

CARMARTHENSHIRE COUNTY COUNCIL

# GENERAL ENFORCEMENT POLICY

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# **CARMARTHENSHIRE GENERAL ENFORCEMENT POLICY**

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# **CARMARTHENSHIRE GENERAL ENFORCEMENT POLICY**

## **1.0 Introduction**

1.1 Carmarthenshire County Council is committed to protecting the community from harm and enforcement is one of the tools used by this Authority to fulfil this commitment. This Policy is intended to establish a uniform approach to enforcement. Carmarthenshire County Council (the Council) believes that 'prevention is better than cure' and that through actively working with businesses, individuals and the community, by providing advice and assistance with regards compliance, we can reduce the need for enforcement action.

1.2 Where enforcement action is needed, the Council will take a consistent, fair and proportionate approach so as not to place too onerous a burden on local businesses, organisations, customers and the public.

1.3 In the interest of the prevention and detection of crime/protection of public safety, the Council will exchange information with its agency partners and between Council Services, in compliance with relevant legislation.

1.4 A copy of this policy is available at:

<http://www.carmarthenshire.gov.wales/>

1.5 This policy applies to the following specified regulatory areas:

- Environmental Health
- Trading Standards
- Licensing
- Animal Welfare,
- Private Sector Housing,
- Public Sector Housing,
- Planning,
- Building Regulation,
- Waste Regulation,
- Highways,
- School attendance
- Benefit Regulation

and any other area that may become applicable by statute

## **2.0 Carmarthenshire's approach to compliance and enforcement**

### **2.1 Principles of Good Regulation**

2.1.1 The Legislative and Regulatory Reform Act 2006, Part 2, requires Carmarthenshire County Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function as set out in The Legislative and Regulatory Reform (Regulatory Functions) Order 2007

2.1.2 We will exercise our regulatory activities in a way which is:

- (i) Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- (ii) Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- (iii) Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,
- (iv) Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- (v) Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

## **2.2 Regulators' Code**

2.3.1 Carmarthenshire County Council has had regard to the [Regulators' Code](#) in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

## **2.3 Human Rights Act 1998**

2.3.1 Carmarthenshire County Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

## **2.4 Data Protection Act 1998**

2.4.1 Where there is a need for Carmarthenshire County Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1988.

## **2.5 The Code for Crown Prosecutors**

2.5.1 When deciding whether to prosecute Carmarthenshire County Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

2.5.2 The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

- a. Evidential Test - is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, Carmarthenshire County Council will consider what evidence can be used in court and is reliable. We

must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

- b. Public Interest Test - is it in the public interest for the case to be brought to court?

Carmarthenshire County Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits.

## **2.6 Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')**

2.6.1 The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a primary authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

## **3.0 Advice and guidance**

3.1 Carmarthenshire County Council, where appropriate, will provide information, advice and guidance to make it easier for businesses/individuals to understand and meet their legal obligations and we will provide it in clear, concise and accessible language. Further information may be found on the Council's website;

<http://www.carmarthenshire.gov.wales/home>

3.2 All investigations will be carried out under the following legislation and any other applicable legislation; they will also be conducted in accordance with any associated guidance or codes of practice, in so far as they relate to Carmarthenshire County Council:

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998
  
- the Equality Act 2010

3.3 These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

3.4 Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

### **3.5 Powers of entry**

Where applicable enforcement officers may exercise their rights of powers of entry under relevant legislation or obtain a warrant of entry from the Justices.

## **4.0 Enforcement action**

### **4.1 Advice/warning letter**

4.1.1 Where it is deemed appropriate by Carmarthenshire County Council, officers may provide compliance advice, guidance and support as a first response to a breach of

legislation. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

## **4.2 Voluntary undertakings**

4.2.1 In certain circumstances, Carmarthenshire County Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. Failure to honour voluntary undertakings are taken very seriously and enforcement action is likely to result from such a failure

## **4.3 Statutory and Legal Notices**

4.3.1 Statutory notices and other legal notices include, but are not limited to: 'Stop Notices', 'Prohibition Notices', 'Remedial Action Notices', 'Emergency Prohibition Notices', 'Abatement Notices' and 'Improvement Notices'. Such notices are legally binding. Failure to comply with a statutory notice in some circumstances can be a criminal offence and may lead to prosecution and/or, where appropriate, the carrying out of work in default.

4.3.2 A statutory or legal notice will, where applicable, clearly set out what actions must be taken and the timescales within which they must be taken as well as the consequences of non-compliance and any appeals procedure.

