



Enforcement Policy Statement



ONR ENFORCEMENT POLICY STATEMENT

Introduction

The Office for Nuclear Regulation's (ONR's) mission is to provide efficient and effective regulation of the nuclear industry, holding it to account on behalf of the public. As the nuclear regulator, ONR must take enforcement action when licensees are found to be failing to meet the safety and security standards required by law. To do this ONR has been provided with a range of enforcement powers which range from providing advice to instigating court proceedings. This policy statement sets out how it will use these powers to ensure that companies comply with the legislation for which ONR is the enforcing authority.

This Enforcement Policy Statement is in accordance with the Regulators' Code and the regulatory principles required under the Legislative and Regulatory Reform Act 2006. It sets out the general principles and approach which ONR must follow. All ONR staff who make enforcement decisions are required to follow ONR's Enforcement Policy Statement. The appropriate use of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to safeguard security, health, safety and welfare. In allocating resources, ONR should have regard to the principles set out below, the objectives published in its Annual Plan, and the need to maintain a balance between enforcement and other activities, including inspection.

The Nuclear Installations Act 1965 empowers ONR to attach to each nuclear site licence such conditions as it considers necessary or desirable either in the interests of safety or with respect to the handling, treatment and disposal of nuclear matter. The licence conditions provide the main basis for the regulation of nuclear safety by ONR. They do not relieve the licensee of its responsibility for maintaining nuclear safety. They are generally non-prescriptive and set goals which the licensee is responsible for meeting, amongst other things by applying detailed safety standards and safe

procedures. The licensee's management system will incorporate arrangements which it has developed to meet the requirements of the licence conditions.

On a sampling basis, ONR will inspect the licensee's licence condition compliance arrangements to ensure they are clear and unambiguous and address the main safety issues adequately. Procedures which comply with nuclear site licence conditions are likely to satisfy the requirements of other health and safety legislation under HSWA which relate to nuclear hazards, for example the Management of Health and Safety at Work Regulations 1999. However, compliance with these other requirements must still be demonstrated.

Under the Nuclear Industries Security Regulations 2003 (NISR), responsible persons are legally and financially responsible for ensuring that their nuclear premises and off-site movements of nuclear material and other radioactive material are subject to security arrangements which conform at all times to the approved Nuclear Site Security Plan as well as Transport Security Statements and Transport Security Plans. Approval is also required in situations where a Temporary Security Plan (TSP) is required to allow any work of alteration or extension to any building or other structure which is, or forms part of, nuclear premises. The Regulations also prescribe the arrangements necessary to protect Sensitive Nuclear Information (SNI). Dutyholders' plans are assessed against the goal-setting objectives within the National Objectives, Requirements and Model Standards (NORMS) document with reference to the Nuclear Industries Malicious Capabilities Planning Assumptions (NIMCA) and the HMG Security Policy Framework. ONR security inspections also operate on a sampling basis, to ensure arrangements described in approved plans are delivered effectively and that security risks are effectively addressed in a proportionate manner.

The International Atomic Energy Agency (IAEA) publishes, from time to time, model regulations for the safe transport of radioactive materials. These technical requirements, augmented by mode specific provisions, are given effect in GB law through a variety of statutory instruments. The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 as amended (CDG2009) (insofar as it relates to the civil carriage of Class 7 goods (radioactive material)) provides the main basis for the regulation of the safe transport of radioactive material by ONR in Great Britain by road, rail and inland waterway, where ONR is the GB

Competent/Enforcing Authority. The regulatory framework differs from that established for nuclear installations safety due to the need to preserve a consistent set of regulatory standards across international boundaries. Hence the technical provisions which are given effect by CDG2009 are a mixture of prescriptive and non-prescriptive duties which dutyholders are responsible for meeting. ONR inspects dutyholders' arrangements on a sampling basis informed by risk. The radioactive materials transport dutyholder community is diverse, including nuclear site licence holders, industrial sites, radiographers, hospitals and medical research institutions and carriers, together with their supply chains. ONR also have duties in respect of the enforcement of certain security provisions which relate to the transport of radioactive material by road and rail, in addition to the requirements of the Nuclear Industries Security Regulations 2003 (NISR). In addition, ONR advises on, and performs, certain delegated Competent Authority functions in relation to the transport of radioactive material by air and sea.

