



Office for
Nuclear Regulation

ONR ENFORCEMENT POLICY STATEMENT

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1. Introduction

- 1.1 The Office for Nuclear Regulation's (ONR's) mission is to provide efficient and effective regulation of the nuclear industry, holding it to account on behalf of the public. As the nuclear regulator, ONR must take enforcement action when dutyholders are found to be failing to meet the safety, security or safeguards standards required by law. To do this ONR has been provided with a range of enforcement powers, from providing advice to instigating court proceedings. There is no hierarchy in those powers. This policy statement sets out how ONR will use these powers to ensure that companies comply with the legislation for which it is the enforcing authority.
- 1.2 This Enforcement Policy Statement accords with the Regulators' Code and the regulatory principles required under the Legislative and Regulatory Reform Act 2006. It sets out the general principles and approach which ONR must follow. All ONR staff who make enforcement decisions are required to follow ONR's Enforcement Policy Statement. The appropriate use of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to meet security, health, safety, safeguards and welfare standards. In allocating resources, ONR should have regard to the principles set out below, the objectives published in its Corporate Plan, and the need to maintain an appropriate balance between enforcement and other activities, including inspection.
- 1.3 The Nuclear Installations Act 1965 empowers ONR to attach to each nuclear site licence such conditions as it considers necessary or desirable either in the interests of safety or with respect to the handling, treatment and disposal of nuclear matter. The licence conditions provide the main basis for the regulation of nuclear safety by ONR. They are generally non-prescriptive and set goals which the licensee is responsible for meeting, amongst other things by applying detailed safety standards and safe procedures, and do not relieve the licensee of its responsibility for maintaining nuclear safety. The licensee's management

system will incorporate arrangements that it has developed to meet the requirements of the licence conditions.

- 1.4 On a sampling basis, ONR will inspect the licensee's licence condition compliance arrangements to ensure they are clear and unambiguous, and address the main safety objectives adequately. Procedures which comply with nuclear site licence conditions are likely to satisfy the requirements of other health and safety legislation under HSWA which relate to nuclear hazards, for example the Management of Health and Safety at Work Regulations 1999. However, compliance with these other requirements must still be demonstrated.
- 1.5 Under the Nuclear Industries Security Regulations 2003 (NISR), responsible persons are legally and financially responsible for ensuring that their nuclear premises and off-site movements of nuclear material and other radioactive material are subject to security arrangements which conform at all times to the approved Security Plan as well as Transport Security Statements and Transport Security Plans where appropriate. These security plans are assessed by ONR against the outcome-focused Security Assessment Principles (SyAPs), taking account of the Design Basis Threat (known in the UK as the Nuclear Industries Malicious Capabilities Planning Assumptions (NIMCA)). The Regulations also place a requirement to maintain such security standards, procedures and arrangements as are necessary for the purpose of minimising the risk of loss, theft or unauthorised disclosure of, or unauthorised access to, any sensitive nuclear information. ONR security inspections also operate on a sampling basis, to ensure arrangements described in approved plans are delivered effectively and that security risks are effectively addressed in a proportionate manner.
- 1.6 ONR is the enforcing authority for Ionising Radiation Regulations 2017 (IRR17) in relation to civil transport of radioactive material by road, rail and inland waterway. It should be noted that ONR enforces IRR17 as it applies to transport, and transport begins with any preparatory process (such as packaging) through to unloading at the destination, including in-transit storage.

