



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

Planning Enforcement Charter

A Guide to Enforcing Planning Controls in North Ayrshire

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1. Introduction

The Scottish Government places a strong emphasis on the role of planning enforcement in delivering key policy objectives and maintaining public confidence in the planning system. The Planning etc. (Scotland) Act 2006 introduced the requirement for Councils to produce enforcement charters, as a means of clarifying the purpose, powers and raising the overall profile of planning enforcement.

This Charter, which was revised in 2023, explains what enforcement means, what the Council can and cannot do, the service standards and what happens at each stage of what can be a lengthy process.

Planning permission is required for most development that takes place in Scotland, with the exception of a wide range of “permitted developments” including some changes of use.

Sometimes, development is undertaken without the necessary consents or without complying with conditions of a permission which has been granted. In such cases, the Council has powers to take action in order to remedy the issues which can occur.

There is a key role for members of the public to alert the Council to any potential breaches of planning control they become aware of, whether large or small. The Council can also monitor high profile and other developments of public interest, where resources allow, to ensure planning regulations and conditions are being adhered to.

It should be noted that enforcement action is a discretionary power: even when a breach of planning control has occurred, it may be determined by the Council that it would not be in the public interest to take formal action. The planning system does not exist to protect the interests of private individuals against each other but must work in the public interest.

The Council, as Planning Authority, has to consider each case on its merits and decide the most appropriate response. The Council is unlikely to take formal action, for example over developments, which in planning terms, are seen to be acceptable.

Enforcement is one of the most complex parts of the planning system. The aim of this Charter is to ensure that the adopted procedures are applied fairly and reasonably, and that interested parties are kept informed and are made aware of the process.

It is understood that planning enforcement is an issue that interests many people and it is hoped that this Charter is useful. It should also be noted that we regularly review the Charter and that comments on its content are welcomed.

This Charter sets out the current powers available to Planning Authorities. These powers are set out in the Town and Country Planning (Scotland) Act 1997 as amended.

2. Key points on planning enforcement

- A breach of planning control is **not** of itself a criminal offence
- A breach of listed building control can be a criminal offence

It is important to remember that the primary purpose of planning enforcement is to remedy any breach which has occurred, rather than to apply punitive measures to those responsible. In addition, any action taken must be appropriate to the breach. The Council has statutory powers to:

- investigate alleged breaches of planning (such as unauthorised developments and changes of use);
- investigate alleged unauthorised works to listed buildings;
- investigate alleged displays of unauthorised advertisements;
- investigate alleged unauthorised tree works;
- investigate the conditions attached to permissions/consents;
- initiate formal action where a satisfactory outcome cannot be achieved by negotiation.

The Council is not required to take any particular action on a specific breach, and indeed can decide that no action is necessary.

Fuller information on the use of enforcement powers can be found in the Scottish Governments Planning Circular 10/2009: Planning Enforcement which can be viewed online [view Planning Circular 10/2009: Planning Enforcement](#)

Service standard

By publishing our standards and targets, we aim to improve our enforcement service and make it responsive to the needs of our customers. We will monitor the contents of this Charter to ensure that standards and targets are being met.

The Charter will be made available on the Council's website and by appointment at Planning Services, Cunninghame House, Irvine KA12 8EE.

3. Identifying possible breaches of planning control

Planning enforcement has two main issues:

1. To establish whether a breach has taken place, and
2. Whether it is expedient or appropriate to take enforcement action.

The decision to take enforcement action is at the sole discretion of the Council.

Possible breaches of planning and listed building control can include:

- development being undertaken without planning permission
- alterations to or demolition of a listed building without listed building consent
- the change of use of a building or land without planning permission
- the failure of a developer, owner or occupier of land/buildings to comply with conditions attached to planning permission or listed building consent, and
- departures from approved plans or consents.

Members of the public have a vital role in reporting breaches of control. Any concern should be raised with the Council either via a local councillor or directly to Planning Services (see below). You can make preliminary enquiries by telephone or in person at the Council offices, but these must be followed up in writing or email in order for an alleged breach to be investigated.

