

ONR GUIDE			
Enforcement			
Document Type:	ONR Guide		
Unique Document ID and Revision No:	ONR-ENF-GD-006 Revision 4		
Date Issued:	January 2021	Review Date:	July 2023
Approved by:	K McDonald	Operational Inspection Professional Lead	
Record Reference:	CM Folder 1.1.3.976. (2020/303238)		
Revision commentary:	Rev. 4 incorporates minor amendments to include ONR Safeguards purpose as the enforcing authority for the Nuclear Safeguards (EU Exit) Regulations 2019.		

TABLE OF CONTENTS

1. INTRODUCTION	2
2. PURPOSE AND SCOPE	2
3. THE ONR ENFORCEMENT FRAMEWORK – SUMMARY	2
4. ENFORCEMENT OVERVIEW	3
5. RISK ANALYSIS.....	7
6. BASELINE ENFORCEMENT LEVEL (BEL).....	10
7. ENFORCEMENT ACTIONS	12
8. APPLICATION OF DUTYHOLDER FACTORS	18
9. APPLICATION OF STRATEGIC FACTORS	20
10. ENFORCEMENT RECOMMENDATION.....	22
11. RECORDING THE APPLICATION OF THE ONR EMM.....	23
12. ENFORCEMENT DECISION	23
13. COMMUNICATE WITH THE DUTY HOLDER AND TAKE ACTION	24
14. GLOSSARY	25
15. REFERENCES	27
16. APPENDIX 1 CONSEQUENCE LEVEL EXAMPLES	28
17. APPENDIX 2 EXAMPLES OF ADMINISTRATIVE COMPLIANCE GAPS	30

© Office for Nuclear Regulation, 2021

If you wish to reuse this information visit www.onr.org.uk/copyright for details.

Published 01/2021

1. INTRODUCTION

- 1.1 The ONR Enforcement Management Model (EMM) is a defined approach that helps inspectors make consistent enforcement decisions in line with the ONR [Enforcement Policy Statement](#) (EPS)
- 1.2 The EPS sets out the principles that inspectors should apply when determining what enforcement action to take in response to breaches of health, safety, security and safeguards legislation. Fundamental to this is the principle that enforcement action should be proportionate to the health, safety, security and safeguards risks and compliance gaps and/or the seriousness of the breach.

2. PURPOSE AND SCOPE

- 2.1 The purpose of this document is to set out the ONR EMM and how it is to be used by inspectors in making enforcement decisions.
- 2.2 This guide sets out the principles that ONR inspectors should apply when determining what enforcement action to take in response to breaches of legislation; it provides an overview of enforcement for all ONR purposes and guides inspectors through the key facets of determining the enforcement decision.
- 2.3 These key facets are:
 - Risk Analysis
 - Identification of the Benchmark Standard
 - Determining the Baseline Enforcement Level (BEL)
 - Application of Dutyholder Factors
 - Application of Strategic Factors
 - Recording the basis for the enforcement decision
- 2.4 The term safety should be considered as relating to all aspects of safety including Health, Conventional, Nuclear, Radiological, Chemotoxic, Fire and Transport. The term security refers to civil nuclear and radiological matters only. The term safeguards refers to nuclear safeguards. This reflects all of ONR's purposes for which enforcement action is relevant.

3. THE ONR ENFORCEMENT FRAMEWORK – SUMMARY

- 3.1 This enforcement guidance reflects how ONR regulates the nuclear industry and relevant areas of the non-nuclear industry and is applicable to all of ONR's purposes. ONR inspectors often operate in an environment where they are regularly in contact with dutyholders during the course of their work to carry out risk informed and targeted interventions. ONR inspectors usually have the opportunity to regularly monitor the response to identified shortfalls and where necessary escalate in cases where dutyholders fail to respond appropriately.
- 3.2 This regular monitoring by ONR means that the usual approach adopted by inspectors is to identify a baseline level of enforcement to deliver compliance, which is proportionate to, the risk to health, safety, security or safeguards, or the seriousness of any breach of the law. Consideration of dutyholder factors is also important when making an enforcement decision; as these reflect the inspectors' knowledge of the dutyholder and their activities. Dutyholder factors therefore have the potential to escalate the enforcement decision from the baseline level.
- 3.3 This enforcement guidance provides a framework for making consistent enforcement decisions; **it is not a mechanistic decision making tool**. It guides inspectors in

considering the key aspects of a dutyholder's shortfall in performance; to arrive at the most appropriate enforcement decision for the circumstances. Enforcement decisions are based on aspects such as the expectations specified in the EPS, the level of risk, the authority of the relevant standard and the application of factors (dutyholder and strategic).

