

Harbours Enforcement and Prosecution Policy

1. Introduction

Argyll and Bute Council is a Statutory Harbour Authority at eight locations and a marine asset owner at a further 28 marine facilities located throughout the Council area. The Council's Statutory Harbour Authorities are namely:

1. Bruichladdich Pier, by virtue of the 'Islay Piers Order, 1904'.
2. Carradale Harbour, by virtue of the 'Pier and Harbour Orders Confirmation (No 3) Act, 1901'.
3. Campbeltown Harbour, by virtue of 'Campbeltown Harbour Acts and Orders 1846 to 2011'.
4. Craignure Harbour, by virtue of the 'Argyll County Council (Arinagour and Craignure Piers, etc) Order 1961'.
5. Dunoon Harbour, by virtue of 'The Pier and Harbour Orders Confirmation Acts 1895 to 1906'.
6. Oban North & South Pier, by virtue of the 'Oban Pier and Harbour Orders 1862 to 1988'.
7. Port Askaig, by virtue of the 'Port Askaig Acts and Order 1904 to 1975'.
8. Rothesay Harbour, by virtue of the 'Rothesay Harbour Acts and Orders 1831 to 1937'.

The Council is the marine asset owner and, in most cases, operator of 28 piers, wharves and slipways. Some of these marine assets are located within the jurisdiction of a Statutory Harbour Authority (for example, Kilcreggan and Helensburgh Piers are located in Clydeport's harbour). Others are located outside of Harbour Authority boundaries (for example, Iona and Fionnphort). In all situations, the Council is responsible for marine safety and must manage these facilities in compliance with the requirements of the Code.

In addition, the Council is also the Competent Harbour Authority in respect of Pilotage, under the requirements of the Pilotage Act 1987, at:

- Campbeltown Harbour.

Argyll and Bute Council manages these ports, harbours and piers as the Statutory Harbour Authority (SHA) and Local Lighthouse Authority (LLA). Additionally, the Council is the Marine Asset Owner at the further 28 piers, jetties and slipways with a range of duties and responsibilities described in the Port Marine Safety Code, health and safety, environmental and maritime legislation and guidance.

The Executive Director of Development & Infrastructure Services is the Duty Holder under the Port Marine Safety Code.

2. Enforcement

Under the Port Marine Safety Code, Argyll and Bute Council is responsible for the effective enforcement of regulations made and directions given to assist in managing marine operations and ensuring safety of navigation within their harbours.

This is achieved by the Argyll and Bute Council Harbour Masters:

- Maintaining strategic and operational oversight of the activities in the Harbours to ensure the duties, responsibilities and powers of Argyll and Bute Council as statutory harbour authority or non-statutory asset owner are discharged but not exceeded.
- Liaising with, guiding and supporting any Harbour Operator as required to ensure safe and efficient operation of CalMac Ferry Services from non-staffed Argyll and Bute Council harbours and facilities.

Enforcement underpins navigational safety by ensuring compliance with legislation, byelaws or regulation. It requires effective surveillance, incident investigation, and leads, where appropriate, to sanctions imposed either by Argyll and Bute Council or when necessary, by the Courts. Argyll and Bute Council will ensure that any enforcement action taken is proportional to the risks posed by the breach of legislation, byelaws or regulation and the seriousness of the offence.

Any decision regarding enforcement action will be impartial and objective, and will not be influenced by race, gender, politics, sexual orientation, disability or religious beliefs of any alleged offender, victim or witness. Such decisions will not be affected by improper or undue pressure from any source.

A consistent approach to enforcement in similar circumstances will be adopted throughout the harbour network and effective liaison will be maintained with enforcing authorities. Enforcement will be concentrated on those activities which cause the greatest threat to public safety, employee safety and pose the greatest threats to the environment or undermine regulatory regimes, which have been created to protect and improve the environment and safety and prevent harm to human health.

3. Prosecution

The objective of enforcement is to ensure that preventative or remedial steps are taken to protect public safety, the environment and to prevent or minimise, future breaches of legislation/byelaws/regulations. Prosecution of offences under relevant legislation is one of the ways of achieving that objective. Neither Argyll and Bute Council or any Harbour Operator will knowingly ignore any criminal or negligent act by any person or company which damages or threatens the environment or which flouts the law.

Enforcement Action may take the form of:

- Local Harbour Staff or Harbour Operator staff verbal warning.
- Harbour Master verbal or written warning.
- Marine Operations Manager written warning.
- Suspension or cancellation of berth or mooring.
- Prosecution under the relevant legislation.
- A combination of any of the above.

Should Argyll and Bute Council decide the situation warrants consideration of prosecution under the relevant legislation they will report incidents to the Police, MCA, MAIB or HSE to enable preparation of cases to the Procurator Fiscal.

Where the circumstances warrant, incidents may be reported to the enforcement agencies for consideration of reporting a case to the Procurator Fiscal without prior warning or recourse to alternative methods of enforcement.

The purpose of any enforcement action is to promote the safety of the harbour and its users.

4. Procedures

This policy is based on education in the first instance and generally only reverting to prosecution for repeat offenders, for offences bringing significant risk of serious injury or loss of life or for when users threaten harm or abuse to harbour staff.

Argyll and Bute Council recognise that most harbour users want to comply with the law. Therefore, where it can Argyll and Bute Council will help users to meet their legal obligations without unnecessary expense, while taking firm action – including prosecution where appropriate – against those who flout the law or act irresponsibly.

Argyll and Bute Council will provide information and advice in plain language on the rules that apply and will disseminate them as widely as possible. Argyll and Bute Council will provide encouragement and support to ensure their legal powers are used appropriately and proportionately to improve and safeguard public health, public safety and the environment.

Argyll and Bute Council will:

- Maintain through regular reviews, a relevant and effective regulatory framework, consistent with national legislation, ancillary regulations and byelaws.
- Ensure that effective enforcement procedures are developed and maintained that comply with national legal requirements and guidelines.
- Ensure that effective investigation procedures are developed and maintained that support the enforcement process, and meet the requirements of the navigational

Safety Management System in respect of identifying, promulgating and making good use of any 'lessons learned'.

- Ensure that all staff involved in incident investigation, or who are required to follow Argyll and Bute Council enforcement procedures, receive effective and relevant training.
- Ensure all navigational incidents and breaches of regulations are investigated.
- Maintain an effective surveillance and audit regime to monitor compliance with, and detect breaches of, relevant national and local regulations.
- Respond to breaches of regulations, by imposing a sanction appropriate to the circumstances, or initiating a prosecution where the facts warrant, and it is in the public interest to do so.
- When bringing prosecutions, observe the Crown Office and Procurator Fiscal Service Prosecution Code.

In appropriate cases Argyll and Bute Council will seek to recover the costs of taking enforcement action following a conviction. Any award of costs will be for the court to determine.

Kirsty Flanagan
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