## **4.4 Financial penalties**

4.4.1 Carmarthenshire County Council have powers to issue Fixed Penalty Notices in respect to some breaches of legislation. A fixed penalty notice is not a criminal fine and does not appear on an individual's criminal record. If a fixed penalty is not paid Carmarthenshire County Council may commence criminal proceedings or take other enforcement action in respect of the breach. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

## **4.5 Refusal/suspension/revocation of licences**

4.5.1 Carmarthenshire County Council processes and issues a number of licences, authorisations, approvals and permits. During the processing of applications, previous breaches, enforcement action and intelligence will be considered. Most licences include conditions which require the licence holder to operate the businesses in a manner that protects public safety for example. Certain legislation sets out specific licensing objectives which must be upheld. Where breaches of these conditions are found, this may lead to further enforcement action and/or a review of the licence/approval which may result in warning, suspension, amendment or revocation.

## **4.6 Detention/ seizure /Forfeiture proceedings**

4.6.1 Where the legislation permits, Carmarthenshire County Council has the power to detain/ seize/forfeit items.

#### **4.7 Injunctive Actions, Enforcement Orders etc.**

4.7.1 In some circumstances Carmarthenshire County Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

4.7.2 Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

4.7.3 In some circumstances, Carmarthenshire County Council is required to seek enforcement orders after issuing certain enforcement notices. This will provide the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, Carmarthenshire County Council will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

#### **4.8 Simple cautions**

4.8.1 Carmarthenshire County Council has the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution if it is deemed appropriate in the circumstances. This can only be considered where a business/person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, Carmarthenshire County Council is likely to consider prosecution.

4.8.2 A simple caution will appear on the offender's criminal record. It is likely to influence how Carmarthenshire County Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

4.8.3 Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance.

#### **4.9 Prosecutions**

4.9.1 In addition to specific powers to prosecute under certain legislation, s.222 of the Local Government Act 1972 allows Carmarthenshire County Council the power to prosecute any criminal offence where they consider it expedient for the promotion or protection of the interests of the inhabitants of their area.

4.9.2 When deciding whether to prosecute, Carmarthenshire County Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

4.9.3 Prosecution will only be considered where Carmarthenshire County Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

4.9.4 Before deciding that prosecution is appropriate, Carmarthenshire County Council will have due regard to the public interest test as set out in the Code for Crown Prosecutors

<http://www.cps.gov.uk/publications/codeforcrownprosecutors/index.html>

4.9.5 A successful prosecution will result in a criminal record. The court has a range of sentencing powers which includes a financial penalty, community based penalty, imprisonment and other powers as contained in specific legislation. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any criminal benefit which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

#### **4.10 Fixed Monetary Penalties**

4.10.1 Carmarthenshire County Council has powers under certain legislation to impose Fixed Monetary Penalties, which are capped at a relatively low level and are not intended to be used for more serious cases of non-compliance. Fixed Monetary Penalties are not criminal fines and do not appear on an individual's criminal record. Fixed Monetary Penalties cannot be used in conjunction with any other sanction.

#### **4.11 Discretionary Requirements**

4.11.1 Carmarthenshire County Council has powers under certain legislation to impose Variable Monetary Penalties and Non-Monetary Discretionary Requirements.

4.11.2 Variable Monetary Penalties may be imposed up to a maximum level set out in the relevant legislation.

4.11.3 Non-Monetary Discretionary Requirements are requirements to take steps to ensure that a breach does not continue or recur. Where Carmarthenshire County Council chooses to impose Non-Monetary Discretionary Requirements it will clearly set out what those steps should be and the time period within which they must be completed. A failure to comply with the requirements is likely to result in a financial penalty.

4.11.3 Carmarthenshire County Council may use Variable Monetary Penalties and Non-Monetary Discretionary Requirements in combination.

#### **4.12 Proceeds of Crime**

4.12.1 Where applicable Carmarthenshire County Council may make an application under the Proceeds of Crime Act 2002 for the restraint/confiscation of assets.

### **5.0 Working in partnership**

5.1 If an offender commits offences in a number of Local Authority areas it may be more appropriate for one Council to take a prosecution for all offences, including ones that took place outside of its area.

5.2 Where an offender commits offences across different Local Authority areas, consideration will be given to the provisions in s.101 of the Local Government Act 1972, which allows for one Local Authority to instigate a prosecution on another's behalf.



5.3 Carmarthenshire County Council will work closely with our partners including other local Authorities and other Agencies. As such, we will exchange information on enforcement activities with our partner organisations and we will do so in accordance with any established methods of information sharing and legal requirements. A decision may be made for a case to be passed to a third party for further action.

## **6.0 Review**

We will review this enforcement Policy annually or where there are any significant changes for example to legislation.