



<b>ONR GUIDE</b>			
<b>The Delicensing Process for Existing Licensed Nuclear Sites</b>			
<b>Document Type:</b>	Instruction		
<b>Unique Document ID and Revision No:</b>	NS-PER-IN-005 Revision 3		
<b>Date Issued:</b>	December 2019	<b>Review Date:</b>	December 2022
<b>Approved by:</b>	M. Richardson	Professional Lead, Human and Organisational Capability	
<b>Record Reference:</b>	CM9: 2019/326931		
<b>Revision commentary:</b>	Fit for Purpose Review. Minor changes to reflect changes in environmental regulations and clarification on the use of HSE “no danger” criterion. References updated.		

### TABLE OF CONTENTS

1. INTRODUCTION .....	2
2. LEGAL BACKGROUND.....	2
3. INTERPRETATION OF ‘NO DANGER’ .....	3
4. THE DE-LICENSING APPLICATION.....	5
5. METHODOLOGY OF INSPECTION AND ASSESSMENT.....	5
6. CONSULTATION.....	6
7. ROLE OF THE NUCLEAR DECOMMISSIONING AUTHORITY (NDA).....	7
8. RETENTION OF RECORDS .....	7
9. DOCUMENTING THE ASSESSMENT AND PRODUCING THE LEGAL INSTRUMENT ...	7
10. SURRENDER OF NUCLEAR SITE LICENCES.....	8
11. ANNEXES .....	10

## 1. INTRODUCTION

- 1.1 This guidance sets out the mechanisms by which a licensed nuclear site, or part thereof, may be removed from the licensing requirements of the Nuclear Installations Act (NIA 1965). Possible action following surrender of a nuclear site licence by a licensee is also considered.

## 2. LEGAL BACKGROUND

- 2.1 Section 5(1) of NIA 1965 empowers ONR, as the “*appropriate national authority*” to revoke nuclear site licences. Section 5(1) also gives licensees the right, unilaterally, to surrender nuclear site licences. The licensee’s right to surrender its licence is not constrained by any qualifying conditions, provided that the site is no longer being used for licensable activities (using a site for licensable activities without a licence being in force would be an offence under section 1 of NIA 1965). However, the surrender or revocation of the licence does not, of itself, end the licensee’s period of responsibility.

### ‘Period of responsibility’

- 2.2 The period of responsibility is defined in section 5(14) and section 5(15) of NIA 1965 as follows:

*“5(14) In this Act, “period of responsibility” in relation to the licensee under a nuclear site licence means as respects the site in question or any part of it, the period*

*(a) beginning with the grant of the licence, and*

*(b) ending with whichever of the dates in subsection (15) is the earliest,*

*except that it does not include any period during which section 19(1) does not apply in relation to the site.*

*5(15) Those dates are-*

*a) the date when the appropriate national authority gives notice in writing to the licensee that in the authority’s opinion there has ceased to be any danger from ionising radiations from anything on the site or, as the case may be, on the part of it in question;*

*b) the date when a new nuclear site licence in respect of a site comprising the site in question or, as the case may be, that part of it, is granted (whether to the same licensee or to some other person);*

*c) the date when the following conditions have both become satisfied-*

*(i) the site in question or, as the case may be, that part of it is used or occupied by or on behalf of the Crown, and*

*(ii) a nuclear site licence has ceased to be required in respect of that site or part.”*

- 2.3 This statutory period of responsibility is significant because:

- it can survive the revocation or surrender of the licence. Section 5(1) of NIA 1965 provides that, at any time, the site licence can be revoked by ONR or surrendered by the licensee but, unless it is being replaced by a new licence, the period of responsibility continues until ONR notifies the licensee in writing

that in its opinion there has ceased to be any danger from ionising radiations from anything on the site or, as the case may be, the relevant part of the site;

- where a licence has been revoked or surrendered and for the duration of the period of responsibility ONR is empowered under section 5(5) to “... *give the licensee such directions as the authority may think appropriate for preventing, or giving warning of, any risk of-*

a) *injury to any person, or*

b) *damage to any property,*

*by ionising radiations from anything remaining on the site”.* Failure to comply with directions given under s.5(2) is an offence under NIA 1965 s.5(8).

