



ONR Guide			
<b>NON-STATUTORY ENFORCEMENT OF THE MINISTRY OF DEFENCE AS A CROWN BODY</b>			
<b>Document Type:</b>	Enforcement Guide		
<b>Unique Document ID and Revision No:</b>	ONR-ENF-GD-009		
<b>Date Issued:</b>	December 2019	<b>Review Date:</b>	December 2022
<b>Prepared by:</b>	A Hillery	Principal Inspector	
<b>Approved by:</b>	D Urquhart	Deputy Chief Nuclear Inspector	
<b>Record Reference:</b>	CM9 Folder 2.5.464. (2019/98236)		
<b>Revision commentary:</b>	<p>This is a new Guide that has resulted from commitments made in the first MOD – ONR General Agreement (GA). It outlines the process for non-statutory enforcement of safety requirements by ONR of the Ministry of Defence (MOD) as a duty-holder. The MOD, is a Crown body, and as such is immune from legal sanction for non-compliance with legal duties. The Guide also reflects arrangements made for ONR’s access to Defence Nuclear Programme (DNP) sites for inspection and investigations. MOD has been consulted on and has accepted the general approach outlined in this Guide.</p>		

### TABLE OF CONTENTS

1. INTRODUCTION AND BACKGROUND.....	2
2. PURPOSE AND SCOPE .....	2
3. MOD AS A CROWN BODY .....	3
4. CROWN ENFORCEMENT NOTICES.....	3
5. CROWN CENSURES .....	4
6. THE CENSURE REPORT AND HEARING .....	5
7. INDIVIDUAL CROWN SERVANTS.....	7
8. ONR ACCESS TO MOD DNP SITES FOR INSPECTION AND INVESTIGATION.....	7
REFERENCES .....	10
APPENDIX 1 – IMPROVEMENT NOTICE FOR CROWN EMPLOYERS (LP51) .....	11
APPENDIX 2 – CROWN NOTICE THAT WORK SHOULD BE STOPPED (LP52) .....	13
APPENDIX 3 – TEMPLATE LETTER OF ONR’S INTENTION TO CENSURE THE MOD .....	14
FIGURE 1 – ILLUSTRATIVE FLOWCHART FOR CROWN ENFORCEMENT.....	16

© Office for Nuclear Regulation, 2019

## **1. INTRODUCTION AND BACKGROUND**

- 1.1 ONR, through the Energy Act 2013 (TEA), is the principal enforcing authority for regulating Great Britain nuclear sites that form an integral part to the UK's Defence Nuclear Programme (DNP); under the auspices of the Ministry of Defence (MOD). In addition, ONR is the enforcing authority on the MOD Authorised sites for the Health & Safety at Work Act (HASWA), its relevant statutory provisions (RSP) and other relevant health and safety legislation. In relation to activities at the Submarine Operational Berths (also termed Nuclear Warship Sites), ONR is the enforcing authority for the Ionising Radiations Regulations 2017 (IRR17) and the Radiation (Emergency Preparedness and Public Information) Regulations 2019 (REPPiR'19) only. Further information on aspects of regulating the DNP sites is available in another ONR Guide (Ref: 1).
- 1.2 Non-statutory enforcement procedures were introduced for Crown bodies in 1978. In 2001 the Cabinet Office provided further guidance in the form of an information note (Ref: 2) outlining, in broad terms, enforcement procedures for Crown bodies such as the MOD. Whilst legal enforcement notices or court proceedings may not be taken against the MOD, this document sets out equivalent administrative arrangements, which are non-statutory, but should enable ONR to sanction the MOD for significant failures to comply with its legal duties. Hereinafter all references to the Crown in this document are considered to apply to the MOD, but could also be applicable to other Crown bodies that ONR may need to regulate in future, by agreement
- 1.3 With the conclusion of the first MOD – ONR General Agreement (GA) (Ref: 3), it became necessary for ONR to set out its own arrangements for inspection, investigation and non-statutory enforcement of MOD, which has the status of a Crown body. Prior to publishing this document the MOD and the Health & Safety Executive (HSE) agreed to arrangements for inspection, investigation and enforcement on MOD premises, and ONR and its predecessor organisations had access to use these arrangements on DNP sites. However, after the vesting of ONR and becoming a statutory body, ONR needs to have its own non-statutory enforcement procedures. This guide draws on the above processes and the arrangements outlined are not significantly different to those already familiar to MOD. The MOD is the only Crown body that ONR currently has any regulatory responsibility for.
- 1.4 Although the provisions and legal duties of HASWA and aspects of TEA apply to the MOD, including its departments and agencies, Crown bodies have immunity from statutory enforcement by ONR by virtue of HASWA s.48(1), and TEA, Section 111, respectively. Annex A provides supplementary information on the MOD as a duty-holder under both TEA and HASWA.