Other than on GB licensed sites, Crown sites, new nuclear build construction sites, and in relation to certain applicable elements of the supply-chain, enforcement of compliance with conventional health and safety legislation by dutyholders remains a function of the Health and Safety Executive.

ONR's Policy Statement on Enforcement

The following is the full text of the statement:

The purpose and method of enforcement

1. The ultimate purpose of the enforcing authorities (of which ONR is one) is to ensure that dutyholders manage and control risks effectively, thus preventing harm as required by law. The term 'enforcement' has a wide meaning and applies to all dealings between enforcing authorities and those on whom the law places duties.
2. ONR's enforcement activities are primarily undertaken by inspectors. ONR is empowered to appoint suitably qualified individuals to act as inspectors under the Energy Act 2013 and the Health and Safety at Work etc Act 1974 to enforce the relevant statutory provisions and legislation under these Acts.
3. The purpose of enforcement is to:
 - ensure that dutyholders take action to deal immediately with serious risks;
 - promote, achieve and sustain compliance with the law;
 - ensure that dutyholders who breach regulatory requirements, and directors or managers who fail in their responsibilities, may be held to account, which may include bringing alleged offenders before the courts in England and Wales, or recommending prosecution in Scotland, in the circumstances set out later in this policy.
4. In this context, enforcement can range from advice by inspectors to warnings, letters, notices, use of powers under the licence conditions and other nuclear safety and security legislation or prosecutions. ONR will make use of this wide range of tools at its disposal to secure compliance with the law and to ensure a proportionate response to criminal offences. Inspectors may offer dutyholders information and advice, both face to face and in writing. This may include warning a dutyholder that in the opinion of the inspector, they are failing to comply with the law. Where appropriate, inspectors may also serve improvement and prohibition notices. Subject to having the appropriate delegated authority they may also issue security directions, withdraw approvals,

- use powers provided by the licence conditions and they may prosecute (or report to the Procurator Fiscal with a view to prosecution in Scotland).
5. Every improvement notice contains a statement that in the opinion of an inspector an offence has been committed. Improvement and prohibition notices, and written advice, may be used in court proceedings.
 6. Prosecutions are important ways to bring dutyholders to account for alleged breaches of the law. Where it is appropriate to do so in accordance with this policy, ONR will use one of these measures in addition to issuing a security direction, an improvement or prohibition notice, or taking other appropriate enforcement action, for example under the powers provided by the licence conditions.
 7. Investigating the circumstances encountered during inspections or following incidents or complaints is essential before taking any enforcement action. In deciding what resources to devote to these investigations, ONR should have regard to the principles of enforcement set out in this statement and the objectives published in ONR's Annual Plan.
 8. Sometimes the law is prescriptive – spelling out in detail what must be done. However, much of modern health and safety law is goal setting – setting out what must be achieved, but not how it must be done. ONR puts significant emphasis on its Safety Assessment Principles (SAPs), which set out relevant good practice, although it should be noted that the SAPs are not legal requirements and not applicable or relevant in all situations. ONR also relies on certain Approved Codes of Practice (ACOPs), for example for the Ionising Radiation Regulations 1999. Where ACOPs are not followed by dutyholders, they must demonstrate that the alternative methods employed are equal to or better than the ACOP recommendations. ONR also employs other guidance material describing good practice, for example guidance on compliance with licence conditions or the transport regulations. In considering whether the law has been complied with, inspectors will need to take the SAPs, relevant ACOPs and guidance into account, using sensible judgement about the extent of the risks and the effort that has been applied to counter them.

