



Infrastructure  
and Environment

# Enforcement Policy

## Regulation Directorate

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Government of Jersey

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## Introduction

The [Regulation team](#) protect Islanders by delivering socially responsible regulation, preventing unfair commercial practices, and providing statutory functions including planning and building, trading standards, licensing, food safety, water quality, plant health and the control of noise, waste and pollution.

The team is responsible for:

- ensuring safe rental accommodation and food practices
- enforcing consumer protection laws and providing a comprehensive consumer and business advisory service
- protecting the Island's waters and wider environment from pollution
- protecting the Island from plant-based pests and diseases
- regulating border controls for plants, animals, and products of animal origin
- keeping people safe by ensuring our buildings are safe
- ensuring best use of land and development of our environment

## The purpose of enforcement

The Regulation Directorate, whose functions are specified by legislation, must have regard to the Regulators' [Code](#) when developing policies and operational procedures that guide their regulatory activities. Regulators must equally have regard to the Code when setting standards or giving guidance which will guide the regulatory activities of other regulators.

Regulatory 'enforcement' activities has a wide meaning and applies to all dealings between the Regulation Directorate and those on whom the law places responsibilities and duties.

This document sets out our policy in respect of our approach to dealing with non-compliance with the Laws we enforce. It is intended to set the framework for our decision-making and help those affected by our activities to understand how and why decisions are made.

This policy explains:

- the results we seek to achieve,
- the regulatory principles we uphold,
- how we make enforcement decisions, and
- the range of enforcement options available.

The five outcomes we seek to achieve are to:

- stop illegal activity from occurring or continuing
- minimise the risk of harm
- put right harm or damage, also known as remediation
- bring otherwise illegal activity under regulatory control, and so in compliance with the law
- deter any future instances of non-compliance

## The regulatory principles we uphold

We are committed to delivering regulation in a manner that is risk-based, targeted, proportionate, and consistent.

We aim to be transparent and accountable about our regulatory approach and activities, in accordance with the principles of good regulation.

We believe in firm but fair regulation. This will be informed by:

- the principles of proportionality in applying the law and securing compliance
- consistency of approach
- targeting of enforcement action
- transparency about how Regulation operates and what those regulated may expect
- accountability for Regulation's actions

These principles should apply to all activities carried out by the Regulation Directorate.

The principles include:

### Proportionately

We will act proportionately when we apply the law. We will take account of, and balance the:

- risk posed
- seriousness of any breach or offence
- impact or potential impact on people, places and businesses
- cost of taking enforcement action against the benefit of taking it

Ultimately, the courts determine what the outcome is in every case.

### Consistency

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

It is recognised 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 individuals and businesses, any history of incidents, breaches or offences, previous enforcement action, and the seriousness of any breach or offence, which includes any potential or actual harm arising from a breach of the law of offence under it. Decisions on enforcement action are discretionary, involving the Officers of the Regulation Directorate exercising their judgement.

### Targeted

Targeting means prioritising regulatory effort towards activities that give rise to potential and actual serious risks and harms. Regulatory activities can include inspections, site visits, sampling, investigations, and other regulatory interactions.

Certain high-risk activities will receive regular inspections so that we can give the public assurance that such risks are properly controlled.

Any enforcement action will be directed against those responsible for the breach or offence. Regulation may direct action against more than one individual or organisation when it is appropriate to do so, in accordance with this policy.

### Transparency

Transparency means helping everyone understand what is expected of them and what they should expect from the Regulation Directorate. It also means making clear not only what they have to do but, 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 Regulation Directorate having arrangements for keeping everyone informed. Regard must also be given to legal constraints and requirements and may include a statutory right of appeal or raising a complaint through the Government of Jersey [Customer feedback policy](#).

### Accountability

Regulators are accountable to the public for their actions. This means that Regulatory Officers will have regard to the [Regulators Code](#). This includes:

- carrying out activities in a way that protects the environment and supports those we regulate to comply and grow,
- providing for a simple and straightforward way to engage with those we regulate and hear their views,
- basing our regulatory activities on risk, and
- sharing information about compliance and risk.

### Inspections and investigations

We will exercise our powers and conduct our investigations and inspections properly and in accordance with relevant legislation and related codes of practice, ensuring that inherent protections for those we regulate are followed.

We will exercise powers in accordance with the requirements of the legislation under which we are acting, and with any associated guidance or codes of practice.

The Regulation Directorate uses discretion in deciding how investigations are progressed.

Investigations are undertaken in order to determine:

- the cause,
- whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law, and
- what response is appropriate to a breach of the law or offence.

To maintain a proportionate response, most resources available for an investigation will be devoted to the more serious circumstances.