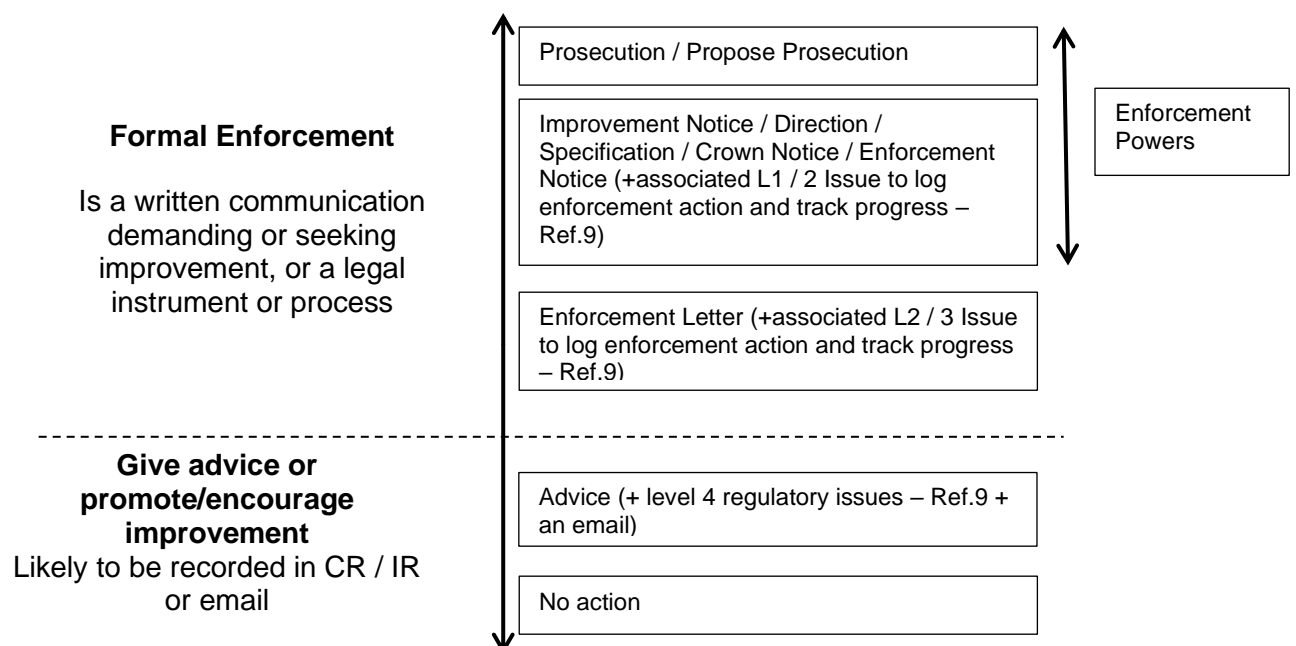
- 3.4 In relation to Conventional Health and Safety (CH&S) matters and Fire Safety this guidance is written to arrive at a comparable enforcement decision to that from the [HSE EMM](#). However, it should be noted that the steps for how this is arrived at are different to the HSE EMM reflecting differences in ONR's regulatory approach to that of HSE.
- 3.5 In relation to CH&S matters inspectors should refer to current [HSE operational guidance](#) to determine whether there is relevant enforcement guidance available.
- 3.6 ONR inspectors apply the principles of the ONR EMM in all of their regulatory activities, but they will only formally apply the EMM and record the outcome when considering more serious safety, security or safeguards 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 formal enforcement (see figure 1).
- 3.7 Formal application of the EMM must take place when the BEL is to use formal enforcement or if the BEL has been escalated due to dutyholder factors or modified by strategic factors. The enforcement decision should be recorded on an [Enforcement Decision Record \(EDR\)](#), which clarifies the basis of the inspectors' conclusions.
- 3.8 There are limitations to the ONR EMM, when assessing risk and compliance with legislation since the decision making can range from being relatively straightforward to extremely complex. The ONR EMM is a simple model that provides a framework for aiding decision making and improving consistency; it cannot capture all the nuances and complexities of enforcement decision-making in all circumstances. EDRs must therefore be used to articulate and record how the various factors have influenced the enforcement decision in an open and transparent manner.
- 3.9 The ONR EMM includes a delivery lead review which can be used to help inspectors and delivery leads 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](#).
- 3.10 Note on Permissioning
 - 3.10.1 The permissioning regimes regulated by ONR are not included in the ONR EMM as ONR has comprehensive guidance to inspectors regarding the nuclear industry and transport permissioning regime (Ref.1). Where duty holders are seeking ONR permission, they are not implementing or operating the proposed new or modified activity/plan. Consequently, there cannot be any actual risk associated with the proposal in itself at that point. This is also the situation with a proposal to start up a plant or process following a periodic shutdown.