9. Similarly security objectives are at the heart of the National Objectives, Requirements and Model Standards document (NORMS); they are consistent with the Nuclear Industries Malicious Capabilities Planning Assumptions (NIMCA) and based on the fundamental principles of categorising material and a 'Graded Approach', which allows for greater security where the potential consequence of an act of theft or sabotage is highest. They also underpin the concept of risk management and are consistent with international best practice. The NORMS approach places greater emphasis on the achievement of security objectives and on performance based testing. It focuses on offering model security standards as a benchmark, for consideration, rather than specifying a solution to a problem. Dutyholders may propose alternative security arrangements to the model standards, but in so doing, they must demonstrate that alternate arrangements will address the required objectives. The onus is on dutyholders to determine and justify their security arrangements and to demonstrate how their proposals achieve the relevant objectives. In considering whether the law has been complied with, inspectors will need to take NORMS and other guidance into account, using sensible judgement about the extent of the risks and the effort that has been applied to counter them.
10. The Nuclear Site Licence provides six primary powers comprising Consent, Approval, Direction, Notification, Specification and Agreement. These powers are delegated through the Chief Nuclear Inspector to appropriate inspectors appointed by ONR, and often involve prior consultation with dutyholders. These powers create a regulatory regime whereby ONR has at its disposals a range of actions, including freezing dutyholders' arrangements, permissioning activities or directing operations to cease.
11. ONR must use discretion and judgement in deciding when to investigate or what enforcement action may be appropriate. ONR will set down in writing the decision-making process which inspectors will follow when deciding on enforcement action, and make this publicly available. ONR expects that such judgements will be made in accordance with the following principles. These are in accordance with the Regulators Code and the regulatory principles required under the Legislative and Regulatory Reform Act 2006.

The principles of enforcement

12. ONR is responsible for firm but fair enforcement of relevant nuclear, health and safety, security, and radioactive materials transport legislation, using principles set out in the Legislative and Regulatory Reform Act 2006. These are: proportionality in applying the law and securing compliance; consistency of approach; targeting of enforcement action; transparency about how the regulator operates and what those regulated may expect; and accountability for the regulator's actions. These principles should apply both to enforcement in particular cases and to management of enforcement activities as a whole.

Proportionality

13. Proportionality means relating enforcement action to the level of risk arising from a breach and/or the seriousness of a failure to comply with a legal obligation. Those whom the law protects, and dutyholders, expect that action taken by ONR to achieve compliance or bring dutyholders to account for non-compliance should be proportionate to any risks to health, safety and security, or to the seriousness of any breach.
14. In practice, applying the principle of proportionality means that ONR should take particular account of how far the dutyholder has fallen short of what the law requires and the extent of the risks to people arising from the breach.
15. Some health and safety duties are specific and absolute. Others require action that is so far as is reasonably practicable. ONR will apply the principle of proportionality in relation to both kinds of duty.
16. Deciding what is reasonably practicable to control risks involves the exercise of judgement. Where dutyholders must control risks so far as is reasonably practicable, ONR will, when considering protective measures taken by dutyholders, take account of the degree of risk on the one hand, and on the other the sacrifice, whether in money, time or trouble, involved in the measures necessary to avert the risk. ONR will also consider strategic factors in this equation, whereby it may be necessary in some instances to accept a short-term increase in risk in order to achieve greater reductions in risk over longer timescales. In the case of safety issues, unless it can be shown that there is gross disproportion between these factors and that the risk averted is

insignificant in relation to the cost, the dutyholder must take measures and incur costs to reduce the risk.

17. ONR will expect relevant good practice to be followed. Where relevant good practice in particular cases is not clearly established, the law effectively requires dutyholders to establish explicitly the significance of the risks to determine what action needs to be taken. Ultimately, the courts determine what is reasonably practicable in particular cases.