In selecting which matters to investigate, and in deciding the level of resources to be used, the Regulation Directorate will take account of the following factors:

- the severity and scale of potential or actual impact or harm,
- the seriousness of any potential breach of the law or offence,
- knowledge of the individuals or organisational past performance,
- the enforcement priorities, and
- the practicality of achieving results.

Inspections and investigations are reviewed on a regular basis, or when new information comes to light, to ensure that due process is being followed and that cases are progressing as quickly and effectively as possible.

Consideration is given, at each review, to the evidence gathered and to:

- a) whether it is considered to be in the public interest to progress the case, and
- b) the evidential threshold that we need to satisfy in respect of a particular enforcement action.

Decisions are taken at an appropriate level and are informed by all available information.

## The 4 E's model of Enforcement

There are a wide range of actions available to us when managing non-compliance. These include actions that are set out in the relevant legislation and may vary between legislative areas.

We follow a 4 E's model of enforcement. That is:

### Engage, Explain, Encourage and Enforce

This involves officers **Engaging** with members of the public, **Explaining** the law and regulations and **Encouraging** them to comply. We will normally consider all other options before considering **Enforcement** through criminal proceedings. Generally, prosecution is our last resort.

We also aim to make sure our enforcement response is proportionate and appropriate to each situation.

## How we make enforcement decisions

In every case we will consider all the individual facts and circumstances of the potential breach or offence. We will test the evidence and then weigh up the public interest factors. Then we will make an overall judgement and decide on whether to take action, and which is the appropriate level of action to take to bring the individual into compliance.

### Intent

We are more likely to seek formal enforcement action when an offence or breach has been committed deliberately, recklessly or because of serious negligence.

When an offence or breach has been committed accidentally or is a genuine mistake, we are more likely to give advice and guidance or issue a warning.

### Foreseeability

Where the circumstances leading to an offence or breach could reasonably have been foreseen and no action to avoid or prevent it was taken, we will normally impose a sanction higher than advice and guidance which could include the issue a formal warning.

### Environmental, Health or Consumer Detriment

The more serious the effect is, the more significant our enforcement response will be. Our choice will be based on the potential or actual harm, including the risk to people, reputation, communities and the environment.

### Nature of the offence or breach

We will normally seek more formal enforcement action when the offence or breach impacts on our ability to be an efficient and effective regulator, including where:

- Regulation Directorate staff are obstructed in conducting their duties,
- we are targeting a particular type of offending, or
- we are given false or misleading information.

### Financial implications

We will normally seek more formal enforcement action if the offending or breach is motivated by financial gain including:

- undercutting a legitimate business,
- making a profit from the illegal activity, or
- avoiding costs, such as costs saved by not applying for a permit, licence or registration.

### Deterrent effect

When we choose the level of enforcement action to take, we will consider the most appropriate response to achieve:

- specific deterrence of the offender, or
- general deterrence of others who may be tempted to offend.

We want to prevent future offending or breach by both the offender and others.

### Previous history and repeat offending

We will check if the offender has a history of non-compliance, including the:

- degree, number and nature of the breaches or offences, and
- time elapsed since the previous breach or offence.

We will normally escalate our enforcement response if previous sanctions have failed to achieve the desired outcome. For example, if we have previously issued a written warning to encourage a change in behaviour to prevent future offending, and the person commits the same offence or breach again, then we are likely to seek a more formal enforcement approach.

### Personal circumstances

We will consider the individual's personal circumstances, including serious ill health. This may for example include giving more time to comply, liaising with a representative and providing additional advice and guidance.

## Attitude

We are likely to apply a lesser sanction, such as advice and guidance, where the individual:

- voluntarily provides us with details of the offence or breach,
- reports the matter to us promptly, and
- has voluntarily remedied the offence or breach.

## Conflict of interests

A conflict of interest can occur where an Officer has a relationship to a person, business, place or any interest in any process, investigation, outcome or work of the Regulation Directorate. Conflicts of interest can be actual, perceived or potential and where they are not declared, recorded and managed appropriately may have an impact on the integrity of the Regulation Directorate's work and decisions.

The Regulation Directorate has a Conflict of Interests policy. Officers should declare a conflict relating to an action or a decision before work is undertaken or an outcome is determined, or as soon as practicable when an actual, potential or perceived conflict comes to light.

Officers are also bound by the [Jersey Regulators Code](#) issued by the Regulation Directorate and the [States of Jersey Codes of Practice](#), issued by the States of Jersey Employment Board to all employees being in public service of the States of Jersey.

## The range of enforcement options available

There are a number of different enforcement options we can consider other than prosecution. These include.

