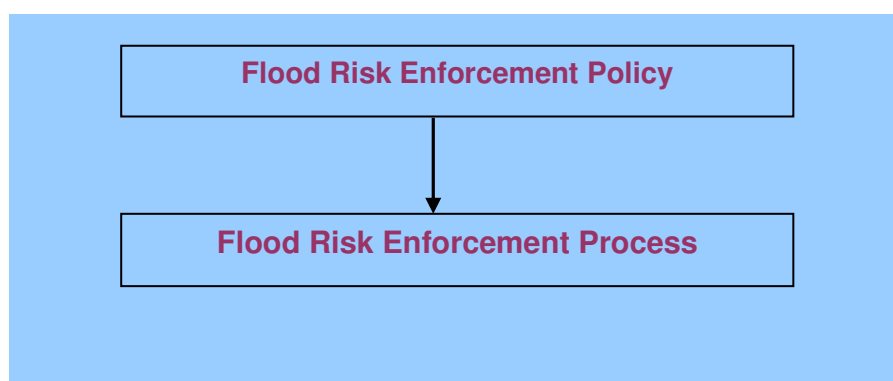
Statement and Aims

Cambridgeshire County Council is a Lead Local Flood Authority (LLFA) under the Flood and Water Management Act 2010.

Our Flood Risk Enforcement Policy aims to:

- Clarify our approach to flood risk management
- Define the criteria for enforcement intervention
- Explain our principles for regulation and enforcement
- Explain our flood risk enforcement process

How the documents work together



Document History	Details	By	Current Version	Date
	Initial Draft	AN	V0.3	23/01/2013
	Revision following consultations	AN	V0.4	30/01/2013
	Final Report	AN	V1.0	18/02/2013
	Amendments following Cabinet Meeting	AN	V1.1	07/03/2013
Authorisation	Title		Signature	Date
	Graham Hughes	GH		18/02/2013
	Cllr Bates on behalf of CFRMP	IB		20/03/2013
	Cabinet	NC		05/03/2013

Introduction

Background and Legislative Framework

The Flood and Water Management Act 2010 transferred to the LLFAs the powers held by the Environment Agency for managing flooding from Ordinary Watercourses outside of the Internal Drainage Board areas.

Our enforcement powers currently derive from sections 23, 24 and 25 of the Land Drainage Act 1991.

Our powers of entry onto land for enforcement purposes derive from section 64 of the Land Drainage Act 1991.

Our approach

We take a risk based approach in managing flooding within Cambridgeshire County. As the Lead Local Flood Authority, we currently manage flood risk from a variety of sources including; surface water, ordinary watercourses and groundwater.

This approach ensures that our response to any contravention of the legislation will be proportional to the flood risk issues faced at the location.

Our target and desired outcome

We believe prevention is better than cure. In line with Cambridgeshire's core objectives and values, our general approach is to educate landowners, developers, farmers, and businesses to enable compliance.

Our desired outcome is always to ensure compliance through discussions and negotiations. Where we are unable to make progress due to lack of willingness on the part of the offenders to work with us, sadly, we will have to take a number of actions to ensure that lives and properties are not put at risk.

