ONR GUIDE

Process for Conducting Investigations

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### ABBREVIATIONS AND ACRONYMS USED

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<th>Abbreviation</th>
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<tr>
<td>CNI</td>
<td>Chief Nuclear Inspector</td>
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<td>CNS</td>
<td>Civil Nuclear Security</td>
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<td>CPIA</td>
<td>Criminal Procedure and Investigations Act 1996</td>
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<td>DDS</td>
<td>Divisional Delivery Support</td>
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<td>DWP</td>
<td>Department for Work and Pensions</td>
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<td>EDR</td>
<td>Enforcement Decision Record</td>
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<td>EMM</td>
<td>Enforcement Management Model</td>
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<td>Investigation Decision Record</td>
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<td>INES</td>
<td>International Nuclear Event Scale</td>
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<td>Investigation Resource Group</td>
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<td>KDL</td>
<td>Key Decision Log</td>
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<td>NISR</td>
<td>Nuclear Industries Security Regulations 2003</td>
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<td>NM</td>
<td>Nuclear Material</td>
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<td>ORM</td>
<td>Other Radioactive Material</td>
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<td>PACE</td>
<td>Police and Criminal Evidence Act 1984</td>
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<tr>
<td>PL</td>
<td>Professional Lead</td>
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<td>RCIS</td>
<td>Redgrave Court Incident Suite</td>
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<tr>
<td>RIDDOR</td>
<td>Reporting of Injuries, Diseases and Dangerous Occurrences Regulations</td>
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1. INTRODUCTION

1.1 The purpose of this document is to set out the process to be followed when conducting an investigation under ONR’s purposes. There are a number of ways that ONR can be made aware of a matter that may warrant investigation. These include: notification of incidents and events, via ONR’s inspection and assessment activities and concerns/whistleblowing received about a duty holder (Table 1). Depending on the seriousness of the matter, an investigation of the surrounding circumstances may be necessary to inform potential enforcement decisions and action. Decisions on enforcement action must accord with ONR’s Enforcement Policy Statement (EPS) (Ref. 1). The need to commission an investigation must be balanced with the requirement to act promptly to ensure that the licensee/duty holder addresses risk gaps identified through the application of the Enforcement Management Model (EMM) (Ref. 2).

1.2 The ONR investigation process commences from when ONR becomes aware of a matter that may warrant investigation through to when ONR either records an informed decision that the matter will not be investigated further, or completes the investigation. This Guide distinguishes between any ‘preliminary enquiries’ made to obtain sufficient information in order to make a decision as to whether a matter warrants investigation or not, and the investigation itself.

1.3 In line with the ONR EPS, investigations are undertaken in order to determine:

- The direct and root 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.
- A proportionate response to a breach of the law.

1.4 Two key pieces of administrative law underpin the criminal investigation process in England and Wales, namely the Criminal Procedure and Investigations Act 1996 (CPIA) (Ref. 3) and the Police and Criminal Evidence Act 1984 (PACE) (Ref. 4). In Scotland the Criminal Justice and Licensing (Scotland) Act 2010 (Ref. 5) is the primary administrative law governing criminal investigations (see Appendix 1 for further information).

1.5 It should be noted that all investigatory work, including preliminary enquiries must be conducted having regard to PACE and CPIA and the equivalent laws for Scotland. Applying good practice throughout the investigation process is vital both in the interests of justice and to reduce the likelihood that the outcome of the investigation (including any legal proceedings) might be successfully challenged. Adherence to this legislation also helps safeguard ONR’s reputation.

1.6 During any investigation there is a need to maintain confidentiality to ensure that any subsequent prosecution cannot be undermined and any future disclosure duty is minimised. This requires the inspectors involved to ensure that the investigation is only discussed with members of the investigation team and others with a legitimate need to know. Other ONR staff should refrain from offering unsought opinions verbally or in writing. This protocol also maintains the independence of potential expert witnesses. Within the investigation team, there needs to be a culture of open dialogue and the lead investigator must provide regular updates on the investigation progress to the approval officer, divisional director and other ONR colleagues satisfying the “need to know” criterion.
2. DEFINITIONS

2.1 Within this document the following definitions have been adopted, having regard to the CPIA (Ref. 3) code of practice :-

- **The decision maker** is the warranted inspector responsible for deciding whether to commence an investigation. The role of the decision maker would normally be undertaken by the relevant delivery lead who should consult their divisional director when taking on this role. Alternatively, the divisional director may decide to take on the role of decision maker or allocate an alternative decision maker.

- **An investigator** is any warranted inspector involved in the conduct of a criminal investigation. All investigators must comply with the duties imposed on them under the CPIA code, including in particular pursuance of all reasonable lines of enquiry, whether these point towards or away from a suspect; recording information and retaining records of information and other material.

- **The inspector in charge of an investigation** is responsible for directing the investigation and is responsible for ensuring that proper procedures are followed for recording information, and retaining records of information and other material, arising in the investigation. In ONR this inspector is referred to as "the lead investigator".

- **The disclosure officer** is the person or persons responsible for examining material retained by ONR during the investigation; revealing material to the prosecutor during the investigation and any criminal proceedings resulting from it, and certifying that s/he has done this; and disclosing material to the accused at the request of the prosecutor. A solicitor agent or prosecuting counsel cannot act as disclosure officer. If a solicitor agent is engaged, they should be contacted at an early stage after appointment to discuss disclosure of unused material. However, the role of disclosure officer remains the same irrespective of whether a solicitor agent is engaged. Where a solicitor agent has been engaged, it is important that all relevant information is available to them to enable the correct decisions to be made. The final decision on disclosure will generally be taken by the solicitor agent (e.g. lawyer) following discussion with the disclosure officer and prosecuting counsel (e.g. barrister).

- **The prosecutor** is the authority responsible for the conduct of criminal proceedings resulting from a criminal investigation. In cases brought by ONR this will initially be the approval officer until it passes to the solicitor agent who will undertake any prosecution proceedings.

- **The approval officer** is the warranted inspector responsible for deciding whether or not to commence a prosecution on behalf of ONR. The approval officer is appointed by the divisional director and would normally be the relevant delivery lead. Alternatively, and with the agreement of the Chief Nuclear Inspector (CNI), the divisional director may take on the role of approval officer. This appointment should be made in writing at the outset of the investigation. Any changes in appointment must be made prior to any prosecution decision and the reasons for such changes should be fully documented.

**NOTE – The appointment of key investigation roles needs to ensure that those appointed are able to demonstrate consistent, independent, objective and impartial decision making that is free from undue interference, in particular suitable arrangements should be in place for approval officers to remain sufficiently distant from the investigation activities to allow them to reach an objective decision on whether to proceed with a prosecution. These roles may require re-**
Material is material of any kind, including information, electronically held material and objects, which may be obtained in the course of a criminal investigation and which may be relevant to the investigation. This includes not only material coming into the possession of the investigators (for example, provided by witnesses) but also material generated by investigators (such as an interview record).