Targeting

18. Targeting means making sure that actions are targeted primarily on those whose activities give rise to the most serious risks, where the hazards or vulnerabilities are least well controlled or where ongoing compliance with the law needs to be established; and that action is focused on the dutyholders who are responsible for the risk and who are best placed to control it.
19. ONR has a number of processes in place to help decide which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of risks posed by a dutyholder's operations.
20. Any enforcement action will be directed against dutyholders responsible for a breach. For a nuclear licensed site, this will normally be the licensee, but could also include individuals and others, where appropriate. Where several dutyholders have responsibilities, ONR may take action against more than one when it is appropriate to do so in accordance with this policy.
21. When inspectors issue improvement or prohibition notices or security directions, withdraw approvals, use powers granted by the licence conditions or prosecute, ONR will ensure that a senior officer of the dutyholder concerned is also notified.

Consistency

22. Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar outcomes.

23. Dutyholders managing similar risks should expect a consistent approach from ONR in the advice tendered, the use of enforcement notices, decisions on whether to prosecute and in the response to incidents.
24. ONR recognises that in practice consistency is not a simple matter and its inspectors are faced with many variables including the degree of risk, the attitude and competence of management, any history of incidents or breaches involving the dutyholder, previous enforcement action, and the seriousness of any breach. Decisions on enforcement action are discretionary, involving judgement by the inspector in accordance with the principles outlined in this policy and the relevant Enforcement Management Model.

Transparency

25. Transparency means helping dutyholders to understand what is expected of them and what they should expect from ONR. It also means making clear to dutyholders not only what they have to do but, where this is relevant, what they don't. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.
26. Transparency also means that ONR should have arrangements for keeping employees, their representatives, and injured parties or their families informed. These arrangements must have regard to legal constraints and requirements.
27. This statement sets out the general policy framework within which ONR will operate. Dutyholders, employees, their representatives and others also need to know what to expect when an inspector calls and what rights of complaint are open to them. In many cases, existing dutyholders will be familiar with the way inspectors appointed by ONR operate and what is required of them during an inspection, investigation or following a concern. New dutyholders will be informed during the early stages of engagement with ONR of what they and their employees and representatives can expect when an inspector calls at a workplace. In particular:
 - when inspectors offer dutyholders information, or advice, face to face or in writing, including any warning, inspectors will advise the dutyholder what to do to comply with the law, and explain why. Inspectors will, if

asked, write to confirm any advice, and to distinguish legal requirements from best practice advice;

- in the case of improvement notices the inspector will discuss the notice and, if possible, resolve points of difference before serving it. The notice will say that in the inspector's opinion a breach of the law has been committed, what needs to be done to correct it, why and by when;
- in the case of a prohibition notice the notice will explain why the prohibition is necessary; and
- in the case of a security direction, the direction will explain what needs to be done to correct a breach of the law.

Accountability

28. Regulators are accountable to the public for their actions. This means that ONR has policies and standards (such as the four enforcement principles above) against which they can be judged, and an effective and easily accessible mechanism for dealing with comments and handling concerns.
29. ONR's procedures for dealing with concerns are set out in its complaints procedure on the ONR website. Information about making an appeal to an employment tribunal against an improvement or prohibition notice can be found on the Employment Tribunal website.

Investigation

30. ONR will use discretion in deciding whether incidents, possible breaches of legislation or complaints should be investigated.
31. Investigations are undertaken in order to determine:
 - causes;
 - whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law;
 - lessons to be learnt and to influence the law and guidance;
 - what response is appropriate to a breach of the law.
32. To maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more serious circumstances.

ONR's Annual Plan recognises that it is neither possible nor necessary for the purposes of the relevant legislation to investigate all issues of non-compliance with the law which are uncovered in the course of inspections or in the investigation of reported events.

