ONR INSTRUCTION

ONR DECISION REVIEW AND APPEALS PROCESS

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1. INTRODUCTION

1.1 We are committed, as the nuclear safety and security regulator within Great Britain, to provide an efficient, effective, professional, and courteous service. As part of this commitment this instruction enables appeals to be raised relating to the process applied to regulatory decisions. This instruction meets the expectations of the UK Regulators’ Code and International Atomic Energy Agency (IAEA) guidance.

2. PROCESS FLOW

2.1 The decision review and appeal process is set out below.
3. BASIS OF APPEALS

3.1 An appeal can be made should the Appellant consider that the process in arriving at a regulatory decision taken by ONR has been applied incorrectly or that we have failed to follow the expectations of the UK Regulators’ Code. The basis of an appeal includes:

- Decisions concerning the granting or otherwise of a nuclear site licence;
- Decisions relating to the use of powers contained within the licence conditions (directions, approvals, specifications, consents, notifications and agreements);
- Decisions in relation to whether an investigation should proceed as well as the investigation process up to the point at which a decision in relation to prosecution is made. Should an investigation be ongoing at this time, it would not be halted as a result of any appeal.
- Decisions in relation to the Ionising Radiation Regulations 2017;
- Approval of security plans required under the Nuclear Industries Security Regulations 2000; and
- Approval of package designs for class 7 material under the Carriage of Dangerous Goods Regulations 2009.
- Non-compliance with Sections 1 to 6 of the UK Regulators’ Code.

3.2 An appeal cannot be based upon:

- Advice provided by ONR to dutyholders, other regulators or wider government;
- The awarding of a ‘Design Acceptance Conformation’ as part of a ‘Generic Design Assessment’;
- ONR responses to consultations (including where ONR is a statutory consultee); or
- Decisions made by others (for example, Ministers or other regulators) to which ONR has contributed advice.

3.3 Regulatory decisions concerning the issuance of improvement or prohibition notices, which have existing appeals systems in place through employment tribunal, are not within the scope of this decision review and appeal process.

3.4 Appeals against regulatory decisions relating to investigations for which the approval officer has taken a prosecution decision are outside the scope of this process, as this would be non-compliant with the Crown Prosecution Service (CPS) Code for Crown Prosecutors. Any appeal of this nature would need to be performed as a formal judicial review of the decision or via the Victim’s Right of Review Scheme operated by the CPS.

3.5 The Chief Nuclear Inspector (CNI) may, if appropriate, suspend the regulatory decision at any time during the informal and formal stage of the appeal should the process associated with the regulatory decision be found not to be robust or ultra-vires (out with our statutory duties). This decision would be captured in a letter to the CE.

4. INFORMAL APPLICATION OF THE PROCESS

4.1 To ensure best use of resources and timely resolution of disputes, those wishing to apply for a decision review will be, and encouraged to, meet the independent Deputy Chief Inspector (DCI), to set out objections and to provide further evidence if available in the first instance. Should the grounds for the appeal be addressed to the satisfaction of the Appellant the issue will be considered to be resolved. Interactions at this stage will follow standard operational procedures and any additional information or changes to the ONR’s position will be recorded in a Contact Record.
4.2 Should the dispute not be resolved, the Appellant may escalate to the CNI for a formal appeal review. The purpose of the CNI review is to consider the grounds for appeal through discussion with the Appellant and arrive at a decision whether to uphold the appeal. The CNI should inform the Appellant of the outcome and alert them to the formal Decision Review and Appeals Process should the appeal not be upheld.

4.3 Where the decision being challenged was made by the CNI, the review at this stage will be conducted by ONR’s Head of Regulatory Assurance function, who reports to the Finance Director. The Head of Regulatory Assurance will decide if the appeal is eligible for acceptance and, should this be the case, consider whether it should be upheld, partially upheld, or rejected. Should they accept the grounds for the appeal and identify the need to revise the original decision, the outcome will be documented capturing the basis of the decision made. Should the appeal not be upheld, the Appellant will be informed of the formal process.

