

PLANNING ENFORCEMENT CHARTER

Planning and Building Standards Service

West 
Dunbartonshire
COUNCIL

September 2020

Planning Enforcement Charter

What is Planning Enforcement?

Many types of development require planning permission or other related consents. Sometimes, either by accident or intentionally, developers or householders undertake work without the necessary permission, or fail to implement correctly the permission they have been given. This is called a breach of planning control.

Possible breaches of planning control can include:

- Carrying out physical work or changes of use of property without the required planning permission;
- Failure to comply with conditions attached to a planning permission;
- Carrying out development otherwise than in accordance with the approved plans or specifications;
- Works in breach of special planning controls, including those relating to listed buildings, conservation areas, tree preservation orders and advertisement control

Recent examples of breaches of planning control have included:

- Erection of a satellite dish on a listed building
- Developers working outwith the times specified on a condition of consent
- Non-compliance with a High Hedge Notice
- Decking in the garden of a flat without planning permission

The aims of this charter are to explain the enforcement process, and to ensure that our adopted procedures are fair and reasonable; that all interested parties are kept informed at each stage of the process; and that they are clearly made aware of anything which is required of them.

Councils have powers to take enforcement action, if it is in the public interest to do so. The Council's planning enforcement function is administered by the Development Management team. Building Standards have separate powers under the Building (Scotland) Act 2003.

Key points on Planning Enforcement:

- Category of priority given to case;
- Enforcement is discretionary, any enforcement action must be in the public interest;
- We work to resolve the problem, not punish the breach unless the seriousness of the breach warrants action;
- Any enforcement action will be proportionate to the scale of the breach;
- The council will not act as an arbiter for neighborhood disputes

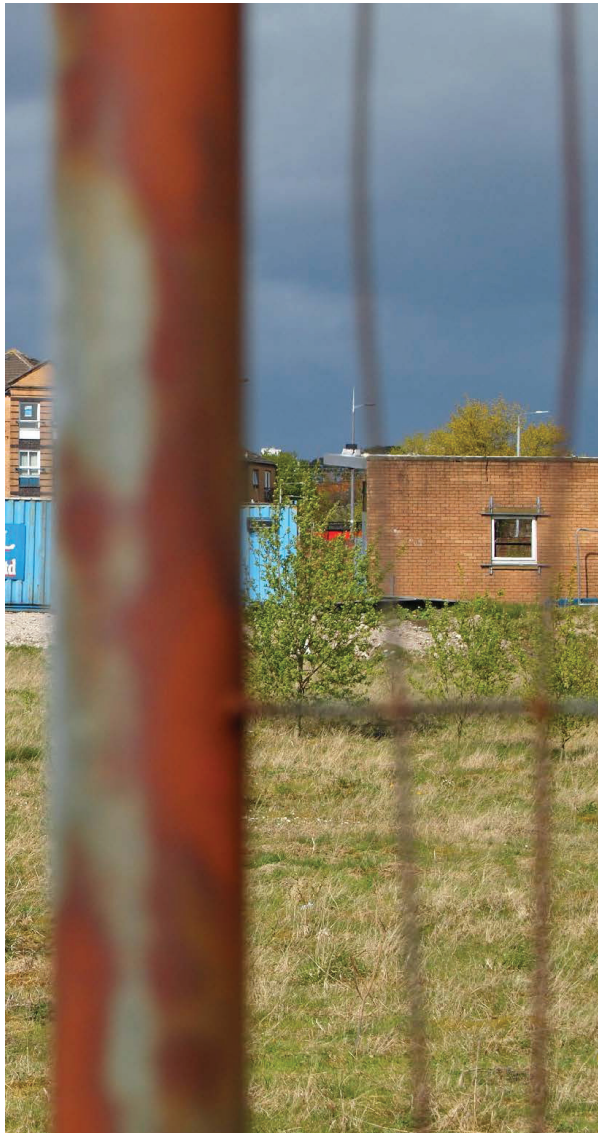
The Planning Compliance team consists of two part time Compliance Officers. One of the officers focuses on general enforcement matters and monitoring of quarry and landfill sites and the other, who was recruited in September 2019, principally monitors the planning conditions and development on the ground associated with the major development and large regeneration sites at Queens Quay and Dumbarton Waterfront to ensure compliance as well assisting with general enforcement matters.