- 1.7 The International Atomic Energy Agency (IAEA) publishes, from time to time, model regulations for the safe transport of radioactive materials. These technical requirements, augmented by mode specific provisions, are given effect in GB law through a variety of statutory instruments. The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (CDG2009) (insofar as it relates to the civil carriage of Class 7 goods (radioactive material)) provides the main basis for the regulation of the safe transport of radioactive material by ONR in Great Britain by road, rail and inland waterway, where ONR is the GB Competent/Enforcing Authority. The regulatory framework differs from that established for nuclear installations safety due to the need to preserve a consistent set of regulatory standards across international boundaries. Hence the technical provisions which are given effect by CDG2009 are a mixture of prescriptive and non-prescriptive duties which dutyholders are responsible for meeting. ONR inspects dutyholders' arrangements on a sampling basis informed by risk. The radioactive materials transport dutyholder community is diverse, including nuclear site licence holders, industrial sites, radiographers, hospitals, medical research institutions and carriers, together with their supply chains. ONR also has duties in respect of the enforcement of certain security provisions which relate to the transport of radioactive material by road and rail. In addition, ONR advises on, and performs, certain delegated Competent Authority functions in relation to the transport of radioactive material by air and sea.
- 1.8 The Nuclear Safeguards (EU Exit) Regulations 2019 place duties on UK operators to account for and control their nuclear material in civil activities, and to provide regular accountancy reports to ONR. The regulations require that these arrangements are documented in an Accountancy and Control Plan (ACP). These plans will be assessed against outcome focussed ONR guidance for Nuclear Material Accountancy, Control and Safeguards (ONMACS) and guidance for the assessment of ACPs. ONR safeguards inspections also operate on a sampling basis, to ensure the arrangements outlined in the ACP and the accountancy declarations supplied by operators are compliant with the regulations.

- 1.9 ONR is also the regulator for conventional health and safety matters on GB nuclear sites, new nuclear build sites, authorised defence sites, and in relation to certain applicable elements of the supply chain.

ONR's Policy Statement on Enforcement

The following is the full text of the statement:

The purpose and method of enforcement

- 1.10 The ultimate purpose of an enforcing authority such as ONR is to ensure that dutyholders manage and control risks effectively, thus preventing harm to the standards required by law.
- 1.11 The term 'enforcement' has a wide meaning and applies to all dealings between enforcing authorities and those on whom the law places duties.
- 1.12 ONR's enforcement activities are primarily undertaken by inspectors. ONR is empowered to appoint suitably qualified individuals to act as inspectors under the Energy Act 2013 and the Health and Safety at Work etc. Act 1974 to enforce the relevant statutory provisions and legislation under these Acts.
- 1.13 The purpose of enforcement is to:
- ensure that dutyholders take action to deal immediately with serious risks;
 - promote, achieve and sustain compliance with the law;
 - ensure that dutyholders who breach regulatory requirements, and directors or managers who fail in their responsibilities, are held to account, which may include bringing alleged offenders before the courts in England and Wales, or recommending prosecution in Scotland, in the circumstances set out later in this policy.
- 1.14 In this context, enforcement can range from advice by inspectors to warnings, letters, notices, use of powers under the licence conditions and other nuclear safety, security and safeguards legislation or prosecutions. ONR will make use of the wide range of tools at its disposal to secure compliance with the law and to ensure a proportionate and consistent response to criminal offences. Inspectors may offer dutyholders information and advice, both face to face and

in writing. This may include warning a dutyholder that in the opinion of the inspector, they are failing to comply with the law. Where appropriate, inspectors may also serve improvement and prohibition notices. They may also issue security directions, withdraw security clearances, and use powers provided by the licence conditions.

- 1.15 Prosecution is an important way to bring dutyholders to account for alleged breaches of the law. Where it is appropriate to do so in accordance with this policy ONR will institute proceedings, or in Scotland recommend prosecution to the Procurator Fiscal Service. Proceedings could be in addition to issuing a security direction, an improvement or prohibition notice, or taking other appropriate enforcement action, for example under the powers provided by the licence conditions.
- 1.16 Improvement and prohibition notices, and written advice and enforcement letters, may be used in court proceedings.
- 1.17 Investigating the circumstances encountered during inspections or following incidents or complaints is essential before taking any enforcement action. In deciding what resources to devote to these investigations, ONR should have regard to the principles of enforcement set out in this policy and the objectives published in ONR's Corporate Plan.
- 1.18 Sometimes the law is prescriptive – spelling out in detail what must be done. However, much of modern health and safety law is goal setting – setting out what must be achieved, but not how it must be done. ONR puts significant emphasis on its Safety Assessment Principles (SAPs), Security Assessment Principles (SyAPs) and ONR guidance on Nuclear Material Accountancy, Control and Safeguards (ONMACS) which set out relevant good practice, although it should be noted that these are not legal requirements and not applicable or relevant in all situations. ONR also relies on certain Approved Codes of Practice (ACoPs), for example for the Ionising Radiation Regulations 2017. Where ACoPs are not followed by dutyholders, they must demonstrate that the alternative methods employed are equal to or better than the ACoP