Material may be relevant to an investigation if it appears to an investigator, the inspector in charge of an investigation (lead investigator) or to the disclosure officer, to have some bearing on any offence under investigation or any person being investigated, or on the surrounding circumstances of the case, unless it is incapable of having any impact on the case;

Sensitive material is material, the disclosure of which, the disclosure officer believes, would give rise to a real risk of serious prejudice to an important public interest. The disclosure officer may need to consult with the officer in charge of the investigation, the prosecuting lawyer and line management before reaching this view.

2.2 In practice, the role of the officer in charge of an investigation (lead investigator) and the disclosure officer are likely to be undertaken by the same inspector. Other inspectors may assist as investigators as appropriate.
3. GOVERNANCE AND GENERAL CONSIDERATIONS

3.1 The Investigation Sub-Specialism, led by the operational inspection Professional Lead (PL) includes an Investigation Resource Group (IRG) chaired by the Operational Inspection PL and a team of suitably qualified and experienced investigation and specialist inspectors who make up the Investigation Core Team (ICT).

3.2 The IRG is responsible for advising the operational inspection PL on any matter relating to the adequacy of ONR's capability and resilience in conducting investigations, e.g. in terms of people, processes and provision of facilities and equipment etc. The operational inspection PL reports to the ONR Technical Director. The IRG also reviews changes and updates to legal processes and/or precedents and considers the need to change existing ONR arrangements to address them.

3.3 Advised by the IRG, the operational inspection PL provides advice and if necessary challenge to the divisions undertaking investigations. The ICT provides subject matter expertise to provide advice and support to ONR inspectors undertaking investigations.

4. PURPOSE AND SCOPE

4.1 The purpose of this document is to provide guidance to inspectors through the key steps necessary to undertake and record preliminary enquiries and investigations and should be read in conjunction with the ONR HOW2 Investigation Process Map. The steps are:

- Step 1 Receive Notification and Act Upon, including the identification of any initial regulatory action that may be necessary.
- Step 2 Conduct Preliminary Enquiries and Decide Whether To Investigate.
- Step 3 Plan and Resource Investigation.
- Step 4 Conduct Investigation.

4.2 The sections below provide guidance on the execution of each step of the ONR investigation process which is summarised in the flow chart at Appendix 2.

4.3 The process for undertaking and reporting investigations is different in England and Wales than in Scotland, although there is considerable commonality. Where appropriate, this guide identifies the different approaches required. Advice should be sought from the ONR Legal Advisory Service in advance of undertaking investigations in Scotland.

5. STEP 1 – RECEIVE NOTIFICATION & ACT UPON

5.1 Table 1 identifies the different means by which ONR might become aware of a matter that may warrant preliminary enquiries and/or subsequent investigation.

5.2 A decision should be made by a warranted inspector on whether there is already sufficient information to make a decision on whether the investigation criteria have been met. If this is not the case, preliminary enquiries should be undertaken to obtain further information to make this decision. The relevant delivery lead maintains oversight of the event notifications and subsequent inspector actions at sub-division level.

5.3 Where an early decision is made that the relevant investigation criteria are clearly NOT met, the decision must be recorded in an appropriate manner. This may be on the associated INF1 (part B) or in a contact report or intervention record. In exceptional circumstances for RIDDOR notifications, an email record may be sufficient.

5.4 For concerns raised or whistleblowing or where protected disclosures apply regarding a duty holder, the guidance published on ONR's website (Ref. 6) must be followed. All
concerns / whistleblowing relating to matters that ONR regulates (or would have regulated prior to vesting in 2014, when part of HSE) should be subject to preliminary enquiries. Reports of Whistleblowing are followed up separately by the CEO’s Private Office.

5.5 The investigation criteria are set out in Tables 2-4 at the end of this process, i.e:

- Nuclear and radiological incident investigation selection criteria provided in Table 2, these also apply for civil nuclear and non-nuclear radiological transport matters involving Class 7 radioactive material.
- Conventional health and safety criteria provided in Table 3.
- Civil Nuclear Security criteria provided in Table 4.

5.6 The notified inspector should engage with other appropriate ONR inspectors (e.g. discipline specialists, professional lead/s, delivery lead) as necessary to ensure that an informed decision is made.

5.7 If the incident involves a fatality at work then the Work Related Deaths Protocol and associated guidance should be followed (Refs 7, 8 and 9).

6. **STEP 2 - CONDUCT PRELIMINARY ENQUIRIES & DECIDE WHETHER TO INVESTIGATE**

Step 2.1 Conduct Preliminary Enquiries

6.1 Preliminary enquiries should be conducted as necessary to obtain sufficient information to support an informed decision on whether the matter meets the investigation criteria (Tables 2-4).

6.2 Preliminary enquiries should normally be undertaken through site / workplace visit(s). However, preliminary enquiries may be undertaken by other means such as a phone call or email where the inspector judges this to be appropriate.

6.3 Preliminary enquiries should be commenced as soon as practicable after notification of an incident or event. The resulting investigation decision should be recorded appropriately (see paras 6.8 and 6.9 below) within 5 weeks, unless an extension is agreed with the relevant divisional director.

6.4 Inspectors must comply with the ONR EPS and application of the ONR EMM throughout the investigation process. A requirement for prompt enforcement action may emerge at any stage, based on prevailing information.

6.5 The outcome of preliminary enquiries may be to progress to an investigation. In order not to compromise any subsequent investigation, the inspector(s) must conduct preliminary enquiries in accordance with the requirements of the CPIA. It is essential to maintain independence from any duty holder investigation being conducted in parallel until a decision has been made by the decision maker on whether an ONR investigation is warranted. Appendix 3 summarises key aspects to bear in mind during preliminary enquiries.

Step 2.2 Decide Whether to Investigate

6.6 Once sufficient information is obtained from the initial incident/event notification or from subsequent preliminary enquiries, a decision needs to be made on whether the matter warrants investigation. The relevant investigation criteria (see Tables 2 to 4) should be applied by the ONR warranted inspector leading the preliminary enquiries.
6.7 If the inspector leading the preliminary inquiries concludes that the investigation criteria are not satisfied, their judgement must be recorded in the relevant intervention record or contact record.

6.8 If the inspector judges that the investigation criteria are satisfied, they must complete part A of an Investigation Decision Record (IDR) (Ref. 10) having informed the relevant delivery lead in advance. A unique number for the IDR must be obtained from the Chief Nuclear Inspector (CNI) Office and recorded on the IDR. The inspector should seek advice from the relevant specialists and PLs as appropriate prior to completion of part A of the IDR and record such advice in the part A. A blank IDR form can be found at Appendix 4.

