



ONR INSTRUCTION			
Licensing Procedures: Public Body Notification			
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1. INTRODUCTION

- 1.1 The purpose of this procedure is to set out ONR's process for implementing its discretionary power of public body notification and to support the consistent use of this power.

2. PURPOSE AND SCOPE

- 2.1 When considering applications for nuclear site licences, ONR is able, in certain circumstances, to exercise a discretionary power provided by section 3(4) of the Nuclear Installations Act 1965 (NIA 1965) to direct a licence applicant to serve notice on certain public bodies: this is known as Public Body Notification (PBN).
- 2.2 The purpose of PBN is to provide an opportunity for public bodies which have statutory duties in relation to the site or its vicinity, to be informed of proposals for potential changes arising from a licence application and suggest anything which they believe should be included in the conditions to be attached to the licence.

3. BACKGROUND

Background to the power to direct an application to follow PBN

- 3.1 The discretionary power of PBN originates from the Nuclear Installations (Licensing and Insurance Act) 1959, which provided the foundation of the NIA 1965. The Ministry of Power's notes on the 1959 Act explain the purpose of the discretionary power as follows:

“The Subsection provides that the Minister [for which now read ONR] may, on receiving an application for a nuclear site licence; direct the applicant to give notice about the application to any local authority, river board or local fisheries committee..; to statutory water undertakers; or to any other body which is a public or local authority. The Minister may require that the notice shall contain such particulars about the proposed use of the site as he thinks fit. Such notice shall state that the body on whom it is served may make representations to the Minister at any time within three months of the date of service. The Minister is not then to grant the licence until he is satisfied that three months have elapsed since the service of the last such notice nor until after he has considered any representations made by the bodies notified.

The Minister is thus able to ensure that all the local bodies concerned have an opportunity to comment and to suggest anything which, from the point of view of their own statutory responsibilities, ought to be provided for in the conditions attached to the licence.”

It is clear, therefore, that PBN was intended to have a specific focus on the licence conditions to be attached to the licence. It is not intended to address issues which are properly the province of other regulators or government bodies, such as:

Justification: guidance on Justification, and a register of justified practices, can be found on the website of the [Department for Energy and Climate Change](#) (DECC);

Planning: matters relating to the local socio-economic and environmental impact of a proposed nuclear facility are within the remit of the local planning authority or Secretary of State (as the case may be);

Environment: wider issues of environmental impact and the disposal of radioactive waste are regulated by the appropriate environment agency;

Nuclear Liability Insurance: DECC leads on this, and on wider issues of financial liability.

Consequently, to avoid misunderstandings, it is important that any communication regarding PBN generated by ONR, or by the licence applicant under ONR's direction, should be explicit about the scope of the exercise and the limitations of ONR's vires.

- 3.2 This guidance sets out the factors to be considered when considering whether to invoke a PBN, and the process to follow when it is invoked.

4. LEGAL BASIS

- 4.1 Section 3(4) of the NIA 1965 enables ONR to direct an applicant for a nuclear site licence to serve on any public authority specified by ONR a notice that an application for a site licence has been made. Section 3(5) of the NIA 1965 makes it clear that a 'public authority' includes a water undertaker or, in Scotland, Scottish Water.

Exception for generating stations requiring consent to operate under Electricity Act 1989

- 4.2 ONR's power to direct PBN does not apply in relation to an application in respect of a site for a generating station where a consent under section 36 of the Electricity Act 1989 or Article 39 of the Electricity (Northern Ireland) Order 1992 is required for the operation of the station (section 3(8), NIA 1965). The Secretary of State may, by order under section 36(4) of the Electricity Act 1989, exempt generating stations of particular classes or descriptions from this consent requirement. Any generating station exempted in this way would, accordingly, become subject to the power to require a PBN. At the date of this guidance, no exemption orders relevant to nuclear power stations have been made under the 1989 Act. ONR should keep up to date on whether any relevant exemption orders have been made.

Changes made to the Electricity Act 1989 by the Planning Act 2008

- 4.3 The Planning Act 2008 (PA 2008) removed, from 1 March 2010, the requirement for consent under section 36 of the 1989 Act for the operation of a generating station, if the operation of that station has been authorised by a Development Consent Order (DCO) granted under PA 2008.
- 4.4 A DCO is required for the construction or extension of an onshore generating station in England or Wales with a capacity exceeding or expected to exceed (when constructed or extended) 50 megawatts (PA 2008, section 15). A DCO for such construction or extension may also authorise the operation of the station (PA 2008, sections 120 and 140).