## **2. PURPOSE AND SCOPE**

- 2.1 This document sets out the circumstances and outlines guidance to be followed in the event that the MOD does not comply with the law on one of the DNP sites, and as a result ONR wishes to take non-statutory enforcement action to sanction MOD and to gain improvements to safety. It also contains information and guidance related to inspections and investigations undertaken by ONR as envisaged in the GA, and which may lead to initiating non-statutory enforcement against the MOD. Such enforcement would be through a Crown censure, or issuing a Crown enforcement notice i.e. Crown Improvement or Prohibition Notice (akin to those described in Section 21 and 22 of HASWA, and Schedule 8 of TEA). These enforcement tools should be used where, but for MOD's Crown immunity, there would have been sufficient evidence to provide a realistic prospect of conviction in the courts, or to defend an appeal in an Employment

Tribunal. ONR has consulted with MOD, and both organisations have agreed to the arrangements outlined herein (Ref.4).

### **3. MOD AS A CROWN BODY**

- 3.1 The Secretary of State (SofS) for Defence is responsible to Parliament for the safety of the DNP. The SofS responsibilities flow down through the MOD structure and MOD is committed to complying with all relevant health, safety and environmental legislation unless specific exemptions apply. If exemptions are in place, it is SofS's policy to apply standards and arrangements that produce outcomes that are, so far as is reasonably practicable, at least as good as those required by UK legislation. Whilst it is acknowledged by MOD that formal enforcement action may not be taken against it, the GA recognises that ONR inspectors may exercise their powers of inspection and investigation and to undertake enforcement activities.
- 3.2 ONR should make decisions on the inspection of MOD, and any subsequent enforcement action, using the same criteria as for non-Crown employers. ONR inspectors seek to ensure that the law is complied with and that Crown employers meet established standards of nuclear and conventional safety and apply relevant good practice. ONR inspectors act in accordance with the principles included in our enforcement policy and associated enforcement management arrangements, which are available on the ONR website.

### **4. CROWN ENFORCEMENT NOTICES**

- 4.1 Crown notices are the non-statutory equivalent of Improvement and Prohibition notices. The Crown equivalent to a Prohibition Notice (PN) is titled: 'Notice that work should be stopped'. ONR templates of both types of notice can be found at Appendices 1 and 2 (ONR LP51 and ONR LP52); together with a Schedule that may be used with either type of notice. Crown notices are not legally binding and the Crown cannot be prosecuted for not complying with these notices, however failure to comply with a Crown notice may lead to a Crown Censure. This position is reflected in the text contained within the body of the notice templates.
- 4.2 If an ONR inspector intends to issue a Crown enforcement notice to MOD, the inspector will discuss the contents of the notice with the MOD and, if possible resolve points of difference before issuing it. The notice should identify what needs to be done, why, and by when. Crown prohibition/stop notices include an explanation of why remedial action is necessary. Inspectors should not issue a Crown Improvement Notice (IN) on the day but should consult with the responsible ONR Superintending Inspector to discuss if it is appropriate, and the inspector should complete an EMM1 form and produce a project assessment report justifying their decision, prior to issuing the notice.
- 4.3 Where possible, prior to issuing the Crown notice, inspectors should contact the ONR Communications team to assist in the production of a plan and relevant information for communicating the proposed action more widely. ONR Communications team should share relevant information with their counterparts in MOD so they are made aware of the situation to allow them to prepare for any stakeholder interest or enquiries.
- 4.4 Crown notices should be issued to the MOD as a Crown body and not to individuals. However, inspectors should keep employees and other employee representatives informed of matters affecting health and safety, including any enforcement action proposed or taken (section 28(8) HASWA, Schedule 8 Part 4 of TEA refers).

- 4.5 When considering whether to issue a Crown enforcement notice to MOD, inspectors should take the same approach, and follow the same procedures, as for statutory improvement and prohibition notices (Ref 5). A copy of the notice should be given to the safety representative or other appropriate employee representative.
- 4.6 In order to keep the procedures as similar as possible to those in place for statutory notices the date provided to MOD for compliance with a Crown improvement notice should not be less than 21 days from the date it is served. However, the period of time allowed for completing any remedial work should be no more generous than for a licensee or other duty holder regulated by ONR; notices should reflect the same sense of urgency. MOD may request an extension to the time in which to comply with the notice, they should apply for any extension before the notice due date expires. They may also request the withdrawal of a Crown improvement notice, in which case the request should be dealt with in the same way as for a comparable statutory notice.
- 4.7 There is no process by which the MOD can appeal against a Crown notice to an employment tribunal. If MOD considers that it has grounds to challenge a Crown notice, it may appeal to the ONR investigating inspector's Deputy Chief Inspector and, ultimately, to ONR's Chief Nuclear Inspector.
- 4.8 Information about Crown notices will normally be published on ONR's website, with sufficient detail to explain why the notice was deemed appropriate. ONR will normally include information from the front page of the notice in question, but will consult with MOD for its agreement before publication, in case such disclosure would adversely affect national defence interests.