33. ONR will carry out a site investigation of a reportable work-related death unless there are specific reasons for not doing so, in which case those reasons should be recorded.
34. In selecting which concerns or reports of incidents, injury or breach of legislation to investigate and in deciding the level of resources to be used, ONR should take account of the following factors:
 - the severity and scale of potential or actual harm;
 - the seriousness of any potential breach of the law;
 - knowledge of the dutyholder's past health and safety or security performance;
 - the enforcement priorities;
 - the practicality of achieving results;
 - the wider relevance of the event, including serious public concern.

Prosecution

England and Wales

35. In England and Wales ONR has the power to prosecute for breaches of relevant legislation. ONR must use discretion in deciding whether to bring a prosecution, or a joint prosecution with another enforcing authority.
36. In England and Wales the decision whether to prosecute must take account of the tests set down by the Director of Public Prosecutions in the Code for Crown Prosecutors. No prosecution may proceed unless ONR decides that there is sufficient evidence to provide a realistic prospect of conviction, and that prosecution would be in the public interest.
37. While the primary purpose of ONR is to ensure that dutyholders manage and control risks effectively and comply with the law, prosecution is an essential part of enforcement. ONR will prosecute where it has collected sufficient evidence

to provide a realistic prospect of conviction and has decided, in accordance with this policy and the Code for Crown Prosecutors that it is in the public interest to prosecute. The Code for Crown Prosecutors requires the decision to prosecute to be kept under continuous review. Where the circumstances warrant it and the evidence to support a case is available, ONR may prosecute without prior warning or recourse to alternative sanctions.

Scotland

38. In Scotland the Procurator Fiscal decides whether to bring a prosecution and will need to be satisfied that there is sufficient evidence and that prosecution is in the public interest. Such a decision may be made on the basis of a recommendation by ONR, although the Procurator Fiscal may investigate the circumstances and institute proceedings independently of ONR. ONR will use discretion in deciding whether to report to the Procurator Fiscal with a view to prosecution. Where appropriate, ONR will discuss its proposed approach with the Procurator Fiscal at an early stage and seek direction.

39. Subject to the above, ONR expects that it will normally prosecute, or recommend prosecution, where, following an investigation or other regulatory contact, one or more of the following circumstances apply:

- death was a result of a breach of the legislation;
- the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
- there has been reckless disregard of health and safety or security requirements;
- there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- a dutyholder's standard of managing its legal responsibilities is found to be far below what is required by the legislation and to be giving rise to significant risk;
- there has been a failure to comply with a notice or direction;
- false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;

- inspectors have been intentionally obstructed in the lawful course of their duties.
40. Where inspectors are assaulted, ONR will seek police assistance, with a view to seeking the prosecution of offenders.
41. ONR will, in the public interest, consider prosecution or recommending prosecution, where following an investigation or other regulatory contact, one or more of the following circumstances apply:
- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law;
 - a breach which gives rise to significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity.

Prosecution of individuals

42. Subject to the above, ONR will identify and prosecute or recommend prosecution of individuals if it considers such action is warranted. In particular, it will consider the management chain of the offending licensee or dutyholder. Where the inspection or investigation reveals that the offence was committed with the consent or connivance of individual directors and managers, or that the offence was attributable to neglect on their part, ONR will take action against them where it would be appropriate to do so in accordance with this policy. Where appropriate, ONR will seek disqualification of directors under the Company Directors Disqualification Act 1986.

Publicity

43. ONR will make publicly available information on convictions and on improvement and prohibition notices it has issued. A notice which is a relevant notice for the purposes of the Environment and Safety Information Act 1988 and does not impose requirements solely for the protection of persons at work will be placed on the public register once the period for appealing the notice has

expired or any appeal against the notice has been resolved and the notice upheld.

44. In England and Wales, ONR will consider in all cases drawing media attention to factual information about charges which have been laid before the courts, but great care will be taken to avoid any publicity which could prejudice a fair trial. ONR will also consider publicising any conviction which could serve to draw attention to the need to comply with the law, or deter anyone tempted to disregard their duties.
45. In Scotland, decisions in relation to publicity of prosecutions are a matter for the Crown Office and Procurator Fiscal Service.