### Advice and guidance

Our objective is to provide an opportunity for the individual to return to compliance and stay compliant. We can support this individual or a business who has committed an offence or is likely to commit an offence by giving detailed advice and guidance. The advice and guidance can be verbal or written and may be recorded. However, any continued or further offence or breach may influence our later choice of enforcement action.

### Warnings

We can issue a written warning if we believe an individual or business has committed an offence or breach. This will set out:

- the offence or breach we believe has been committed,
- the action(s) we expect to be taken and by when, and
- what may happen if action is not taken.

We can do one of the following:

- send a warning letter, or
- issue a site warning, normally as a result of a compliance visit at a site with a permit.

The warning will be kept on record. Any continued or further offence or breach may influence our later choice of enforcement action.



## Statutory Notices

Many of the laws and regulations we enforce contain powers to serve statutory notices. We may serve these where appropriate.

They may require an activity to stop immediately or take specific actions, including restorative steps.

Different types of notice are contained within the specific legislation which can be viewed [here](#).

In many cases, there may be a right of appeal of the notice. Information outlining this right will be contained within the service of the notice.

## Failure to comply with a notice

If a recipient fails to comply with a notice, we will normally seek a more formal sanction.

## Injunctions

In relation to development controls, an Officer may recommend the Regulation Directorate apply to the Royal Court for an injunction. We will only apply for an injunction if it appears necessary or expedient to prevent or restrain an actual breach of development controls.

Similar powers are also contained within some consumer protection legislation. The Attorney General may apply to the Royal Court for an injunction to secure compliance with the law.

## Suspension, revocation or withdrawal of a registration, licence or permit

Subject to specific legislation, we may suspend, revoke or withdraw a registration, licence or permit where a business or individual:

- is not compliant with their registration, licence or permit (and associated conditions attached) until such time as they are compliant, or
- has not paid their registration, licence or permit fee or renewal.

## Undertakings

Under certain consumer protection laws, we can accept an undertaking from the person that the person will not, as the case may require,

- continue or repeat the conduct, or
- engage in such conduct in the course of the person's business or another business, or
- consent to or connive in the carrying out of such conduct by a body corporate with which the person is connected.

We may also publish such undertakings.

## Prosecution

When deciding whether an apparent breach of the law should be referred to the Attorney General, Officers must refer to the [guidance](#) issued by the Attorney General entitled "Note for Officers of Regulatory Departments when considering whether or not a suspected breach of the law should be referred to the Attorney General".

Before prosecutions can be instituted, the Attorney General will need to be satisfied that there is sufficient evidence, and that prosecution is in the public interest. The decision as to how to proceed is

one for the Attorney General not the Regulation Directorate, although the views of the Directorate will be considered.

In accordance with the guidance, an apparent offence or breach of the law should be referred to the Attorney General in the following circumstances:

- where it was significant
- where it is seen to have been conscious and deliberate
- where the public interest makes it more important that there should be a prosecution
- where it was one of a series of small offences or breaches which suggest a persistent lack of conformity with the law
- where there was a perceived trend of similar minor offences or breaches by others which might call for prosecution as a warning or example

The guidance note also sets out the following circumstances where it may be appropriate not to refer an apparent offence or breach:

- where it was minor
- where the offence or breach was committed as a result of a genuine mistake or misunderstanding\*
- where it would not be in the public interest for the offender to be prosecuted.\*  
For example, if by relying on information volunteered in the course of a genuine enquiry to form the basis of a prosecution, this would deter others from seeking assistance from the HSI to comply with the law\*
- where it was a single incident\*
- where there had been a long delay between the HSI having knowledge of a suspected breach or offence of the law and investigating it\*

\* These factors must be balanced against the seriousness of the offence or breach.

## Minor offence or breach

We will normally choose to give advice and guidance to help bring an individual or business back into compliance where a minor breach or offence has been committed. We consider a minor breach or offence to be where there is limited impact on the environment or health and / or safety of individuals or minimal consumer detriment.

## Operating without a permit, licence or other authority

We are initially likely to seek to bring the individual or business into compliance independently and voluntarily. Depending on severity we may consider imposing a more serious sanction if the necessary authorisation has not been obtained.

## Body corporate

We can take action against a corporate body, an individual or both.

Where an offence or breach is as a result of a company's activities, we will usually enforce against the company.

Where an offence or breach is committed by a body corporate, as a result of the consent, connivance or neglect of any director, manager, secretary or other officer, that person could also be guilty of an offence. We may enforce against that person.

We will use the full range of enforcement options available to us.

### Combined offences or breaches

Where a number of offences or breaches have occurred from the same or related incidents, where it is possible and correct to do so, we will assess all of those offences or breaches and try to take a single enforcement response. Our response will match the overall level of offending.