



**Isle of Man**  
**Government**

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DEPARTMENT OF ENVIRONMENT, FOOD AND AGRICULTURE

# ENFORCEMENT POLICY STATEMENT

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## Introduction

**The Department works to protect and enhance the Island's environment within the core principles of environmental, economic and social sustainability; whilst optimising quality of life, international reputation, food production, energy security and outdoor amenity, and protecting the health of the public.**

DEFA works in partnership with all sectors of the Manx Community to protect and enhance the essentials of life – food, air, land and water and to minimise the impact of work activities and food borne and infectious disease on the people who live, work and visit the Isle of Man. It has policy responsibility for animal health and welfare, environmental protection, food, farming, fisheries and landscape.

Other responsibilities include climate change mitigation and adaptation which have enhanced DEFA's role in promoting a low carbon, resource-efficient economy and in securing a sustainable and healthy food supply for the Isle of Man.

DEFA through its Directorates of Agriculture, Environment, Fisheries and Forestry together with the Government Laboratory are responsible for enforcing a wide range of statutory and non-statutory rules, many of which carry a criminal sanction for non compliance. Enforcement should be seen as one of the tools we have to help us meet strategic priorities and deliver our outcomes. Enforcement should also be proportionate and risk based. Whilst not every enforcement activity can be directed to DEFA's strategic priorities and outcomes, because those priorities and outcomes are not exhaustive, every effort will be made to satisfy these priorities and outcomes.

To this end, this Enforcement Policy Statement sets out the general principle we intend to follow in relation to the regulation of statutory and non-statutory functions of the Department. It is intended as a living policy and will be kept under review.

This Policy Statement is applicable to all areas of enforcement by DEFA .

## **Main DEFA Strategic Objectives:**

### **Agriculture**

Through supporting economic growth in our rural communities we will facilitate a reliable, sustainable and self-reliant Manx food chain that can both maintain and increase international and on-Island trade and create new trading relationships. This trade is created within the Isle of Man's traditional landscape and unique natural heritage, which we will protect and enhance.

### **Environment**

The purpose of the Directorate is to protect the health and safety of both the Public and the Environment. This is done through Environmental/Public Health and Environmental Protection Practitioners supported by other professional staff and technicians who can provide a wide range of environmental and health disciplines including, food safety, infectious disease control, housing safety and standards, public health, waste and water, statutory nuisance, dangerous structures, pollution prevention and control, noise, meat inspection, pest control, climate change, energy efficiency and biodiversity strategy and advocacy. To assist the staff of the Directorate have wide-ranging powers that are vital in protecting the public from hazards such as food poisoning, health problems associated with unsatisfactory housing and public health nuisances and, the environment from pollutants that may be discharged into our water, land or air.

### **Fisheries**

We will ensure proper management and protection of our fisheries and their supporting ecosystems within the Isle of Man and the Territorial Seas. In partnership with the Manx Fishing Industry, anglers, wildlife groups and other stakeholders we will develop innovative and dynamic management and marketing measures that seek to balance social, environmental and economic needs of the Isle of Man and meet our international obligations.

### **Forestry, Amenity and Lands**

We will encourage through proper management the continued recreational and commercial activities across our estate whilst ensuring that the plantations, National Glens and uplands are not detrimentally affected. We will maintain our woodland environment and character and protect tree health as far as possible. In delivering our forestry services we will strive to produce better products and services, which reduce environmental impacts across their lifecycle while boosting prosperity and competitiveness. We will also ensure that our unique and valuable resources of wild animals and natural habitats are properly managed and effectively conserved for future generations.

## **Government Laboratory**

We aim to maintain an effective quality assured analytical capability with appropriate third party accreditation, providing a service across Government and the private sector. We will ensure continued testing of the safety/quality of food, fuel, industrial products, soil, marine, fresh and other water, monitoring and reporting on environmental variables relating to the health and well being of the public.

## **Overall**

We aim to be a respected Department delivering efficient and high quality services and outcomes, utilising our resources flexibly to ensure we are prepared to deal with effectively and efficiently all areas within our responsibility including emergency response. We will also champion sustainable development across Government and internationally through organisations such as the British Irish Council.

## **Better Enforcement**

DEFA recognises that the best way to achieve compliance with the law in the first place is to ensure, by guidance and advice, that those carrying out regulated activities understand the nature and extent of their responsibilities and comply voluntarily.

However, there are times when conformity with the law needs to be sought by formal enforcement action. Formal enforcement action is about securing compliance with regulatory requirements. To this end, there is a spectrum of civil and criminal options available ranging from simple advisory visits or letters, warning letters, enforcement notices, conditional cautions and criminal prosecutions before the courts.

The effective use of enforcement powers contained in Regulations, Orders, Bye-Laws and Schemes is important to secure compliance with the rules and, where necessary, to ensure that those who have not complied may be held to account. Enforcing authorities need to take into account the need to maintain a balance between enforcement and other advisory activities when allocating resources.

### **1. Principles of Enforcement**

DEFA believes in firm and fair regulation of the matters for which it has responsibility. DEFA has adopted the following enforcement principles for achieving this.

#### **1.1 Openness and Transparency**

We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any changes that we make. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulty.

## **1.2 Helpfulness**

We believe that prevention is better than cure and our role therefore involves actively working with those being regulated to advise and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we encourage business to seek advice/information from us. Applications for licences etc. will be dealt with efficiently and promptly within stated time frames. We will ensure that wherever practicable, our enforcement services are effectively co-ordinated, both within our Department and with other Government Departments, to minimise unnecessary overlaps and delays.