## **5. CROWN CENSURES**

- 5.1 Whilst proceedings may not be taken against the Crown, an administrative procedure known as Censuring the Crown has been developed for use in circumstances where it is ONR's opinion that, but for Crown immunity, there would have been sufficient evidence to provide a realistic prospect of conviction in the courts. The Crown Prosecution Service (CPS) Code for Crown Prosecutors describes the standard to be met to have a realistic prospect of conviction in England and Wales. In Scotland normally the decision to take a prosecution would not be made by ONR but by the Procurator Fiscal. Nevertheless ONR will apply the same approach to non-statutory enforcement across all DNP sites in line with its statutory enforcement policy and processes. Circumstances that could lead to Censure of the Crown would include a failure to comply with a Crown enforcement notice in the time allowed.
- 5.2 In the case of proposed Crown Censures of MOD, at the conclusion of the formal investigation phase, any breaches identified (and by which duty-holder within MOD) will be discussed in a meeting with the relevant MOD senior officials. This meeting will be facilitated by the investigating inspector providing a summary of the facts of the case and the alleged breaches of legislation for the MOD to consider prior to the meeting. If MOD subsequently disputes some or all of the ONR's representations or the facts then the MOD officials and the investigating inspector should attempt to resolve them – which may require a further meeting. This procedure is slightly different to that set out by the Cabinet Office in Reference: 2, but both ONR and MOD agree that it is advisable to clarify or resolve any Censure related evidence or Censure process issues prior to commencement of a formal Censure. In addition legal advice should be sought within ONR to provide further validation to the strength of the case being made to invoke a Censure.
- 5.3 Once the Crown Censure details have been finalised with MOD and formally approved within ONR, the ONR investigating inspector will initiate a formal meeting ('hearing') by writing to the relevant MOD Top Level Budget Holder (TLBH) or Chief Executive in the letter format outlined in Appendix 3, along with a copy of the Information(s) and a

summary of the evidence to the relevant MOD TLBH, and copied to the Defence Safety Authority (DSA). The inspector's written presentation on the facts of the case, photographs etc. should also be provided at this stage.

- 5.4 The flowchart contained in Figure 1 at the end of this document outlines the main stages of the Crown enforcement process.

## **6. THE CENSURE REPORT AND HEARING**

- 6.1 Where ONR considers that a failure to comply with the relevant statute for which it is the enforcing authority, and the failure to comply would normally justify prosecution through application of the ONR EMM process and the tests contained in the CPS Code for Crown Prosecutors (Ref: 6). ONR should first notify the site's senior MOD representative (e.g. Naval Base Commander, Ships Commander). This should be done in writing, stating that ONR intends to begin the Censure procedure. The lead investigating inspector should then initiate a formal meeting. This meeting will be known as a Censure hearing, and will be chaired by the ONR Deputy Chief Inspector (DCI), or their nominated representative, and be attended by a senior representative of the MOD.
- 6.2 Prior to writing to MOD an investigation report should have been prepared by the ONR investigating inspector justifying consideration of a Crown Censure and making recommendations in this respect (and / or prosecution of a civilian organisation and / or individual MOD or civilian duty holder). The formal investigation will be conducted in accordance with the ONR investigation process (Ref: 7); any recommendations should take account of the representations made by MOD and whether there would have been a realistic prospect of conviction (in line with the Code for Crown Prosecutors), in the circumstances of the case, had the matter been the subject of criminal proceedings. The investigation/prosecution report should follow the format and content prescribed in the ONR investigation report template (Ref: 8).. Independent legal oversight should be sought in cases involving a Censure and should also be considered for incidents or findings that result in Crown notices being issued and are likely to lead to significant media interest.
- 6.3 Copies of relevant material sufficient to support the proposed action by ONR should be provided to the relevant MOD senior responsible officer by the investigating inspector who should in turn inform other MOD officials as necessary. MOD should be asked to confirm availability and a mutually convenient time for the Censure hearing agreed from dates suggested by ONR. The relevant MOD counterpart should ensure that the relevant MOD senior official will attend to receive the censure and will provide the inspector with the text of the mitigating remarks to be made by the MOD for agreement. The aim is that there should be no material disagreements at the Censure hearing.
- 6.4 MOD should advise the relevant Minister of the forthcoming Censure hearing. Censure hearings should normally be held in one of ONR's offices.
- 6.5 Although a Censure of the Crown is not in any sense a trial, ONR will disclose relevant material in advance of the hearing of its 'case' in the same way as though to a non-Crown body which is called to hear facts against it at court. The MOD has the opportunity to provide a written response in advance of the hearing though ONR will not enter into any further correspondence about detail of the proposed hearing. No witnesses are called.
- 6.6 The Censure hearing should normally be chaired by the ONR Chief Nuclear Inspector (CNI) or their nominated representative; other inspectors should attend as required. MOD should be represented by the appropriate TLBH or Chief Executive and a representative of the MOD DSA may also attend. Attendance of other persons (e.g.