- 4.5 The Electricity Act 1989 has been amended so that consent under section 36 of that Act for the operation of the relevant generating station is not required if operation of the station is authorised by a DCO. But even though consent under section 36 of the Electricity Act 1989 is not required where the operation of the station is authorised by a DCO, this does not bring back the PBN procedure for such stations. Section 36(8) of the 1989 Act provides that PBN does not apply where a consent under section 36 of that Act is required, or where such consent would be required but for a DCO being in place. In other words, PBN would not usually be required when the licence application is for construction of a commercial nuclear power station.

5. USE OF DISCRETIONARY POWER

- 5.1 ONR's Licensing Unit will evaluate a site licence application to decide on whether to direct the applicant to PBN by considering:

- 1) whether the case is covered by the exception in section 3(8) of NIA 1965;
- 2) for re-licensing applications, the extent of the proposed changes to activities on the site;
- 3) the potential safety implications;
- 4) the related impact on local public bodies' duties and activities associated with a site; and
- 5) consistency with ONR's previous use of this power.

- 5.2 Examples of previous use are:

- 1) the first application for a nuclear licence for a site;
- 2) a change in the corporate body using a licensed site, where this has a significant impact on the duties of public bodies, except those sites owned by NDA where the NDA has already entered into public dialogue and the business carried out on site is largely the same as before; and
- 3) the restructuring of the nuclear power generation industry.

It would also be appropriate to consider invoking public body notification where a significant change was proposed in the prescribed activities undertaken at the site.

- 5.3 ONR's Licensing Unit should seek guidance from ONR's policy group where ONR is minded not to go to public body notification, to ensure that there are no policy issues affecting this decision.

6. SELECTION OF APPROPRIATE PUBLIC BODIES

- 6.1 ONR's approach in deciding upon the appropriate public bodies to be notified will follow the requirements of the NIA 1965 for the applicant to serve notice on certain

local authorities, statutory water undertakers, inshore fisheries and conservation authorities and other public bodies.

- 6.2 Membership of the local community liaison committee (LCLC) / Site Stakeholder Group (SSG) will be a useful guide for selecting those public bodies that the applicant should be directed to notify. However, the list of LCLC / SSG representatives should be supplemented with local authorities who, although invited, may not send a representative. For applications for new sites, the selection of public bodies for notification will need to be considered separately.
- 6.3 The compilation of the list of public bodies will also be informed by considering those local authorities whose residents receive, or would receive, information under the Radiation (Emergency Preparedness and Public Information) Regulations 2001 (REPPIR).
- 6.4 To meet the requirement to consult bodies with duties related to water pollution, the list should include the water companies supplying water to the area and the appropriate Fisheries Committee. The views of the Environment Agency, Natural Resources Wales and the Scottish Environment Protection Agency will be sought as statutory consultees of ONR. They do not require inclusion in the direction.
- 6.5 The list of bodies to be notified should also include the public authorities who may be involved in an emergency response to an event at the site. This includes Fire, Police, Ambulance Trusts and Health Authorities.
- 6.6 Compilation of the list will be aided by reference to:
 - a) the Municipal Year Book and Public Services Directory, a copy of which is available from ONR's Information Centre; and
 - b) Local Ordnance Survey maps at 1:5000 scale to identify local parish councils.
- 6.7 In summary, the bodies to be notified include the following:
 - 1) Councils represented on, or who had received an invitation to, the LCLC/SSG;
 - 2) Councils whose residents would receive REPPIR information (if these regulations applied), including local parish councils;
 - 3) Local Health Authorities;
 - 4) Local Ambulance trust;
 - 5) Local Fire and Rescue Services;
 - 6) Local Police;
 - 7) Coastguard;
 - 8) Water companies supplying the area;
 - 9) Inshore fisheries and conservation authorities.

Format of Direction

The direction should take the standard format, with a covering letter, given in Annex 1. It should state clearly that ONR is invoking the statutory power provided by section 3(4) of the NIA 1965. The Direction should be cleared by a legal adviser and signed by the Chief Inspector.

