



1. Introduction

- 1.1. Argyll and Bute Council is an enforcing authority for the purposes of the Health and Safety at Work etc. Act 1974 (“the Act”).
- 1.2. As an enforcing authority under the Act, the Council’s objective is to protect the health, safety and welfare of people at work, and to safeguard others, mainly members of the public, who may be exposed to risks from the way work is carried out.
- 1.3. The Council is required to have regard to the Health and Safety Executive’s (HSE’s) *Enforcement Policy Statement* in determining its own policy and HSE’s *Enforcement Management Model* in making enforcement decisions in individual cases.
- 1.4. The principles and policies set out in this document are brought into operational effect by procedures approved by the Regulatory Services Manager in consultation with the Area Environmental Health Managers, the Trading Standards Manager and the Lead EHO (Health & Safety and Service Support).

2. The Principles of Enforcement

- 2.1. Argyll and Bute Council is committed to firm but fair enforcement of health and safety law. The Council’s approach is informed by the following principles:
 - 2.1.1. **Proportionality**, which means that enforcement action relates to the risks to health and safety, to the seriousness of any breach and to any actual or potential harm arising from a breach of the law.
 - 2.1.2. **Targeting**, which means that the regulatory activities of the Council are directed primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled. Targeting also requires that action is focussed on the dutyholders who are responsible for the risk and who are best placed to control it.
 - 2.1.3. **Consistency**, which means taking a similar approach in similar circumstances to achieve similar ends. This is not the same as uniformity and requires the exercise of professional judgement and discretion by inspectors.
 - 2.1.4. **Transparency**, which means helping dutyholders to understand what is expected of them and what they should expect from the Council as an enforcing authority. It also means making clear to dutyholders not only what they have to do, but where this is relevant, what they don’t. This means distinguishing between statutory requirements and advice or guidance about what is good practice but not compulsory.
 - 2.1.5. Public transparency also requires that the Council shall publicise successful enforcement actions such as prosecutions.

- 2.1.6. **Accountability**, which means that the Council, as an enforcing authority, is accountable to the public for its actions. This means having a clear and accessible complaints procedure which is brought to the attention of those with whom inspectors come into contact.

3. The Purpose and Methods of Enforcement

- 3.1. The purpose of enforcement is to:
 - 3.1.1. Ensure that dutyholders take action to deal immediately with serious risks;
 - 3.1.2. Promote and achieve sustained compliance with minimum legal standards;
 - 3.1.3. Ensure that dutyholders who breach minimum legal requirements, and directors or managers who fail in their responsibilities, may be held to account, which may include recommending prosecution.
- 3.2. The methods of enforcement are:
 - 3.2.1. Giving information and advice, either verbally or in writing;
 - 3.2.2. Serving improvement or prohibition notices;
 - 3.2.3. Making a recommendation of prosecution to the Procurator Fiscal.
- 3.3. In addition to the methods of enforcement set out above, inspectors have powers under section 20 of the Act to deal with causes of immediate danger in the workplace.

4. Enforcement Decisions

- 4.1. Enforcement decisions shall be taken having regard to HSE's *Enforcement Policy Statement* and *Enforcement Management Model*.
- 4.2. Enforcement decisions shall be made in accordance with the principles set out at section 2 of this policy.
- 4.3. Precautionary Principle
 - 4.3.1. In circumstances where the information is lacking to inform an enforcement decision based upon the protection of public health, inspectors are required to exercise a precautionary approach.
 - 4.3.2. The precautionary approach, with the objective of protecting public health, requires the inspecting Officer to act as if the hazard and a risk have been confirmed, based upon available objective evidence.
 - 4.3.3. This is in recognition that to await absolute evidence may endanger public health in certain circumstances. In such cases, the Inspector's Line Manager shall be advised of the actions proposed.