About this Charter

This charter explains how the enforcement process works in the West Dunbartonshire Council's planning authority area*, including the enforcement powers available to the Council and the service standards which developers and objectors can expect from the Council.

The aim of the charter is to explain the enforcement process, to ensure our adopted processes are fair, reasonable and all interested parties are kept informed at each stage of the process.

Breaches of planning control are an issue concerning members of the public. We welcome any comments or suggestions on this charter on how we could improve the planning enforcement services further.



We will monitor the delivery of planning enforcement function to ensure the charter's standards are met.

* With the exception of the High Hedges Scotland Act 2003 planning enforcement within the boundaries of the Loch Lomond and the Trossachs National Park is the responsibility of the Loch Lomond and the Trossachs National Park Planning Authority.

Identifying Breaches of Planning Control

Members of the public have an important role in reporting potential breaches of planning control including the monitoring of planning conditions. Due to the large number of permissions granted each year it is not possible for the Council to actively monitor every site. Any concerns about unauthorised work or breaches of conditions can be raised with the Council by email, telephone or in person at one of the Council's offices (all contact details can be found at the end of this Charter).



When reporting a potential breach of planning control it is important to provide the following information:

- The address of the property concerned;
- The name and address of the person carrying out the breach (if known);
- Details of the alleged breach of planning control (including any times and dates if relevant);
- An explanation of any problems arising from the alleged breach; and
- Your own name, address and contact details