- it is used to determine the licensee’s liability for injury or damage affecting third parties under the insurance provisions of the NIA 1965 (see in particular sections 7 and 19 of NIA 1965, which are regulated by the Department for Business, Energy and Industrial Strategy [DBEIS] and the Scottish Executive). A claim may be up to 30 years after the occurrence giving rise to that claim. Consequently, a licensee’s liability may continue beyond the end of the period of responsibility.

- 2.4 Although the period of responsibility can continue after the surrender or revocation of the licence ONR anticipates that in most cases the licensee will seek to achieve a state of ‘no danger’ as a precursor to delicensing, so that delicensing and the ending of the period of responsibility can be achieved simultaneously.

### **De-licensing by Variation**

- 2.5 Section 3(12) of NIA 1965 allows ONR to vary a nuclear site licence in order to exclude part of the site, as follows:

*“The appropriate national authority may from time to time vary any nuclear site licence by excluding from it any part of the licensed site-*

(a) *which the licensee no longer needs for any use requiring such a licence, and*

(b) *with respect to which the appropriate national authority is satisfied that there is no danger from ionising radiations from anything on that part of the site.”*

- 2.6 This will have the effect of de-licensing the part of the site which is excluded. The requirement to meet the ‘no danger’ criterion in section 3(12)(b) prevents variation of a nuclear site licence in order to transfer part of a site to a neighbouring site. Any transfer of land will require re-licensing of both sites.

## **3. INTERPRETATION OF ‘NO DANGER’**

- 3.1 Section 3(12) and section 5(15)(a) NIA 1965 refer to ‘no danger’ as a requirement for de-licensing. The Act does not give any detail as to the precise meaning of ‘no danger’. The Act also states that ONR is the judge as to whether or not this requirement has been met. Guidance on the interpretation of the ‘no danger’

requirement is given in *HSE Criterion for Delicensing Nuclear Sites (HSE, 2005)* and HSE's *Delicensing Guidance (HSE, 2008)*.<sup>1</sup>

---

<sup>1</sup> ONR is in the process of producing its own guidance document. The Revocation Guidance Project will reflect the provisions of the 2016 Paris Convention Low Level Waste Exclusion Criteria. The project is expected to be completed by the end of 2020.

## 4. THE DE-LICENSING APPLICATION

4.1 As previously described, there are several ways in which a licensee's responsibility under the site licence may be brought to an end. The amount of detail in the application will depend upon the nature of the proposed de-licensing exercise. Prior to any application there will have been engagement between the licensee and ONR (usually through the nominated site inspector), and the need for de-licensing and the methodology to be adopted by the licensee will have been discussed. If a novel approach is to be adopted, it should be fully understood by ONR in advance of the application.

4.2 The application should be supported by a Safety Submission which should include:

- a statement that the site, or relevant part of the site, is no longer to be used for licensable activities;
- a history of the use of the land and buildings;
- identification of areas where radioactivity could contribute significantly to radiation exposure, now or in the future, and a demonstration of reasonably practicable methods for their remediation;
- documentation, records and results of radiological surveys and analyses of samples from the area to be de-licensed for comparison with background data from the vicinity of the site;
- an assessment of dose and risk to the public following de-licensing, based on conservative assumptions regarding reasonably foreseeable future use of the site and exposure pathways, i.e. to demonstrate that any future use of the land represents no danger;
- a revised site map showing the de-licensed area and, where appropriate, the remaining licensed area. Different colours should be used to differentiate between the two.