Enforcement actions

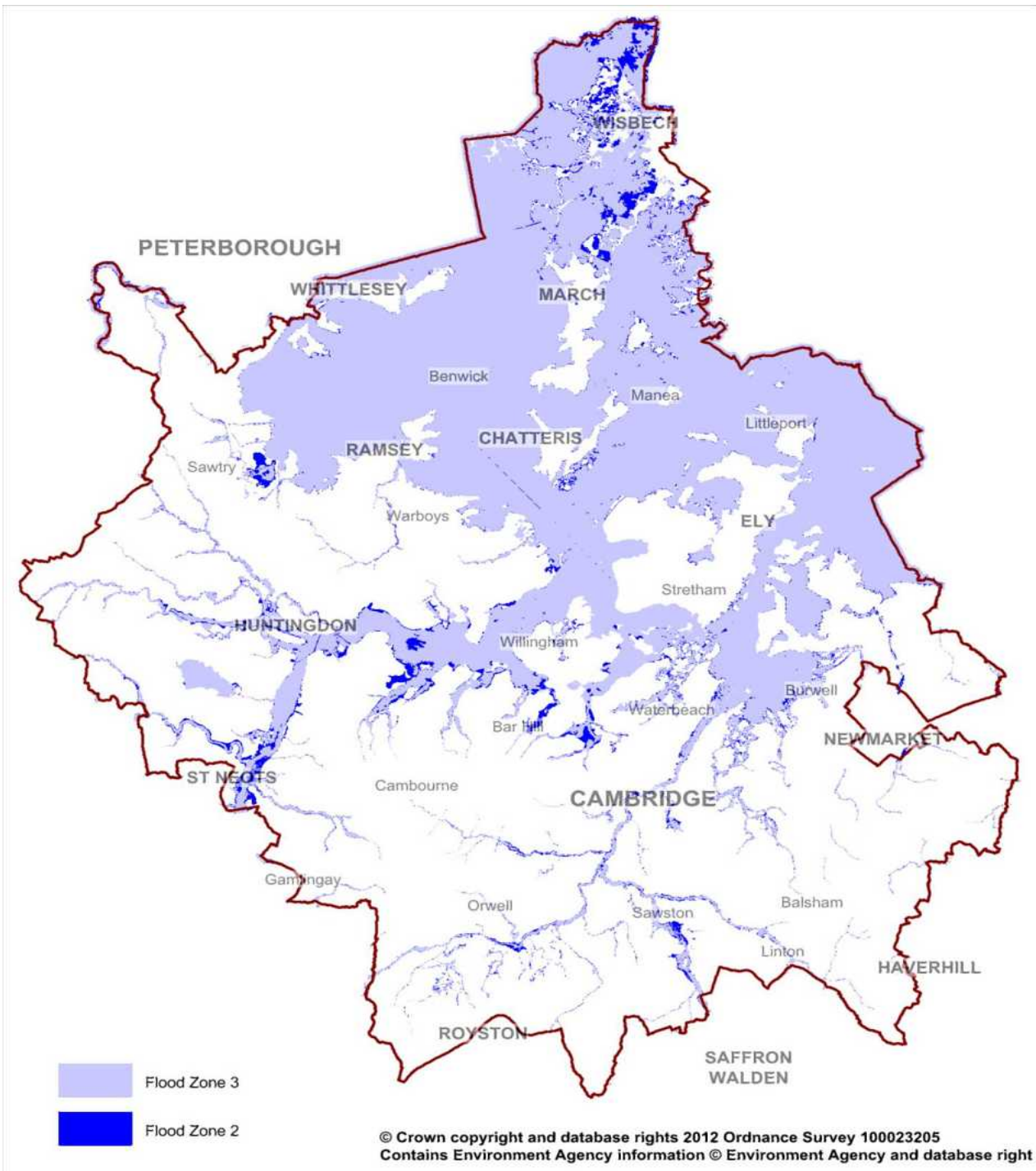
When it is impossible to achieve our desired outcome, we have to enforce compliance through a combination of the following formal options:

- Serving of works notices

- Prosecution
- Carrying out remedial works

We believe that publishing information on our enforcement activities, where appropriate, raises awareness of the need to comply.

We will issue press releases and other publicity relating to offences and offenders, proportionate to the flood risk.



Principles

We believe in firm but fair regulation. Underlying our commitment to firm but fair regulation are the principles of:

- proportionality in the application of the law and in securing compliance;
- consistency of approach;
- transparency about how we operate and what those we regulate may expect from us;
- targeting of enforcement action; and
- accountability for the enforcement action we have taken.

Our criteria for enforcement intervention

Definition

For the purpose of this statement, enforcement means any action we take where we suspect an offence has occurred or in some cases is about to occur. This may range from providing advice and guidance, serving notices through to prosecution, or any combination that best achieves the desired outcome.

