



From mountain to sea

Building Standards Regulatory and Enforcement Charter



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1. Building Standards

The Building Standards service has statutory responsibility for enforcement of the Building (Scotland) Act 2003. The Council seeks to be risk-based and proportionate, whilst minimising burdens on business and individuals where possible. Our regulatory operational approach is to educate, enable and enforce. This graduated approach is explained in this policy.

This policy sets out the key principles by which Building Standards Officers will seek to achieve compliance with the legislation.

The policy will help businesses and individuals better understand the objectives when deciding what the most appropriate response is to a breach of legislation.

All decisions regarding the appropriate enforcement action will have regard to current statutory guidance, codes of practice, Crown Office guidance and the Human Rights Act 1998 and in the case of business regulation will also take account of the UK Regulators' Code and the Scottish Regulators' Strategic Code of Practice.

2. Introduction

The Building Standards service in conjunction with other regulatory services largely carries out different functions but we have common aims. In providing this policy we are helping both businesses and individuals understand what we do to follow the principles of the UK Regulators' Code and the Scottish Regulators' Strategic Code of Practice.

The aim of the Building (Scotland) Act 2003 is to:

- Secure the health, safety, welfare and convenience of persons in or about buildings and of other who may be affected by buildings or matters connected with buildings
- Further the conservation of fuel and power, and
- Further the achievement of sustainable development

Within the Act, compliance with the legislation falls to the “**relevant person**”. This person or people are:

- Any person carrying out the work, and
- Any person for whom the work is being done; that is an owner, tenant or developer, and
- The owner: if the owner is different from the persons above.



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This policy will assist businesses operating within the legislation by explaining our enforcement role regarding people undertaking work not complying with the standards or work without the correct authorisation. On the same basis, this policy will clarify for homeowners, the purpose of positive enforcement for the health, safety and welfare of persons in and around dwellings. In these cases, the principles of good enforcement practice contained in this policy will be applied where applicable.

Our operational policies affecting regulation and enforcement comply with the spirit and requirements of the UK Regulators' Code (the Code) and the Scottish Regulators' Strategic Code of Practice (the COP).

Both Codes recognise the need for regulation to be applied in a way that allows and encourages good businesses to flourish. The UK code states, 'regulators should carry out their activities in a way that supports those they regulate to comply and grow' and the Scottish code states 'regulators should adopt a positive enabling approach in pursuing outcomes that contribute to sustainable economic growth'.

3. The Principles of Positive Enforcement

We have adopted the following principles of positive enforcement:

- **Openness** – we will provide information, as far as legislation permits, and advice in plain language and a format that is accessible and easily understood. We are open about how we carry out our function and take account of stakeholders' views, where possible. When communicating with applicants, we will make sure that there is a clear distinction between actions necessary for compliance with the law and those actions that are recommendations as best practice.
- **Targeting** – We aim to prioritise our regulatory work using information and intelligence available to us and any risk assessment. We will use risk assessment, considering the likelihood of non-compliance and the impact of non-compliance, to determine our work plans. We will use nationally agreed systems to determine frequency of visits to building work, where appropriate. We will explain the rationale for such frequency upon request.
- **Helpfulness** – we believe in maintaining compliance by working with customers of the Building Standards system and especially new, small, and medium sized businesses, to advise and assist with compliance.



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- **Proportionality** – we minimise the costs of compliance for the relevant person by ensuring that any action we require is proportionate to the risks. As far as the law allows, when considering action we will take account of the circumstances of the case, the knowledge of the relevant person and that the sanction taken is meaningful and within the public interest. We take particular care to work with small businesses and voluntary/community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.
- **Consistency** – we aim to carry out our duties in a fair, equitable and consistent manner. While officers are expected to exercise their professional judgement in individual cases, we have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities within our peer group.
- **Accountability** – our service plans are published which inform others what our operational objectives are and how they fit with the Council's priorities. We publish our performance information which gives detail on how our services have performed against our service plans. Where a legislative appeal process is not available, we have a formal corporate complaints procedure for issues being raised about our enforcement actions.

4. General Principles

This policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improves regulatory outcomes without imposing unnecessary burdens.

We use a variety of means to achieve our aims such as help and guidance, liaison with industry and enforcement. Our graduated approach means enforcement is usually the last resort except where the circumstances demand a quicker response e.g. an immediate public risk.