4.3 When only a part of a site is to be de-licensed, the licensee should demonstrate that it has adequate arrangements for the safe operation of the site after partial de-licensing. Issues which may need to be addressed as part of the application include:

- marking the revised site boundary;
- security considerations concerning changes to the site security plan;
- emergency arrangements;
- access to the site if access roads cross the de-licensed area;
- organisational changes (if applicable);
- impact on safety cases for remaining facilities/activities on the site.

## 5. METHODOLOGY OF INSPECTION AND ASSESSMENT

5.1 Consideration of a licensee's case for demonstrating 'no danger' will follow ONR's normal approach to making regulatory decisions: ONR assesses and inspects on a sample basis, involving consultants and ONR's legal advisors and policy function where appropriate.

- 5.2 A project inspector will usually be nominated to coordinate the assessment effort. This may involve specialist inspectors from within ONR and the nominated ONR Licensing specialist, who will liaise with the Government Legal Department on legal matters, particularly any property matters. A specialist inspector will need to consider the extent of the Public Health England (PHE) survey and assessment required to gain confidence in the licensee's claims and will oversee the PHE contract.
- 5.3 Communication between the project inspector and all parties involved should be maintained throughout the de-licensing exercise.
- 5.4 The nominated ONR Civil Nuclear Security inspector should be included in the assessment of the proposal for delicensing and should assess any impact on the site security plan. In instances where the site may, after delicensing, accommodate radioactive materials, such as sealed sources, subject to the Environmental Permitting (England and Wales) Regulations 2016 or the Environmental Authorisations (Scotland) Regulations 2018 and the Ionising Radiation Regulations 2017, ONRCNS will notify the appropriate agency responsible for the environment who will seek advice on how to secure such materials from the National Counter Terrorism Security Office (NaCTSO).
- 5.5 ONR will not de-license a site, or grant a licence variation, unless it is satisfied that all issues of significant regulatory concern have been resolved. ONR may ask the licensee to consider withdrawing, amending or deferring the proposed change, or refuse to grant the application if, for example:
- implementation is perceived to be potentially detrimental to the wider objectives of health, safety and waste management at the site (e.g. if it resulted in more complex operational interfaces and/or regulatory arrangements); or
  - the relevant environment agency raised reasonable objections to the variation as a result of consultation under section 3(13) of NIA 1965, in accordance with the MoUs referred to in paragraph 6.1.

## 6. CONSULTATION

- 6.1 Section 5(2) of NIA 1965 requires that:

*'The appropriate national authority must consult the appropriate environment authority before revoking a nuclear site licence.'*

- 6.2 The framework for this consultation is set out in the Memoranda of Understanding (MoU) between ONR and the Environment Agency, Scottish Environment Protection Agency and Natural Resources Wales. In accordance with the MoUs, ONR will take full and meaningful account of any environmental issues raised.
- 6.3 The NIA 1965 does not place any other specific consultation requirement on ONR in relation to an application for delicensing. ONR will decide the outcome of the application on the basis of its own reasoned assessment of the facts of the case and will publish its Project Assessment Report (PAR) underpinning the delicensing decision. Also, ONR encourages licensees to ensure that, wherever possible, the local community is kept fully informed via Local Liaison Committee / Site Stakeholder Group meetings, newsletters etc. Licensees are encouraged also to engage with other stakeholders such as DBEIS, the Scottish Government, the Ministry of Defence (for defence-related sites), and any other public bodies having duties in relation to the site.
- 6.4 ONR must consult the appropriate environment authority if the variation relates to or affects the creation, accumulation or disposal of radioactive waste, as defined in the EPR 2016 (for England and Wales) and the Environmental Authorisations (Scotland)

Regulations 2018. The environment authority will probably have been involved in discussions with the licensee prior to submission of the application. However, formal consultation must be conducted. The consultation process should be carried out by the nominated licensing specialist.