4. ENFORCEMENT OVERVIEW

- 4.1 The ONR EPS states that 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 safeguard security, health, safety, welfare and safeguards.
- 4.2 The term 'enforcement' has a wide meaning and applies to all dealings between enforcing authorities and those on whom the law places duties.

- 4.3 When inspectors are carrying out their core functions, e.g. inspection and investigation, they use the ONR EMM and consider the level of risk or compliance gap to identify proportionate enforcement actions to secure compliance. During inspections (Ref. 2) inspectors link their inspection findings to an inspection rating and an expected ONR response; the ONR EMM is intrinsic to this process, particularly if the intervention rating is 'Red'.
- 4.4 Terminology can be confusing given everything we do when dealing with a dutyholder is termed enforcement. So to distinguish, the term 'formal enforcement' when used in this EMM guidance relates to an enforcement letter or greater as opposed to other means of enforcement such as giving advice and encouraging improvement. Definition of the two classes of enforcement is provided in Figure 1 below:

Figure 1 Types of Enforcement



- 4.5 In accordance with the EPS, the purpose of enforcement is to:
- ensure that dutyholders take action to deal immediately with serious safety, security and safeguards risks;
 - promote, achieve and sustain compliance with the law;
 - ensure that dutyholders who breach regulatory requirements, and directors and managers who fail in their responsibilities, may be held to account. This may include bringing the alleged offenders before the courts in England and Wales, or recommending prosecution in Scotland.

4.6 Process of enforcement

- 4.6.1 ONR inspectors utilise a variety of enforcement tools to deal with safety, security and safeguards risks and to secure compliance. Within the ONR EMM these range from regulatory advice, an enforcement letter, to issuing specifications, directions and notices. Inspectors can also institute proceedings (England & Wales) or recommend prosecution (Scotland) where the circumstances warrant it. Making decisions about appropriate enforcement is fundamental to the role of an inspector.

- 4.6.2 Crown bodies are exempt from statutory enforcement but ONR can issue non-statutory notices, and censure Crown bodies in circumstances where, but for Crown immunity, prosecution would have been justified.
- 4.6.3 Inspectors should have a good understanding of the hazards and control measures associated with the dutyholder's activities. The process of making enforcement decisions is complex and should involve the exercise of professional judgement, so that action appropriate to each situation is taken. Further guidance may be found in the document [The Judge Over Your Shoulder](#).
- 4.6.4 Use of the EMM is not a one-off process. For example as part of an investigation (Ref. 3) it may be identified that there are clear breaches and a timely enforcement decision may be required to achieve compliance with the law, prior to completing the investigation. However, as the investigation culminates, inspectors may need to consider the EMM again to ensure the proposed enforcement action meets the purposes of enforcement.
- 4.6.5 Enforcement decisions must be impartial, justified and procedurally correct. The EPS sets out the approach which inspectors should follow and the [Legislative and Regulatory Reform Act 2006](#) sets the regulatory principles to be followed. Enforcement action should also be taken in accordance with the spirit and the aims of the [Regulators Code](#). As a public regulator, ONR is accountable for managing the enforcement processes we apply.

4.7 **Addressing Immediate Safety and Security Risks**

- 4.7.1 ONR inspectors have a range of options for addressing immediate safety and security risks. As stated previously, addressing immediate risk (including risk of serious personal injury) is the first purpose of enforcement, using the most appropriate regulatory tool.
- 4.7.2 When addressing immediate risk the inspector will likely be on site, and will be making contemporaneous notes within their notebook. In the first instance the inspector should use influence with the dutyholder to deal with the immediate risk. If this doesn't result in the immediate risk being mitigated then the inspector should try to contact their delivery lead or an appropriate specialist for advice prior to utilising their powers to deal with immediate risk (e.g. [Health & Safety at Work Act 1974](#) (HSWA) s22 / s25, [The Energy Act 2013](#) (TEA13) schedule 8 part 2 (4) / part 3 (10), [The Regulatory Reform \(Fire Safety\) Order 2005](#) part 3 article 31 and [The Fire \(Scotland\) Act 2005](#) part 3 chapter 2 section 63).
- 4.7.3 Utilising inspectors' powers to deal with immediate risks will most likely require the use of prohibition notices (including deferred prohibition notices). In addition, LC 31(1) gives power to ONR to direct the licensee to shut down any plant, operation or process on the site within such period as the ONR may specify. In relation to COMAH, the COMAH Competent Authority (i.e. ONR in conjunction with the relevant Environment Agency partner) has the power to issue COMAH prohibition notices to direct the licensee to shut down any COMAH related operation if it is seriously deficient in preventing major accidents.
- 4.7.4 By using influence or statutory powers, the inspector is likely to have taken action sufficient to ensure the risk is effectively controlled. However, the inspector will also need to determine:
- whether to take further enforcement action to secure sustained compliance with the law in relation to that, and all other risks they have identified; and
 - whether consideration of criminal proceedings is appropriate.