6.9 The IDR should be passed to the decision maker responsible for deciding whether or not to commence an investigation. As per para 2.1, the decision maker is normally the relevant delivery lead. The decision maker must complete part B of the IDR. Parts A and B of the IDR should be completed within 5 weeks of the initial notification unless an extension is agreed with the relevant divisional director.

6.10 The output of part A and part B of the IDR is a decision on whether ONR will conduct a criminal investigation. Para 1.3 sets out the fundamental elements of ONR's conduct of investigations. These are consistent with the definition given in the CPIA Code for criminal investigations. Hence, for the remainder of this document, the terms investigation and criminal investigation are synonymous. The decision to undertake an investigation should take account of the relevant factors within ONR's EPS (Ref. 1), including the aspects listed at paras 8.19 and 8.20.

6.11 Once a decision has been made, the CNI's Office should be informed of the outcome, copying in the relevant divisional director.

6.12 If the decision is made to proceed with a criminal investigation, the divisional director in discussion with the relevant delivery lead, must assign the key roles of the investigation team having regard for the CPIA Code of Practice (See Section 2) including:

- Lead Investigator (Inspector in Charge of the Investigation),
- Investigator(s),
- Disclosure Officer,
- Approval Officer (potential Prosecutor),
- Divisional Delivery Support (DDS).

Further guidance on these roles and appointments to them is provided in para 2.1.

6.13 The lead investigator must ensure that:

- Unique numbers for the Investigation Report and Key Decision Log are obtained from the CNI's Office.
- The form at Appendix 1 to ONR-FIN-GD-008 (Ref. 11) is completed and submitted to the CNI Office.
- The CNI Office has provided a COIN service order against which all time spent on the investigation should be recorded, and a procurement order against which any external resources used should charge.
7. **STEP 3 - PLAN AND RESOURCE INVESTIGATION**

**Step 3.1 Resource Investigation**

7.1 Resource planning is an important activity as experience shows that performing an investigation may be resource intensive, depending on its complexity. Therefore, consideration should be given to whether the **lead investigator** should be full-time for the duration of the investigation and associated subsequent activities. The delivery lead should also plan and make arrangements for the re-allocation of duties from those identified to undertake the investigation, and for those persons’ subsequent re-integration into normal duties once the investigation and associated activities have completed.

7.2 As part of the planning process, the lead investigator should consider the requirements for any specialist support. Professional leads should be consulted as appropriate with regard to securing this resource.

7.3 Consideration should be given to whether any ONR staff may later be needed to provide expert witness testimony during any subsequent court proceedings. Such individuals should be identified early and be kept separate from the investigation in order to preserve their independence.

7.4 DDS staff needed to assist with the investigation should be identified along with the equipment and facilities for collecting, indexing and storing investigation material. Advice can be obtained from the ONR IRG/ICT on the practical arrangements associated with these activities. The resource planning referred to in 7.1 also applies to resourcing of DDS staff. An ONR template is available for record keeping of material collected and generated (Ref. 12).

7.5 External specialist resource (such as from HSE’s Science Division (previously HSL), or a solicitor agent) may be required during the investigation and can be secured using the previously obtained procurement order (Ref. 11).

7.6 To enable resource tracking, all internal and external resourcing should be booked to the service order and procurement order numbers provided by the CNI office.

7.7 The **lead investigator** should agree resource estimates with the relevant delivery lead, in consultation with their divisional director.

7.8 Consideration should be given to what equipment provisions will be required at the site or at other remote locations to assist the investigation.

7.9 The time required for completion of the investigation should be considered during the planning phase. **Investigations should be completed as soon as practicable.** No specific completion target has been set here, reflecting the potential variety in investigations ONR may conduct. Instead, regular progress reviews between the **lead investigator** and **approval officer** must be undertaken and should consider explicitly whether appropriate progress is being made. See para 8.8 for more details on progress reviews.
Step 3.2 Plan the Investigation – Setting Objectives (Lead Investigator)

7.10 Once a decision has been made to undertake an investigation, the lead investigator should seek advice from the IRG on the planning and conduct of the investigation. This is particularly relevant for complex cases. Advice and guidance on application of relevant due process should also be sought from the IRG as necessary during the investigation.

7.11 The objectives of the investigation should be identified and will include matters such as:

- Identify the relevant dutyholder(s) and witnesses.
- Establish the key facts relating to the potential causation, recognising that an incident or event may not necessarily have occurred.
- Identify the applicable legislation and whether legal compliance has subsequently been achieved.
- Identify immediate and underlying causes.
- Establish whether an offence (or offences) may have been committed.
- Ensure action to prevent a recurrence including any wider implications beyond the duty holder(s) concerned.
- Apply the ONR EMM (Ref. 2) to establish proportionate and appropriate regulatory action.

Step 3.3 Plan the Investigation – Developing the Plan (Lead Investigator)

7.12 The plan for the investigation should be developed by:

- Establishing the investigation techniques to be used.
- Collating and reviewing records and intelligence held on the duty holder.
- Identifying and obtaining standards, benchmarks and sources of relevant guidance.
- Determining reasonable lines of enquiry to use in Step 4.4.
- Identifying and securing people, equipment and other required resources (see Step 3.1 above).
- Considering how the views of injured parties / any bereaved families will be obtained.
- Considering personal health and safety requirements of investigating staff and making adequate provision as appropriate. Due account should be taken of the relevant guidance in the ONR General Inspection Guide (Ref. 13).

7.13 The lead investigator should consider the need to develop a communications plan in conjunction with the ONR Communications Team. Care should be taken to avoid communications compromising the outcome of the investigation.

8. STEP 4 - CONDUCT INVESTIGATION

Step 4.1 Commence Investigation (Lead Investigator)

8.1 The investigation should be commenced in accordance with the Investigation Plan at the earliest opportunity, and would normally be expected to include, unless this is inappropriate, a visit to the scene of the incident or event.

Step 4.2 Relevant Contacts (Lead Investigator)

8.2 As soon as practicable after beginning the investigation, the lead investigator should identify or confirm:

- The duty holder(s) to explain ONR’s role and the investigation objectives.
- Potential witnesses.
- Any injured person(s) and/or bereaved families.
- Any employee/safety representatives.

**Step 4.3 Immediate Enforcement Action (Lead Investigator)**

8.3 As stated in Paragraph 1.1, matters of evident or potential major concern should be dealt with promptly and in accordance with the EPS (Ref. 1) and the EMM (Ref. 2).