recommendations. ONR also employs other guidance material describing good practice, for example guidance on compliance with licence conditions, and security, safeguards or transport regulations. In considering whether the risks have been reduced so far as is reasonably practicable (SFAIRP), inspectors will need to take the SAPs, SyAPs, ONMACS, relevant ACoPs and other guidance into account using sensible judgement about the extent of the risks and the effort that has been applied to counter them.

- 1.19 The Nuclear Site Licence provides six primary powers comprising Consent, Approval, Direction, Notification, Specification and Agreement. These powers are delegated through the Chief Nuclear Inspector to appropriate inspectors appointed by ONR. These powers create a regulatory regime whereby ONR has at its disposal a range of actions, including freezing dutyholders' arrangements, permissioning activities or directing operations to cease.
- 1.20 ONR has discretion and uses judgement in deciding when to investigate or what enforcement action may be appropriate. ONR will set down in writing the decision-making process which inspectors will follow when deciding on enforcement action, and make this publicly available. ONR expects that such judgements will be made in accordance with the following principles. These principles accord with the Regulators Code and the regulatory principles required under the Legislative and Regulatory Reform Act 2006.

The principles of enforcement

- 1.21 ONR is responsible for firm but fair enforcement of relevant nuclear, health and safety, security, safeguards and radioactive materials transport legislation, using principles set out in the Legislative and Regulatory Reform Act 2006. These are: proportionality in applying the law and securing compliance; consistency of approach; targeting of enforcement action; transparency about how the regulator operates and what those regulated may expect; and accountability for the regulator's actions. These principles should apply both to enforcement in particular cases and to management of enforcement activities as a whole.

Proportionality

- 1.22 Proportionality means relating enforcement action to the level of avoidable risk (i.e. the risk gap) arising from a breach and/or the seriousness of a failure to comply with a legal obligation. Those whom the law protects, and dutyholders, expect that action taken by ONR to achieve compliance or bring dutyholders to account for noncompliance will be proportionate to any avoidable risks to health, safety and security, or to the seriousness of any breach.
- 1.23 In practice, applying the principle of proportionality means that ONR should take particular account of how far the dutyholder has fallen short of what the law requires and the extent of avoidable risks to people arising from the breach.
- 1.24 Some health and safety duties are specific and absolute. Others require risks to be reduced so far as is reasonably practicable. ONR will apply the principle of proportionality in relation to both kinds of duty.
- 1.25 Deciding what is reasonably practicable to control risks involves the exercise of judgement. Where dutyholders must control risks SFAIRP, ONR will, when considering protective measures taken by dutyholders, take account of the degree of risk on the one hand, and on the other the sacrifice, whether in money, time or trouble, involved in the measures necessary to avert the risk. ONR will also consider strategic factors in this equation, whereby it may be necessary in some instances to accept a short-term increase in risk in order to achieve greater reductions in risk over longer timescales (i.e. holistic risk reduced SFAIRP). In the case of safety issues, unless it can be shown that there is gross disproportion between measures to reduce risks and the magnitude of risk averted, the dutyholder must take available measures and incur the costs to reduce the risk. Whilst reasonably practicable is an untested concept for security, ONR applies a graded approach to ensure that the degree of risk is taken account of when considering dutyholders protective measures in order to achieve the principle of proportionality.
- 1.26 ONR will usually expect relevant good practice to be followed. Where relevant good practice in particular cases is not clearly established, or may be

disproportionate in specific instances, the law effectively requires dutyholders to establish explicitly the significance of the risks to determine what action needs to be taken. Ultimately, the courts determine what is reasonably practicable in particular cases.