7. THE INFORMATION TO BE SUPPLIED BY THE LICENCE APPLICANT

7.1 In light of the aim to give a reasonable opportunity for the types of bodies who may have duties in relation to the safety of the site to be informed of proposals for change and to be able to comment, ONR considered it appropriate to direct licence applicants to include within the PBN the following information

- 1) a statement provided by ONR setting out the purpose of PBN and describing ONR's processes for dealing with responses: this will ensure that respondents' expectations of the process are realistic. [A specimen statement](#) is provided at Annex 2 to this guidance;.
- 2) the location of the site and a plan showing the proposed site boundary;
- 3) a description of the prescribed installations(s) proposed in the application and an explanation that an application has been made for a nuclear site licence;
- 4) a summary of the applicant's proposals for ensuring the safe disposal of liquid, gaseous and solid effluents and wastes, including expected quantities. Reference should be made as appropriate to existing authorisations for the site, or to the procedure being followed by the relevant environment agency to consider the grant or transfer of new or varied authorisations;
- 5) local community liaison arrangements;
- 6) the proposed licence conditions, which include a requirement for an emergency plan approved by the ONR. Unless a bespoke set of conditions is to be used, it will be adequate for the licence applicant to refer to the [standard suite of licence conditions](#) available on the ONR website.

7.2 The public body notification issued by the applicant should state that only matters that are relevant to the public body notification will be taken into account in ONR's deliberations. This may be done by using the notes given in paragraph 8 of [Annex 2](#) to this guidance. It should also make clear to potential respondents that their attributed comments may be published in a public domain report on the public body notification exercise.

8. TIME ALLOWED FOR RESPONSE

8.1 The direction to licence applicants will require the notification to include a named contact within ONR to whom representations may be made within a period of 3 months from date of service of the notice. This person should be a nominated individual in ONR's Licensing Unit.

- 8.2 Where ONR has used its powers under section 3(4) of the NIA 1965 to direct a PBN, it cannot grant a nuclear site licence in response to an application unless:
- (a) it is satisfied that the direction has been followed and 3 months have elapsed since the date of service of the last of the notices required by the direction; and
 - (b) it has considered any representations made in accordance with any of those notices.
- 8.3 The Public Body Notification is not subject to the Cabinet Office's Code of Practice on Consultation because it is not a policy consultation.
(<http://www.gov.uk/government/publications/consultation-principles-guidance>)

9. CONSIDERATION OF RESPONSES

- 9.1 ONR cannot grant a nuclear site licence for an application where it has used its discretionary powers under section 3(4) of the NIA 1965 unless it has considered the representations received. It also cannot grant a licence before the expiry of three months from the date of service of the last of the notices required to be served under the direction.
- 9.2 ONR will prepare a Project Assessment Report (PAR) on the Public Body Notification Exercise. The PAR should include the following:
- 1) Confirmation that the licence applicant has written to all the addressees on the Schedules of Authorities (with evidence from a carrier if appropriate), sending the required information. A copy of the list of public bodies and their addresses compiled by the applicant may be checked against the original Schedule.
 - 2) Confirmation that the 3 month notice period has elapsed.
 - 3) An assessment of all representations made in response to the notice to determine whether there is a need to supplement or vary the standard conditions in the proposed nuclear site licence. This consideration should bear in mind the established principle of having common licence conditions for all licensees. The representations should be considered by ONR's Licensing Unit with input from the appropriate ONR Inspection Unit and the policy group, as necessary. Other regulators may also be consulted on responses of common interest.
- 9.3 The PAR may be published via the ONR website.
- 9.4 ONR should forward any issues which are within the domain of another regulatory body or government department to that organisation for any action which it deems appropriate.
- 9.5 Since the NIA 1965 was enacted, ONR has adopted a standard set of licence conditions for all its sites. Where ONR believes that, in the light of responses received, it would be appropriate in relation to a particular site to attach an additional licence condition, or to vary a standard condition, the wording will be developed in

consultation with the relevant ONR operational division, ONR's policy group, ONR's legal advisers, and with the licensee.

10. ONR'S REPLY TO RESPONDENTS

- 10.1 Each respondent should be sent an acknowledgement within 10 working days of receipt of their letter, indicating that relevant comments will be taken into account by ONR when determining the application.
- 10.2 Following conclusion of ONR's assessment of the responses, each body which submitted substantive comments should be advised of ONR's position on each of the relevant issues they raised. This may be achieved either by writing to them individually or by forwarding a copy of the PAR. Respondents should also be advised if copies of their correspondence have been passed to another body for consideration.
- 10.3 Where a PAR has been produced, a copy should be sent to all public bodies on whom notice was served by the licence applicant. The report may also be placed on the appropriate section of the ONR website.

Annex 1 – Specimen Public Body Direction Letter with an example of a Direction and a Schedule of Authorities.