Criteria for intervention

On becoming aware of any contravention, we will undertake an initial investigation to establish the following:

- identity of the offender
- the location of contravention
- type of contravention and the
- impacts of the contravention

In considering whether it is expedient to take enforcement action a number of factors will be taken into consideration including the following:

- Where the location of contravention is in any of the following:
- Flood zones 2 and 3 as identified on Environment Agency flood maps
- Strategic Flood Risk Assessment maps issued by District Councils
- Hot spots identified on our Surface Water Management Plans (SWMP)
- Information identified in Internal Drainage Board strategies

- Information provided in Water Cycle Studies
- Flood prone areas from data held on our flood investigation database (locations with history of flooding problems)
- Where there is historical evidence of internal flooding or significant flooding of gardens
- Where the impact of the contravention has any of the following effects:
 - Increases flood risk to other properties
 - Has the propensity to create a bad precedence

Penalty principles

We expect full voluntary compliance to sections 23, 24 and 25 of the Land Drainage Act 1991. However, when considering the appropriate course of action to ensure compliance we aim to follow the Macrory Penalty Principles which are set out in the [Regulators' Compliance Code](#). These state that enforcement should:

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance, where appropriate; and
- aim to deter future non-compliance.

Where we have been compelled to undertake works on the ground to manage flood risk, we will seek to recover the following costs:

- Staff costs including time and mileage costs associated with the investigations and eventual works;
- Legal costs;
- Full costs for undertaking the works including labour, materials, equipment and services; and
- Full contractual costs for consultants and contractors hired to provide evidence during the investigation.

Principles of regulation and enforcement

Regulators Compliance Code

We must take account of the provisions in the Regulators' Compliance Code when devising and implementing regulatory policies and systems. However those provisions do not apply directly to individual cases.

The requirements of the Code do not apply in certain situations, for example:

- where it is necessary to respond immediately to either prevent or respond to a serious breach or incident;
- where following the provisions would defeat the purpose of the proposed enforcement action; and
- where there are reasonable grounds to suspect that a serious criminal offence has been committed, in particular where such offending would have a damaging effect on legitimate business and desirable regulatory outcomes.

Principles of firm but fair regulation

We believe in firm but fair regulation. Underlying our commitment to firm but fair regulation are the principles of:

- proportionality in the application of the law and in securing compliance;
- consistency of approach;
- transparency about how we operate and what those we regulate may expect from us;
- targeting of enforcement action; and
- accountability for the enforcement action we have taken.

Proportionality

Concept

In general, the concept of proportionality is included in much of the regulatory system by balancing action to protect the environment against the risks and costs of such action.

Balancing our response to the risk

Any enforcement action we take will be proportionate to the risks posed to people and the environment and also to the seriousness of the breach of the law and its impact on the lives of the communities within Cambridgeshire County.

Consistency

Approach

Having a risk based approach means that we will apply our procedures consistently whilst giving due regard to the criteria for enforcement intervention.

We aim to be consistent in the advice we give, how we respond incidents, the use of our powers, and the application of our criteria for intervention.

Discretion

However, we recognise that consistency does not mean simple uniformity. Officers need to take account of many variables: the impacts of the contravention and the history of previous incidents or breaches.

Decisions on enforcement action are a matter of professional judgement and our officers need to be able to exercise this judgement, particularly on estimating the potential impacts of a contravention.

We will continue to develop arrangements to promote consistency, including effective ways to liaise with other enforcing authorities.

Transparency

Approach

Transparency is important in maintaining public confidence in our ability to regulate. It means helping regulated entities and others to understand what is expected of them and what they should expect from us. It also means making clear why an officer intends to take, or has taken, enforcement action.

