**Annex 8.1.3**

**ENFORCEMENT POLICY**

One of the functions of River Yealm Harbour Authority (RYHA) is to act as a regulator and enforcer for a range of legal duties and powers contained in Acts of Parliament, Regulations and Orders including the RYHA Regulations.

The purpose of enforcement is to regulate the use of the harbour and crown estate to enable business to be conducted efficiently and safely; thereby protecting harbour users, residents, and visitors to the River Yealm whilst safeguarding the environment. Enforcement is a very broad term which covers a large spectrum of work and includes offering advice and information through to bringing prosecutions for more serious offences.

The RYHA is responsible for a range of harbour and marine legislation. This policy details the standards and guidance that will apply when the harbour officers/assistants undertake their regulatory duties.

**Aims**

The RYHA will:

* Seek to achieve compliance in a fair, consistent, proportional, transparent and targeted manner
* Seek to be clear, open, and helpful in its approach to enforcement
* Seek to target enforcement resources at areas of highest risk, including non- compliant businesses and individuals

**Guiding Principles**

The Guiding Principles that the RYHA will have regard to when undertaking their regulatory and enforcement role are:

* 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.
* The RYHA believes that many individuals and businesses wish to comply with legal requirements and should be assisted to do so.
* We will give positive feedback, wherever possible, to encourage and reinforce good practices.
* In dealing with any enforcement situation, the RYHA’s actions will be proportionate to the scale, seriousness, and intention of any non- compliance.
* There will be consistency of enforcement, whilst recognising that there are different, satisfactory solutions to each issue. We will refrain from being over prescriptive whenever possible.
* This policy is built around a process of escalation. Except in the most serious cases or where advice/warnings have not been heeded, adequate opportunity will be given to rectify non-compliance before formal legal action commences.
* Prosecution will normally only be considered where it is in the public interest to do so and where there have been serious breaches or where other enforcement measures have failed.
* Regard shall be had to the relevant legislation and codes of practice which protect the rights of the individual and guide enforcement action (e.g., Human Rights Act, Code for Crown Prosecutors, Regulators Compliance Code).
* Regard shall be had to the RYHA’s own policies in respect of Customer Care, Equal Opportunities, etc.

**Clear Standards**

* Matters relating to enforcement and regulation will be dealt with promptly.
* Officers will announce themselves on arrival. Officers will always explain the purpose of their visit/enquiry
* Officers will provide their name and contact details to those persons or businesses with whom they are in contact concerning a regulatory or enforcement matter
* Complaints relating to enforcement or regulatory matters will normally only be dealt with if the name and address of the complainant is given. Any such identification will be treated in confidence but may need to be disclosed (with prior consent) should formal legal proceedings be taken against the person or business to which the complaint relates. Anonymous complaints may however be investigated if the matter relates to a serious health & safety or navigational issue etc.
* Officers will not be able to act as consultants or legal advisors to individuals or businesses but will be available (by appointment if necessary) to discuss general issues or matters of specific enforcement with the aim of assisting or guiding compliance.
* Officers will be professional, courteous, and helpful in their conduct of regulatory or enforcement matters, and wherever possible will seek to work with individuals and businesses towards compliance
* Officers will endeavour to provide advice in a clear and simple manner and where any corrective action is necessary, an explanation will be given as to why it is necessary, and over what timescale it is required. Where non- compliance may result in further enforcement action or prosecution the matter will normally be confirmed in writing by way of a “Formal Warning”
* Officers will seek an informal resolution to cases of non-compliance except where immediate formal enforcement action is required (e.g., serious issues relating to the safety of the harbour or harbour estate, including the control of pollution, etc.)
* Where there is known to be an involvement of any other enforcement agency, or any case involves joint enforcement arrangements, the RYHA will consult and share intelligence with that other agency prior to taking any formal enforcement action
* Where any charges or fees are to be levied for a service, individuals and businesses will be informed of the cost or rate of charge prior to the service being provided
* Any dissatisfaction with the quality and/or advice given or any complaint concerning the harbour authority’s failure to comply with procedures, rules, statutory obligation or published service standards will be dealt with by the RYHA at the regularly monthly meeting.

**Consistency**

Consistent enforcement action is desirable, but uniformity in approach would not always recognise individual circumstances. We will encourage consistency of approach by:

* Ensuring compliance with the standards set out in this policy
* Recognising that we should not normally take formal enforcement action or prosecution in the case of minor infringements
* Recognising that in some situations, we have no legal discretion and must pursue enforcement action
* Taking into consideration the guidance issued by Government Departments and other national agencies, e.g., Department for Transport, Maritime & Coastguard Agency, Health and Safety Executive, etc.

**Targeting and Proportionality**

We will not initiate formal enforcement procedures without a clear need to do so. We believe that through a positive, proactive approach, we can achieve higher compliance rates and better overall outcome than by using reactive enforcement action.

Any formal enforcement procedures will:

* Aim to change the behaviour of the offender
* Aim to eliminate any financial gain or benefit to the individual or business from non-compliance
* Be responsive and consider what is the most appropriate sanction for the offender and regulatory issue
* Be proportionate to the nature of the offence and the harm caused
* Aim to deter future non-compliance

**Monitoring**

To ensure that this policy is effective, several monitoring and feedback mechanisms will be utilised:

* Publication of the policies on the RYHA web site and provide opportunity for feedback
* Periodic consultation with harbour stakeholders, e.g., the Harbour Liaison Forums
* Open forum at the RYHA AGM where members of the public can question the RYHA.

RIVER YEALM HARBOUR AUTHORITY PROSECUTION POLICY

The decision to prosecute must be agreed by the RYHA and should only be considered when:

* There is sufficient admissible and reliable evidence to provide a realistic prospect of conviction
* It is in the public interest to do so.

Prosecution will normally be in the public interest when one or more of the following criteria are satisfied:

* Unlawful acts or omissions have seriously or repeatedly compromised the safe and efficient use of the harbour/harbour assets or the environment
* The offence created/posed a risk to public safety, RYHA personnel or to the environment.
* The offence involves a failure to comply in full or in part with a statutory notice, including a Harbour Master’s direction
* The offender has flagrantly or repeatedly breached harbour byelaws or other harbour legislation and has ignored advice or requests to remedy breaches of such legal requirements
* The offender obstructs an Officer of the RYHA carrying out statutory duties or where the offence involves the failure to supply information or the supply of false or misleading information upon lawful request
* The RYHA is under a statutory duty to enforce legislation

The above list is not exhaustive and the decision whether to prosecute will be taken having regard to the individual circumstances of each case and following consultation with external legal advisors.