Where we consider enforcement action is necessary each case will be considered on its own merits. However, there are general principles that apply to the way each case will be approached. These are as follows:

- Enforcement decisions will be fair, independent, and objective and will not be influenced by issues such as ethnicity or national origin, age, gender or gender identity, religious beliefs, political views, or the sexual orientation of the offender. Such decisions will not be affected by improper or undue pressure or interference from any source.
- We will consider the views of any person disadvantaged or affected to establish the nature and extent of any harm or loss, and its significance, in making the decision to take enforcement action.



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- We are a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- We will clearly communicate with businesses, individuals, or witnesses in line with our service standards to ensure they are fully informed of any intended enforcement action. Confidentiality will be maintained, and personal information will be processed in accordance with the principles of the Data Protection Act 1998.

5. Enforcement Action

Where an infringement of the Building (Scotland) Act 2003 has occurred, any action is taken depending on the circumstances of the infringement. Enforcement action includes any action taken by duly authorised officer aimed at ensuring that businesses or individuals comply with the law. Any enforcement action is a graduated approach based on the infringement subject to action. We will clearly explain, in all cases, what the issue is, the advice we are giving, what and why action is required, what action we will take and the consequence of not following our advice. We will always clearly explain whether the issue is a legal requirement or a recommendation.

The action can be:

- (i) **Informal Action:**
In certain circumstances where the Building Standards Officer considers that the detrimental impact is very low, the relevant person will be given advice and guidance to help with compliance with the legislation.
- (ii) **Indirect Action:**
In certain circumstances, the officer may consider that the most appropriate action is to refer the matter to another agency or another authority.
- (iii) **Written Warning:**
In certain circumstances where an infringement has been discovered and rectified by negotiation, it may be considered not appropriate to submit a report for prosecution. A formal written warning may be issued which would be kept on record for any future infringement.
- (iv) **Statutory Notices:**
In certain circumstances where the legislation allows, the officer may issue a statutory notice requiring the relevant person to take a specific action or cease certain activities.



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At the time of serving a statutory notice, the recipient will be advised of the implications of the notice, any potential penalties, any right of appeal and the process to be followed. Where necessary to aid understanding, notices can be translated.

6. Who Decides What Enforcement Action is taken?

Building Standards Officers are professionally trained to take the most appropriate course of action in cases of non-compliance with the law. They are also required to maintain their competence through continuous professional development.

Decisions about the most appropriate course of enforcement action to be taken will be based upon professional judgement and, where applicable, legal guidelines and codes of practice.

Where appropriate, decisions about enforcement action will involve consultation between, or approval from:

- Regulatory Officer(s)
- Service Managers/Team Leaders
- Solicitors from Legal Services

7. Reporting to the Procurator Fiscal

A decision to report an offence to the Procurator Fiscal Service is made by a Service Manager or above. A report will only be submitted for prosecution where the evidential test is met with regard to the Crown Office Procurator Fiscal Service guidance.

A report to the Procurator Fiscal service will in general be submitted where one or more of the following criteria are met:

- Endangering the health, safety, wellbeing of people or where the economic interests of consumers and businesses are affected.
- Deliberately, negligently, or persistently breaching legal obligations likely to cause material loss, harm or nuisance to others.
- Deliberately or persistently failing to act on, or comply with, previously issued advice, guidance, formal warnings, or notices and having been given reasonable opportunity to do so.
- Previous breaches and/or previous convictions.
- Assault or obstruction of an officer in the course of their duties.
- Failure to comply with a statutory notice
- Where the accused will unlikely be able to establish any relevant statutory defences.



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8. Liaison with other Enforcement Agencies

Where appropriate, enforcement activities within the various regulatory services will be co-ordinated including intelligence sharing with other enforcement agencies and local authorities to maximise the effectiveness of any enforcement activities.

Building Standards will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies within the scope of the Data Protection Act.

9. Recovery of costs

In certain circumstances where the law allows and where the consequences of enforcement activity leads to additional costs being incurred by Aberdeenshire Council, the Council will seek to recover these costs as appropriate from the individual or business responsible. This can be for example, where the Local Authority has incurred costs in completing work identified within a statutory notice.

10. Appeals

Appeals against most formal enforcement decisions will be taken through the legal process specified within the legislation. This process will always be explained when formal action is taken. In the case of a written warning the formal corporate complaints will be used to assist in resolving disputes. Once this route is exhausted and the dispute has not been resolved satisfactorily then there is recourse to the Ombudsman. There are no appeal mechanisms against a report made to the Crown Office Procurator Fiscal Service as the matter will be examined by the Procurator Fiscal, and subsequently the court, which will determine whether an offence has been committed.

11. Review of the Regulatory and Enforcement Policy

This policy will be reviewed by Building Standards when external changes dictate and at intervals of not more than three years.