4.4 Regardless of the outcome, there will in all likelihood be learning that can be captured by ONR and taken forward by the CE, as appropriate. This may result in the need to amend our processes and procedures and will be managed through existing governance arrangements.

4.5 The discussions detailed within this section are not considered application of the formal decision review and appeals process. The intention of any informal discussions is to reach a timely and practical solution to issues. Details of the informal application of this process are to be recorded within a Contact Record.

5. **FORMAL APPLICATION OF THE PROCESS**

5.1 Should the informal discussions detailed in Section 3 not resolve the issue, the Appellant may appeal in writing to the ONR Chief Executive (CE) to request a review of the process applied to the regulatory decision. The letter should set out clearly the grounds for the appeal and basis of their case.

5.2 A request for review should be made within 15 working days beginning the day after which the decision being challenged was made or, if the Appellant is not the dutyholder, within 15 working days of ONR publishing its’ decision. In exceptional circumstances ONR may consider requests to extend this time, for example if the Appellant is engaged in preliminary discussions with ONR to resolve the issues. It should not be assumed that an extension will be granted in every case, particularly if the circumstances do not justify an extension.

5.3 The CE will discuss the appeal directly with the Appellant, the independent DCI, and the ONR inspector accountable for the decision. This may involve requests for further information or written clarification of any points, as necessary.

5.4 The CE may appoint expert advisers, as appropriate, to provide advice in reviewing the process elements associated with the regulatory decision. The CE may not appoint as an expert adviser any person who participated in the original decision or in preliminary discussions regarding the original decision. The CE may not change regulatory decisions providing the correct ONR processes have been applied at arriving at the decision made. If it is considered that the process has failed, the CE may refer the regulatory decision back to the CNI.

5.5 In reviewing the decision, the CE will focus on the process by which the original decision was made, including both the technical and non-technical approaches taken. Whilst the focus will be on the application of ONR process, further relevant factors can be taken into account in arriving at the decision. Taking into account all the evidence presented by the Appellant and the inspector as well as any advice from the appointed
experts, the CE will decide if ONR has made a valid decision or, in the case of the Code, whether a non-compliance with the Code has occurred.

5.6 The CE will, as a result of the review:

- Reject the appeal; or
- Uphold the appeal on the grounds of process or other relevant factors; and
- Communicate the outcome in writing to the Appellant.

5.7 Should the third party be dissatisfied with the outcome having completed the appeals process, a request can be made to the Office of the Parliamentary and Health Service Ombudsman to review the appeal via their Member of Parliament.

5.8 The CE, as part of regular reporting, will communicate the outcome of any reviews to the ONR Board in the first instance for awareness and to identify any immediate remedial action that is required.

5.9 The CE will normally conduct the review and communicate their final decision within 60 working days of receipt of the written appeal. There may be instances when the review of the decision takes longer due to the complexity of the decision or availability of relevant personal and/or expert advice. In such cases, the Appellant will be notified and a date provided confirming when the decision will be communicated.

5.10 The detailed basis of the decision will be sent to the Appellant in writing and once issued there is no recourse for further appeal within ONR. If the Appellant considers that the response has not addressed the grounds for the appeal to their satisfaction, the option to pursue the appeal through formal judicial review is available to them through appropriate legal channels.

6. OPENNESS AND TRANSPARENCY

6.1 The letter from CE detailing the outcome (with reasons) of the appeal will be published with redactions, as appropriate. The letter will capture any organisational learning that will lead to improvements or changes required.

6.2 All publications will be subject to any relevant restrictions concerning security, data protection, disclosure of information provisions in the Health and Safety at Work etc Act 1974, the Energy Act 2013, and in any other relevant legislation.

7. COST RECOVERY

7.1 ONR will recover costs, where it has relevant charging powers that arise from a review procedure only when the original decision is upheld. (ONR has powers to charge for the majority of its regulatory functions, primarily through provisions of the Nuclear Installations Act 1965, the Health and Safety (Fees) Regulations 2012 and the Nuclear Industries Security (Fees) Regulations 2005. These fees will be applied where relevant to the costs of decision reviews).

7.2 Costs will be recovered in line with ONR’s standard charging model and will include the costs associated with any appointed expert advisers.

END