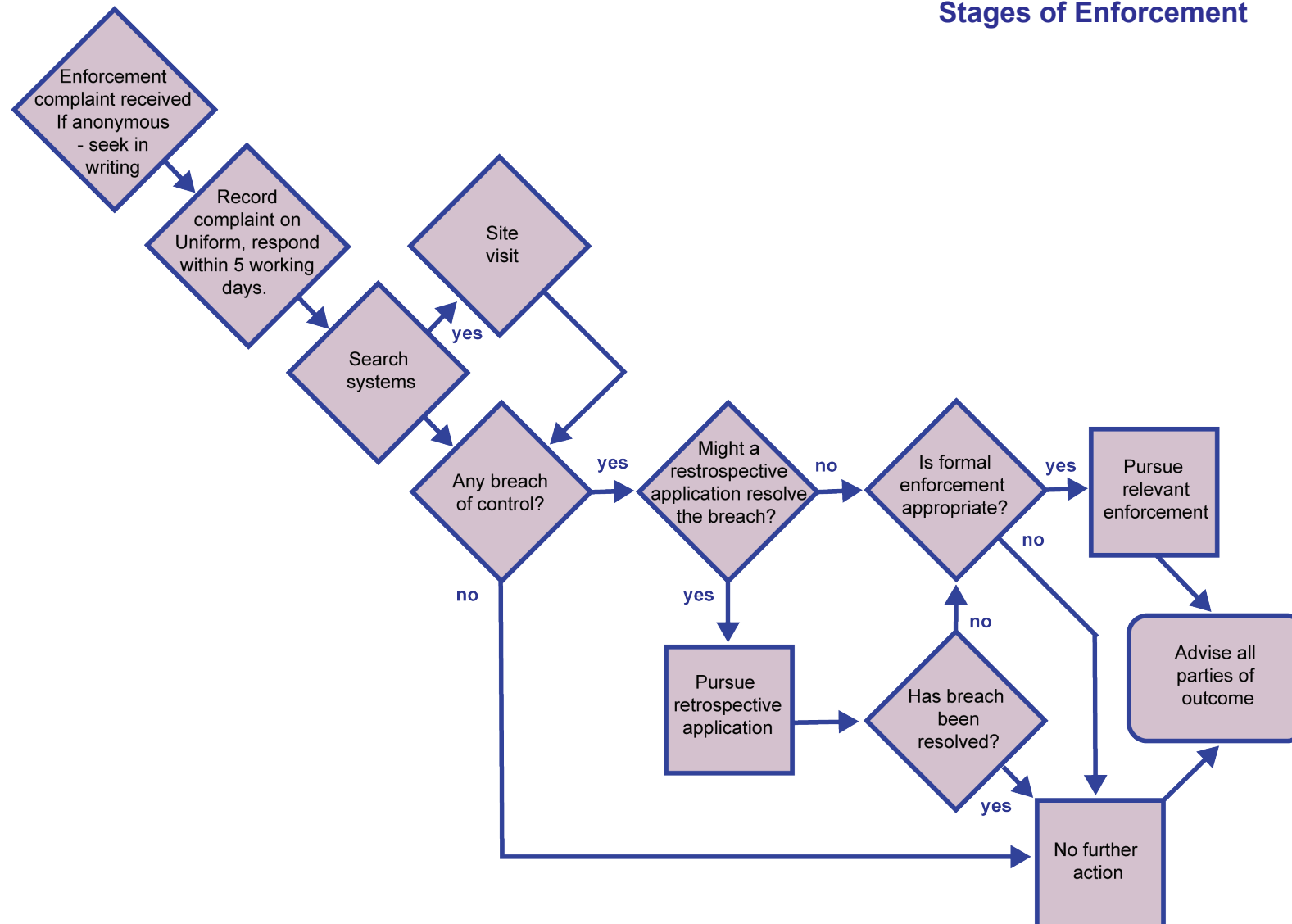


Anonymous complaints will not normally be investigated. The Council will not normally disclose who has made a complaint without that person's agreement, however developers do have the right to access certain information about their cases under the Environmental Information (Scotland) Regulations 2004 and the Freedom of Information (Scotland) Act 2002, and that information may include complaints correspondence.

Sometimes complaints arise over matters such as disputes over ownership boundaries, rights of access or damage to property. These are private legal matters over which the Council has no remit, in which case we will not investigate further. However, the Council operates a Mediation Service which may be of assistance in such situations, and details can be found at:

<https://www.west-dunbarton.gov.uk/contact-us/other-council-services/neighbourhood-mediation-service/>

Stages of Enforcement



Investigating Possible Breaches of Planning Control

The extent to which enforcement action will be pursued will depend on whether the development complies with the policies of the local development plan. The decision to pursue enforcement action rests with the Council.

The information received will be first checked to ensure that it involves a possible breach of planning control. It is important that members of the public reporting breaches provide as much information about it as possible in order to help speed up the investigation. The Council will acknowledge receipt of enforcement complaints by email or letter within 5 working days, providing contact details for the Compliance Officer.

For most enforcement cases it is necessary for the Compliance Officer to visit the site and to discuss the situation with the developer. How quickly this happens will depend on the priority status given to the case (see 'Service Standards' section of this Charter).

Priority will be given to urgent situations such as a clear public safety concern or damage to

a listed building. In cases where we have not been provided with the developer's contact details it can take time to track down and make contact with whoever is responsible for the alleged breach, especially in the case of vacant sites and absentee landlords.

In many cases the investigation can be concluded fairly quickly as it will be clear whether or not a breach of planning control has taken place, but in some situations this will take significant longer. Officers may have to monitor a site over an extended period to establish what is taking place or to gather evidence for any enforcement proceedings. Depending on the circumstances, occasionally complainants may be asked to keep a diary of events. The Council will keep interested parties informed of the priority status given to the case and progress made and they should feel free to contact the Compliance Officer for an update. Progress made at each stage of the process and the decisions which have been reached will be recorded by the Compliance Officer.

Due to a high number of enforcement inquiries, each inquiry is prioritised depending on the significance of the breach to ensure an effective service is provided. The priority

category depends on the nature of the breach, the significance of its effects and the relative sensitivity of the site. (Priorities are not influenced by the complainant, the subject of the complaint or the number of complaints received). The below category lists are not exhaustive but aims to provide examples of how a particular breach might be dealt with.