For preliminary enquiries, Planning Services can be contacted by the following methods:

By telephone:

01294 324319 (24 hour voicemail facility available)

[View the Council's website for additional telephone numbers](#)

[Email eplanning@north-ayrshire.gov.uk](mailto:eplanning@north-ayrshire.gov.uk)

In person:

Planning Services

North Ayrshire Council

Cunninghame House, Irvine KA12 8EE

Please make an appointment to see an Officer prior to coming to Cunninghame House

Suspected planning breaches should be reported to the Council as follows:

Using the North Ayrshire Council website:

[Report a Planning Breach](#)

By post:

Planning Services, North Ayrshire Council, Cunninghame House, Irvine KA12 8EE

The following information is essential when reporting a suspected breach:

- details of the alleged breach, with times and dates if relevant
- the address or location of the breach
- your name, telephone number, postal and email address
- whether the enquiry is to be treated confidentially

Failure to provide the above information may result in no investigation taking place.

The Council is subject to the requirements of the Freedom of Information (Scotland) Act 2002. Requests for total confidentiality may limit the ability of the Council to take formal action and cannot be guaranteed if the case leads to court proceedings.

In relation to development with planning permission, monitoring is undertaken by the Council's Planning Services. It is not a statutory requirement that the Council monitors all planning conditions at all times. Public involvement is therefore invaluable in providing information where it is believed that conditions attached to consents are not being complied with or have not been discharged in a satisfactory way.

Information received by Planning Services is checked to ensure that it involves a possible breach of control and includes all the details required for a possible investigation. After preliminary checking and compliance with the requirements for investigation, the complaint will be registered. Once registered, and where contact details have been provided, a written or email acknowledgment will be sent to the person who has made the complaint.

Some complaints, such as neighbour disputes over boundaries, relate to matters over which the Planning Service has no control and cannot therefore be pursued.

Service standard

If preliminary checking of a complaint suggests a possible breach of planning control, the complaint will be registered. Once registered, an acknowledgement will be sent out within 5 working days if a postal address or email address has been provided. The acknowledgement will include a reference number and contact details for the Planning Officer.

4. Investigating alleged breaches of planning control

A priority system is used for investigating complaints based on matters such as the significance of the harm of the alleged breach on amenity or other relevant planning considerations.

Service standard

Priority will be given to significant alleged breaches of planning control including, but not limited to:

- Significant detrimental impact on amenity;
- Alleged breaches of condition for major developments;
- Irreversible damage to listed buildings; and
- Unauthorised felling or other works affecting trees protected by Tree Preservation Orders

An investigation normally begins with the Planning Officer visiting the site. Following this visit, the individual who has made the complaint will be informed of what action, if any, is proposed.

In some cases, additional investigation may be needed. A record will be maintained of all contact, both verbal and written.

Service standard

Where contact details have been provided, a person who provides information by letter or email to Planning Services will receive a formal response within 20 working days of receipt. The person will also be advised of the proposed action to be taken. The action may include the need for additional investigation prior to deciding on the course of action. The person will be advised if the matter does not involve a breach of planning control.

The length of time required to resolve the case or take action can be affected by a number of factors. Progress can be delayed by the gathering of further evidence, to allow negotiations to take place or for formal procedures to be concluded. Similarly, an application to remedy the alleged breach or an appeal against a decision of the Council can also delay resolution of the case.

The Council can also grant planning permission retrospectively. Conditions may be attached to planning permission in order to remedy a breach.

The Council recognises that delays can be a source of considerable frustration to persons submitting information, particularly if they consider their amenity is affected by the alleged breach. Consequently, interested parties may wish to contact the Planning Officer for more regular updates.

5. Acting on alleged breaches of planning control

The Council has to consider each case on its merits and decide on the most appropriate solution.

In the first instance, an investigation will be undertaken by the Planning Officer to establish whether or not a breach has occurred and decide on whether to take any further action.

In some cases, enforcement action may not be considered appropriate, even although planning regulations may have been breached. Enforcement action will only be taken when it is in the wider public interest which is at the Council's discretion.

The Council is unlikely to take formal enforcement action over developments which, in planning terms, are considered acceptable had an application been made beforehand. In such cases, a retrospective planning application is normally sought. In granting planning permission retrospectively, the Council can impose conditions to regulate a wide range of planning matters in order to make a retrospective development acceptable. It is not always necessary to impose conditions.