Company Secretary

Office for Nuclear Regulation

Superintending Inspector
Redgrave Court
Merton Road
Bootle
Merseyside
L20 7HS

Tel:
Fax:

Date:

<http://www.onr.gov.uk/>

Your Reference:

Our Reference:

Dear Sir or Madam:

NUCLEAR INSTALLATIONS ACT 1965
Applicant's Name
Site's Name/Location
APPLICATION FOR SITE LICENCE No:

Pursuant to section 3(4) of the Nuclear Installations Act 1965 (as amended), enclosed is a direction to serve notice that an application for a nuclear site licence has been made on those public bodies set out in the schedule attached to the direction. The Office for Nuclear Regulation's standard nuclear licence conditions referred to in the Direction may be downloaded from <http://www.onr.gov.uk/nuclear/silicon.pdf> .

I am copying this letter to the [insert name of appropriate Environment Agency] for their information.

Yours faithfully

Nominated ONR person Cc:

Environment Agency

Application for Nuclear Site Licence No: XX

Date

NUCLEAR INSTALLATIONS ACT 1965 (AS AMENDED)

DIRECTION

Made under section 3(4) of

NUCLEAR INSTALLATIONS ACT 1965

Application for Nuclear Site Licence No: XX

APPLICANT NAME, SITE NAME

In exercise of the power in section 3(4) of the Nuclear Installations Act 1965, the Office for Nuclear Regulation directs that the licence applicant, [Applicant Name], shall serve notice on the bodies specified in the Schedule attached to this Direction that an application has been made for a nuclear site licence, and that notice shall also give the following particulars:

- the proposed location of the nuclear site;
- a description of the development proposed in the nuclear site licence application and the intended use of the proposed site when licensed, giving a brief description of the purpose of the nuclear installation;
- an explanation as to why [Applicant Name] is seeking a nuclear site licence and an outline of any changes to existing activities on the site;
- a statement that once licensed, all of ONR's standard nuclear site licence conditions will apply to the licensed site;
- the proposed arrangements for local community liaison for the licensed site;
- ONR's statement on the purpose of public body notification (copy attached);
- ONR's statement on publication of any responses made to the public body notification (copy attached) and
- a statement that representations regarding this application may be made by any recipient of the notice to the [Named Officer] Office for Nuclear Regulation, Nuclear Site Licensing Section, Redgrave Court, Merton Road, Bootle, Merseyside L20 7HS, within three months of the date of service of the notice on the recipient.

The Office for Nuclear Regulation will not grant the nuclear site licence unless it is satisfied that three months have elapsed since the service of the last of the notices required by this Direction and that it has considered any representations made in accordance with any of those notices.

[This Direction shall come into effect on Date]

Dated:

For and on behalf of the
Office for Nuclear Regulation

Signed:

Chief Nuclear Inspector

A person authorised to act in
that behalf

AN EXAMPLE OF A SCHEDULE OF AUTHORITIES

1	The Chief Executive Cumbria County Council	2	The Chief Executive Allerdale District Council
3	The Clerk Workington Town Council	4	The Chief Executive Lake District National Park Authority
5	The Chief Constable Cumbria Constabulary	6	The Chief Executive Cumbria Fire & Rescue Service
7	The Chief Executive North West Ambulance Service NHS Trust	8	The Chief Executive United Utilities PLC
9	The Chief Executive Port of Workington	10	Chief Environmental Health Officer Workington Port Health Authority
11	The Chief Executive Cumbria Sea Fisheries Committee	12	The Chief Executive Cumbria Primary Care Trust
13	The Chief Executive Nuclear Decommissioning Authority	14	The Chief Executive Food Standards Agency
15	The Chief Executive Natural England	16	Daniel Phillips Bay 3/26 Maritime and Coastguard Agency Spring Place 205 Commercial Road Southampton SO15 1EG
17	The Clerk Dean Parish	18	The Chief Executive Copeland Council
19	The Clerk Winscales Parish	20	The Clerk Distington Parish
21	The Clerk Lowca Parish		

Annex 2 – Specimen Explanatory Notes to Accompany Notices Issued to Public Bodies by an Applicant for a Nuclear Site Licence

Public Body Notification: Purpose and Scope

1 This note sets out the purpose and scope of the public body notification exercise which [.....**name of licence applicant...**] has been directed to undertake by the Office for Nuclear Regulation (ONR), in accordance with the discretionary power in section 3(4) of the Nuclear Installations Act 1965 (NIA 1965).

Background

2 [.....**insert name of licence applicant...**] has applied for a nuclear site licence for a site at [...**name of site...**]. Further details of the location of the site and the licensable activities are included in this pack.