The Town and Country Planning (General Permitted Development (Scotland) Order 1992 (as amended) permits some small works to be undertaken without the requirement for planning permission. Advice should always be sought from the planning authority to establish if proposed works benefit from permitted development rights or require planning permission. In some cases works may require planning permission but may be considered 'de minimus .' This means there has been a technical breach of planning regulations, however the breach is so minor that is not proportionate nor in the public interest to pursue a retrospective application nor take any further action. Further information is provided in links at the end of this document.

Service Standards

Category A – High Priority (visit the site within 5 working days unless the impacts of the breach are regraded as potentially significant and in such cases the Compliance Officers will visit the site as a matter of urgency)

- Works that contravene an Enforcement Notice or otherwise counter any enforcement action already taken.
- Unauthorised works, including demolition, affecting a Listed Building or a building in a Conservation Area.
- Unauthorised works that harm, or potentially harm, sites of international or national importance, such as Sites of Special Scientific Interest or Scheduled Ancient Monuments.
- Unauthorised works that harm or remove trees protected by a Tree Preservation Order or within a Conservation Area.
- Unauthorised development that endangers members of the public.

Category B – Medium Priority (visit the site within 10 working days)

- Lesser breaches of Listed Building or Conservation Area control
- Non-compliance with High Hedge Notices
- Breaches, including breaches of planning conditions particularly those imposed on regeneration, housing, quarry and landfill sites
- Unauthorised development associated with quarry and landfill sites
- Unauthorised advertisements causing significant visual harm or compromising highway safety
- Unauthorised development resulting in adverse landscape and visual impacts

Category C – Low Priority (visit the site within 15 working days)

- Minor or technical breaches with little or no impact on public amenity
- Lesser breaches of advertisement control
- Untidy land not affecting public amenity.
- Any other alleged breach of planning control not falling into Category A or B



Follow up response

We understand someone may simply want to alert us to a breach and leave it at that and other times someone who may be affected may want more contact and feedback on the Council's progress with the investigation. It is usually difficult to predict how long it will take to resolve a case and how this might happen. Each one is different. The outcome of each enforcement complaint will be advised to the complainant.



Exercising Enforcement Powers

The pursuit of formal enforcement action is only considered once the existence of the breach has been established and the possibility of resolving the problem by other means has been explored. It is preferable to resolve problems through negotiation in the first instance. In general, the Council will only pursue enforcement where there is a clear breach of planning control and significantly affects public safety and public amenity. In many cases this approach is successful, so only a relatively small proportion of cases result in formal enforcement action.

The Council's Compliance Officers has powers to enter land or buildings to:

- Establish whether there has been a breach of planning control;
- Check if there has been compliance with a formal notice;
- Check if a breach has been satisfactorily resolved.



Time Limits for Enforcement

In determining whether a breach of planning control has taken place, the Council is bound by statutory time limits. If an unauthorised development or activity has existed for a long period of time it effectively becomes immune from enforcement action.

The main time limits are known as the **Four Year Rule** and the **Ten Year Rule**:

The Four Year Rule applies to “unauthorised operational development” (i.e. the carrying out of building, engineering, mining or other physical works), and also the change of use to a single dwellinghouse.

The Ten Year Rule applies to all other development, including other changes of use and breaches of conditions.

If there has been no formal enforcement action during this time, after these time periods expire the development becomes Lawful and no further enforcement action can be taken. However, these rules may not apply in cases where there has been deception on the part of the developer (such as deliberate efforts to hide an unauthorised development or to mislead the planning authority about its use), and development which becomes lawful under these rules may not be able to intensify or expand without the need for further planning permission.

These time limits for enforcement **do not apply** to breaches of listed building, conservation area or advertising controls.





Retrospective Applications

The outcome of many enforcement cases may be the submission of a retrospective application to regularise a breach. These are dealt with in the same way as other planning applications and are subject to the same consideration.

The invitation to submit a retrospective application in no way implies that permission will necessarily be granted. There is scope for third parties, for example, neighbours to comment if a retrospective planning application is made. A retrospective application may be submitted to regularise a breach otherwise legal and time difficulties may be experienced if sell the property.

