



Falkland Islands Government

Environmental Planning Department
ENFORCEMENT CODE OF PRACTICE

May 2012

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1. Introduction

- 1.1 The Environmental Planning Department provides services under the following legislation:
 - The Planning Ordinance 1991 (as amended) for town and country planning;
 - The Building Ordinance 1999 for building control; and
 - The Conservation of Wildlife and Nature Ordinance 1999 (as amended) for environmental protection and conservation.
- 1.2 All three Ordinances specify a range of activities and developments that the Government has decided can only be carried out with its prior approval, typically through the grant of planning consent or the issuing of a licence or building permit. The reasons why prior approval is necessary are many and varied but include health and safety, to secure the proper development of an area or for environmental management and conservation.
- 1.3 Anyone who carries out an activity or development without the necessary approval from Government commits an offence and could be liable to a fine and conviction. In some instances they might also have to correct the contravention by undertaking remedial steps, such as demolishing an unauthorised building.
- 1.4 Examples of activities that could merit enforcement under the above legislation include:
 - a. Constructing a building without a building permit.
 - b. Destroying or damaging a protected animal, bird or plant without the necessary licence.
 - c. Altering the external appearance of a listed building without having first secured planning permission.
- 1.5 Turning a blind eye to unauthorised activities or developments is unfair to law abiding citizens and undermines Government policies to safeguard wildlife and ensure that developments are built correctly in the right places. In order to uphold the laws of the Falkland Islands the Government will therefore consider taking action (enforcement) in appropriate cases.
- 1.6 When considering whether to pursue enforcement action the Department will work closely with the Government's legal adviser - the Attorney General. In appropriate cases the Department will also consult with the relevant Government Committee. The Planning and Building Committee has statutory powers regarding enforcement, while the Historic Buildings Committee and Environmental Committee are

advisory and may be requested to provide views on the desirability of undertaking enforcement in particular cases.

- 1.7 This document sets out a protocol to be followed by officers of the Department which details what householders, businesses and others regulated by those officers can expect in matters of enforcement. The overriding aim is to carry out enforcement functions in an equitable, practical and consistent manner.
- 1.8 The code of practice seeks to cover a wide range of enforcement powers from different areas of legislation and some of the references to powers may not be applicable to all areas. This document sets out our general approach to enforcement matters rather than act as a guide to procedures for any particular action that may be contemplated or taking place.

2. Standards

- 2.1 The level of service and performance for the Department are published in a range of documents including various ordinances and the departmental business plan.
- 2.2 This Code of Practice sets out how the department will deal with enforcement cases from when the matter is first raised to its conclusion.

3. Openness

- 3.1 The Department will provide information and advice in a clear and straightforward manner on the rules that apply to residents, businesses and the local community. Where written guidance is not available, staff will be available to discuss specific requirements of legislation, general issues, specific compliance failure and other enforcement problems. The Department will endeavour to keep information in the public domain whilst still exercising legal and business confidentiality including, where possible, protecting the identity of members of the public who bring breaches to our attention.