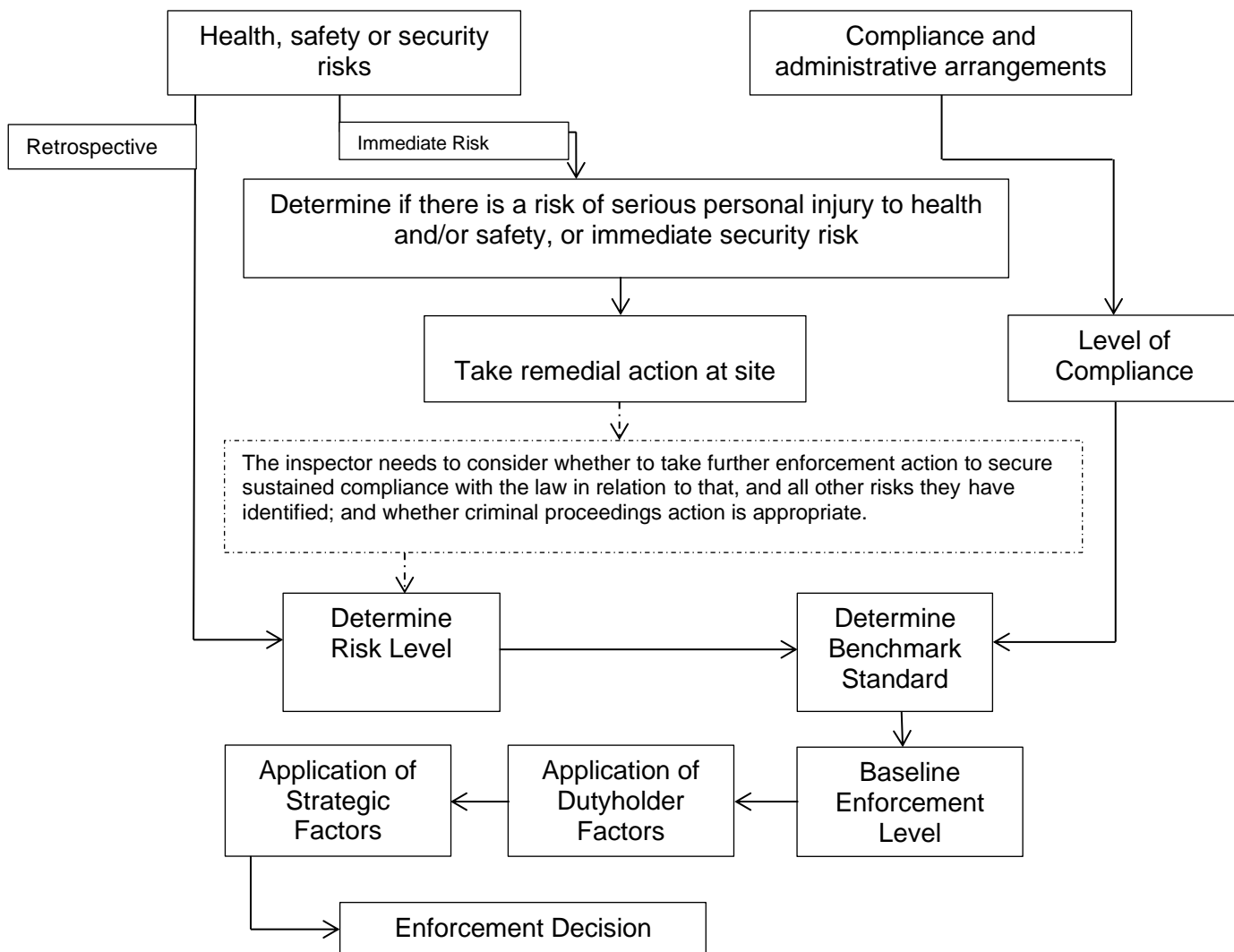
4.8 Purpose of the EMM

4.8.1 The ONR EMM is intended to:

- ensure consistency in the enforcement decision making process;
- ensure proportionality and targeting by considering the risk based criteria against which decisions are made;
- provide a framework for making enforcement decisions transparent, and for ensuring that those who make decisions are accountable for them;
- help inspectors assess their decisions in complex cases, and allow peer review of enforcement action; and
- guide less experienced inspectors in making enforcement decisions.

4.9 **The EMM is not intended as a mechanistic decision making tool.** Rather, the purpose of the ONR EMM is to aid judgement, assisting inspectors to arrive at enforcement decisions in line with the expectations of the ONR EPS. The ONR EMM process is presented in diagrammatic form at Figure 2.