Only a relatively small number of cases lead to formal enforcement action. Where formal action is required, a report may be prepared for consideration by the Council's Planning Committee. Formal enforcement action can include the issue of a Notice to the landowner or developer. Various options are available, including a Notice requiring a retrospective planning application to be made, an Enforcement Notice, or a Breach of Condition Notice.

The Council also has the power to serve an Amenity Notice, the purpose of which is to require improvements to land or buildings which have become detrimental to the amenity of an area.

Enforcement Notices served by the Council are placed on the Enforcement Register. You can view the Register by appointment at Planning Services, Cunninghame House, Irvine between 9am and 4.45pm Monday – Thursday (9am and 4pm on Fridays). The post 2015 Register is available to view online [view the Enforcement Register](#)

Enforcement Notices and Breach of Condition Notices include the following information:

- A description of the breach of control that has taken place;
- The steps that should be taken to remedy the breach;
- The timescale for taking these steps;
- The consequences of failure to comply with the Notice; and
- Where appropriate, any rights of appeal the recipient has and how to lodge such an appeal.

Appeals against Enforcement Notices and Amenity Notices are considered by Scottish Ministers and dealt with by a Scottish Government's Directorate for Planning and Environmental Appeals (DPEA).

There is no right of appeal against a Breach of Condition Notice.

Service standard

Where a planning breach cannot be resolved and action is justified, formal enforcement action will be taken. Authorisation from the Planning Committee may be required for the service of a Notice, or to take any other formal action that is appropriate to the breach. The Notice will explain to the recipients what is required, the timescales involved and the available options to resolve the issue.

Failure to comply with a Notice may result in the Planning Authority taking further action. There are a range of possible options, such as:

- Referring the case to the Procurator Fiscal for possible prosecution;
- The Council may carry out work and charge the person for the costs involved;
- Seeking a court interdict to stop or prevent a breach of planning control.

For more details, see the Enforcement Powers section at page 11.

Service standard

Where the terms of any formal Notice are not complied with, every effort will be made to resolve the case to the satisfaction of the Council. Options include:

- In the case of an Enforcement Notice, direct action by the Council;
- For either an Enforcement Notice or a Breach of Condition Notice, the matter being referred to the Procurator Fiscal for possible prosecution or alternatively offering the opportunity to pay a fixed penalty (issue of a Fixed Penalty Notice).

The Council has powers to enter land to:

- Establish if there has been a breach of planning regulations;
- Check if there has been compliance with a formal Notice; and
- Check if a breach has been satisfactorily resolved.

Powers of entry apply to any land and may also involve officials entering land adjacent to the site of the alleged breach.

Enforcement Action has to be taken within strict time limits:

A four year limit applies to "unauthorised operational development" (the carrying out of building, engineering, mining or other operations in, on, over or under land) and the change of use of a building to a dwellinghouse. After 4 years, such developments become lawful for planning purposes, and enforcement action cannot be taken.

A ten year limit applies to all other development including change of use (other

than to a single dwellinghouse) and breaches of condition. After 10 years the development becomes lawful if no enforcement action has begun; and

There is no time limit for breaches of listed building control.

Breaches of listed building control can be a criminal offence. Persons responsible can be reported to the Procurator Fiscal without the prior issue of a Listed Building enforcement notice.

6. Making a suggestion or complaint

The Council makes every effort to deliver a satisfactory planning enforcement service. However, if you have any suggestions, concerns or difficulties, we want to hear from you.

The Council is committed to improving our Planning service. We will consider all complaints about the way an Enforcement Inquiry has been dealt with.

Dissatisfaction with the outcome of an investigation is not sufficient grounds for complaint.

In the first instance, complaints should be discussed with the member of staff involved. If you are still dissatisfied, please request a discussion with the Senior Planning Officer (see list of contacts). If they are unable to help, you will be given the name of a more Senior Manager who will investigate the matter.

Written complaints will be acknowledged within 10 working days and then fully and promptly investigated. The complainant will be given a written response explaining the outcome of the investigation and any action that the Council proposes to take. If no action is proposed, the reasons for this will be explained.

Service standard

Where contact details are provided, we will get in touch with you within 5 working days of receiving a complaint or suggestion to let you know what is happening. We will monitor all complaints and suggestions made and use them to review and improve the service we provide.