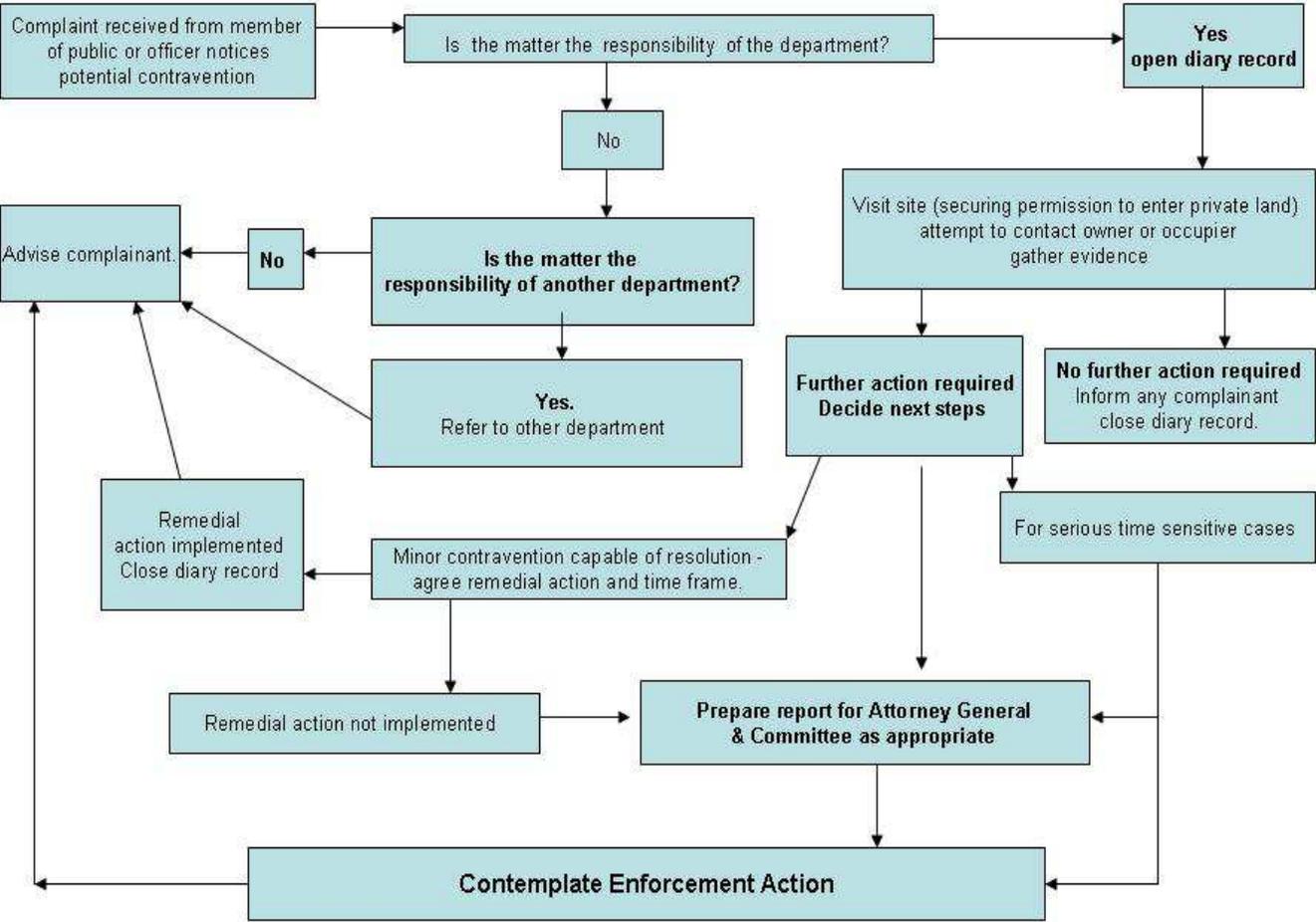
4. Helpfulness

- 4.1 The Department believes that prevention is better than cure and officers will actively work with residents, businesses and others who need advice to ensure compliance with legislative controls. The Department will provide a courteous and efficient service and the officers will identify themselves by name. Letters, telephone messages and other service requests will be answered in accordance with published standards. A contact point and telephone number for future dealings with the Department will be provided.

5. Bringing potential cases to the attention of the Department

- 5.1 Contraventions of legislation are usually brought to the attention of enforcement officers through two routes. Firstly, by officers of the Department carrying out their day to day duties noticing that a contravention has or may have occurred and secondly, by a concerned member of the public via a telephone call, email, letter or some other form of communication.
- 5.2 In both cases, upon referral to the appropriate officer in the Department the next stage will be to ascertain the facts of the case. In some cases the matter will fall outside the scope of the Department but may be the responsibility of another government department. A complainant will be advised of this and to whom the matter has been referred.
- 5.3 If the matter appears to be the responsibility of the Department the next stage will normally be an officer visiting the site where the contravention is alleged to have occurred and speaking to neighbours or other persons who may hold information as to what has occurred. Statements, measurements and photos may be taken, along with any other evidence that may be material to the case. It is normal practice for investigating officers to secure the agreement of landowners to enter private land, although in some cases powers of entry are available without prior consent.
- 5.4 Having obtained evidence the investigating officer shall consider and, in conjunction with other officers determine whether or not there appears to be a case for enforcement. Where there is no case the officer shall inform the complainant and any other interested party of this conclusion.
- 5.5 Where there appears to be a case to answer the officer shall inform any interested or affected party and advise them of the next steps they intend to take. These can include:
 - (for minor issues where remedial actions can rectify a contravention) agreeing with those responsible for the contravention that they will correct it within a specified timescale;
 - referring the matter to the relevant Government Committee and Attorney General for consideration or
 - (for serious time sensitive cases), initiating immediate enforcement proceedings to stop an activity (such as the unauthorised demolition of a building listed for its architectural or historic interest).
- 5.6 The flow chart on the next page summarises the procedure.