Figure 2 Process of the EMM



5. RISK ANALYSIS

- 5.1 Whilst intervention priorities are guided by Regulatory Directorate (RD) divisional plans and strategies, inspectors have discretion in deciding subsidiary priorities for regulatory action within ONR due process. ONR inspectors inspect compliance with the legislation for which ONR is the Enforcing Authority.
- 5.2 During regulatory contacts (e.g. inspections, investigations, incident reporting, events, follow-up of complaints/concerns/ whistle-blower), inspectors collect or are provided with information about hazards, risk control measures and security threats. From this, they make judgements about the health, safety, security and safeguards risks associated with the activity. Inspectors should identify specific hazards / threats and consider common root/underlying causes to ensure serious risks are dealt with immediately.
- 5.3 In determining the risk, the inspector should initially assess the level(s) of actual risk arising from the dutyholder's activities. This should be based on their judgement of the hazards and control measures informed by their training, experience, guidance and other relevant sources of information. Some risks may be relevant to more than one ONR purpose. On these occasions it is important that the purposes co-ordinate to ensure awareness of the risk and that appropriate enforcement action is taken.
- 5.4 Evaluation of the risk may involve considering several complex, inter-related causal factors, e.g. in the case of an evaporative cooling water system where causal factors may include system management, responsible person competence, maintenance, sampling, control measures, and/or assessment of the risks. When applying the EMM, it is important to ensure that all contributory causal factors are identified and assessed to arrive at a pertinent risk analysis. As we regulate on GB nuclear sites there may also be interdependency between nuclear and non-nuclear risks which will need to be clearly identified and taken into account.
- 5.5 Risk analysis is not appropriate for non-risk based compliance with administrative issues; these are covered in Table 3.
- 5.6 **Evaluating the Risk Level**
- 5.6.1 The concept of risk level is used in the ONR EMM as an overall indicator of how far away from an adequate standard the particular circumstances encountered by the inspector actually are. The risk level takes account of the level of harm including potential harm (consequences) and the adequacy of the control measures in place to provide protection. The risk level is used for the purpose of selecting a BEL.
- 5.6.2 The ONR EMM is designed to specify a higher BEL where the gap to relevant good practice (benchmark standard) is greater; and in circumstances where the consequences are more severe. Four risk levels are used in the ONR EMM: extreme, substantial, moderate and nominal. This does not include administrative non-compliances; which are covered in Table 4.

5.7 Risk Level Matrix

5.7.1 The following risk level matrix (Table 1) should be used by inspectors, in conjunction with their experience and judgement, to determine an appropriate risk level. The risk level matrix uses two parameters; the consequence level is a relative measure of the actual or potential harm to workers or the public (including possible civil disruption). The control measures level is a relative measure of the extent to which relevant good practice set out in benchmark standards has been satisfied. See Appendix 1 for guidance on the selection of consequence and control measure levels.

5.7.2 Table 1 – Risk Level Matrix

Consequence	Serious	Nominal	Substantial	Extreme
	Significant	Nominal	Moderate	Substantial
	Minor	Nominal	Nominal	Moderate
		Broadly satisfied	Weakened	Absent/ inadequate
		Control measures		

5.8 Benchmark Standard

5.8.1 The authority of the relevant benchmark that is being used to evaluate the circumstances requiring enforcement is the next factor to be considered. The ONR EMM is designed to specify a higher BEL in circumstances where the legal requirement is more explicitly defined.

5.8.2 Benchmarks are derived from security, safety and safeguards standards which come from various sources. These standards have differing ‘authorities’, e.g. They could be specified in law, or may be a reasoned description of what the law seeks to achieve set down in guidance. This influences the decision about the proportionate level of enforcement.

5.8.3 A higher level of enforcement is expected where a dutyholder has failed to meet well known and defined standards compared to situations where there is less information or guidance available. There may be a range of standards that are relevant to the matter(s) being considered; the standard used should be that which best describes the circumstances. Standards are divided into three categories to capture their broad range of authority; Defined, Established and Interpretative (see Table 2 for details).

5.8.4 ONR’s safety, security and safeguards assessment principles (SAPs, SyAPs & ONMACS) have the legal authority of an established standard. For nuclear safety decisions, demonstration of ALARP will normally be made within the dutyholder’s safety case required under LC 23. The need to demonstrate ALARP also arises in other legislation e.g. Ionising Radiations Regulations 2017 (IRR) Regulation 9 requires that exposure should be restricted SFAIRP, or the Management of Health and Safety at Work Regulations 1999, which require a suitable and sufficient risk assessment. For

security, nuclear premises and approved carriers demonstrate legal compliance through effective implementation of their security plan. The need to comply with an approved security plan arises from a requirement within NISR 2003 and therefore the security plan is considered to be a Defined standard.

