

CAIRNRYAN PORT

PORT OF CAIRNRYAN Ltd (POCL) - ENFORCEMENT POLICY

1. GENERAL POWERS

- 1.1 The terms of reference of Port of Cairnryan Ltd (POCL) are to administer Cairnryan Port in accordance with the 'Port of Cairnryan (Harbour Empowerment) Order 2007' (the 2007 Order) and the principles of governance promoted in the Port Marine Safety Code (2016), including its Guide to Good Practice (2018) published by the Department of Transport. Pursuant to the foregoing legislation,
- 1.2 The limits of the port within which the Company shall exercise jurisdiction and the harbour master shall exercise his powers shall be the area bounded by an imaginary straight line commencing at a point (PL1) at 54°58.08'N, 005°00.94'W thence extending in an imaginary straight line to a point (PL2) at 54°58.07'N, 005°01.02'W thence extending in an imaginary straight line to a point (PL3) at 54°58.07'N, 005°01.83'W thence extending in an imaginary straight line to a point (PL4) at 54°57.34'N, 005°01.31'W thence extending in an imaginary straight line to a point (PL5) at 54°57.34'N, 005°00.52'W thence extending in an imaginary straight line to a point (PL6)
- 1.3 The Harbours Act 1964 (the 1964 Act) empowers the Board to fix rates at the level required to meet its statutory obligations. The Marine Navigation Act 2013 (the 2013 Act) introduced amendments to the 1964 Act in relation to Powers of General Direction..
- 1.4 The 2007 Order conferred on the Board and Harbour Master powers of Direction for the regulation and management of the harbour. Section 27 of the 2007 Order, as well as Section 5 40C of the 2013 Act specifies that contravention of a Direction may result in prosecution through the Magistrates' Court (See Prosecution Policy).
- 1.5 The Criminal Justice Act 1982 (as amended) provides for a standard scale of fines for summary offences. A person who fails to comply with a General Direction or Special Direction is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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2. PRINCIPLES OF ENFORCEMENT

- 2.1 Enforcement action may be appropriate in circumstances where POCL as a SHA is exercising its statutory powers to regulate the conduct of vessels in the Harbour's jurisdiction and to assist in managing the risks of marine operations.
- 2.2 In this regard, POCL will provide information and advice in plain language on the rules that apply; will disseminate it as widely as possible and provide encouragement and support to ensure that their legal powers are used appropriately to improve and safeguard public health, public safety and the environment.
- 2.3 Where it appears that POCL's directions or any applicable byelaws may have been contravened, POCL has the options of negotiation, education and persuasion and, where an offence has occurred, of warning or prosecuting an offender. In considering the action to be taken, the circumstances of the case, the operator's attitude, the costs of compliance and that any action it takes is proportionate to the risks will be taken into account.
- 2.4 The carrying out of such duties will be undertaken in a fair, equitable and consistent manner and, at all times, POCL's approach to enforcement will be clear, open and helpful. POCL will seek to target enforcement resources where they are most needed and will be informed by its other policies, aims and objectives. It will liaise with other authorities and enforcement bodies as appropriate.
- 2.5 In implementing its enforcement policies POCL recognizes that most harbour users want to comply with the law and will help such users to meet their legal obligations without unnecessary expense. However, in order to promote the safety of all harbour users, firm action including prosecution where appropriate will be taken against those users that flout the law or act irresponsibly.

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3 CONSIDERATION OF ACTION

3.1 When dealing with alleged offences:

- Officers will always identify themselves and explain the purpose of their visit or interview.
- Each case will be considered on its individual merits and a prosecution will only be initiated in accordance with the port's Prosecution Policy.
- Any decision to initiate a prosecution will be recorded in writing and the reasons for initiating the prosecution will be given.
- Any investigation carried out by the Harbour Authority will be conducted pursuant to the Police and Criminal Evidence Act 1984 (and/ or any other relevant legislation) with due regard to the applicable Codes of Practice (including the Code for Crown Prosecutors).
- In addition, where applicable, best practice will be observed as set out in national guidance issued by bodies such as the Department for Transport (Ports Policy) and/ or Maritime and Coastguard Agency.

3.2 In considering whether any enforcement action should be taken, POCL will take into account the following:

- The seriousness of the complaint;
- The risk of harm to the public, others or the environment;
- The public interest;
- The explanation of the offender;
- The attitude of the offender;
- Whether the matter is a recurrence;
- Whether there have been any other contraventions of Directions or legislation by the offender;
- The willingness of the alleged offender to prevent a recurrence of the incident;
- Any action taken by the offender to mitigate damage and/or loss to others;
- The availability of witnesses;
- The reliability of witnesses;
- The sufficiency of evidence;
- A combination of any of the above.

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4 ENFORCEMENT ACTION

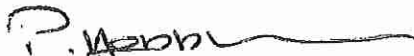
4.1 The types of Enforcement action available to POCL can take the form of:

- In the event of a contravention of a General or Special Direction, a verbal warning which will be recorded and given by an authorised member of staff;
- A written warning explaining the way in which a Direction has been contravened and the implications should the offender re-offend. This is not a caution for the purposes of criminal records;
- Suspension or revocation of a licence or permission previously granted by POCL;
- Prosecution – as an ultimate sanction; see Prosecution Policy.

4.2 If, having regard to the evidence, the Harbour Master decides that the berthing or mooring facility should be suspended or revoked altogether, he will offer the vessel owner the opportunity to make written representations about this action before making any decision. If, after further consideration, the Harbour Master orders suspension or revocation of the berth or mooring, then the vessel owner may, within 7 days from the date of such an order, make a written request for a Director of POCL to review that decision. The Director's decision will be final.

Director, Port of Cairnryan Ltd. Board

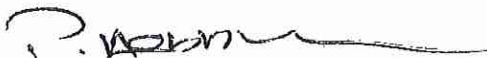
Date 1st August 2022



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PORT OF CAIRNRYAN LTD. (POCL) - PROSECUTION POLICY

1. POCL recognizes that prosecution is a serious step and must be regarded as the ultimate sanction. Any decision to initiate a prosecution will be recorded in writing and the reasons for initiating the prosecution will be given.
2. A prosecution will be initiated only when the alleged conduct has been such that POCL cannot impose an appropriate sanction itself and, thus, the matter must be ceded to the Courts. Such a sanction will be considered in the following circumstances :-
 - i. The alleged offence is a flagrant breach of Directions or legislation such that safety of the general public or other harbour users is or has been put at risk.
 - ii. The alleged offence involves failure to comply with a warning.
 - iii. There is a history of similar offences.
 - iv. The alleged offence involves risk of damage to the environment.
 - v. There are no other public interest factors indicating that prosecution is not appropriate.
3. Under section 27 of the 'Port of Cairnryan (Harbour Empowerment) Order 2007' (the 2007 Order), the master of a vessel who fails to comply with a general direction or a special direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
4. It shall be a defence for the master of a vessel charged with an offence under section 27 of the 2007 Order to prove that he had reasonable grounds for believing that compliance with the direction in question would be likely to imperil his vessel or that in the circumstances compliance was impracticable.
5. The Harbour Authority is committed to assisting other enforcement agencies, including the Police, the Scottish Environment Protection Agency (SEPA), the local council (D&G Council) and the Maritime and Coastguard Agency (MCA) to pursue their statutory duties. POCL will liaise with any enforcement agency that may also have an interest in any matter being considered for prosecution.
6. POCL will always seek to recover its prosecution costs of taking enforcement action. Any award of costs will be for the court to determine.



Director, Port of Cairnryan Ltd. Board

Date 1st August 2022