Targeting

- 1.27 Targeting means making sure that actions are targeted primarily on those activities that give rise to the most serious risks, where the hazards or vulnerabilities are least well controlled, or where ongoing compliance with the law needs to be established; and that action is focused on the dutyholders who are responsible for the risk and who are best placed to control it.
- 1.28 ONR has a number of processes in place to help decide which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of risks presented by a dutyholder's operations.
- 1.29 Any enforcement action will be directed against dutyholders responsible for a breach. For a nuclear licensed site, this will normally be the licensee, but could also include contractors, individuals and others as appropriate. Where several dutyholders share responsibilities, ONR may take action against more than one where it is appropriate to do so in accordance with this policy.
- 1.30 When inspectors issue improvement or prohibition notices or security directions, withdraw approvals, use powers granted by the licence conditions or prosecute, ONR will ensure that a senior officer of the dutyholder concerned is also notified.

Consistency

- 1.31 Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar outcomes.
- 1.32 Dutyholders managing similar risks should expect a consistent approach from ONR in the advice tendered, the use of enforcement notices, decisions on whether to prosecute and in the response to incidents.

1.33 ONR recognises that, in practice, consistency is not a simple matter and its inspectors are faced with many variables including the degree of risk, the attitude and competence of the dutyholder, any aggravating history of incidents or breaches involving the dutyholder including previous enforcement action, and the seriousness of any breach. Decisions on enforcement action therefore involve judgement by the inspector in accordance with the principles outlined in this policy, ONR's Enforcement Management Model, and application of the relevant processes

Transparency

- 1.34 Transparency means helping dutyholders to understand what is expected of them and what they should expect from ONR. It also means making clear to dutyholders not only what they have to do but, where this is relevant, what they don't. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.
- 1.35 Transparency also means that ONR should have arrangements for keeping employees, their representatives, and injured parties or their families informed. These arrangements must have regard to legal constraints and requirements.
- 1.36 This statement sets out the general policy framework within which ONR will operate. Dutyholders, employees, their representatives and others also need to know what to expect when an inspector visits a workplace/site, and what rights of complaint are open to them. In many cases, existing dutyholders will be familiar with the way inspectors appointed by ONR operate and what is required of them during an inspection, investigation or following a concern. New dutyholders will be informed during the early stages of engagement with ONR of what they and their employees and representatives can expect when an inspector visits at a workplace/site. In particular:
- when inspectors offer dutyholders information, or advice, face to face or in writing, including any warning, inspectors will advise the dutyholder what to do to comply with the law, and explain why. Inspectors will, if asked, write to

confirm any advice, and to distinguish legal requirements from best practice advice;

- in the case of improvement notices, the inspector should discuss the notice to clarify any points of misunderstanding before serving it. The notice will say that in the inspector's opinion a breach of the law has been committed, what needs to be done to remedy it, why and by when;
- in the case of a prohibition notice the notice will explain why the prohibition is necessary; and
- in the case of a security direction, the direction will explain what needs to be done to achieve compliance with the law.

Accountability

- 1.37 Regulators are accountable to the public for their actions. This means that ONR has policies and standards (such as the principles of enforcement above) against which they can be judged, and an effective and easily accessible mechanism for dealing with comments and handling concerns.
- 1.38 ONR's procedures for dealing with concerns are set out in its complaints procedure on the ONR website. Information about making an appeal to an employment tribunal against an improvement or prohibition notice can be found on the Employment Tribunal website.

Investigation

- 1.39 ONR will use discretion in deciding whether incidents, possible breaches of legislation or complaints should be investigated.
- 1.40 Investigations are undertaken in order to determine:
- causes;

- whether adequate investigation and subsequent remedial actions have been taken by the dutyholder to prevent a recurrence and to secure compliance with the law;
- lessons to be learnt and to influence the law and guidance;
- what enforcement action, if any, is appropriate.

1.41 To maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more serious potential breaches of the law. ONR recognises that it is neither possible nor necessary for the purposes of the relevant legislation to investigate all issues of non-compliance with the law which are identified in the course of inspections or in the investigation of reported events.