- 5.8.5 When considering the BEL, it is possible that multiple standards may be applicable to the circumstance being considered. The standard that sets the most relevant benchmark should be the one that is applied. An example would be LC 13; it is explicit in LC 13(4) that the nuclear safety committee should consist of at least seven persons, here the benchmark which is to be achieved is directly set by the LC and so LC 13 can be regarded as the relevant standard, which is Defined. However, LCs in a number of places require a benchmark of making and implementing adequate arrangements. Here, it is necessary to turn to sources of relevant good practice to directly inform the required benchmark. In this instance the relevant good practice will be found in Established standards.
- 5.8.6 Guidance on what constitutes relevant good practice can be found in Reference 4 'Guidance on the Demonstration of ALARP (As Low As Reasonably Practicable)'.
- 5.8.7 Table 2 provides further guidance on standards, their legal authority and how they should be used in the ONR EMM.

TABLE 2. BENCHMARK STANDARDS	
WHAT IS THE AUTHORITY OF THE APPROPRIATE STANDARD?	
Descriptor	Definition
Defined Standard	Minimum standard specified by Acts, Regulations, Orders and ACoPs. For example, Regulatory Reform (Fire Safety) Order 2005, The Fire (Scotland) Act, Management of Health and Safety at Work Regulations 1999, Health and Safety at Work Act 1974, Nuclear Industries Security Regulations 2003, Control of Asbestos Regulations 2012, Working at Height Regulations 2005, Confined Spaces Regulations 1997 ACoP, Ionising Radiations Regulations, Carriage of Dangerous Goods and Use of Transportable Pressure Equipment 2009, Control of Major Accident Hazards Regulations 2015. Nuclear Safeguards (EU Exit) Regulations 2019.
Established Standard	Codes of Practice and other standards linked to legislation, published or commonly known standards of performance interpreted by regulators or other specialists, industry or other organisations. For example, British Standards, LCs, Security and Safety Assessment Principles, Safeguards Nuclear Material Accountancy, Control and Safeguards (ONMACS). Cabinet Office Security Policy Framework, TIGs, TAGs and IAEA Standards.
Interpretative Standard	Standards which are not published or available generally, but are examples of the performance needed to meet a general or qualified duty.

6. BASELINE ENFORCEMENT LEVEL (BEL)

- 6.1 The next step in the ONR EMM is for inspectors to determine the BEL. This is the baseline level of enforcement that is judged appropriate to deliver compliance; it reflects, and is proportionate to, the risk to health, safety, security or safeguards or the seriousness of any breach of the law and is consistent with regulatory action taken in other similar situations. The BEL is aligned to the expectations laid out in ONR's EPS.
- 6.2 To determine the BEL the Risk Level and Benchmark Standard are compared in Table 3.

TABLE 3. BASELINE ENFORCEMENT LEVEL			
		Baseline Enforcement Level (to secure compliance with the law)	Consider Prosecution
Risk Level	Benchmark Standard		
Extreme	Defined	Notice / Direction / LC Powers (refer to section 7.4)	Yes (Section 7.3)
	Established	Notice / Direction / LC Powers (refer to section 7.4)	Yes (Section 7.3)
	Interpretative	Notice / Direction / LC Powers (refer to section 7.4)	
Substantial	Defined	Notice / Direction / LC Powers (refer to section 7.4)	
	Established	Enforcement Letter (refer to section 7.5)	
	Interpretative	Enforcement Letter (refer to section 7.5)	
Moderate	Defined	Enforcement Letter (refer to section 7.5)	
	Established	Regulatory Advice (refer to section 7.6)	
	Interpretative	Regulatory Advice (refer to section 7.6)	
Nominal	Defined	Regulatory Advice (refer to section 7.6)	
	Established	No Action	
	Interpretative	No Action	

- 6.3 The concept of Risk Level is not appropriate for administrative aspects of legal requirements which in themselves do not relate directly to risk control e.g. the requirement to notify ONR of an incident (Ref. 5). The ONR EMM refers to such cases as non-risk based compliance with administrative issues and treats them separately from risk based issues. Proportionate enforcement action is then determined by considering the extent of the non-compliance and the standards expected. Table 4 identifies the BEL for securing compliance in such cases.
- 6.4 It is not usually appropriate to consider prosecution in relation to compliance with administrative arrangements that do not in themselves give rise to risks. An exception however might be where there are relevant dutyholder and/or strategic factors, or the matter is specified in the EPS, e.g. failure to comply with a notice or direction.