Environmental Planning Department Enforcement Flow Chart



6. Proportionality

6.1 On all occasions the Department will minimise the costs of compliance for householders, businesses and other organisations by ensuring that any action is proportionate to the risks posed to those we are trying to protect. The Department will, so far as practicable, aim to work with small businesses, voluntary and community organisations in such a way that they can meet their legal obligations without unnecessary expenditure.

6.2 Factors that will be considered when determining the course of enforcement action can include:

- Seriousness of the offence, especially involving risk to the public or the environment
- The likely penalty as opposed to the cost of investigation
- The age or 'staleness' of the offence
- The circumstances, state of mind and attitude of the offender
- Whether the offence is likely to be continued or repeated
- The views of any aggrieved persons
- Past conduct and previous history of the offender including previous similar convictions or cautions
- The alternatives to legal proceedings
- The effect of likely defences and mitigation
- Whether there has been an element of fraud, negligence or recklessness in the commission of the offence
- Whether previous action has been unable to resolve the problem
- Whether a prosecution could test an important legal point or set a precedent
- Whether there has been a blatant disregard of legislation
- Whether any action has been taken to resolve the problem
- Whether the offence has come to light as the result of a complaint or information from an outside body
- Whether it would be in the public interest, having regard to all the circumstances of the case, to instigate legal proceedings.

7. Consistency

7.1 While enforcement staff are expected to exercise judgement in individual cases, the Department will aim to promote consistency and ensure that enforcement officers carry out their duties in a fair and equitable manner.

8. Powers of Entry

8.1 Some of the statutes enforced by the Department have provision for authorised officers to enter premises (land and property) for the purposes of enforcing the legislation. These powers will be used having regard to the rights enshrined in the Falkland Islands

constitution and will only be employed as a matter of necessity and last resort if entry by invitation has been denied.

9. Enforcement Powers

9.1 The above guidelines are not intended to be exhaustive, but to provide a framework to ensure consistent decision-making. Where there has been an alleged breach of legislation, there are several alternatives for action depending on the nature, seriousness and public interest of the alleged infringement. The possible courses of action include (not all actions are available to all areas of enforcement):

- Informal advice
- Enforcement notices
- Stop notices
- Immediate or direct action
- Prosecution proceedings
- Injunctions and other civil sanctions

9.2 More general information on these powers is given below:

Informal advice

9.3 This course of action is most appropriate when there has been a very technical or minor breach of legislation. Advice on how to comply will be given in as clear and concise manner as possible. Where necessary the Department will specify any steps required in writing identifying the relevant legislation, the time scale involved and whether such steps are a legal requirement or, otherwise, a matter of good practice. Officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference prior to formal enforcement action being taken, unless the circumstances require that immediate action be taken.

Enforcement notices

9.4 Within the range of legislation enforced by officers of the Department there are specific provisions detailing instances when officers can serve written, statutory notices. When such a notice is served the reason for the notice being served and any available appeal mechanism will accompany it.

Stop notices

9.5 For certain serious breaches of planning control a stop notice can be served requiring the breach of control to be immediately stopped. There is no right of appeal against a stop notice, but it is usually accompanied by an enforcement notice, which does have a right of appeal.

Immediate or direct action

- 9.6 In certain circumstances, such as where immediate enforcement action is necessary because of the seriousness of the breach, direct action can be taken. Information will be given at the time, in writing, explaining why the enforcement action is being taken, what powers are being used, and any available appeal procedures.

Prosecution proceedings

- 9.7 It is the Government's practice that the institution of prosecution proceedings is used as a last resort. It will normally be considered when a person is a persistent and deliberate offender, public safety issues are involved or an Enforcement Notice has been ignored.

Injunctions and other civil sanctions

- 9.8 Where a fine or other penalty is inadequate or ineffective in preventing repeated or continuing breaches or in order to prevent very serious breaches in limited circumstances, there are provisions that enable the Government to seek injunctions from the Supreme Court to restrain the offender.

10. Human Rights Considerations

- 10.1 The Falkland Islands Constitution 2008 includes provision that everybody has the right to respect for their private and family life, home and correspondence. Interference with this right can only be justified if it is in accordance with the law and is necessary in a democratic society.
- 10.2 The Department recognises that an individual's human rights may be affected as a consequence of enforcement action and is legally required to have regard to the Constitution in the discharge of its functions.

11. Complaints against the Service

- 11.1 Complaints against the Government's services or officers should initially be taken up with the Departments Head of Service (the Environmental Planning Officer). If the matter cannot be resolved within the service the matter can be referred to the Government, which has a corporate Complaints procedure or the independent Complaints Commissioner.
- 11.2 Much of the legislation enforced also contains procedures for appeal against enforcement decisions; any such appeals will be communicated at the time of enforcement action.