relevant safety representatives or the injured person) or relatives will be agreed between MOD and ONR beforehand, as necessary. ONR will either make contemporaneous notes of the hearing or by agreement make an audio-recording and, on its completion, produce an agreed note or audio-file that can be distributed more widely subject to any restrictions on the disclosure of information. The aim of the hearing is to seek acknowledgement of the safety issue, to formally hold MOD to account for its actions, and to obtain an undertaking from MOD to improve standards of health and safety.

- 6.7 ONR is responsible for inviting the relevant trade union or other safety representatives to observe the hearing, and will either do so directly or agree that the MOD should extend the invitation. In situations where public discussion of any aspects of an incident or possible breach of health and safety law would harm national security or defence, or refer to information that relates specifically to an individual (unless that individual has explicitly consented to such information being disclosed), or relate to any other circumstances where there is a prohibition on the disclosure of information under any enactment, rule of law or non-statutory code, consideration should be given to excluding trade union or other safety representatives from that part of the hearing. Subject to these same provisos, when ONR provides the MOD, at the hearing, with further information designed to clarify proceedings, such as diagrams or photographs, a copy of the information will also be given to observers.
- 6.8 To commence the Censure hearing the CNI (or their nominated representative) should outline the circumstances why crown censure of MOD is warranted. The ONR investigating inspectors(s) or a nominated representative should then present the facts and explain the circumstances surrounding the case and why it would justify prosecution, but for Crown immunity. This presentation will include appropriate reference to any victim personal statement. On completion of this presentation, the chair will invite the MOD representative to make mitigating remarks; these should include action that has been taken to remedy the circumstances that led to the offence and an acknowledgement that, were it not for Crown immunity, the matter would provide a realistic prospect of conviction in the courts. If however MOD officials do not accept there is sufficient evidence to have provided a realistic prospect of conviction ONR will invite them to make further representations for its review. If a review is required both parties should decide if this can be done through a short recess in the hearing, or the hearing needs to be suspended and re-convened at a later date. In either event this will take place prior to any publication related to the Censure being concluded. Where, despite representations from MOD, ONR remains confident that a decision to prosecute would have been justified, ONR's CNI should write as appropriate to the Permanent Secretary responsible for MOD, to seek agreement to recording the Censure.
- 6.9 The chair should then conclude the Censure hearing by formally recording that were it not for Crown immunity the matter would provide a realistic prospect of conviction in the courts.
- 6.10 ONR should consult with MOD on the contents of any proposed media release outlining the circumstances of the case and that a formal Censure has been recorded, before placing it on the ONR website. This consultation is to ensure that any aspects of national security or defence are not compromised.
- 6.11 MOD should advise their Minister on conclusion of the Censure. A record of the Censure will then be entered onto ONR enforcement records and uploaded onto ONR's website. MOD should ensure that any lessons identified from the investigation are learned and appropriately communicated throughout MOD and reference to these and the Censure are made in its relevant annual reports.

## 7. INDIVIDUAL CROWN SERVANTS

- 7.1 Under section 48 of HASWA and section 111 of TEA, persons in the service of the Crown may be prosecuted for health and safety offences, and, if convicted, fined, or for certain offences imprisoned. Managers, as well as other employees who are personally culpable, should not escape prosecution simply because they are Crown servants. ONR provides assurance that an individual Crown servant would be prosecuted only in the same circumstances as an individual in non-Crown employment, for example where there was wilful or reckless disregard of health and safety requirements. There is no question of individuals being prosecuted in substitution for the Crown body, or for honest mistakes, or because of systemic management or organisational failings. It is therefore highly unlikely that Crown servants would be prosecuted except, for example, through a deliberate act, or omission by them, which imperilled their own safety, or the safety of others.