How we do this

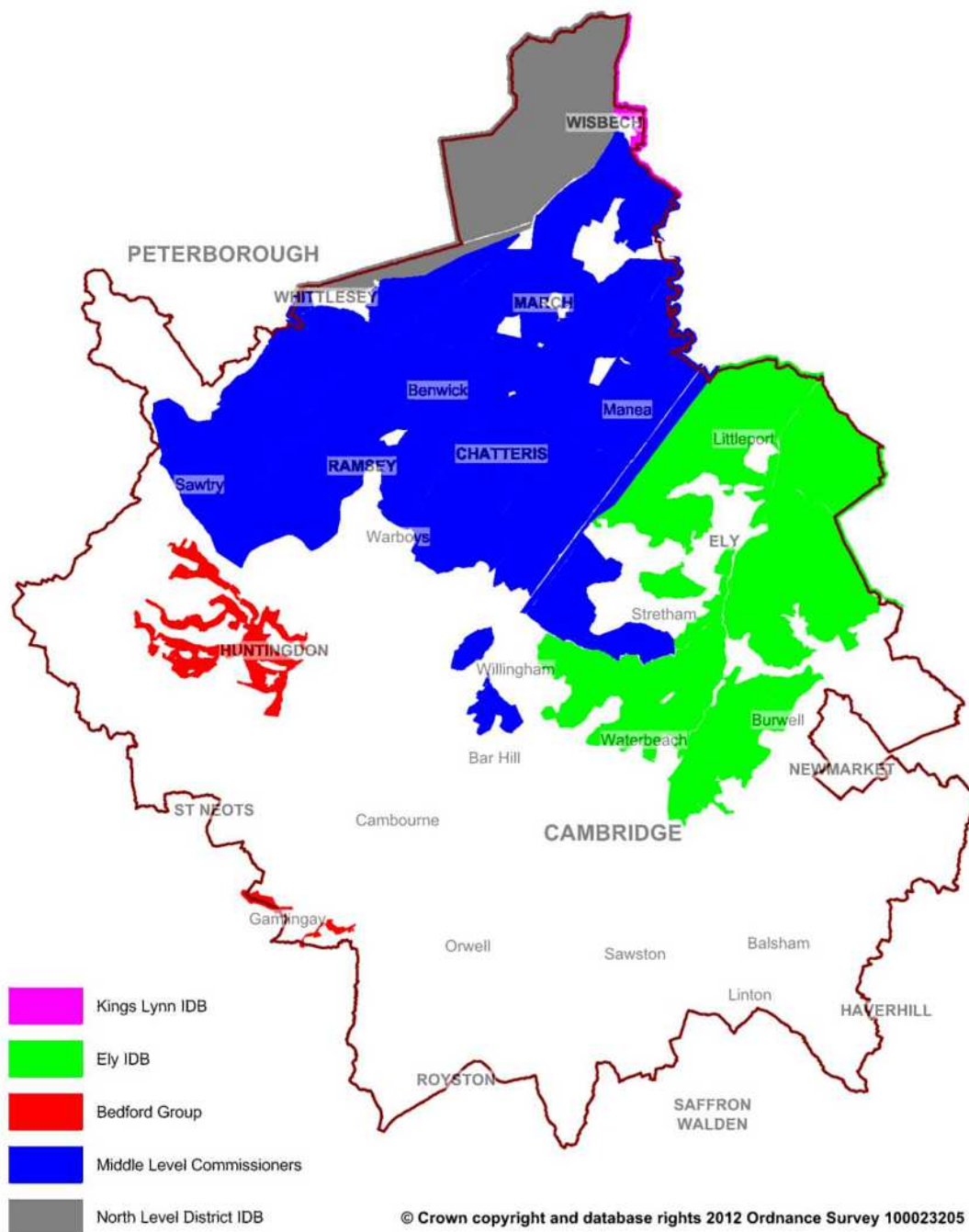
Transparency is integral to an officer's role and we will continue to train our staff and to develop our procedures to ensure that:

- where remedial action is required, we clearly explain why the action is necessary and when it must be carried out, making a distinction between best practice advice and legal requirements;
- we provide the opportunity to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example to protect people from flooding
- our enforcement notices will provide an explanation of any rights of appeal against formal enforcement action at the time the action is taken.