## **7. ROLE OF THE NUCLEAR DECOMMISSIONING AUTHORITY (NDA)**

7.1 The NDA is responsible for 17 sites. The NDA owns land which has been 'designated' to it under the Energy Act 2004. Before any NDA land can be sold or transferred it must be 'de-designated': this is achieved by a De-designation Direction granted by the Secretary of State for Business, Energy and Industrial Strategy. De-designation is not a prerequisite for delicensing. The NDA 'test' for de-designation is that the land must be fit for 'next use'; it does not have to meet the 'no danger' criterion. ONR may be asked to provide relevant information to support de-designation applications and these should be dealt with on a case by case basis. Note also the NDA requirement for Site Licence Companies to 'maintain and procure' a nuclear site licence, described in part 10 of this guidance.

## **8. RETENTION OF RECORDS**

8.1 The general rule is that any person who believes they may have suffered harm as a consequence of activities on a licensed nuclear site is entitled to make a claim for compensation at any time up to 30 years after the date of the occurrence which gave rise to the claim (section 15 of NIA 1965 refers). Consequently, upon delicensing and/or the ending of the period of responsibility for all or part of a licensed site, ONR will expect the licensee to make secure arrangements for relevant records to be retained for at least that period. This should be verified by the site inspector prior to de-licensing.

## **9. DOCUMENTING THE ASSESSMENT AND PRODUCING THE LEGAL INSTRUMENT**

- 9.1 The nominated technical assessor will provide the nominated project inspector with a report setting out the outcomes of the assessment. If the assessor has concluded that the 'no danger' criterion is satisfied, and has recommended revocation or variation of the licence and ending the licensee's period of responsibility, the project inspector should prepare a delicensing PAR pulling together all aspects of the application for delicensing and, where necessary, referring out to reports from other bodies such as Public Health England, and recommending revocation or variation. The PAR should be reviewed by the Licensing Specialist.
- 9.2 ONR's Licensing Specialist will prepare the revocation or variation and arrange for it to be reviewed by the Government Legal Department. Examples of a revocation and a variation are attached as Annexes 1 and 2 to this guidance. The Licensing specialist will also provide guidance on procedural matters and will liaise with the nominated lawyer in the Government Legal Department's Department as necessary.
- 9.3 The Chief Nuclear Inspector (CNI) or a nominated Deputy Chief Inspector (DCNI) will consider all the evidence and the recommendation in the delicensing PAR before making a decision on the acceptability of the applicant's case. When satisfied that the application is in order the CNI or nominated DCNI will sign the revocation or variation. If not satisfied, the licence will remain in force until any outstanding issues have been resolved to the CNI or nominated DCNI's satisfaction. The licensee will be informed as to the outcome of this process.

## 10. SURRENDER OF NUCLEAR SITE LICENCES

- 10.1 ONR does not encourage the surrender of nuclear site licences. Section 5(1)(b) of NIA 1965 allows a licensee to surrender a nuclear site licence. However, this is not an unrestricted right; section 1(1) prohibits the installation or operation of a nuclear reactor, or any other prescribed installation, unless a licence has been granted. This will effectively prevent a licensee from surrendering its licence if it wishes to continue carrying out prescribed activities. Contravention of section 1(1) is an offence under section 1(8) of the Act.

### Nuclear Decommissioning Authority Sites

- 10.2 It should be noted that the NDA frequently includes a condition in its Management and Operations contract requiring the tenant organisation to "maintain and procure a Nuclear Site Licence" in order to fulfil its obligations under the contract. This should discourage surrender of site licences by licensees of NDA sites.