In cases where it is considered that a development is clearly unacceptable or that it is giving rise to negative impacts upon the environment or local amenity which require to be addressed immediately a retrospective application will not normally be sought. Instead, the breach will require to be removed and enforcement action will be taken to resolve this. However the Council cannot prevent a developer submitting a retrospective application should they so wish.

Enforcement of Advertisement Control

The display of advertisements is covered by the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984. Many advertisements are displayed with 'deemed consent' which means they do not require consent provided they meet the various 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.

Where advertisements are displayed without the required advertisement consent, or in breach of the conditions of such consent, the Council can serve an advertisement enforcement notice. This specifies what is required (such as removal of the advertisement) and the time period for compliance (usually at least 28 days, although this can be reduced to 7 days where the advertisement is detrimental to public safety or where it can be removed without any other work being required). There is a right of appeal against the notice to the Scottish Ministers.



An advertisement enforcement notice can also require that a particular piece of land should not be used to display advertisements. This remains in force even after the original advertisement is removed, so any subsequent advertising on this site would amount to a breach of the notice.

In the event of failure to comply with advertisement enforcement notice the Council has powers to remove the advertisement concerned and to seek recovery of the costs of so doing from the owner as a civil debt.

Where ad hoc banners and signs are displayed remotely from the business premises or activity to which they relate, limited opportunity will be given to the party responsible to remedy the matter voluntarily, if they can be readily identified. Direct action may be taken as the first response if there are



Monitoring of our Quarries and Landfill Sites

Quarries and landfill sites have major impacts on the landscape and restoration requirements require regular monitoring. There are two quarries within the Council area (Sheephill and Dumbuckhill) and two landfill sites (Auchencarroch and Rigangower) it has been agreed by the Council that these sites will be formally monitored on an annual basis during the month of May, in order to allow the preparation of an annual report.

These sites would be visited more frequently should this be needed, for example if complaints are received or if compliance issues come to light during the formal monitoring visit. During these site visits the current progress of the operations will be recorded and compliance with the conditions of the relevant permissions will be monitored. Also the progress of the restoration scheme will be recorded and discussed with the operator. Notes of the site visit and updated information on the compliance with conditions will be recorded in the case records.





Tree Preservation Orders (TPO) and Trees in Conservation Areas

It is an offence to wilfully cut down, uproot, destroy or damage a tree which is subject to a Tree Preservation Order or within a conservation area. Prosecution may be sought in serious cases, in which case the offence is punishable by a fine of up to £20,000 on summary conviction or an unlimited fine if convicted on indictment.

Any person who has removed or damaged a protected tree without the necessary consent must plant a replacement tree of an appropriate size and species as soon as reasonably possible, unless otherwise agreed with the Council. Should they fail to do so, the Council may serve a notice requiring appropriate re-planting. There is a right of appeal against such a notice. Failure to comply with the notice may result in the Council taking direct action to carry out the re-planting and recovering the costs of doing so from the owner. Wilful obstruction of this would be an offence liable to a fine of up to £1,000 on summary conviction.

High Hedges (Scotland) Act 2013

Anyone considering applying for a High Hedge Notice must have tried to settle the issue with their neighbour before making an application. If the Council receives an application where there is no evidence that the applicant has tried to do this, it will be rejected. The steps people should have taken before applying to the local authority will depend on the circumstances of the case. However, it is not enough for an applicant to simply claim that their neighbour is unapproachable.

The following link is a guide to high hedges.
<https://www.west-dunbarton.gov.uk/planning-building-standards/high-hedges/>



Responsibility for Exercise of Enforcement Powers

The majority of enforcement proceedings are undertaken by the Planning Compliance officer under delegated powers; however in a small number of more significant cases authority may be sought from the Planning Committee.

Appeals against enforcement proceedings are to the Scottish Ministers, but in most cases the determination of appeals is delegated to Reporters from the Scottish Government's Directorate of Planning & Environmental Appeals.

