

Harbour Enforcement & Prosecution Policy & Procedure

1. Introduction

Aberdeenshire Council (AC) is the competent Harbour Authority (CHA) for Portsoy, Banff, Macduff, Rosehearty, Stonehaven, Gourdon and Johnshaven harbours. The AC Harbour Master has day-to-day responsibility for the safety of navigation and other marine activities within the harbour and its approaches.

2. Enforcement

Under the Port Marine Safety Code, AC is responsible for the effective enforcement of regulations made and Byelaws given to assist in managing marine operations and ensuring the safety of navigation within the harbour.

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 AC or when necessary, by the Courts.

AC 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. AC 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:

- **AC Harbour staff verbal warning.**
- **AC Harbourmaster / CHA Officer written warning.**
- **Suspension or cancellation of berth, mooring or associated season ticket.**
- **Asset seizure, sale, and / or removal.**
- **Criminal prosecution under the relevant legislation.**
- **A combination of any of the above.**

Should AC 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, circumstances may be reported to the enforcement agencies for consideration of reporting a case to the Procurator Fiscal without prior warning.

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 AC staff.

AC recognise that most harbour users want to comply with the law. Therefore, where it can AC 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.

AC will provide information and advice in plain language on the rules that apply and will disseminate them as widely as possible. Both organisations 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.

AC:

- **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 AC enforcement procedures, receive effective and relevant training;**
- **Ensure all navigational incidents and breaches of regulations are investigated;**
- **Maintain an effective surveillance 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, AC will seek to recover the costs of taking enforcement action following a conviction. Any award of costs will be for the court to determine.