## **1.3 Proportionality**

We will minimise the costs of compliance for those being regulated by ensuring the action that we require is proportionate to the risks. As far as the rules allow we will take account of the circumstances of the case and the attitude of the operator when considering action.

We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, when practicable.

On occasion, however, the precautionary principle will require enforcement action even though the risks may be uncertain.

## **1.4 Consistency**

We will carry out our duties in a fair, equitable and consistent manner. While Officers are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency.

## **1.5 Targeting**

Targeting of enforcement action means prioritising and directing regulatory effort effectively. This means concentrating on the activities which create the most serious risk, either because the nature of the activity is inherently high-risk, or because of lack of appropriate controls or appropriate attitude in other lower risk activities. It also involves identifying and focusing on those responsible for the risk.

## **1.6 Enforcement Procedures**

Adhering to the principles of openness and transparency, advice from an officer will be put clearly and simply and will, when appropriate, be confirmed in writing. When appropriate the officer will explain why any remedial action is necessary and over what time-scale. They will also make sure legal requirements and non-statutory obligations are clearly distinguished from best practice advice.

Before formal action is taken, officers will provide an opportunity to discuss the circumstances of the case and if possible resolve points of difference, unless immediate action is required (for example, in the interests of public and animal Health or environmental protection to prevent evidence being destroyed).

Where immediate action is considered necessary an explanation of why such action is required will be given at the time and confirmed in writing within 5 working days.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken. Whenever possible this advice will be issued with the enforcement notice.

## **2. Enforcement Options**

Although investigation of the circumstances or matters discovered either on inspection or following a complaint is vital, such an investigation may not necessarily lead to criminal proceedings being instituted. DEFA shall seek a resolution of matters taking the most appropriate action.

### **2.1 Education and Advice**

Sometimes minor breaches of the rules or poor practice are detected that present no direct or potential risk to the public, the environment or animal health. In such cases, officers can offer advice or suggest appropriate systematic or educational remedies. In normal circumstances this may also involve issuing an advisory letter reminding the regulated person of the need to obey the law and may be sent without prejudice to other remedies.

### **2.2 Warning Letters**

Where more serious offences have occurred (or where previous advice has been ignored) DEFA may issue a warning letter detailing the offences together with a warning that if the regulated person does not comply with the law they will be subject to more formal enforcement action.

### **2.3 Enforcement Notices and Licence Revocations**

In certain circumstances where serious or repeated offences have been detected it may be necessary to serve legal notices to ensure an immediate remedy is put in place or to stop a particular high-risk activity. Such legal notices may also include the revocation of any relevant licence issued by DEFA.

## **2.4 Caution**

Where serious breaches of the rules have occurred and it is felt that those regulated have accepted their guilt and shown that they have taken action to remedy the situation it may not be in the public interest to proceed with a prosecution. In such circumstances a formal caution may be issued. Before a caution (where available) can be imposed, the offender must admit their guilt in writing and agree to the imposition of requirements to assist in their rehabilitation and or/ to make reparation for the offence. If the offender does not keep their side of the arrangement, they may be prosecuted for the original offence.

## **3. Prosecution**

The commencement of a prosecution is an important part of enforcement. The purpose is to secure a conviction and ensure the defendant is punished by a court which acts as a deterrent to the defendant and others. A prosecution may be commenced where the suspect does not accept their guilt for any offence or where the matter is too serious for a caution.

Prosecutions are taken by the Attorney General's Chambers on behalf of DEFA, subject to there being a sufficiency of evidence and that they are in the public interest. These two principles are explained below.

### **3.1 Sufficiency of Evidence**

The Attorney General's Chambers will only commence a prosecution when it is satisfied that there is a realistic prospect of conviction on the available evidence. If the case does not pass this evidential test, it will not go ahead, no matter how important or serious the allegation may be.

### **3.2 Public Interest Factors**

The Attorney General's Chambers will also consider other factors in deciding whether or not to prosecute. These factors include:

1. The impact, or potential impact, of the offence on people, the environment, or animals having regard, in particular to the strategic priorities and outcomes of DEFA.
2. The implications of the offence for the enforcement of the regulatory regime e.g. a failure to obtain a required permit or licence for a regulated activity undermines the integrity and efficiency of the regulatory regime and may deprive DEFA of a fee income.
3. Other financial aspects of an offence e.g. the benefit obtained from not seeking the requisite licence or undercutting legitimate operators.
4. Whether the offence was committed deliberately or officials obstructed
5. The previous enforcement record of the offender

6. The attitude of the offender, including behaviour towards officials, and whether corrective measures to remedy the offence or prevent reoccurrence have been put in place.
7. Where offences are prevalent or difficult to detect and a prosecution would constitute a general deterrent for others as a result of making an example of the offender.
8. If the offence arose from unusual circumstances where the situation could not have been foreseen or reasonable precautions would not have avoided the situation, or reasonable steps were taken to mitigate the matter and the appropriate authorities were notified.

#### **4. Complaints about Service**

In all cases we will try to resolve complaints in a professional, fair and equitable manner by reaching mutual agreement. Where this fails we will provide well publicised, accessible, effective and timely complaints procedures.

However, DEFA will not accept complaints about matters which have a formal appeals process available to review the decision of the Department or which are the subject of a prosecution. In certain cases DEFA may defer investigating any complaint until after any prosecution has been completed.

*This document is issued for guidance only and should not be treated as a complete and authoritative statement of the law.*