**Step 4.4 Conduct Investigation (Investigator(s))**

8.4 The **investigators** should conduct the investigation and identify and follow all reasonable lines of enquiry. Normally the **lead investigator** will complete the ONR combined Investigation and Prosecution Report (Ref. 14) as the investigation progresses, unless it becomes apparent early on that there are grounds to discontinue the investigation. In this case, the **approval officer** must record the rationale for this decision in part C of the IDR (Ref. 10), following discussion with the **lead investigator**, other **investigators**, the **approval officer**, the divisional director and other relevant parties (e.g. Professional Lead(s)).

8.5 When conducting the investigation the **investigator(s)** should consider in particular:

- ONR guidance for collecting material (Ref. 15).
- The ONR template (Ref. 12) for recording the material collected. (This should be appropriately recorded in CM9 and referenced from the Investigation and Prosecution Report (Ref. 14)).
- The Criminal Procedure and Investigations Act (CPIA) and associated Code of Practice (Ref. 3).
- The Police and Criminal Evidence Act (PACE) (Ref. 4).
- The Criminal Justice and Licensing (Scotland) Act 2010 (Ref. 5).
- ONR guidance on the taking of witness statements (Ref. 16).
- The additional template required for Scottish Investigations (Ref. 17).
- The ONR Evidence Workflow and associated guidance on HOW2.
- Any advice received from ONR technical specialists, PLs and, where appropriate, external specialists and the solicitor agent.

8.6 The **lead investigator** should ensure that a **Key Decision Log (KDL)** (Ref. 18) is opened (applying the number previously obtained from the CNI office) and maintained throughout the investigation to record information supporting all key decisions. Guidance on KDLs is provided in Appendix 5.

**Interviewing of Suspects**

8.7 The interviewing of suspects differs considerably from the interviewing of witnesses. The interviewing of suspects should only be conducted by ONR personnel who are suitably experienced and have received formal training in the legal requirements for interviewing suspects. Consequently, where a lead investigator identifies the requirement for a suspect to be interviewed, they must request support from the IRG.

**Step 4.5 Regular Review**

8.8 Throughout the investigation, the **lead investigator** should routinely review:

- The objectives for the investigation and revise and/or establish new objectives as necessary.
- Whether all reasonable lines of enquiry are being followed and identify any additional or expired ones.
- Whether any analytical investigation methods that are being / have been used remain appropriate and sufficient.
- The Key Decision Log.
8.9 The status of the investigation should also be reviewed at intervals of no greater than one month by the lead investigator and approval officer. This review should consider whether any additional resource is necessary and if the timescales continue to be appropriate or require adjustment. In certain circumstances, for example, due to the nature of the event, the investigation may be terminated before its objectives are met. Equally, the approval officer may decide to terminate the investigation. Reasons for terminating an investigation might include:

- Information comes to light that the matter under investigation is not within ONR's area of responsibility.
- It becomes apparent that the matter under investigation does not meet the relevant investigation criteria (see Tables 2 to 4) and/or the possible breaches of legislation are unlikely to meet the relevant criteria in the ONR EPS (Ref. 1) or EMM (Ref. 2) and continuing with the investigation is not essential to determining any lessons to be learned.
- The investigation is impractical e.g. where key witnesses or other evidence is unavailable.
- Exceptional circumstances, for example, where the public interest test shows there is an overall dis-benefit, in terms of safety or security, in continuing with the investigation.
- The length of time elapsed since the incident would limit the realistic prospect of conviction.
- Excessively disproportionate effort would be required to achieve the established objectives.

8.10 If a decision is made to not continue with an investigation, this should be recorded by the approval officer in part C of the IDR. Such decisions should be made following engagement with the lead investigator, the divisional director and other interested parties such as PLs and technical specialists and any advice given should be recorded.

8.11 The approval officer is responsible for briefing upwards on the progress of the investigation. This will normally be via the routine monthly update to the relevant divisional director and CNI Office. When so briefing, the approval officer should ensure that these interactions do not undermine any future prosecution decision. Any briefing records produced need to be included within the scope of potentially disclosable material (see para. 2.1).

Step 4.6 Enforcement Decision (Lead Investigator and Approval Officer)

8.12 On completion of the investigation, the lead investigator will make an enforcement recommendation to the approval officer, via the Investigation and Prosecution Report (Ref. 14). The approval officer will make the final enforcement decision following engagement with the lead investigator, the divisional director other interested parties such as PLs, technical specialists and, where relevant, the solicitor agent, recording/referring to any advice given.

8.13 This decision must be made in accordance with the ONR EPS (Ref. 1) the ONR EMM (Ref. 2) and the Code for Crown Prosecutors (Ref.19).

8.14 If the lead investigator makes a recommendation to prosecute, they must complete all of parts A (investigation details), B (factual report) and C (analysis of compliance) of the Investigation and Prosecution Report and the accompanying Enforcement Decision Record (EDR). The approval officer must complete all of part D (approval officer's consideration and decision). The approval officer should also complete part C of the IDR by referencing the Investigation and Prosecution Report.
8.15 If the recommendation of the lead investigator is not to prosecute, s/he must complete all of parts A and B and as a minimum, parts C10 (application of ONR’s EPS and EMM) and C11 (recommended action) of the Investigation and Prosecution Report, together with the EDR. The approval officer must complete parts D1 (review of application of EPS and EMM to circumstances presented by investigating inspector) and D3 (decision on each of proposed charges with the reasons for or against approval) as a minimum. The approval officer should also complete part C of the IDR by referencing the Investigation and Prosecution Report.

8.16 In considering a case, the approval officer must ensure that:

- The law has been properly applied;
- All relevant evidence is available in an admissible form;
- Inspectors have identified any material that may undermine the prosecution case or assist the defence; and
- ONR has acted in compliance with the Human Rights Act 1998 (Ref. 20).
- The general principles within section 2 of the CPS Code for Crown Prosecutors (ref. 19) are met.

8.17 The approval officer, before they can make a decision to commence a prosecution, must apply the Code for Crown Prosecutors (Ref. 19) Full Code Test, which consists of two stages:

- The Evidential Stage
- The Public Interest Stage

8.18 The Code also includes a third test, called the Threshold Test, which does not apply to ONR and need not be considered. In Scotland, recommendations to prosecute are made to a Procurator Fiscal. In such cases, the Crown Office and Procurator Fiscal Service (COPFS) Prosecution Code (ref. 25) should be referred to and applied to the ONR decision making process.

8.19 ONR’s EPS (Ref. 1) states that ONR will normally prosecute (or recommend prosecution in Scotland), 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.
8.20 ONR’s EPS also states that ONR will, in the public interest, consider prosecution or recommend 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.