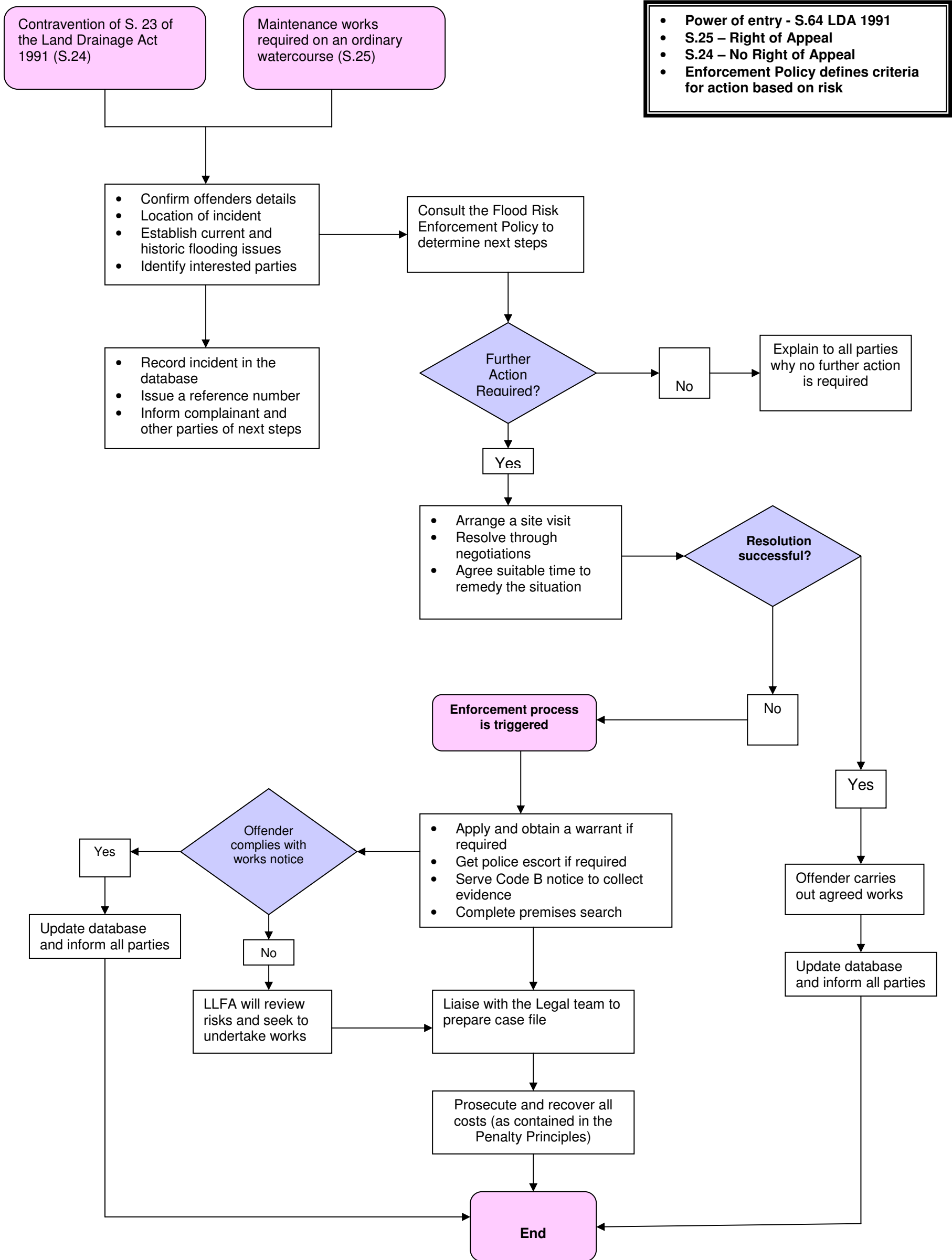
Accountability

Responsibility

Accountability means that we take responsibility for our decisions and will justify them where appropriate. Our notices include relevant information on how to appeal and complain.



Flood risk enforcement process



- Power of entry - S.64 LDA 1991
- S.25 – Right of Appeal
- S.24 – No Right of Appeal
- Enforcement Policy defines criteria for action based on risk