1.42 ONR will carry out a site investigation of a reportable work-related death unless there are specific reasons for not doing so, in which case those reasons should be recorded.

1.43 In determining which concerns or incidents, injuries or potential breaches of legislation are investigated, and in deciding the level of resources to be used, ONR will take account of the following factors:

- the severity and scale of potential or actual harm;
- the seriousness of any potential breach of the law (including risk gap);
- knowledge of the dutyholder's past health and safety, security or safeguards performance;
- the enforcement priorities;
- the practicality of achieving results;
- the wider relevance of the event, including serious public concern.

Prosecution

England and Wales

- 1.44 In England and Wales, ONR has the power to prosecute for breaches of relevant legislation. ONR must use discretion in deciding whether to bring a prosecution, or a joint prosecution with another enforcing authority.
- 1.45 In England and Wales the decision whether to prosecute must take account of the tests set down by the Director of Public Prosecutions in the Code for Crown Prosecutors. No prosecution may proceed unless ONR decides that there is sufficient evidence to provide a realistic prospect of conviction, and that prosecution would be in the public interest.
- 1.46 While the primary purpose of ONR is to ensure that dutyholders manage and control risks effectively and comply with the law, prosecution is an essential part of enforcement. ONR will prosecute where it has collected sufficient evidence to provide a realistic prospect of conviction and has decided, in accordance with this policy and the Code for Crown Prosecutors that it is in the public interest to prosecute. The Code for Crown Prosecutors requires the decision to prosecute to be kept under continuous review. Where the circumstances warrant it and the evidence to support a case is available, ONR may prosecute without prior warning or recourse to alternative sanctions.

Scotland

- 1.47 In Scotland the Procurator Fiscal decides whether to bring a prosecution and will need to be satisfied that there is sufficient evidence and that prosecution is in the public interest. Such a decision may be made on the basis of a recommendation by ONR, although the Procurator Fiscal may investigate the circumstances and institute proceedings independently of ONR. ONR will use discretion in deciding whether to report to the Procurator Fiscal with a view to prosecution. Where appropriate, ONR will discuss its proposed approach with the Procurator Fiscal at an early stage and seek direction.
- 1.48 Subject to the above considerations, ONR expects that it will normally prosecute, or recommend prosecution, 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, security or safeguards 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.

1.49 In the unlikely event that inspectors are assaulted, ONR will seek police assistance, with a view to seeking the prosecution of offenders.

1.50 ONR will, in the public interest, consider prosecution or recommending 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.

Prosecution of individuals

1.51 Subject to the considerations reflected in the preceding paragraphs ONR will identify and prosecute or recommend prosecution of individuals if it considers such action is warranted. In particular, it will consider the management chain of the offending licensee or dutyholder. Where the inspection or investigation reveals that the offence was committed with the consent or connivance of individual directors and managers, or that the offence was attributable to neglect on their part, ONR will take action against them where it would be appropriate to do so in accordance with this policy. Where appropriate, ONR will seek disqualification of directors under the Company Directors Disqualification Act 1986.

Publicity

- 1.52 ONR will make publicly available information on convictions and on improvement and prohibition notices it has issued. A notice which is a relevant notice for the purposes of the Environment and Safety Information Act 1988 and does not impose requirements solely for the protection of persons at work will be placed on the public register once the period for appealing the notice has expired or any appeal against the notice has been resolved and the notice upheld.
- 1.53 In England and Wales, ONR will consider in all cases drawing media attention to factual information about charges which have been laid before the courts, but great care will be taken to avoid any publicity which could prejudice a fair trial. ONR will also consider publicising any conviction which could serve to draw attention to the need to comply with the law, or deter anyone tempted to disregard their duties.
- 1.54 In Scotland, decisions in relation to publicity of prosecutions are a matter for the Crown Office and Procurator Fiscal Service.