Action by the courts

46. The legislation enforced by ONR gives the courts considerable scope to punish offenders and to deter others, including imprisonment for some offences. Unlimited fines may be imposed by higher courts. ONR will continue to seek to raise the courts' awareness of the gravity of offences and of the full extent of their sentencing powers, while recognising that it is for the courts to decide whether or not someone is guilty and what penalty if any to impose on conviction.
47. In England and Wales, ONR will, when appropriate, draw to the court's attention all the factors which are relevant to the court's decision as to what sentence is appropriate on conviction. In relation to health and safety cases, the Court of Appeal has given guidance on some of the factors which should inform the courts (*R v F Howe and Son (Engineers) Ltd* [1999] 2 All ER, and subsequent judgments). ONR notes that the Lord Chancellor has said that someone injured by a breach of health and safety legislation is no less a victim than someone who is assaulted; this position has not changed. The Sentencing Guidelines Council Corporate Manslaughter & Health and Safety Offences Causing Death Definitive Guideline applies to the sentencing of organisations on or after 15 February 2010.

Representations to the courts

48. In cases of sufficient seriousness in England and Wales, ONR will indicate to the magistrates that the offence is of such seriousness that they should send or commit it to the Crown Court, where higher penalties can be imposed. In considering what representations to make, ONR should have regard to Court of Appeal guidance; the Court of Appeal has said 'In our judgement, magistrates should always think carefully before accepting jurisdiction in health and safety at work cases, where it is arguable that the fine may exceed the limit of their jurisdiction or where death or serious injury has resulted from the offence'.
49. In Scotland it would fall to the Procurator Fiscal to draw the court's attention to the seriousness of any offence. Inspectors appointed by ONR will draw the Procurator Fiscal's attention to significant issues as part of the prosecution process.

Death at work

50. Where there has been a breach of the law leading to a work-related death, ONR needs to consider whether the circumstances of the case might justify a charge of manslaughter or corporate manslaughter (culpable homicide or corporate homicide in Scotland).
51. In England and Wales the police are responsible for deciding whether to pursue a manslaughter or corporate manslaughter investigation and whether to refer a case to the CPS to consider possible manslaughter charges. ONR is responsible for investigating possible health and safety offences, as well as those in relation to nuclear safety and transport. If in the course of such investigations, ONR finds evidence suggesting manslaughter or corporate manslaughter, it will be referred to the police. If the police or CPS decide not to pursue a manslaughter or corporate manslaughter case, ONR will normally bring a health and safety prosecution in accordance with this policy.
52. In Scotland, responsibility for investigating sudden or suspicious deaths rests with the Procurator Fiscal who will instruct the police. The police will lead the investigation of any potential offences related to culpable homicide or corporate homicide. ONR will investigate any possible health and safety offences. Under the Scottish work-related deaths protocol the investigations will be co-ordinated

and evidence shared. Unless a prosecution takes place in the same circumstances, the Procurator Fiscal is required to hold a Fatal Accident Inquiry into the circumstances of a death resulting from a work-related accident. An Inquiry may also be held where it appears to be in the public interest on the grounds that the death was sudden, suspicious or unexplained, or has occurred in circumstances such as to give rise to serious public concern.

Crown bodies

53. Crown bodies must comply with nuclear, health and safety, security and radioactive materials transport legislation, but they are not subject to statutory enforcement, including prosecution. The Cabinet Office has established non-statutory arrangements for enforcing these requirements in Crown bodies. These arrangements allow ONR to issue non-statutory improvement and prohibition notices, and for the censure of Crown bodies in circumstances where, but for Crown immunity, prosecution would have been justified. In deciding when to investigate or what form of enforcement action to take, ONR will follow as far as possible the same approach as for non-Crown bodies, in accordance with this enforcement policy.