If you are not happy with the level of service provided (but not the decision reached on planning merits), you can make a complaint. You can submit the details via the Council's Complaints and Feedback section on the website:

[Make a complaint](#)

The various stages of the complaint procedure are set out on the complaints form and on the website.

Lastly, if you are dissatisfied with the Council's complaints process, you have the right to take your complaint to the Scottish Public Services Ombudsman, at:

Freepost SPSO, Edinburgh

Telephone: **0800 377 7330**

[Email ask@spsso.org.uk](mailto:ask@spsso.org.uk)

Generally, you must contact the Ombudsman within 12 months following the conclusion of the Council's complaints procedures.

7. Enforcement Powers

The planning enforcement powers available to the Council are set out in the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006. Listed Building Enforcement Notices are covered by the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The Planning Acts can be viewed online [view the Planning Acts](#)

Scottish Government policy on planning enforcement is set out in planning Circular 10/2009: Planning Enforcement. The Circular is published on the Scottish Government website - [view Circular 10/2009: Planning Enforcement](#)

Types of Notice

Breach of Condition Notice (BCN) – used to enforce the conditions applied to any planning permission. It comes into effect 28 days after being served. It may be used as an alternative to an Enforcement Notice (see below) and is served on any person carrying out the development and/or any person having control of the land. There is no right of appeal. Contravening a BCN can result in the Council deciding to prosecute. On conviction, a fine of up to £51,000 can be imposed.

Enforcement Notice (EN) – generally used to deal with unauthorised development. There are similar notices and powers to deal with listed buildings (see below), and advertisements. An EN will specify a time period to take effect (a minimum of 28 days – but see section below on advertisements); the steps that must be taken to remedy the breach and the time for this to be completed. There is a right of appeal to Scottish Ministers against an EN. In the event of an appeal, the terms of the EN are suspended until a decision is reached.

Failure to comply with an EN within the time specified is an offence. On conviction, this can result in a fine of up to £50,000. Failure to comply may also result in the Council taking direct action to remedy the breach (see other powers below). The Council will then seek to recover costs from the owner of the building or land.

Listed Building Enforcement Notice (LBEN) – in the event of unauthorised works to a listed building, including demolition, an LBEN can be served on the owner, occupier and anyone else with an interest in the property. The procedures are similar to those outlined above. The LBEN must specify the steps to be taken to remedy the breach and a date for compliance. Failure to meet the terms of an LBEN by the specified date is an offence. There is the right of appeal to Scottish Ministers against the LBEN.

Breaches of listed building control are considered a serious matter. The legislation makes it clear that it is a criminal offence to undertake works to demolish, significantly alter, or extend a listed building without the proper authorisation from the Council and, in some circumstances, Historic Scotland. On conviction, this can lead either to an unlimited fine or imprisonment.

Stop Notice – used in urgent or serious cases where unauthorised activity must be stopped, usually on grounds of public safety. When a Stop Notice is served, the

planning authority must also issue an Enforcement Notice. There is no right of appeal against a Stop Notice and failure to comply is an offence. An appeal can be made against the accompanying Enforcement Notice. If a Stop Notice is served without an adequate reason, or an appeal against the Enforcement Notice is successful, the Stop Notice may be quashed, and the Council may face claims for compensation.

The use of Stop Notices therefore needs to be carefully assessed by the Council.

Temporary Stop Notice (TSN) – used to require the immediate halt of an activity which breaches planning control. There is an exception that a Temporary Stop Notice cannot prohibit the use of building or a caravan as a dwellinghouse. Temporary Stop Notices are enforceable for 28 days, after which time they expire. They may, however, be followed by further enforcement action such as an Enforcement Notice and Stop Notice. There is no provision to appeal against a Temporary Stop Notice.

Fixed Penalty Notice (FPN) – used to address situations where a person has failed to comply with the requirements of an Enforcement Notice (EN) or a Breach of Condition Notice (BCN). By paying the penalty imposed by the Fixed Penalty Notice, the person will discharge any liability for prosecution for the offence. It will not, however, discharge the obligation to comply with the terms of the Enforcement Notice or Breach of Condition Notice and the planning authority will retain the power to take direct action to remedy the breach and recover the costs of such work from that person. The Council is not required to offer the option of paying a fixed penalty. Any decision to do so would depend on specific considerations, such as the scale of the breach and its impact on local amenity.

