

STATES OF JERSEY



USE OF ENFORCEMENT POWERS (R.40/2020): EXECUTIVE RESPONSE (R.40/2020 RES.)- COMMENTS

**Presented to the States on 24th August 2020
by the Public Accounts Committee**

STATES GREFFE

COMMENTS

Foreword

In accordance with paragraphs 64-66 of the [Code of Practice](#) for engagement between ‘Scrutiny Panels and the Public Accounts Committee’ and ‘the Executive’, the Public Accounts Committee (PAC) presents comments on the [Executive Response](#) to the Comptroller and Auditor General’s (C&AG) [Report on the Use of Enforcement Powers](#).

Background

The Comptroller and Auditor General’s (C&AG) [Report on the Use of Enforcement Powers](#) was published in April 2020 and evaluated the use of enforcement powers across a number of functions within the Government of Jersey, including planning and building control. The [Executive Response](#), issued jointly by the Chief Executive and the Director General of the Growth, Housing and Environment Department (GHE), was received by the Public Accounts Committee (PAC) on 30th June 2020 and presented to the States and published shortly thereafter. The PAC supports improving the Government of Jersey’s use of enforcement powers and is in agreement with the C&AG’s recommendations. Although the Government of Jersey has accepted all of the recommendations contained in the C&AG’s report, the PAC seeks assurance from the Executive that they will be implemented in a timely and robust manner as set out in the Committee’s comments below.

C&AG Findings and Recommendations

The C&AG’s main findings included:

- Although there is significant information available to the public about regulatory activities, there are some gaps and weaknesses, which, if addressed, could help to reduce the incidence of non-compliance with regulatory requirements;
- There is a limited focus on monitoring the effectiveness of communication with the public about regulatory activities;
- Initiatives designed to improve engagement have not been underpinned by clarity about the desired outcomes;
- In some cases there are no developed arrangements for the training of staff involved in enforcement activities;
- Policies on the use of enforcement powers are often informal and are not publicised;
- There is limited use of Key Performance Indicators (KPIs) for enforcement activities. For planning there is substantial underperformance against target.

To address these issues, the C&AG recommended:

- Reviewing the content of the Government of Jersey (GoJ) website and written communications across regulatory functions to ensure that there is sufficient, accessible and non-technical information provided about enforcement regimes;
- Establish mechanisms for capturing feedback from service users, set targets for responding to enquiries and monitor performance against those targets for all regulatory functions; and
- Ensure that for all regulatory activities, documented procedures are kept up to date to reflect changes in legislation and policy.

The C&AG noted that there is substantial underperformance against targets for planning and building control, and that citizens have not been receiving the service that they should expect. She noted that, at the same time, there has been no structured approach to the implementation of previous recommendations relating to enforcement in planning and building control and performance has deteriorated further. This included how procedures for planning and building control are not comprehensively documented, which parts of it focused on how to record action rather than what action to take and in what circumstances. She therefore recommends that these areas should adopt clear policies on the circumstances in which enforcement action will be taken, and identify conflicts of interest; agree how they will be managed; and record conflicts of interest and how they are being managed.

Executive Response

The PAC is broadly supportive of the proposed activities contained within the action plan within the Executive Response. The Executive has advised that the recommendations made in the C&AG's report align with the principles underpinning the One Gov Modernisation Initiative's review of GHE's functions and confirmed that the department would explore options to ensure that the relevant data is available and transparent in a more publicly accessible format.

The Executive has also accepted that there are challenges in producing non-technical guidance so that Islanders can understand the requirements and that staff needed to be adequately trained and kept up to date. The PAC is pleased to note that 16 GHE staff were currently undertaking the BTEC Edexcel level 7 Advanced Certificate in Investigatory Practice in Regulation.

Formal notifications of conflicts of interest are now expected across all of the regulation directorate services, and are being recorded centrally, although the PAC notes that the Executive recognises that more can be done to ensure consistency and transparency about what happens with these submissions and the recording process.