3 The granting of a nuclear site licence has 2 main consequences:

(a) The NIA 1965 places an absolute liability upon the licensee as regards injury to persons or damage to property arising from a nuclear occurrence, without the need for proof of fault on the licensee's part. The licensee requires insurance or other financial security to cover his liability under the Act: these insurance arrangements must be approved by the Department of Energy and Climate Change (DECC) (or Scottish ministers for sites in Scotland) before a site licence is granted. For further details see the [DECC website](#).

(b) The operators of nuclear facilities in Great Britain are required to comply with the Health and Safety at Work etc. Act 1974. However the additional provisions of the NIA 1965 enable ONR to exercise a greater degree of regulatory control via the conditions it can attach to a nuclear site licence. The licence conditions require the licensee to document the hazards, risks and control measures to ONR's satisfaction. The start or continuation of particular work activities which may affect nuclear safety are conditional upon acceptance by ONR of a safety case or safety report, and may involve the issue of a licence instrument such as a consent, agreement etc. This is known as a "permissioning regime" and is the most intrusive form of regulatory control.

4 In assessing an application for a nuclear site licence ONR will consider whether the applicant:

- is suitably organised and resourced to manage the safety of the licensable facility;
- has an adequate safety case for the proposed activities;
- has made adequate arrangements to comply with the conditions which will be attached to the nuclear site licence.

ONR will also make a judgement about the number of conditions to be attached to the licence and the requirements they impose on the licensee.

5. Further information about the [nuclear regulatory regime](#) is available on the ONR website.

Public Body Notification

6 At this stage it is ONR's intention that the licence sought by [.. **name of applicant (company number xxxxxxxx)...**] for [..**name of site ...**] should, if granted, have attached to it the standard suite of 36 licence conditions. [The standard suite of nuclear site licence conditions is available on the ONR website](#)[, with some explanatory text.]

7 However, before finally deciding whether to grant a licence, ONR has used the discretionary power under section 3(4) of NIA 1965 to direct the licence applicant to serve notice on public bodies local to the site. The intention of public body notification is to ensure that relevant public bodies have an opportunity to comment and to suggest anything that, from the point of view of their own responsibilities, ought to be provided for in the conditions which will be attached to the licence (if granted). Such public bodies include local authorities, emergency services, inshore fisheries and conservation authorities, statutory water undertakings, national parks authorities where appropriate and other public or local authorities.

8 It should be noted that ONR cannot address issues which are properly the province of other regulators or government bodies. Such issues include:

Justification: Justification is a principle of radiation protection embodied in successive European Basic Safety Standards Directives¹. It requires member states to ensure that the benefits of using ionising radiations in a particular situation outweigh the detriment to health that may be caused. Government policy is that Justification is a matter determined by Ministers. The requirements for justification have been translated into UK statute by the Justification of Practices Involving Ionising Radiation Regulations 2004 (SI 2004/1769). Guidance on Justification, and a register of justified practices, can be found on the website of the [Department for Energy and Climate Change](#) (DECC).

Planning: matters relating to the local socio-economic and environmental impact of a proposed nuclear facility are dealt with by the local planning authority or the Secretary of State (as the case may be);

Environment: wider issues of environmental impact and the disposal of radioactive waste are regulated by the appropriate environment agency.

Nuclear Liability Insurance: DECC leads on this, and on wider issues of financial liability. <http://www.gov.uk/government/organisations/department-of-energy-climate-change>.

Responses to Public Body Notification

9 ONR will not grant a nuclear site licence for an application where it has used its discretionary powers under section 3(4) of the NIA 1965 unless it is satisfied that the direction has been followed, that 3 months have elapsed since the date of service of the last of the notices, and that it has considered any responses sent to it in response to the notices.

¹ The current, applicable Basic Safety Standards Directive is Council Directive 96/29 Euratom.

See: http://europa.eu.int/eurllex/en/consleg/pdf/1996/en_1996L0029_do_001.pdf

Responses should be sent to the nominated ONR person at the appropriate ONR Headquarters location.

10 Prospective respondents should note that their comments may be published and attributed to them.

11 Each respondent will be sent an acknowledgement within 10 working days of receipt of their response by the named officer in ONR, indicating that relevant comments will be taken into account by ONR when determining whether to supplement or modify the standard licence conditions.

12 Following conclusion of ONR's assessment of the responses, each body which submitted substantive comments will be advised of ONR's position on each of the relevant issues they raised. This may be achieved either by writing to them individually or by forwarding a copy of a public domain report if this appears to ONR to be more appropriate. Respondents will also be advised if copies of their correspondence have been passed to another body for consideration.

13 If a public domain report is produced, a copy will be sent to all public bodies on which notice was served by the licence applicant. The report may also be placed on the appropriate section of the ONR website.