Notice Requiring Application for Planning Permission for Development

Already Carried Out – where the Council considers that a development which does not have planning permission may be acceptable they may issue a Notice requiring the landowner or development to submit a retrospective planning application. Such an application would be considered on its planning merits and handled in the same way as any other planning application. Issuing such a Notice does **not** guarantee that permission will be granted – the Council may decide instead to refuse permission, or to grant permission subject to conditions or amendments to make the development acceptable.

Other Powers

Planning Contravention Notice (PCN) - used to obtain information about activities on land where a breach of planning control is suspected. It is served on the owner or occupier, or a person with any other interest on the land or who is carrying out operations on the land. Such a notice may be a precursor to further investigation. Failure to comply with a PCN is an offence and, on conviction, can result in a fine.

Notice under Section 179 of the Town and Country Planning (Scotland) Act 1997 – S.179 allows planning authorities to serve a Notice on the owner, lessee or occupier of land which is adversely affecting the amenity of the area. This is also known as an “Amenity Notice” and sets out the action that needs to be taken to

improve the condition of the land or building within a specified period. There is a right of appeal against a Section 179 notice. Whilst non-compliance cannot result in prosecution, the Council may undertake the specified work at its expense and re-charge the owner, occupier or lessee, as appropriate, to recover the costs.

Notice under Section 272 of the Town and Country Planning (Scotland) Act 1997 – S.272 provides limited powers to obtain information on interests on land and the use of land. Failure to provide the information required is an offence.

Interdict and Interim Interdict – an interdict is imposed by the courts and is used to stop or prevent a breach of planning control. Court proceedings can prove costly and Councils normally only seek Interdicts in serious cases or where Enforcement Notices have been ignored in the past. However, a Council can seek an interdict in relation to any breach without having to use other powers first. Breaching an interdict is treated as a contempt of court and carries heavy penalties.

Direct Action – failure to comply with the terms of an Enforcement Notice within the time specified can result in the Council carrying out the specified work. The Council may recover any costs it incurs from the landowner.

Notification of Initiation of Development (NID); Notification of Completion of Development (NCD) and Display of Notices while Development is Carried Out – while not in themselves planning enforcement powers, these Notices are intended to improve delivery the monitoring of planning enforcement by requiring confirmation that development has commenced and been completed. For example, this enables planning conditions to be checked for compliance. Site Notices, which apply to major developments, may help to raise awareness of developments in a locality.

Starting a development without submitting an NID is a breach of planning control and the Council may consider enforcement action. The NCD requires a developer to submit a further Notice after development has been completed.

Site notices contain basic information about the site and the development. Notices also provide contact details where members of the public may find out more information or report alleged breaches of planning control. It is a breach of planning control to fail to display a site notice when required to do so.

Certificates of Lawful Use or Development (CLUD) – may determine whether any enforcement action could be taken by providing a mechanism for establishing the planning status of land i.e. whether an existing or proposed use or development is considered lawful for planning purposes. In addition, the procedure provides a mechanism for obtaining from the Council (or the Scottish Ministers on appeal) a statutory document certifying the lawfulness, for planning purposes, of existing operational development or use as a single dwellinghouse. Anyone can apply to the Council for a decision on whether a specified existing use, operational development, or failure to comply with a planning condition or limitation is lawful for planning purposes.

There are similar provisions for establishing whether a proposed use or operational development would be lawful for planning purposes. In both cases, the onus of proof lies with the applicant. Certificates can be revoked if it subsequently appears that false or misleading information has been submitted with an application.

It should be noted that a CLUD does not mean that planning permission has been granted, but that the use or development is lawful and immune from enforcement action.

8. Enforcement and advertising

The display of advertisements is covered by the Town and Country Planning (Control of Advertisements (Scotland) Regulations 1984 (as amended). Many advertisements are displayed with what is called “deemed consent” which means they do not require advertisement consent from the Council if they meet the criteria and conditions set out in the Regulations.

One of these conditions is that the landowner has given permission for the advertisement to be displayed on their land.

Displaying an advertisement in contravention of the Regulations is an offence. On conviction, an offender can be fined. The Court can impose further fines for each day the breach of the Regulations continues.

