

ONR / NGO Meeting – 21 March 2018	
Title	Briefing Paper on topics relating to “how ONR regulates”
From	ONR Policy & Communications
Date	15 March 2018
Status	For information
Agenda Item / Status	<i>N/A - There will be an opportunity for questions (should that be necessary) on these topics at the meeting as part of the Chief Nuclear Inspector’s update slot</i>

1. Purpose

- 1.1 This paper is to update members of the NGO forum on key topics relating to “how ONR regulates”. These items were discussed by the ONR-NGO working group meeting (on 8 February 2018) to set the 21 March 2018 agenda. They agreed that a briefing paper be provided to update on these topics.
- 1.2 The following topics are covered:
- ONR’s Guide to Enabling Regulation
 - CNI themed inspection of Hinkley Point C supply chain arrangements
 - ONR’s Enforcement Management Model

2. ONR’s Guide to Enabling Regulation

- 2.1 In February 2018 ONR published its ‘Guide to Enabling Regulation in Practice’. Enabling Regulation is not new for ONR and there are many examples of how an ‘enabling’ approach has been successful in the past and some of those examples we share in the guide. However, the phrase itself is relatively young and we are keen to build a broader awareness amongst our different stakeholders of what we mean by ‘Enabling’ principles and behaviours.
- 2.2 Put simply, enabling regulation means that we will take a constructive approach with industry ‘dutyholders’ and other relevant stakeholders to enable effective delivery against clear and prioritised safety and security outcomes.
- 2.3 Many of the principles associated with enabling regulation are widely recognised as good, regulatory practices and have achieved many positive outcomes for the benefit of society.



- 2.4 The features of a successful enabling approach are enshrined in the regulatory principles and can be summarised as:
- Building on regulatory good practices and successes.
 - Ensuring priorities are established, understood and agreed.
 - Being clear on legal duties and what is needed for compliance.
 - Focusing on outcomes rather than process.
 - Constructive, committed, open and early engagement to avoid surprises and build trust.
 - Ensuring solutions are fit for purpose in meeting the requirements of the law efficiently and effectively.
 - A willingness to address blockers, distractions and unnecessary bureaucracy.
- 2.5 Our new guide does not represent formal ONR policy, but instead is intended to provide helpful information to support understanding, discussion and development. As an organisation committed to openness and transparency, we've taken the decision to publish the guide so that we can share our thinking with our different stakeholders to demonstrate compliance with the Regulator's Code and provide practical examples of where an enabling approach has worked well.
- 2.6 Nothing in this approach alters the obligations on industry to comply with the law. Enabling regulatory practices do not prevent or curtail us from continuing to hold the industry to account on behalf of the public; we will continue to use our enforcement tools appropriately, proportionately and independently.
- 2.7 In cases of non-compliance we will apply our formal powers of enforcement proportionately and in line with our Enforcement Policy Statement and Enforcement Management Model.
- 2.8 Where the non-compliance is more significant, we will limit the extent to which our inspectors can act in an enabling manner. We will still seek to apply the principles so far as is reasonable, but the fundamental principle of ensuring that the hazards from the nuclear industry are controlled to protect people and society remains inviolable, firm and resolute.
- 2.9 Some NGO Forum and Site Stakeholder Holder Group members joined ONR for our very first Webinar discussing the guide and we thank those that participated for their involvement and their constructive questions. You can see the short presentation at the start of the webinar at: <http://www.onr.org.uk/documents/2018/enabling-regulation-in-practice.mp4>
Notes from the Q&A are currently being compiled and will be shared as soon as possible.
- 3. CNI Themed Inspection of Hinkley Point C Supply Chain**
- 3.1 Our first Chief Nuclear Inspector's (CNI) themed inspection took place during October and November 2017. ONR has introduced these inspections to



