

Use of enforcement powers

Project Specification

Background

The States of Jersey operates a number of regulatory functions, for example relating to planning and building control. The applicable legislation gives it certain powers to enforce its regulatory powers, ultimately including prosecution.

There has been public criticism of the way in which the States has used its powers, including a Complaints Panel decision in 2018. The Comptroller and Auditor General has also received letters which raise concerns in this area.

Within the former Department of the Environment there was a wide ranging review of the use of enforcement powers in relation to planning and building control in 2014 that made recommendations in relation to:

- policy and process;
- systems and administration;
- records management;
- enforcement culture and officer behaviour;
- consistency between planning and building control enforcement and other enforcement action;
- management, location and officer support; and
- performance management and reporting

Regulatory functions are an important area of interaction between the States and citizens. Decisions and the enforcement of decisions can have a significant impact on individuals.

Enforcement powers are a necessary component of regulation. However:

- enforcement action is a last resort: it is resource intensive and inherently adversarial. Effective information, engagement and advice are important elements of minimising the need to take enforcement action; and
- public confidence is secured only where enforcement powers are exercised (and seen to be exercised) proportionately, consistently and fairly.

The Council of Ministers, supported by officers, is committed to reviewing the structures for regulatory functions within the Government, including the checks and balances in place.

The Functions of the Comptroller and Auditor General (C&AG)

Article 11 of the Comptroller and Auditor General (Jersey) Law 2014 requires the C&AG to:

- provide the States with independent assurance that the public finances of Jersey are being regulated, controlled, supervised and accounted for in accordance with the Public Finances (Jersey) Law 2005;
- consider and report to the States on:
 - the effectiveness of internal controls of the States, States funded bodies and funds;
 - the economy, efficiency and effectiveness in the way the States, States funded bodies and funds use their resources; and
 - the general corporate governance arrangements of the States, States funded bodies and funds; and
- make recommendations to bring about improvement where improvement is needed.

Objectives

The review will:

- establish the range and nature of regulatory functions performed within the States;
- evaluate the effectiveness of design and operation of arrangements for engagement with citizens through provision of information and advice that might minimise the need for enforcement action;
- evaluate the design and operation of the existing arrangements for monitoring compliance and determining whether and what enforcement action is taken including:
 - documentation of procedures;
 - training and supervision of staff;
 - management of conflicts of interest;
 - evaluation of alternative courses of action; and
 - record keeping; and

- evaluate the design and operation of the existing administrative arrangements for challenge of the proposed or actual use of enforcement powers.

In undertaking the work an evaluation will be made of:

- the extent to which the recommendations of the 2014 internal review have been implemented; and
- the extent to which there is scope for learning between enforcement activities across the States.

Scope

The review will extend to enforcement activities within the Growth, Housing and Environment Directorate.

The objectives and/or scope of the review may be amended in the course of the review in the light of emerging findings or other matters arising.

Approach

The review will commence with an initial documentation request. The findings of the document review will be followed up by interviews with key officers within Growth, Housing and Environment and elsewhere in the States, including the Law Officers' Department.

The review will not necessarily cover all regulatory activities in respect of which enforcement action is taken.

The detailed work will be undertaken by JAO affiliates.