5. Prosecution

- 5.1. The decision to prosecute in any case is a matter for the Procurator Fiscal, having regard to the available evidence and the public interest.
- 5.2. The decision to report an offence to the Procurator Fiscal shall be considered when:
 - 5.2.1. Prosecution is identified as the most appropriate intervention from the *Enforcement Management Model*;
 - 5.2.2. The relevant dutyholder has failed to comply with an improvement notice without reasonable excuse;
 - 5.2.3. The requirements of a prohibition notice have been breached;

- 5.2.4. Irrespective of whether or not prior enforcement action has been taken, the circumstances warrant consideration of prosecution.
- 5.2.5. The circumstances when it is appropriate that a report shall be made to the Procurator Fiscal in the terms of the previous paragraph are likely to involve a combination of high risk and extreme failure to meet an explicit or defined standard, which is well-known and obvious. This is not moderated by factors such as the dutyholder's previous record, or any other moderating dutyholder factors specific to the circumstances of a case.
- 5.3. Where inspectors are obstructed in the execution of their duty, consideration shall be made to reporting the matter to the Procurator Fiscal.
- 5.4. The decision to refer a case to the Procurator Fiscal shall be made by the Regulatory Services Manager.
- 5.5. Where inspectors are assaulted, the Council shall support the officer should they wish to press charges and seek Police assistance, with a view to seeking the prosecution of offenders.

6. Business's Right to Challenge Incorrect Health and Safety Advice

- 6.1. Businesses are entitled to receive sensible health and safety advice based on risk and Argyll and Bute Council are committed to giving advice on that basis.
- 6.2. Argyll and Bute Council shall put the following procedures in place to provide a route to challenge incorrect health and safety advice or advice which goes beyond what is required to control the risk(s) adequately:
 - 6.2.1. A business can raise the matter with the Inspector directly;
 - 6.2.2. If not satisfied, the business can raise the matter with the inspector's line manager;
 - 6.2.3. If still not satisfied, the business can:
 - 6.2.3.1. Raise the matter through the Council's Complaints Procedure, and/or
 - 6.2.3.2. Raise the matter with the Independent Regulatory Challenge Panel.
- 6.3. All informal letters shall include a paragraph setting out the Council's commitment to giving sensible health and safety advice and indicating how a business may raise concerns about the requirements or advice given, including how to contact the Independent Regulatory Challenge Panel.

7. Enforcement in premises in which Argyll and Bute Council may have an interest

- 7.1. A potential conflict of interest may occur where Argyll and Bute Council is the relevant enforcing authority in relation to premises in which it also has an ownership or management interest. A conflict of interest can either be an actual or a perceived conflict of interest.
- 7.2. Potential conflicts of interest shall be managed according to the following principles:
 - 7.2.1. The Regulatory Services Manager shall be proactive in identifying and addressing potential conflicts of interest and will consult with the Health and Safety Manager;

- 7.2.2. The Regulatory Services Manager shall propose arrangements for dealing with those exceptional circumstances where a conflict of interest has come to light after an incident has occurred;
- 7.2.3. The Regulatory Services Manager shall consult with the Health and Safety Manager to identify whether any potential conflicts of interest are introduced or removed when governance arrangements change.
- 7.2.4. It is not presumed that HSE will act as the default regulator where there is a potential conflict of interest. Other means of addressing the conflict should be explored first, with transfer of enforcement responsibility to HSE taking place only in exceptional circumstances and as a last resort.
- 7.3. Argyll and Bute Council shall otherwise:
 - 7.3.1. Carry out its enforcement policy and practice in exactly the same way that it does for all other premises and dutyholders;
 - 7.3.2. Inform HSE if they identify a split in enforcement responsibility.

8. Appointment of Inspectors

- 8.1. The Executive Director, Development and Infrastructure Services has delegated authority under the Council's Scheme of Delegations to appoint inspectors under the Act.
- 8.2. The appointment of inspectors and the variation of the level and scope of their appointments is at the discretion of the Executive Director, Development & Infrastructure Services, having regard to the recommendation of the Regulatory Services Manager.

9. Indemnification of Inspectors

- 9.1. Under the terms of section 26 of the Act, where an action has been brought against an inspector in respect of an act done in the execution or purported execution of any of the relevant statutory provisions and the circumstances are that he is not legally entitled to require Argyll and Bute Council as the enforcing authority to indemnify him, Argyll and Bute Council shall, nevertheless, indemnify him against the whole or any part of any damages and costs or expenses which he may have been ordered to pay or may have incurred, if the Regulatory Services Manager is satisfied that he honestly believed that the act complained of was within his powers and that his duty as an inspector required or entitled him to do it.

10. Review

- 10.1. This policy will be reviewed annually, and more frequently as may be required, by the Regulatory Services Manager.
- 10.2. The policy will be presented to the Planning, Regulatory Services and Licensing Committee for approval on an annual basis as part of the annual Occupational Health and Safety Service Plan.

Alan Morrison, Regulatory Services Manager

Reviewed: April 2013

Reviewer: Patrick Mackie, Lead EHO (Health & Safety and Service Support)