Information on Current Enforcement Proceedings

Details of outstanding enforcement notices, Breach of Condition Notice and Stop Notices and other formal enforcement proceedings are recorded in the Council's Enforcement Register. You can inspect the register and the documents online <https://www.west-dunbarton.gov.uk/planning-building-standards/planning-decision-notices-appeals-and-enforcement/planning-enforcement/>

Enforcement Powers

The Planning Enforcement powers available to the Council are set out in Part IV of the Town and Country Planning (Scotland) Act 1997 and in Chapter IV of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The Planning Acts are available from The Office of Public Sector Information (OPSI) at www.opsi.gov.uk.

For ease of reference, a summary of all relevant planning legislation and associated enforcement powers is provided in Appendix 1 at the end of this document.

Further information about enforcement can be found in the Scottish Government Circular 10/2009 www.scotland.gov.uk/Publications/2009/09/16092848/1 and Planning Advice Note 54 - Planning Enforcement www.scotland.gov.uk/Publications/1999/03/pan54

Enforcement Contacts

Contact details for reporting suspected breaches of Planning control:

Development Management Team

West Dunbartonshire Council

Email: compliancemonitoring@west-dunbarton.gov.uk

Tel: 0141 951 7941

Address:

16 Church Street

Dumbarton

G82 1QL

Contact details for general enquiries on Planning issues:

Planning & Building Standards West

Dunbartonshire Council

Email: development.management@west-dunbarton.gov.uk

Tel: 0141 951 7941

Enquiries regarding building warrants:

Building Standards Team

West Dunbartonshire Council

Email: building.standards@west-dunbarton.gov.uk

Tel: 0141 951 7941

Contact details for complaints regarding the level of service:

Inquiries about unauthorised development are not formal complaints. The Planning Service is committed to providing a high quality service but if you have a concern about the way your enforcement inquiry was dealt with, please email the Planning Manager:

Ms Pamela Clifford

Manager of Planning & Building Standards

Email: pamela.clifford@west-dunbarton.gov.uk

Tel: 0141 951 7938

For general enquiries regarding the Planning system:

The Scottish Government – Planning helpline

Tel: 0845 774 1741

Planning Aid for Scotland provides a free and independent advice Service for individuals and community groups across Scotland -

<https://www.pas.org.uk/>

or call the helpline 0845 603 7602.

Enquiries for planning or enforcement matters within Loch Lomond and the Trossachs National Park Planning Authority:

Email: planning@lochlomond-trossachs.org

Tel: 01389 722 024

Planning Legislation / Guidance

Permitted Development Rights (Householder)

<https://www.legislation.gov.uk/ukxi/1992/223/contents/made>

Scottish Government advice

<https://www.gov.scot/publications/guidance-householder-permitted-development-rights-9781780456836/pages/3/>

CONTACT DETAILS

Planning and Building Standards

Council Offices

16 Church Street

Dumbarton

G82 1QL

Telephone: 0141 951 7948

Email: development.management@west-dunbarton.gov.uk

OTHER FORMATS

This document can be made available on request in alternative formats such as large print, Braille, audio tape or computer disc as well as in five community languages.

本文件也可應要求，製作成其他語文或特大字體版本，也可製作成錄音帶。

अनुरोध पर यह दस्तावेज़ अन्य भाषाओं में, बड़े अक्षरों की छपाई और सुनने वाले माध्यम पर भी उपलब्ध है

ਇਹ ਦਸਤਾਵੇਜ਼ ਹੋਰ ਭਾਸ਼ਾਵਾਂ ਵਿਚ, ਵੱਡੇ ਅੱਖਰਾਂ ਵਿਚ ਅਤੇ ਆਡੀਓ ਟੇਪ 'ਤੇ ਰਿਕਾਰਡ ਹੋਇਆ ਵੀ ਮੰਗ ਕੇ ਲਿਆ ਜਾ ਸਕਦਾ ਹੈ।

درخواست پر یہ دستاویز دیگر زبانوں میں، بڑے حروف کی چھپائی اور سننے والے ذرائع پر بھی میسر ہے۔

هذه الوثيقة متاحة أيضا بلغات أخرى والأحرف الطباعية الكبيرة وبطريقة سمعية عند الطلب.

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