Recommendations to the Government of Jersey

Recommendation 1: Review the content of the Government of Jersey website and written communications across regulatory functions to ensure that on a consistent basis:

- **sufficient information is provided about enforcement regimes; and**
- **communication is in accessible and non-technical language where possible.**

The PAC welcomes the commitment towards customer experience and improvement made in the recommendation, and the use of the Regulatory Improvement function to highlight areas of improvement. However, the PAC urges the Chief Executive to work to ensure that the updated information on the Government of Jersey's website is easily accessible by members of the public, and presented in a clear and easy-to-read format, and that they work with relevant departments to ensure that the information presented fits the house style of the Government of Jersey.

Recommendation 2: Across all regulatory functions:

- **establish mechanisms for capturing feedback from service users;**
- **set targets for responding to enquiries; and**
- **monitor and manage performance against those targets.**

The Executive Response states that a system is already in place within Trading Standards to establish these mechanisms, with learning to be rolled out on a wider basis on 1st September 2020. The Response further notes that feedback through the Government of Jersey-wide customer feedback management system will inform this recommendation. The PAC would recommend that the methodology used to analyse these mechanisms and collect data are made publicly available, with effort made to provide a clear public understanding of how feedback and monitoring of performance will link to improvements in the Enforcement of Powers.

Recommendation 4: Prepare comprehensive documented procedures for officers responsible for decisions on enforcement action for:

- **planning;**
- **building control; and**
- **highways/events.**

The Executive Response states that GHE will audit such procedures to ensure consistency across the specific procedures outlined by the C&AG and where processes are not documented, guidelines will be developed. The PAC recommends that the C&AG is granted access to these procedures and is able to provide feedback on them, in order to ensure that they are in keeping with the recommendations made.

Recommendation 7: For planning, building control, environmental health, environmental protection, highways/events and car parking, introduce structured arrangements to:

- **identify conflicts of interest;**
- **agree how such conflicts will be managed; and**
- **record conflicts of interest and how they are being managed.**

The PAC is pleased to note that greater work will be undertaken on identifying conflicts of interest and managing them. The PAC further notes that potential issues with the Planning Function were also accepted, with a new target operating model for Regulation expected to reflect the issues raised regarding resources in compliance and bringing together all land-related activities, with the Regulation Directorate now possessing a Regulatory Improvement function as part of its new structure.

However, the PAC is concerned that the Executive Response to this recommendation lacks sufficient detail in providing an understanding of how conflicts of interest will be matched against appropriate responses, and what framework will be used to ensure appropriate judgement. The PAC would therefore recommend that GHE make public the framework and methodology used to assess conflicts of interest and provide regular auditing of this process to ensure consistency. The PAC would further recommend that the Chief Executive undertake the appropriate steps to ensure that Conflicts of Interest are treated consistently across all Government of Jersey departments in order to avoid lapses in judgement.

Recommendation 13: Develop forums to share experience and promote effective cooperation between and learning from between teams within the Government of Jersey engaged in enforcement functions.

The PAC is welcoming of the move to improve feedback and the sharing of experience but would like to seek assurance that the system is both in keeping with forums and other methods of feedback across government, and that appropriate measures will be taken to ensure transparency. The PAC also notes confirmation in the Executive Response that GHE are building upon regular quarterly meetings with the Attorney General's office by continuing to work with the Law Officers' Department and the Attorney General. These meetings are designed to clarify the protocols for enforcement action, and ensure that they are available and communicated to the public in an accessible manner. The PAC recommend that documents are made available to the PAC and C&AG that provide an understanding of the results of these meetings and how they have affected GHE's approach to enforcement action.

Conclusion

Overall, the PAC welcomes the positive response made to the recommendations of the C&AG. However, it is clear that a significant amount of work remains before all concerns are adequately addressed by the Government of Jersey and a considerable amount of work remains to be done to ensure that sufficient transparency and public information is provided by the Government. In light of this, the PAC welcomes the positive response to the recommendations of the C&AG.

However, it wishes to caution against complacency regarding the use of enforcement powers, and that it is essential for consistent and transparent frameworks to be established by the Government in order to avoid further pitfalls as outlined in the C&AG's report. The Government should also aim to work actively with both the public and Officers in relevant departments to ensure that they are satisfied with the resources made available to them.

Finally, whilst it is acknowledged that the Government of Jersey's response to the recommendations contained in the report are likely to be delayed due to the ongoing COVID-19 crisis, and that any review activity will now be set in a post-COVID-19 landscape, the PAC would urge the Government to prioritise the implementation of the C&AG's recommendations as soon as possible.