TABLE 4. BASELINE ENFORCEMENT LEVEL – COMPLIANCE WITH ADMINISTRATIVE ISSUES		
Level of Compliance	Standard (Table 2)	Baseline Enforcement Level
Absent Total absence, appreciation or implementation of compliance. For example, safety case not submitted, assessment of risk not completed, requirements not implemented or complied with or incidents not reported.	Defined	Notice / Direction / LC Powers (refer to section 7.4)
	Established	Enforcement Letter (refer to section 7.5)
	Interpretative	Enforcement Letter (refer to section 7.5)
Inadequate Only rudimentary observance with standards or inadequate compliance, where such failures are of a substantial or material nature. For example inadequate safety case / security plan submitted, washing facilities not provided with hot water, only fatal or 'major injuries' reported, lack of cascade of licensee management system requirements into supplier for matters affecting safety.	Defined	Enforcement Letter (refer to section 7.5)
	Established	Enforcement Letter (refer to section 7.5)
	Interpretative	Regulatory Advice (refer to section 7.6)
Minor Deficiencies or inadequacies are minor, have little material impact and can be remedied easily. For example isolated compliance breaches associated with inspection findings.	Defined	Regulatory Advice (refer to section 7.6)
	Established	Regulatory Advice (refer to section 7.6)
	Interpretative	No Action

7. ENFORCEMENT ACTIONS

- 7.1 The ONR EMM captures the principles of the ONR EPS by providing a framework in which enforcement action is proportional to the legal breach. This section of the guidance explores the enforcement actions available across our purposes in more detail.
- 7.2 ONR inspectors have a range of legal powers that can be used to compel dutyholders to comply with legal duties, or face prosecution if they fail to do so. Note that the issuing of prohibition notices is not covered under this guide (see section 4.7), but failure to comply with a prohibition notice is covered under 7.3.5.

7.3 Prosecution

England and Wales

- 7.3.1 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) and ensure that so doing fully aligns with our EPS.
- 7.3.2 In England and Wales the decision on whether to prosecute must take account of the tests set down by the Director of Public Prosecutions in the Code for Crown Prosecutors (CCP). No prosecution may proceed unless ONR decides that there is sufficient evidence to provide a realistic prospect of conviction, and that prosecution would also be in the public interest.
- 7.3.3 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 enforcement option. The CCP 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

- 7.3.4 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.

General Points

- 7.3.5 The EPS identifies specific circumstances where ONR expects that it will normally prosecute, or recommend prosecution, where, following an investigation (Ref. 3) or other regulatory contact, one or more of the following circumstances apply:
- death was as a result of a breach of 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.

7.3.6 In addition, ONR will, in the public interest, consider prosecution or recommend prosecution, where following an investigation or other regulatory contact, one or more of the following circumstances apply:

- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law;
- a breach which gives rise to significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity.

7.3.7 If prosecution is to be considered it will be necessary to investigate to establish the breaches and their root causes, applying ONR's Investigation guidance (Ref. 3).

7.3.8 The potential to prosecute applies to all dutyholders under security, health, safety and safeguards legislation, including individuals such as individual employers, directors, managers, self-employed persons and employees.

7.3.9 Crown bodies are exempt from statutory enforcement but ONR can censure Crown bodies in circumstances where, but for Crown immunity, pursuing a prosecution would have been justified.

7.3.10 When considering the prosecution of employees, inspectors should also take account of the role that the individual employees played in the commission of the offence, and any relevant actions by their employer.

7.3.11 Directors or managers may only be prosecuted under HSW Act, Section 37, if the body corporate has failed to meet a legal duty. Prosecutors must then be able to prove the failure was caused through the consent, connivance or neglect of the director or manager in question. When considering the prosecution of such persons, inspectors should seek to apply the principles of the EMM wherever possible and, in particular, should consider the management chain and the role played by individual directors and managers. These additional elements are addressed in guidance (see list and links below), not the EMM itself.

7.3.12 For legal advice, inspectors should seek guidance from our legal advisory service applying ONR's guidance on 'Obtaining Legal Advice' (Ref. 6). Additionally, detailed guidance on prosecution can be found at the links below:

- [Code for Crown Prosecutors](#) for England and Wales
- [Prosecution Code for Scotland](#)
- [HSE Operational Circular \(OC\) 130/8 V2](#) refers to prosecuting individuals
- [HSE Enforcement Guide for England and Wales](#)
- [HSE Enforcement Guide for Scotland](#)
- [HSE Operational Procedures \(Prosecution\)](#)
- [ONR Enforcement Policy Statement \(EPS\)](#)
- [Work Related Death \(WRD\) Protocol](#)