Action by the courts

- 1.55 The legislation enforced by ONR gives the courts considerable scope to punish offenders and to deter others, including imprisonment for some offences. Unlimited fines may be imposed by higher courts. ONR will continue to seek to raise the courts' awareness of the gravity of offences and of the full extent of their sentencing powers, while recognising that it is for the courts to decide whether or not someone is guilty and what penalty if any to impose on conviction.
- 1.56 In England and Wales, ONR will, when appropriate, draw to the court's attention all the factors which are relevant to the court's decision as to what sentence is appropriate on conviction. In relation to health and safety cases, the Attorney General has provided guidance.¹ ONR notes that the Lord Chancellor has said that someone injured by a breach of health and safety legislation is no less a victim than someone who is assaulted; this position has not changed. The Sentencing Guidelines Council Corporate Manslaughter & Health and Safety Offences Causing Death Definitive Guideline applies to the sentencing of organisations on or after 15 February 2010. The Attorney Generals guidelines apply to cases post 1 February 2016.

Representations to the courts

- 1.57 In cases of sufficient seriousness in England and Wales, ONR will indicate to the magistrates that the offence is of such seriousness that they should send or commit it to the Crown Court, where higher penalties can be imposed. In considering what representations to make, ONR should have regard to Court of Appeal guidance; the Court of Appeal has said: "In our judgement, magistrates should always think carefully before accepting jurisdiction in health and safety at work cases, where it is arguable that the fine may exceed the limit of their jurisdiction or where death or serious injury has resulted from the offence".

¹ <https://www.sentencingcouncil.org.uk/wp-content/uploads/HS-offences-definitive-guideline-FINAL-web.pdf>

Whilst fines are not now limited in the Magistrates Court in England and Wales, the Court of Appeal guidance on venue is still relevant.²

- 1.58 In Scotland it would fall to the Procurator Fiscal to draw the court's attention to the seriousness of any offence. Inspectors appointed by ONR will draw the Procurator Fiscal's attention to significant issues as part of the prosecution process.

Death at work

- 1.59 Where there has been a breach of the law leading to a work-related death, ONR needs to consider whether the circumstances of the case might justify a charge of manslaughter or corporate manslaughter (culpable homicide or corporate homicide in Scotland).
- 1.60 In England and Wales the police are responsible for deciding whether to pursue a manslaughter or corporate manslaughter investigation and whether to refer a case to the Crown Prosecution Service (CPS) to consider possible manslaughter charges. ONR is responsible for investigating possible health and safety offences, as well as those in relation to nuclear safety and transport. If in the course of such investigations, ONR finds evidence suggesting manslaughter or corporate manslaughter, it will be referred to the police. If the police or CPS decide not to pursue a manslaughter or corporate manslaughter case, ONR will normally bring a health and safety prosecution in accordance with this policy.
- 1.61 In Scotland, responsibility for investigating sudden or suspicious deaths rests with the Procurator Fiscal who will instruct the police. The police will lead the investigation of any potential offences related to culpable homicide or corporate homicide. ONR will investigate any possible health and safety offences. Under the Scottish Work Related Deaths Protocol the investigations will be co-ordinated and evidence shared. Unless a prosecution takes place in the same circumstances, the Procurator Fiscal is required to hold a Fatal Accident Inquiry into the circumstances of a death resulting from a work-related accident. An

² Legal Aid, sentencing and Punishment of Offenders Act 2012

Inquiry may also be held where it appears to be in the public interest on the grounds that the death was sudden, suspicious or unexplained, or has occurred in circumstances such as to give rise to serious public concern.

Crown bodies

Crown bodies must comply with nuclear, health and safety, security and radioactive materials transport legislation, but they are not subject to statutory enforcement, including prosecution. The Cabinet Office has established non-statutory arrangements for enforcing these requirements in Crown bodies, which ONR has adopted. These arrangements allow ONR to issue non-statutory improvement and prohibition notices, and for the censure of Crown bodies in circumstances where, but for Crown immunity, prosecution would have been justified. In deciding when to investigate or what form of enforcement action to take, ONR will follow as far as possible the same approach as for non-Crown bodies, in accordance with this enforcement policy.