The Council also has the power to serve an Enforcement Notice against unauthorised advertisements, requiring their removal. Such a notice specifies the time period (normally 28 days) for compliance. However, the compliance period can be reduced to seven days if the Council believes there is an urgent need for the advertisement to be removed or altered in the interests of public safety, or if the advertisement can be removed without any other work being required.

An Enforcement Notice can also require that a particular piece of land should not be used to display advertisements. A notice remains in force even once the original advertisement is removed. Any subsequent advertising on this site would amount to a breach of the Notice.

The Council can also take action against advertising being displayed with “deemed consent” where it is held that the advert is either a danger to public safety or substantially injures local amenity.

A Discontinuance Notice, requiring removal of an advert, can be served on the owner or occupier of the land as well as the person who displays the advertisement.

There is a right of appeal against both an Enforcement Notice and Discontinuance Notice.

The Council also has powers to remove or destroy placards and posters that do not benefit from either advertisement consent or deemed consent. If the person or company who put up the poster can be suitably identified, they can be given at least two days’ notice that the Council intends to take the poster down. If the person or company cannot readily be identified, then the advert can be removed immediately.

If necessary, Council planning officers can enter unoccupied land to remove an advertisement. However, planning officers have no powers to remove advertisement displays within a building to which there is no public access.

9. Enforcement contacts

There are various ways to contact Planning Services do this:

Using the North Ayrshire Council website:

[Report a Planning Breach](#)

By telephone:

01294 324319 (24 hour voicemail facility available)
or 01294 310000

[Email \[emailplanning@north-ayrshire.gov.uk\]\(mailto:emailplanning@north-ayrshire.gov.uk\)](mailto:emailplanning@north-ayrshire.gov.uk)

By post or in person:

Planning Services
North Ayrshire Council
Cunninghame House, Irvine KA12 8EE
Please make an appointment prior to attending Cunninghame House

If the initial complaint has not been resolved to your satisfaction, you may report the matter to the Senior Development Management Officers on either 01294 324318 (East Team) or 01294 324320 (West Team). Both numbers have voicemail should you be unable to speak directly to the person.

General enquiries on planning issues in North Ayrshire should be made either by phone to 01294 310000 or [email \[emailplanning@north-ayrshire.gov.uk\]\(mailto:emailplanning@north-ayrshire.gov.uk\)](mailto:emailplanning@north-ayrshire.gov.uk)

The postal address for making a complaint regarding the handling of a planning enforcement matter is:

Customer Complaint Team
Cunninghame House
Irvine
KA12 8EE

For enquiries about the Planning and Enforcement system in Scotland, please contact the Scottish Government at Victoria Quay, Edinburgh EH6 6QQ. The Scottish Government website also has an extensive planning section at [visit the **Planning section of the Scottish Government website**](#)

Free, impartial and professional planning advice can be obtained from Planning Aid Scotland on 0131 220 9730 and via [Planning Aid Scotland website](#)

Complaints regarding the **content** of advertisements should be made to the Advertising Standards Authority via its website [visit the **Advertising Standards Authority website**](#)

10. Summary of the Planning Enforcement Charter

This Charter does not comprise an authoritative interpretation of the Planning Acts in Scotland.

- It is important to remember that the primary purpose of planning enforcement is to remedy any breach which has occurred rather than to apply punitive measures to those responsible
- The Council is not required to take any particular action on a specific breach, and indeed can decide that no action is necessary
- A priority system is used for investigating complaints based on matters such as the significance of the alleged breach on amenity or other relevant planning considerations
- The Council routinely monitors high profile and other developments of public interest to ensure planning regulations and conditions are being adhered to
- There is a role for members of the public to alert the Council to any potential breaches of planning control they become aware of, whether large or small
- Some complaints, such as neighbour disputes over boundaries, relate to matters over which the Planning Service has no control and cannot therefore be pursued
- The planning system does not exist to protect the interests of private individuals against each other, but must work in the public interest
- The resolution of enforcement cases can be lengthy
- The Council can also grant planning permission retrospectively. Conditions may be attached to planning permission in order to remedy a breach

Planning legislation is complex, and if you are in receipt of any correspondence or formal notice from the Council relating to planning enforcement, you are advised to seek legal or independent professional planning advice.

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