**Step 4.7 Communicate Outcome (Lead Investigator)**

8.21 The CNI’s Office should be notified of the investigation decision. Interested parties should be identified by the lead investigator, and, as appropriate, are to be advised of the outcome of the investigation, any actions required, and by whom. These include:

- Any bereaved family.
- Any injured person.
- Any complainant.
- The duty holder(s).
- Any employee/safety representatives.
- Other parts of ONR.
- Other agencies.
- Other stakeholders e.g. trade associations.

8.22 If the matter under investigation was a Work Related Death, the Coroner (or in Scotland, the Procurator Fiscal) must be informed that the investigation has concluded and to agree disclosure of information for the purposes of the inquest.

8.23 Where appropriate, a communication plan will need to be developed with the ONR Communications Team (see discussion in paragraph 7.13 about use of a plan at an earlier stage).

**Step 4.8 Follow-Up Action**

8.24 ONR inspectors should undertake any follow-up actions required. With regard to duty holders, this should be in-line with the ONR Inspection Guide (Ref. 13) and the need for any Regulatory Issues (Ref. 21) should be considered.

**Step 4.9 Proceed to Prosecution**

8.25 If the approval officer makes the decision to commence a prosecution on behalf of ONR, the proceedings through to court system will be led by ONR’s solicitor agent supported as necessary by ONR inspectors and DDS staff. ONR’s involvement is likely to be in the following areas: technical support from the lead investigator, approval officer, specialist inspectors and expert witnesses; administrative support for evidence management and disclosure; communications team support to assist with media handling.

8.26 Once information has been laid in court, ONR’s subsequent costs are not recoverable from duty holders as stipulated in the Health and Safety and Nuclear (Fees) Regulations 2016. Therefore, the necessary funding must be drawn down in the form of a grant from the Department for Work and Pensions (DWP) such that ONR does not unduly penalise other duty holders and ONR’s overall cash flow is protected.

8.27 To obtain the necessary funding, the lead investigator will need to update the previously completed finance form (appendix 1 to ONR-FIN-GD-008 Ref. 11) together
with a completed draft of the DWP Statement of Requirements form (appendix 2 to ONR-FIN-GD-008 Ref. 11). This should be done in conjunction with ONR Finance.

8.28 The CNI office will liaise with ONR Finance and ONR Procurement to facilitate the draw-down of a grant to fund the prosecution.
9. REFERENCES & FURTHER SUPPORTING INFORMATION

1. ONR Enforcement Policy Statement
2. ONR-ENF-GD-006 - Enforcement Management Model in ONR
3. Criminal Procedure and Investigations Act 1996 (CPIA) and associated code of practice
4. Police and Criminal Evidence Act 1984 (PACE) and associated codes of practice (codes C, D, E & F)
5. Criminal Justice and Licensing (Scotland) Act 2010 and associated code of practice.
6. ONR Guidance on Complaints, Concerns and Whistleblowing
   NB. Guidance to inspectors is contained in Appendix 6 of Ref. 13
7. Work-related Deaths: A protocol for liaison (England and Wales)
8. Work-related Deaths Protocol: Practical guide (England and Wales)
9. Work-related Deaths: A protocol for liaison (Scotland)
10. ONR-DOC-TEMP-098 ONR Decision Record Form
11. ONR-FIN-GD-008 - ONR Investigation and Prosecution process – Finance Arrangements
    Rev 0 August 2018.
12. ONR-DOC-TEMP-101 ONR Schedule of Material
13. ONR-INS-P-064 Revision 2 General Inspection Guide
14. ONR-DOC-TEMP-102 ONR Combined Investigation and Prosecution Report
15. ONR-GEN-GD-010 - Guide to Collecting and Exhibiting Material as Evidence
17. ONR-DOC-TEMP-100 Additional Template for Scottish Investigations To Be Used For
    Procurator Fiscal Submissions
18. ONR-DOC-TEMP-099 ONR Key Decision Log
20. The Human Rights Act 1988
21. HOW2 Regulatory Issues Management Process
22. HSE Enforcement Guide (England and Wales)
23. HSE Enforcement Guide (Scotland)

IMPORTANT NOTE:

Inspectors are advised to always seek the latest legal publications from Westlaw or
Redgrave’s Online or by liaison with the ONR Legal Advisory Service, the links above are
correct at publication but should be regarded as for information only.
10. TABLES

### TABLE 1: STEP 1 “RECEIVE NOTIFICATION AND ACT UPON”

**For All notifications**

A warranted inspector must decide whether sufficient information is available to determine if the relevant ONR investigation criteria detailed in tables 2-4 have the potential to be met. If it is clear that the investigation criteria are NOT met, then this decision must be recorded by the inspector.

All decisions must be appropriately recorded.

If there is insufficient information to make an informed decision, then preliminary enquiries should be undertaken to allow this.

If it is clear that the investigation criteria are met then preliminary enquiries may not be required and the inspector can progress straight to completion of part A of the IDR, having informed the relevant delivery lead in advance.

<table>
<thead>
<tr>
<th>Input (Means of Notification)</th>
<th>Output</th>
</tr>
</thead>
<tbody>
<tr>
<td>INF1 or telephone notification of incident or event</td>
<td>For INF1s the decision not to undertake preliminary enquiries should be recorded within the INF1 part B and for telephone notifications this should be recorded within a contact report or intervention record.</td>
</tr>
<tr>
<td>Incident or event Notification to CNS</td>
<td>As described for INF1 or telephone notification.</td>
</tr>
<tr>
<td>Receive transport related incident or event for non-licensee</td>
<td>As described for INF1 or telephone notification.</td>
</tr>
<tr>
<td>Event Report Under RIDDOR</td>
<td>As described for INF1 or telephone notification with the exception that, if it is clear that the investigation criteria are NOT met, the decision may be recorded by the CHS inspector in an email. The email is normally sent to the relevant nuclear safety site inspector to ensure that there are no other safety issues which could change this decision. The emails are filed to serve as a formal record of the decision.</td>
</tr>
<tr>
<td>Duty Holder has a significant event resulting in RCIS set-up</td>
<td>As described for INF1 or telephone notification with the inspector being identified by the relevant Delivery Lead in consultation with the RCIS Director.</td>
</tr>
<tr>
<td>Concern/Whistle Blowing received regarding a duty holder</td>
<td>As described for INF1 or telephone notification with the inspector being appointed by the relevant Delivery Lead in consultation with the CEO’s Private Office or ONR Policy lead on Concerns. If the concern/whistle blowing notification has not come via the ONR Enquiries email route, the CEO’s Private Office (for Whistleblowing) or ONR Policy (for Concerns) must be informed of the notification, and kept appraised of subsequent progress and developments.</td>
</tr>
<tr>
<td>Matter identified during inspection and/ or assessment activities</td>
<td>As described for INF1 or telephone notification.</td>
</tr>
<tr>
<td>Matter reported to ONR by another regulator</td>
<td>As described for INF1 or telephone notification. If the matter reported might reasonably considered to be a Concern or Whistle Blowing then the relevant table entry above applies.</td>
</tr>
</tbody>
</table>
TABLE 2: ONR NUCLEAR AND RADIOLOGICAL INCIDENT/EVENT INVESTIGATION SELECTION CRITERIA

The paragraphs below set out the criteria for matters that should be considered for potential investigation. Matters that only satisfy Criterion 1 or which could potentially satisfy Criterion 2 or 3 should be subject to preliminary enquiries unless it is obvious from the nature of the event/incident that an investigation is warranted without the need for preliminary enquiries.