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- examine regulatory matters that are strategic or broader in nature than our more routine regulatory inspection activities.
- 3.2 The CNI themed inspections are also intended to raise awareness of important issues and highlight our regulatory activities and expectations to a wider audience, in addition to the nuclear industry. These inspections will be delivered over and above our normal regulatory activities which include approximately 1,000 inspections each year.
 - 3.3 The CNI Inspection was instigated in the context of the records falsification issues that emerged in 2016 at Areva's Creusot Forge facility - a key supplier to the Hinkley Point C project. The shortfalls challenged the adequacy of NNB GenCo's supply chain management arrangements, including the effectiveness of their supply chain oversight and assurance arrangements.
 - 3.4 In light of these issues, ONR proactively sought to scrutinise and influence supply chain management arrangements for the Hinkley Point C project, working closely with the French nuclear safety regulator (ASN) with whom we have bilateral working arrangements.
 - 3.5 ONR believes that good progress has been made by NNB GenCo and its key supplier Areva Creusot Forge in deploying their improvement programme - including enhanced manufacturing processes, management system arrangements and safety and quality culture.
 - 3.6 ONR concluded that further work is required to ensure that adequate quality management system arrangements are consistently embedded across the wider Hinkley Point C project, but also recognised the commitment by NNB GenCo to continue to deliver its improvement action plan to achieve this.
 - 3.7 For this reason, ONR has rated the overall inspection finding as 'amber'. This means that some arrangements are below standard and ONR is seeking improvements against a number of Regulatory Issues that have been raised under Licence Condition 17 (Management Systems).
 - 3.8 The key findings and judgements of the CNI Inspection can be most appropriately defined against six key themes.
 - 3.9 The first theme reflects the positive progress made by NNB GenCo and its key supplier Areva against their improvement programmes.
 - 3.10 The remaining five themes represent deficiencies in arrangements and a Regulatory Issue has been raised by ONR against each, defining the required improvement activity. It is ONR's view that they highlight deficiencies in NNB GenCo's management system arrangements.
 - 3.11 ONR will track these issues to completion and engage with the licensee to ensure they are addressed in line with our regulatory expectations, ensuring that the high standards expected to ensure nuclear safety are maintained.



- 3.12 Timely resolution of the issues identified will ensure adequate arrangements are properly implemented across the project and contribute to NNB GenCo's aim of quality 'right first time' delivery.
- 3.13 ONR proactively published the inspection findings on 15 March 2018. In keeping with a commitment to raise awareness of key issues via these new themed inspections, publication included a 'Plain English' summary report, a fuller Intervention Record, associated news release and social media activity.

4. ONR's Enforcement Management Model

- 4.1 ONR has reviewed its enforcement management model (EMM). Since vesting, ONR has applied the same EMM used by HSE, despite the two organisations operating in different regulatory contexts. To ensure ONR has an EMM which reflects its own regulatory approach, a review has been undertaken of the EMM to:
- Develop new guidance to ensure our EMM is appropriate to ONR's regulatory circumstances, and can be used consistently for all of ONR's regulatory purposes.
 - Help guide inspectors through the key aspects of the decision making process
 - Ensure that there is a proportionate approach to when and how we record enforcement decisions.
 - Enable us to more easily coordinate enforcement management information across the organisation and ensure colleagues learn from each other's experiences.
- 4.2 The ONR EMM is a logical process which helps inspectors to consider and make enforcement decisions in line with the ONR [Enforcement Policy Statement](#) (EPS).
- 4.3 The EPS sets out the principles that inspectors should apply when determining what enforcement action to take in responses to breaches of health, safety and security legislation. Fundamental to this is the principle that enforcement action should be proportionate to the health, safety, security risks and compliance gaps and/or the seriousness of the breach.
- 4.4 These key facets in determining enforcement action are:
- Risk Analysis
 - Identification of the Benchmark Standard
 - Determining the Baseline Enforcement Level (BEL)*
 - Application of Dutyholder Factors
 - Consideration of Strategic Factors
 - Recording the basis for the enforcement decision

**BEL is appropriate to deliver compliance; it reflects, and is proportionate to, the risk to health, safety or security or the seriousness of any breach of the law.*



- 4.5 ONR Inspectors will apply EMM in all their regulatory activities, but they will only formally apply the EMM and record the outcome when considering more serious safety and security events or lack of compliance, or the cumulative effects from a number of less serious events or lack of compliance, that could lead to utilising our enforcement powers.
- 4.6 The ONR EMM can be supported by a decision review process which requires inspectors and line managers to consider whether the proposed enforcement action meets the strategic factors, EPS, or if considering prosecution [the Code for Crown Prosecutors in England and Wales](#) or the [Prosecutors Code in Scotland](#).
- 4.7 The new EMM is due to be rolled out across ONR during 2018, with appropriate training for inspectors and supporting engagement with industry and duty holders.