



Harbour Enforcement and Prosecution Policy

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1. Introduction

Caledonian Maritime Assets Ltd (CMAL) is the Statutory Harbour Authority (SHA) for 16 ports, harbours¹ and slipways across the West of Scotland and the Clyde Estuary and own the associated port infrastructure and properties at each of these locations. CMAL also owns and leases several other marine facilities at various locations primarily associated with the delivery of Clyde and Hebrides Ferry Services.

CMAL makes these assets available under contract to CalMac Ferries Limited (CFL) to manage as the Harbour Operator. CFL Harbour Managers and supervisors who have day-to-day responsibility for safety of navigation and other marine activities within the harbours and approaches have been delegated duties, responsibilities and powers from the CMAL Head of Harbour Operations who is appointed as Harbour Master to do so.

2. Enforcement

Under the Ports and Marine Facilities Safety Code (the Code), CMAL 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 CMAL Head of Harbour Operations:

- Maintaining strategic and operational oversight of the activities of the Harbour Operator to ensure the delegated harbour operational and management responsibilities of CMAL as statutory harbour authority or non-statutory asset owner are discharged;
- Liaising with, guiding and supporting the Harbour Operator as required to ensure safe and efficient operation of CMAL 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 CMAL or when necessary, by the Courts. CMAL 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

¹ For a list of locations see <http://www.cmassets.co.uk/harbours/locations/>

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 CMAL or their 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 Operator staff verbal warning;
- Area Harbour Manager verbal or written warning;
- CMAL Head of Harbour Operations written warning;
- Suspension or cancellation of berth, mooring or associated season ticket;
- Prosecution under the relevant legislation;
- A combination of any of the above.

Should CMAL or their Harbour Operator decide the situation warrants consideration of prosecution under the relevant legislation they will report incidents to the Police, MCA, SEPA or HSE to enable preparation of cases to the Crown Office and Procurator Fiscal Service (COPFS).

Where the circumstances warrant, this may be done 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 CMAL or Harbour Operator staff.

CMAL and the Harbour Operator recognise that most harbour users want to comply with the law. Therefore, where it can CMAL and the Harbour Operator 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.

CMAL and the Harbour Operator 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.

CMAL and the Harbour Operator 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 CMAL 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 CMAL will seek to recover the costs of taking enforcement action following a conviction. Any award of costs will be for the court to determine.

Kevin Hobbs

Chief Executive Officer

Caledonian Maritime Assets Limited