The selection criteria to be used for making an informed judgement as to whether an investigation is warranted are Criteria 2 and 3.

Criterion 1: All incidents or events that:

- Are rated at Level 1 or above on the INES scale, whether deemed provisional or final; or

Criterion 2: Any incident or event; where it is immediately evident or where preliminary enquiries of the surrounding circumstances reveal that:

- There appears to be a significant challenge, or potentially significant challenge, to nuclear safety;
- It appears there was, or could have been a significant breach of nuclear site licence conditions or a relevant statutory provision;
- There has been, or there was potential for, a release of radioactivity above, or that approached, the statutory reporting limits;
- There has been, or there was potential for a dose to an individual or group above, or that approached, the statutory dose limits;
- The duty holder had acted knowingly in not taking conservative action;
- There have been a number of incidents or events that have the same apparent cause;
- For transport related incidents or events (involving Class 7 radioactive material): a significant breach of any condition or restriction attached to any approval, derogation or other authorisation issued by the Transport Competent Authority.

Criterion 3: Incidents or events that do not fall within the above criteria, but could reasonably give rise to public concern. All concerns / whistleblowing relating to matters that ONR regulates (or would have regulated prior to vesting in 2014, when part of HSE) fall under this criterion.
TABLE 3 : ONR CONVENTIONAL HEALTH AND SAFETY INCIDENT SELECTION CRITERIA

Drawn from the HSE Revised Incident Selection Criteria (2014)

Criteria for selection for investigation of notified work-related accidents, ill-health and dangerous occurrences

**Scope:** The following criteria apply to all relevant incident or events notified to ONR, and are aligned to those for other enforcing authorities. Predominantly, notification will be via RIDDOR reports, but the criteria remain relevant for notifications received via other means (e.g. contact by emergency services).

1. **Fatalities (Work-related deaths):**
   - All work-related accidents which result in the death of any person, including non-workers. “Accident” specifically excludes suicides* and deaths from natural causes.
   - Other deaths arising from a preventable work-related cause,* where there is a likelihood of a serious breach of health and safety law, and where it is appropriate for ONR to investigate.

   *Note that in such circumstances ONR will continue to apply the HSE guidance on the application of HSWA section 3.

2. **All work-related accidents resulting in a “Specified Injury” [RIDDOR Reg. 4(1)] to any person, including non-workers, that meet any of the following conditions:**
   - Serious multiple fractures (more than one bone), not including wrist or ankle;
   - All amputations other than amputation of digit(s) above the first joint (e.g. fingertip);
   - Permanent blinding in one or both eyes;
   - Crush injuries leading to internal organ damage, e.g. ruptured spleen;
   - Any burn injury (including scalding) which covers more than 10% of the surface area of the body or causes significant damage to the eyes, respiratory system or vital organs;
   - Any degree of scalping requiring hospital treatment;
   - Loss of consciousness caused by head injury or asphyxia;
   - Any injury arising from working in an enclosed space which leads to hypothermia or heat induced illness, or requires resuscitation or hospital admittance for more than 24 hours.

3. **Cases of Occupational Disease:**

The following notifications of cases of occupational disease, other than those arising from circumstances or situations which have already been investigated:

   a. All reports of cases of occupational disease which are reportable under RIDDOR Regulations 8 & 9, specifically:
      i. Carpal Tunnel Syndrome,
      ii. Cramp in the hand or forearm,
      iii. Occupational dermatitis,
TABLE 3: ONR CONVENTIONAL HEALTH AND SAFETY INCIDENT SELECTION CRITERIA

| iv. | Hand Arm Vibration Syndrome, |
| v.  | Occupational asthma, |
| vi. | Tendonitis or tenosynovitis in the arm or forearm, |
| vii. | Any cancer attributed to an occupational exposure to a known human carcinogen or mutagen, |
| viii. | Any disease attributed to an occupational exposure to a biological agent. |

b. Other reports of cases of occupational disease with the potential to cause death or a “serious health effect” as defined in the Enforcement Management Model (EMM), and which arise from working practices that are likely to be ongoing at the time the report is made.

4. Incidents which indicate a likelihood of a serious breach of health and safety law:

This includes any incidents considered liable to give rise to serious public concern, where, from the facts known, the application of the EMM would give rise to an initial enforcement expectation of a notice or a prosecution.

5. Major hazard precursor events:

All relevant precursor events should be considered for potential investigation using the following selection criteria:

- Incidents or events that result in or have the potential for significant releases of dangerous substances.
- Incidents or events that could be precursors to major incidents.
- Incidents or events that indicate that duty holders are not adequately controlling major hazards.

The range of potential precursor events covered by these criteria is broad and it is important that the criteria are not limiting, allowing the significance of each event to be judged based on its individual circumstances and characteristics.

6. Incidents or events that do not fall within the above criteria, but could reasonably give rise to public concern. All concerns / whistleblowing relating to matters that ONR regulates (or would have regulated prior to vesting in 2014, when part of HSE) fall under this criterion.
The paragraphs below set out the criteria for security matters that should be considered for potential investigation. Matters that only satisfy Criterion 1 or which could potentially satisfy Criterion 2 or 3 should be subject to preliminary enquiries unless it is obvious from the nature of the incident/event that an investigation is warranted without the need for preliminary enquiries.

The selection criteria to be used for making an informed judgement as to whether an investigation is warranted are Criteria 2 and 3.

**Criterion 1:** All incidents or events that:

- Indicate a significant breach of NISR 2003 (as amended); or
- Are assessed by the duty holder or ONR to have an initial estimate of significance of Major*; or
- Are deemed to meet the Ministerial Reporting Criteria.

**Criterion 2:** Any incident or event where it is immediately evident or where preliminary enquiries of the surrounding circumstances reveal that:

- There has been a significant departure from approved security arrangements; or
- There has been, or there was potential for, theft of NM/ORM or any sabotage to assets on the site; or
- Where there have been a number of incidents or events that have the same apparent cause.