## 8. ONR ACCESS TO MOD DNP SITES FOR INSPECTION AND INVESTIGATION

- 8.1 The identification of non-compliances with safety requirements that could potentially lead to non-statutory enforcement action against the MOD may arise as a result of ONR inspections, or incidents that come to the attention of ONR, that then lead to further investigations into their circumstances. Any identified shortfalls on MOD DNP sites should be dealt with by ONR in the same manner as if they had occurred on a civil nuclear site.
- 8.2 This section also sets out some general expectations for ONR and MOD during regulatory inspections and investigation. It describes in general the arrangements that ONR and MOD should normally follow in granting access to and arranging for inspections and/or investigations on MOD operated nuclear sites. The arrangements should facilitate such inspections or investigations, recognising the statutory right of ONR to carry them out in all areas covered by TEA and HASWA. However these arrangements may not apply to joint investigations with the police under the Work-related Deaths Protocol (WRDP). Any difficulties in the application of this guidance should be referred through the normal communication channels between ONR and MOD as outlined in the GA.
- 8.3 Inspections by ONR are for the purpose of discharging its functions as the regulatory authority and in practice may be broadly classified as follows:
- a. Planned inspections as part of ONR's annual inspection programmes; these might vary from a half day visit by a single inspector to a team inspection over a number of days. Substantial initiatives planned by ONR will be brought to the attention of the relevant MOD Commanding Officer (CO) / Head of Establishment (HoE).
  - b. Reactive investigations responding, for example, to an accident, incident or a complaint. Although the accident and ill health reporting requirements of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) do not apply to MOD service personnel or visiting forces on duty in Great Britain, MOD has committed, through the GA, to report incidents to ONR in accordance with the requirements of any applicable legislation. In addition ONR inspectors may become aware of incidents on the site through other channels and decide to investigate using their statutory powers under TEA or HASWA.
  - c. Inspections for special purposes, for example, to seek information on a specific health or safety topic.

The principles described in this guide should be followed wherever possible, recognising that reactive investigations may require a more urgent response.

- 8.4 When visiting any MOD establishment ONR inspectors should normally aim to visit by appointment, although MOD should be aware of the powers of access conferred on inspectors by virtue of their ONR warrant. The nominated ONR nuclear safety inspector will normally hold a site access pass and would normally coordinate with the establishment if ONR proposes a substantial inspection or investigation. The CO/HoE should at this stage indicate to the inspector any areas or activities subject to special arrangements for particularly sensitive activities, if appropriate.

### **INVESTIGATIONS BY ONR**

- 8.5 On receipt of information concerning an incident or other finding that may meet ONR's investigation criteria, the relevant ONR site inspector or the Superintending Inspector may initiate preliminary enquiries that could eventually lead to a formal investigation into the circumstances surrounding the incident or finding. The MOD CO/HoE should inform the relevant MOD officials if ONR instigates a formal investigation. The ONR investigation will follow the normal process outlined in relevant ONR guidance (Ref: 7). Where a fatal injury at work is reported by MOD to ONR, the CO /HoE should provide details of the relevant contact in civil and/or MOD police.
- 8.6 The ONR inspector should also attempt to make early contact with the relevant MOD personnel who may be conducting an internal investigation; MOD should share with ONR its investigation reports or other information relevant to its own investigation.
- 8.7 Investigations of particular incidents or complaints are carried out by ONR to determine:
- the root cause or causes of the incident or complaint;
  - whether there has been a non-compliance with the law;
  - whether action has been taken by those outside ONR or needs to be taken to help prevent a recurrence and to secure compliance with the law;
  - any wider lessons to be learned from the incident for promulgation to other parts of MOD or the nuclear industry; and
  - what response by ONR is proportionate in response to the non-compliance.
- 8.8 ONR's response and use of resources will be proportionate to the seriousness of the non-compliance and the prevailing circumstances. ONR's primary focus is to determine whether there have been organisational or systemic failures, although the duties of individuals should also be considered, if appropriate.

### **WORK-RELATED DEATHS**

- 8.9 In the case of a work-related fatality in England and Wales, ONR is a signatory to the Work-related Deaths Protocol (WRDP) and inspectors should follow the agreed guidance (Ref: 9) for effective liaison and joint investigation in support of the Protocol. In the circumstances of a death on a DNP site the liaison is likely to be in the first instance with the civil or MOD police services, followed by a joint investigation into potentially serious criminal offences; the police initially would have primacy. In England the ACPO / MOD Police agreement gives primacy to the local police force unless they choose to cede it to the MOD police force. The legal position in Scotland



is different and a separate WRDP (Ref: 10) should be followed. Where the police, taking advice from the relevant prosecuting authority, decide not to pursue a corporate manslaughter and/or homicide investigation, then they should formally hand-over the investigation to ONR to conclude its own investigation in the normal manner.