### ONR Action following Surrender

- 10.3 Surrender of a nuclear site licence does not end the licensee's period of responsibility described in paragraph 2.2, this only occurs when the requirements of section 5(15) have been met. In practice, the period of responsibility will end when ONR issues a written notice to that effect. Following surrender of a licence, ONR has the power to issue directions to the former licensee during the remainder of the period of responsibility. The nature of these directions will be determined by the particular circumstances of the site concerned. The absence of any detail concerning directions in NIA 1965 suggests that no specific directions are intended by the Act. In these circumstances, ONR may use its own discretion in deciding what directions are appropriate.
- 10.4 Section 5(5) of NIA 1965 empowers ONR to impose "such directions as the authority may consider appropriate for preventing, or giving warning of, any risk of - injury to any person or damage to any property by ionising radiations from anything remaining on the site". Any direction will have to be properly considered to ensure it is within the scope of the power given in section 5(5); it is unlikely that ONR's standard suite of 36 Licence Conditions could be re-imposed in its entirety by means of a direction. It is more likely that a set of directions would be drafted specifically for the site in question. The wording of directions should be reviewed by the Government Legal Department before they are imposed.
- 10.5 Surrender is most likely to occur when a site is substantially or wholly decommissioned, but not de-licensed. If this were so, a number of the standard licence conditions would be irrelevant (e.g. LC 21 - Commissioning). The specific reference within NIA 1965 to injury or damage from ionising radiation precludes the imposition of directions for conventional safety purposes.

## REFERENCES

[a] ONR / EA Memorandum of Understanding on Matters of Mutual Interest in England:  
<http://www.onr.org.uk/documents/2015/mou-onr-ea-180815.pdf>

[b] ONR / SEPA Memorandum of Understanding on Matters of Mutual Interest in Scotland:  
<http://www.onr.org.uk/documents/2019/mou-onr-sepa.pdf>

[c] ONR / NRW Memorandum of Understanding on Matters of Mutual Interest in Wales:  
<http://www.onr.org.uk/documents/2015/nrw-mou.pdf>

[d] HSE Criterion for De-Licensing Nuclear Sites (May 2005)  
[www.hse.gov.uk/nuclear/delicensing.pdf](http://www.hse.gov.uk/nuclear/delicensing.pdf)

[e] HSE De-Licensing Guidance (August 2008)  
[www.hse.gov.uk/nuclear/delicensingguide.pdf](http://www.hse.gov.uk/nuclear/delicensingguide.pdf)

## 11. ANNEXES

### ANNEX 1

Site Licence No: XX

NUCLEAR INSTALLATIONS ACT 1965 ("the 1965 Act")  
REVOCATION OF NUCLEAR SITE LICENCE

(Name of Licensee)

(Name of Site)

1. The Office for Nuclear Regulation, in pursuance of section 5(1)(a) of the 1965 Act, hereby revokes Nuclear Site Licence No.XX granted to ----- on (date) in respect of -----.

2. In the opinion of the Office for Nuclear Regulation there has ceased to be any danger from ionising radiations from anything on the site. Therefore, in pursuance of sections 5(14) and 5(15) of the 1965 Act, the licensee's period of responsibility under the said licence will cease at the time of the coming into force of this revocation.

3. This revocation shall come into force on (date).

Dated

For and on behalf of the Office for Nuclear Regulation

Chief Nuclear Inspector

A person authorised to sign in that behalf

**Site Licence No. XX**

**NUCLEAR INSTALLATIONS ACT 1965 (“the 1965 Act”)  
VARIATION  
of Nuclear Site Licence No.  
(Name of Licensee)  
(Name of Site)**

The Office for Nuclear Regulation, in exercise of its powers under section 3(12) of the 1965 Act, hereby varies Nuclear Site Licence No. granted on (date) to (licensee) in respect of (name of site), by excluding from the site (within the meaning of Nuclear Site Licence No.) that land which is shaded (colour) (“the excluded land”) on the licensee’s drawing referenced Drawing No. (Ref.) entitled (title of diagram) and dated (date) and which is annexed hereto (“the drawing”).

The Office for Nuclear Regulation is satisfied that there is no danger from ionising radiations from anything on the excluded land. Therefore, in accordance with section 5(14) and 5(15) of the 1965 Act, the licensee’s period of responsibility under Nuclear Site Licence No. for the excluded land will cease on the coming into force of this variation.

The residual licensed area is shown in detail outlined in red on the drawing.

This variation shall come into force on (date).

Dated:

For and on behalf of the Office for Nuclear Regulation

Chief Nuclear Inspector  
A person authorised to act in that behalf