

ARGYLL AND BUTE COUNCIL  
PLANNING AND REGULATORY SERVICES  
OCCUPATIONAL HEALTH & SAFETY  
ENFORCEMENT POLICY

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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

- 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

- 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;