- 8.10 In accordance with ONR's arrangements for working with victims, ONR is committed to keeping families informed of progress with its investigations. This is an addition to any contact from MOD-appointed liaison officers or police Family Liaison Officers.

## **ASSISTANCE TO ONR FROM MOD**

- 8.11 The inspector(s) may need to examine the incident scene for relevant evidence and identify witnesses. Where there is early attendance at the scene of an incident, the ONR inspector may require the scene to be left undisturbed to preserve evidence for further examination. Inspectors may also consider prohibiting activities by issuing a Crown Notice that work should be stopped (LP52). The CO / HoE should, if requested, facilitate this process, making witnesses available for interview and accommodation for doing so if required, and for preserving the scene. Witnesses are likely to include those directly involved with the work activity under investigation and also those in managerial / command roles.
- 8.12 ONR inspectors should initially seek to obtain voluntary witness statements without recourse to the use of powers under HASWA or TEA, although this may vary in Scotland. If evidence emerges of an individual suspect, that individual may be invited to an interview under caution in accordance with the normal procedure.
- 8.13 The MOD CO/HoE should assist the ONR inspector with questions about the chain of command / line management responsibilities relating to the circumstances of the incident. If a line of enquiry leads to another chain of command within MOD the inspector may need to liaise with MOD, who will facilitate access to that chain of command. However, it is the inspector who is responsible for deciding on a line of enquiry, and in line with Criminal Procedures and Investigation Act 1996 expectations, should not rule out any reasonable line of enquiry to ensure that all realistic alternatives are explored.
- 8.14 Although the rules concerning admissibility of evidence are not relevant in cases of Crown Immunity as no ONR criminal prosecution will take place, in practice the CPS Code public interest and evidential tests should still be passed.
- 8.15 MOD sometimes convenes a Service Inquiry (SI) to establish the facts of a particular case and to make recommendations to help prevent a recurrence. Where a SI is set up ONR should proceed with its formal investigation in parallel, and towards the end of the investigation should consider whether there is any merit in waiting for the conclusion of the SI before finalising the ONR investigation report. If the SI is complete before ONR concludes its investigation then MOD, if requested, should provide a copy of Part 1 of the report and a copy of the Schedule of Proceedings Master Schedule to the investigating ONR inspector to allow targeted requests for further information. A full copy of the SI report with operational and security sensitive information redacted as appropriate should be provided if requested, on the understanding that it is disclosed in confidence and not to be quoted from or admitted into evidence without further reference to the MOD. Any such disclosure should be regarded as 'normal business' rather than as a precedent for the information that would be released in reply to a Freedom of Information (FOI) request. ONR will consult MOD if they receive an FOI request for the information. Evidence provided by individuals at the SI cannot be used against them by ONR in any subsequent prosecution, and shall not be admissible against a person at a summary hearing or in

proceedings before a civilian or service court, but may be used to identify further lines of enquiry. Inspectors may subsequently obtain further witness statements or interview individuals under caution as appropriate, in order to seek additional evidence.

## REFERENCES

1. ONR Guide: Regulation of GB's Defence Nuclear Programme (NS-INSP-GD-056)  
[http://www.onr.org.uk/operational/tech\\_insp\\_guides/ns-insp-gd-056.pdf](http://www.onr.org.uk/operational/tech_insp_guides/ns-insp-gd-056.pdf)
2. PIN45 Cabinet Office Personnel Information Note: 'PROCEDURES FOR ENFORCING HEALTH AND SAFETY REQUIREMENTS IN CROWN BODIES' – June 2001
3. MOD - ONR General Agreement <http://www.onr.org.uk/documents/2015/mod-agreement.pdf>
4. Enforcement Guide – Crown Censure – MOD comments – CM9 2019/98236
5. ONR Guide: Enforcement (ONR-ENF-GD-006)
6. The Code for Crown Prosecutors  
<https://www.cps.gov.uk/news/assets/uploads/files/code2013english.pdf>
7. ONR Guide: Conducting Investigations (ONR-ENF-GD-005)
8. ONR Investigation and Prosecution Report (ONR-DOC-TEMP-102)
9. Work-related Deaths Protocol: Practical Guide (England and Wales)  
(<http://www.hse.gov.uk/pubns/wrdp2.pdf>)
10. Work-related Deaths: A protocol for liaison (Scotland)  
(<http://www.hse.gov.uk/scotland/workreldeaths.pdf>)

**APPENDIX 1 – IMPROVEMENT NOTICE FOR CROWN EMPLOYERS (LP51)**

Serial number: CI yyyy/ONR/initials/un.no

To:

1. This is a formal notice to you that in the opinion of the Office for Nuclear Regulation you are contravening or have contravened the legal provisions stated at (g) below, and that you should remedy the situation by the date specified at (h) below. The Crown cannot be prosecuted for the contravention of any of the provisions of the Health and Safety at Work etc Act 1974, the Energy Act 2013 or any other of the relevant statutory provisions within the meaning of those Acts, nor for the failure to comply with this notice. Nevertheless, failure to comply is a serious matter and will result in a formal approach from the Office for Nuclear Regulation to an appropriate person with higher authority in your organisation or, if necessary, from the Chief Nuclear Inspector to the responsible Minister.

2. An inspector may withdraw a notice or extend the period specified in the notice before the end of that period. You should discuss the matter with the inspector who has issued the notice if you wish them to consider this, and should do so before the end of the period given in it. If the inspector does not agree to withdraw the notice or extend the period, it is open to you as well as to the inspector to take up the matter at a higher level.

3. The inspector issuing the notice will, at the same time, give a copy to your employees or their representatives in accordance with section 28(8) of the Health and Safety at Work etc. Act 1974/Schedule 8 part 4 of the Energy Act 2013.

4. The application of the Freedom of Information (FOI) Act would normally make information about this notice available to a member of the public. ONR will disclose the front page of this notice and any schedule attached upon request. If you think that disclosure would harm national security or defence or that the information is commercially confidential, you should give written notification to ONR within 15 working days. ONR will consider whether release of the information falls within an exemption to the FOI Act, and if so, refuse to release such information.

(a) Inspector's full name I (a)   
 (b) Inspector's official designation one of (b)   
 (c) Official address of (c)

tel no.

(d) Location of premises or place and activity hereby give you notice that I am of the opinion that at (d)

(e) Tick as necessary you are as (e) and employer  a person wholly or partly in control of the premises

(f) Other specified capacity (f)

(e) are contravening  have contravened  in the circumstances that make it likely that the contravention will continue or be repeated

(g) Provisions contravened (g)

The reasons for my opinion are:

(h) Date You should remedy the said contraventions or, as the case may be, the matters occasioning them by: (h)

(e) in the manner stated in the attached schedule which forms part of this Notice

Signature  Date

Being an inspector appointed by an instrument in writing made pursuant to Section 19 of the Health and Safety at Work etc Act 1974/ Section 83 and Schedule 8 of the Energy Act 2013 and authorised by the Office for Nuclear Regulation to issue this notice

(e) An improvement notice is also being served on:

of

related to the matters contained in this notice



*Crown Improvement/Work Should be Stopped Notice*

*For use in non-statutory enforcement of MOD*

Serial Number: CI yyyy/ONR/initials/un.no

## **Schedule to a Crown Improvement/Work Should be Stopped Notice\***

Measures specified to remedy the said contraventions are:

1. (To be specified as necessary)
2. (To be specified as necessary)
3. (To be specified as necessary)

Or

Take any other equivalent, suitable and sufficient measures agreed in writing with the inspector to remedy the said contraventions.

\* Delete as appropriate.

## APPENDIX 2 – CROWN NOTICE THAT WORK SHOULD BE STOPPED (LP52)

Serial number: CP yyyy/ONR/initials/un.no

To:

1. This is a formal notice to you that in the opinion of the Office for Nuclear Regulation the activities named below involve or will involve a risk of serious personal injury and should be stopped. The Crown cannot be prosecuted for the contravention of any of the provisions of the Health and Safety at Work etc Act 1974, nor the Energy Act 2013 or any other of the relevant statutory provisions within the meaning of those Acts nor for the failure to comply with this notice. Nevertheless, failure to comply is a serious matter and will result in a formal approach from the Office for Nuclear Regulation to an appropriate person with higher authority in your organisation or, if necessary, from the ONR Chief Nuclear Inspector to the responsible Minister.

2. Where this notice is not to take immediate effect, an inspector may withdraw the notice or extend the period specified in the notice before the end of that period. You should discuss the matter with the inspector who issued the notice if you wish them to consider this, and should do so before the end of the period given in it. If the inspector does not agree to withdraw the notice or extend the period, it is open to you as well as to the inspector, to take up the matter at a higher level.

3. The inspector issuing the notice will, at the same time, give a copy to your employees or their representatives in accordance with section 28(8) of the Health and Safety at Work etc. Act 1974/Schedule 8 part 4 of the Energy Act 2013.