**Criterion 3:** Incident or events that do not fall within the above criteria but could reasonably give rise to public concern. All concerns / whistleblowing relating to matters that ONR regulates (or would have regulated prior to vesting in 2014, when part of HSE) fall under this criterion.

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**Major** – Total loss of defence in depth resulting in high risk to site, or where malicious acts have been carried out against the site. Typical examples include:

- Site incursion with intent to disrupt or cause damage.
- Any sabotage to assets on site.
- Any theft of NM/ORM or confirmed compromise of SNI.
- Total loss of Security Management System for periods in excess of four hours.
APPENDIX 1: BACKGROUND ON LEGAL FRAMEWORK FOR INVESTIGATIONS

A1.1 This Appendix provides an overview of the legal framework for conducting investigations.

A1.2 In making adequate arrangements to carry out our duties as an enforcing authority conducting investigations, relevant Administrative Law underpinning this process and their associated codes of practice have been applied. In England and Wales there are two pieces of relevant legislation, namely the Criminal Procedure and Investigations Act 1996 (CPIA) (Ref. 3) and the Police and Criminal Evidence Act 1984 (PACE) (Ref. 4). In Scotland the Criminal Justice and Licensing (Scotland) Act 2010 (Ref. 5) applies.

A1.3 The HSE Enforcement Guides (Refs 22 & 23) provide detailed legal guidance and these should be followed in conjunction with the relevant ONR guidance (this guide, Refs 15 & 16) during ONR investigations.

A1.4 PACE provides a framework for the legal exercising of powers, including identification and dealing with suspects and taking of statements. Working according to PACE ensures that those suspected of a crime know what they are being suspected of, are treated fairly and consistently and ensures their right to a fair and just trial.

A1.5 The CPIA Code of Practice applies only to police officers. However, other investigators (including ONR inspectors) are required to “have regard” to any relevant provisions of it. The Code of Practice preamble states that ‘It sets out the manner in which police officers are to record, retain and reveal to the prosecutor material obtained in a criminal investigation and which may be relevant to the investigation, and related matters’.

A1.6 Further important points from the CPIA Code are summarised below [See also Main Guidance paras 2.1 and 2.2.]. The list is not exhaustive. Consequently, those involved in ONR investigations should read the Code to be familiar with relevant provisions:

- In conducting an investigation, the investigator should pursue all reasonable lines of inquiry, whether these point towards or away from the suspect. What is reasonable in each case will depend on the particular circumstances.
- During the investigation, a range of material will be obtained and some generated. Material is material of any kind, including information and objects, which is obtained or inspected in the course of a criminal investigation and which may be relevant to the investigation. This includes not only material coming into the possession of the investigator (such as documents seized in the course of searching premises) but also material generated by themselves (such as interview and notebook records);
- Material may be relevant to an investigation if it appears to an investigator, or to the disclosure officer, that it has some bearing on any matter under investigation or any person being investigated, or on the surrounding circumstances of the case, unless it is incapable of having any impact on the case;
- Duties in relation to retaining material need to be kept in mind during all stages of the investigation;
- Negative information is often relevant to an investigation. If it may be relevant it must be recorded. An example may be a number of people present in a particular place at a particular time who state that they saw nothing unusual.
Where information which may be relevant is obtained, it must be recorded at the time it is obtained or as soon as practicable after that time.

A1.7 Whilst the legal disclosure process does not take place until after the investigation process is complete, requirements associated with disclosure do have a bearing on how investigation material is collected and recorded. The role of disclosure officer is defined in section 2 of this guide in line with the CPIA Code of Practice. Their role is to examine material retained during the investigation and to propose what material is to be disclosed subsequent to the investigation being completed. The final decision on disclosure will generally be taken by the solicitor agent (e.g. Lawyer) following discussion with the disclosure officer and prosecuting counsel (e.g. Barrister). Consequently, investigators need to bear this in mind whilst obtaining and generating investigation material and associated communications and need to be aware of the disclosure guidelines produced by the Attorney General (Ref. 24). The guidelines state a “golden rule” that fairness requires full disclosure should be made of all material held by the prosecution that weakens its case or strengthens that of defence.

A1.8 For Scotland a Code of Practice (Ref. 5) has been issued under part VI of the Criminal Justice and Licensing (Scotland) Act 2010 (“the Act”) and provides guidance in relation to the disclosure of evidence in criminal proceedings. Under Section 164 of the Act, police forces, prosecutors and other investigating agencies, as prescribed by regulations, must have regard to the code in carrying out their functions in relation to the investigation.
APPENDIX 2 – INVESTIGATION PROCESS FLOWCHART FOR STEPS 3 AND 4

Continued from previous page

Delivery Lead agrees Investigation Resource

Lead Investigator sets objectives and plans investigation

Conduct Investigation

Consider requirement for any enforcement to bring back duty holder into compliance (EPS & EMM)

Monthly Review between Lead Investigator & Approval Officer

Approval Officer records decision on IDR part C

Enforcement recommendation

Consider requirement for any enforcement to bring back duty holder into compliance (EPS & EMM)

Continue Investigation?

Yes

Lead Investigator completes Parts A, B & all of Part C of Investigation & Prosecution Report and EDR

Lead Investigator Recommends Prosecution

Yes

Lead Investigator completes Parts A, B, C10 & C11 of Investigation & Prosecution Report and EDR

Approval Officer completes all of Part D of Investigation & Prosecution Report and IDR part C

Enforcement decision

Yes

Approval Officer completes relevant sections of Part D of Investigation & Prosecution Report and IDR part C

Lead Investigator updates previous completed finance form (App 1 to ONR-FIN-FD-008) and produces draft DWP statement of Requirements

Approval Officer makes decision to prosecute

Yes

Lead Investigator/Approval Officer communicates outcome to interested parties (see para. 8.19)

Lead Investigator Follows up Actions (e.g. IN, Enforcement Letter, Regulatory Issues)

End of Investigation

No

Lead Investigator/Approval Officer communicates outcome to interested parties (see para. 8.19)

No

Enforcement decision

Proceed to Prosecution

End of Investigation Process

Lead Investigator Follows up Actions (e.g. IN, Enforcement Letter, Regulatory Issues)

Lead Investigator/Approval Officer communicates outcome to interested parties (see para. 8.19)

Lead Investigator completes Parts A, B & all of Part C of Investigation & Prosecution Report and EDR

Approval Officer completes relevant sections of Part D of Investigation & Prosecution Report and IDR part C

Lead Investigator updates previous completed finance form (App 1 to ONR-FIN-FD-008) and produces draft DWP statement of Requirements
APPENDIX 3 – ASPECTS TO BEAR IN MIND DURING PRELIMINARY ENQUIRIES

A3.1 During preliminary enquiries, it is crucial not to compromise any subsequent investigation that may take place. Aspects to bear in mind include ensuring:

- Independence from any duty holder investigation being conducting in parallel until a decision has been made by the decision maker on whether an ONR investigation is warranted.
- Compliance with the requirements for the collection and preservation of material that may be used in evidence in a timely and admissible form.
- Confidentiality, to avoid compromising the integrity of a subsequent investigation.
- Avoidance of seeking information from people that could potentially be suspected of having committed an offence under relevant legislation. Guidance is provided in the HSE Enforcement Guide (England and Wales), (Ref. 22), and HSE Enforcement Guide (Scotland), (Ref. 23).
- That a suitable record is made in the inspector's notebook of material gathered during the preliminary enquiries and decisions taken. Guidance on notebook discipline is contained in the ONR General Inspection Guide (Ref. 13).
- That records relating to preliminary enquiries are potentially disclosable.
- That the inspector considers whether to engage with other agencies. There are Memoranda of Understanding (MoU) (available on HOW2) with other agencies and supporting guidance that indicate when such engagement is required. This should be done at the earliest opportunity to ensure both organisations share data, information and intelligence, that we work together effectively during the response and to allow a joint or coordinated investigation to be organised if appropriate. This may well be relevant for an event, incident or accident with reasonable potential for significant public and media interest, and/or with potential consequences to matters regulated by the other agencies.
- That the inspector considers the need under HSWA s.20(2)(e) and TEA (Part 3, Schedule 8 Paragraph 14) to issue a formal notice to leave an item or area undisturbed for so long as is reasonably necessary for the purpose of investigating. Circumstances where this may be appropriate include matters that are potentially very serious or where the inspector is not certain that a duty holder will comply with an informal arrangement to leave an item or area undisturbed. When considering such action the inspector will need to bear in mind whether the requirement to leave undisturbed will have a significant detrimental impact on operational safety/security. Likewise, if an inspector is considering under HSWA s.20(2)(i) or TEA (Part 3, Schedule 8, Paragraph 12) whether to take into possession any article or substance, they will need to bear in mind the guidance for Step 4.4 on collecting material.
## APPENDIX 4: INVESTIGATION DECISION RECORD

<table>
<thead>
<tr>
<th>TRIM Ref:</th>
<th>Unique IDR Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>…………………</td>
<td>…………………</td>
</tr>
</tbody>
</table>

(Contact the CNI Office to obtain a new unique number for each decision record)

### INVESTIGATION DECISION RECORD (IDR)

<table>
<thead>
<tr>
<th>PART A – (completed by ONR Inspector undertaking preliminary enquiries)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title:</td>
</tr>
<tr>
<td>Site:</td>
</tr>
<tr>
<td>Summary of preliminary enquiries:</td>
</tr>
<tr>
<td>How criteria have been satisfied:</td>
</tr>
<tr>
<td>Inspector’s recommendation and supporting rationale:</td>
</tr>
<tr>
<td>Inspector making Recommendation</td>
</tr>
<tr>
<td>Print Name:</td>
</tr>
<tr>
<td>Date:</td>
</tr>
</tbody>
</table>
### Investigation Decision and Supporting Rationale

**PART B** *(completed by Decision Maker)*

**Decision maker’s investigation decision and supporting rationale:**

<table>
<thead>
<tr>
<th>Authorisation given to proceed with investigation?</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Print Name:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Signature:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Investigation Outcome

**PART C** *(completed by Approval Officer)*

**Approval Officer gives rationale for early termination of investigation or references out to the completed investigation and prosecution report:**

<table>
<thead>
<tr>
<th>Decision made to Proceed with Prosecution?</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Print Name:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Signature:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
APPENDIX 5: KEY DECISION LOGS (KDLs)

A5.1 This Appendix provides some background information on the use of Key Decision Logs. A template is provided in Reference 18.

What is a key decision log?

A5.2 A Key Decision Log (KDL) is a contemporaneous record of the key decisions that affect the course of an investigation and the reasons for those decisions. A KDL is not a diary of the actions taken, nor is it meant to substitute for an investigation notebook, which should be maintained separately. It is essential that only one KDL be maintained per investigation to ensure a coordinated investigation strategy and overall management control.

What to record

A5.3 The KDL is not intended to capture every decision made during an investigation. Key decisions are the decisions taken in the management of an investigation that materially affect the course of the investigation. Key decisions are likely to be made on the following issues (this list is not exhaustive):

- Liaison with emergency services or other enforcing authorities.
- Liaison with duty holder management/control.
- Primacy under work-related death protocol.
- Involvement of specialist(s) and/or independent expert(s).
- Determining lines of enquiry.
- Media strategy.
- Instructions given to the duty holder.
- Health and safety implications e.g. immediate danger, prevention of further harm.
- Preservation of evidence.
- Resource allocation/withdrawal.
- Witness evidence, witness identification, vulnerable witnesses, interview strategy.
- Interpreters and translators.
- Suspect identification, unsolicited comments, interview strategy.
- The obtaining of investigation material.
- Prioritisation of actions and lines of enquiry.
- Contact with the bereaved family.
- Issue of notices.

A5.4 Where decisions are made by other investigators, the lead investigator should still enter and sign the Key Decision Log. The investigator making the decision should also sign the entry.

A5.5 For large investigations, it is important to hold review meetings, for example end of day team meetings, to ensure that all key decisions with attendant reasons are accurately recorded. The log belongs to the investigation and needs to be available to the investigation team but care should be taken regarding access where sensitive issues are dealt with. It is equally important to record the decisions and reasons for not doing something as it is for doing something, as well as recording any changes or retractions of previous decisions.
Rationale for KDLs

A5.6 KDLs will help investigators to demonstrate that all reasonable lines of enquiry have been followed, and will provide transparent justification for not following or for discontinuing lines of enquiry.

A5.7 Whilst an investigation is ongoing, the KDL will assist in the management of the investigation by helping to structure the thoughts of the lead investigator, and will help in the monitoring and review of the investigation as described in Step 4.5 of the investigation process.

A5.8 The KDL should enhance communication with all those involved in the investigation, especially following staff changes, helping them to be clear about the direction and priorities of the investigation.

A5.9 Recording the rationale behind decisions at the time they were made can help explain why they were correct in the circumstances and on the basis of the information available at the time, and without the benefit of hindsight. This will assist in assuring third parties that a logical decision making process was followed, and why decisions or the course of the investigation were changed in the light of developing information and events.

A5.10 Investigation decisions may be challenged several years after they were taken, for example during legal proceedings. Such challenges can be difficult to defend without contemporaneous records of the underlying basis and rationale.

A5.11 KDLs also provide accountability and transparency in justifying decisions, including those about resourcing of relative priorities, and task allocation between investigators.