4. The application of the Freedom of Information (FOI) Act would normally make information about this notice available to a member of the public. ONR will disclose the front page of this notice and any schedule attached upon request. If you think that disclosure would harm national security or defence or that the information is commercially confidential, you should give written notification to ONR within 15 working days. ONR will consider whether release of the information falls within an exemption to the FOI Act, and if so, refuse to release such information.

(a) *Inspector's full name* I (a)   
(b) *Inspector's official designation* one of (b)   
(c) *Official address* of (c)   
tel no.

hereby give you notice that I am of the opinion that the following activities, namely:

(d) *Location of activity* which are being carried on by you  likely to be carried out by you  under your control   
at (d)   
involve  will involve  a risk of serious personal injury

I am further of the opinion that the said matters involve contraventions of the following statutory provisions

because

(e) *Date* I am further of the opinion that the said activities should not be carried on by you or under your control  
immediately  after  (e)   
unless the said contraventions and matters included in the schedule, which forms part of this Notice, have been remedied.  
Signature  Date

Being an inspector appointed by an instrument in writing made pursuant to Section 19 of the Health and Safety at Work etc Act 1974/Section 83 and Schedule 8 of the Energy Act 2013 and authorised by the ONR to issue this notice.

LP52 (11/19)

### APPENDIX 3 – TEMPLATE LETTER OF ONR’S INTENTION TO CENSURE THE MOD

Note: Letter to MOD and marked ‘For the attention of MOD TLBH’ and copied to DSA officials.

#### **Health and Safety at Work etc Act 1974 / Energy Act 2013 [sections] and [Regulations]\***

This letter is to notify you formally of our intention to invoke the procedures agreed between ONR and MOD, as a Crown body, for the censure of MOD in circumstances which, but for Crown immunity, would have led to criminal prosecution under the above Act/Regulation\*. I am writing to arrange a formal meeting called a ‘hearing’ with you for this purpose.

You will be aware that the MOD, as a Crown employer, is bound by the duties imposed by health and safety law, but is not subject to the provisions relating to statutory enforcement as a result of Crown immunity. Alternative administrative arrangements (including the Crown Censure procedure) are referenced in the MOD-ONR General Agreement and described in more detail in ONR guidance. The arrangements include ensuring that health and safety issues in MOD receive the same attention as they would in civilian organisations. All decisions are taken in accordance to the ONR’s Enforcement Policy, and the Crown Prosecution Service’s Code for Crown Prosecutors; both documents apply to all employers and employees.

The agreed Censure procedure involves a formal ‘hearing’ involving ONR’s Chief Nuclear Inspector (or their representative), the senior investigating inspector, and a member of the senior management of the MOD. ONR’s aim at the hearing is to seek acknowledgement of the problem and to obtain an undertaking to improve standards of compliance with the relevant law. At the hearing the senior investigating inspector will explain that the circumstances of the case that would justify prosecution of MOD, but for Crown immunity. The CNI or their representative, who chairs the hearing, will then invite any representations or arguments in defence or mitigation. If the hearing confirms ONR’s view that the evidence would be sufficient to provide a realistic prospect of conviction in the courts, ONR notifies MOD and the Censure becomes a matter of public record.

If you do not accept in the course of the hearing that the evidence we present would be sufficient to provide a realistic prospect of conviction in the courts, you will be given the opportunity to make further representations; this may lead to a recess in the hearing or for it to be suspended and re-convened at a later date.

I am enclosing some advance information relating to the non-compliances alleged in this instance. This information follows the structure as described in Part 8 of the Criminal Procedure Rules 2015. A suggested agenda for the hearing is also attached. I suggest the following dates for the hearing: [DD/MM/YYYY etc].

In accordance with my duties under section 28(8) of the above HSWA/ Energy Act ’13 Schedule 8 Part 4\* I will also be bringing these matters to the attention of your staff’s trade union or other safety representatives.

Please contact me by [DD/MM/YYYY] to let me know which date would be convenient or to offer alternatives and to agree a timescale in which you will be submitting any written response to the documentation enclosed herewith. At the same time, please provide the names and addresses of the relevant trade union or other safety representatives so that I can invite them to attend as observers, unless you confirm that you will arrange this yourselves.

\* Delete as appropriate

## **CENSURE PROCEDURE IN LIEU OF LEGAL PROCEEDINGS**

INCIDENT:

LOCATION AND DATE:

### **AGENDA FOR MOD CENSURE HEARING**

Introductions	ONR/MOD
Purpose of hearing and censure procedure	ONR
Statement of alleged breaches	ONR
Break	
Response	MOD
Conclusions	ONR
Agree remedial and future actions	ONR/MOD

**FIGURE 1 – ILLUSTRATIVE FLOWCHART FOR CROWN ENFORCEMENT**