7.4 NOTICES, SECURITY DIRECTIONS & LICENCE CONDITION POWERS

7.4.1 Security directions:

- ONR security inspectors have the power to issue directions under the NISR 2003.
- Such a direction may impose a requirement to be met within a period specified in the direction, or if it is about the continuing or future adequacy of security, then periodically as specified in the direction.
- Templates for the following directions can be found in ONR's Business Management System, Templates and Forms, ONR Legal Forms:
 - Regulation 11(1) – Security of Nuclear Premises
 - Regulation 21(1) – Security of Transport of Nuclear Material
 - Regulation 22(7) – Security of Sensitive Nuclear Information
- Security directions are unlikely to be published on the ONR website.
- This enforcement action will however need to be visible internally (e.g. to the Regulatory Leadership Team (RLT)), along with all other ONR formal enforcement action (i.e. enforcement letter and above), so a unique identifier should be requested from ONR.Enforcement@ONR.gov.uk.
- Consideration should also be given to the extent to which relevant external stakeholders are informed of the formal enforcement action, and in particular other regulatory bodies/agencies.
- The direction will also require an associated Level 1 or 2 regulatory issue (Ref. 7) to track the associated actions with the dutyholder (note that a regulatory issue number is required when requesting a unique identifier).
- The contents of a direction should be discussed with the dutyholder in advance of issuing it, so that they are clear why ONR is taking this action, the response required and to what timescales.

7.4.2 Improvement Notices (IN) / Enforcement Notices (EN):

- ONR inspectors have the power to issue Improvement Notices (IN) under both the HSWA and TEA13.
- In considering the issue of an IN the inspector has to be of the opinion that the duty holder is contravening, or has contravened, one or more of the relevant statutory provisions of HSWA, or the applicable provisions of the TEA13, in circumstances that make it likely that the contravention will continue or be repeated.
- Crown bodies are exempt from statutory enforcement but ONR can issue non-statutory notices.
- Inspectors have the power to issue Enforcement Notices under the Regulatory Reform (Fire Safety) Order 2005 or the Fire (Scotland) Act 2005.
- Templates for an IN, EN and the related extension and withdrawal forms can be found in ONR's Business Management System, Templates and Forms, and ONR Legal Forms.
- An inspector has power to withdraw an IN / EN or extend the period specified in the notice before the end of the period specified in it.
- The IN / EN can be appealed, and on the back of the IN / EN Template is guidance on how that can be done. A notice of appeal must be presented to the Employment Tribunal within 21 days for an IN or to the local Magistrates Court within 21 days for an EN.
- The entering of an appeal suspends the IN until the appeal has been determined or withdrawn.
- Once the validity of the notice has been confirmed the enforcement action will be published on the ONR website.

- This enforcement action will need to be visible internally (e.g. to the RLT), along with all other ONR formal enforcement action (i.e. enforcement letter and above), so a unique identifier should be requested from ONR.Enforcement@ONR.gov.uk.
- Consideration should also be given to the extent to which relevant external stakeholders are informed of the formal enforcement action, and in particular other regulatory bodies/agencies.
- The IN/EN will also require an associated Level 1 or 2 regulatory issue (Ref. 7) to track any associated actions with the dutyholder (note that a regulatory issue number is required when requesting a unique identifier).
- The contents of a notice should be discussed with the dutyholder in advance of issuing it, so that they are clear why ONR is taking this action, the response required and to what timescales.

7.4.3 Licence condition (LC) powers:

- ONR has regulatory powers within the conditions which are attached to the site licence under the Nuclear Installations Act 1965.
- Specifically in relation to enforcement are the powers to direct and specify which are associated with a number of the LCs.
- This enforcement action will need to be visible internally (e.g. to the RLT), along with all other ONR formal enforcement action (i.e. enforcement letter and above), so a unique identifier should be requested from ONR.Enforcement@ONR.gov.uk.
- Consideration should also be given to the extent to which relevant external stakeholders are informed of the formal enforcement action, and in particular other regulatory bodies/agencies.
- The direction / specification will also require an associated Level 1 or 2 regulatory issue (Ref. 7) to track any associated actions with the dutyholder (note that a regulatory issue number is required when requesting a unique identifier).
- The contents of a direction / specification should be discussed with the dutyholder in advance of issuing it, so that they are clear why ONR is taking this action, the response required and to what timescales.

7.5 ENFORCEMENT LETTERS

7.5.1 Enforcement letters are used by ONR inspectors to seek improvement and bring dutyholders back into compliance. Whilst non-compliance with a letter is not in itself an offence, unresponsive dutyholders are likely to face escalation following the application of Dutyholder Factors.

7.5.2 The enforcement letter template is found in ONR's Business Management System, Templates and Forms. Within the body of an enforcement letter it should be made apparent:

- What the compliance matter is, including the precise legal duty.
- Why this is an issue.
- ONR's expectations of when compliance will be achieved.
- ONR expectations for a response to the enforcement letter

7.5.3 The following practices should be followed when issuing enforcement letters:

- It should be clear to the dutyholder that they are receiving an enforcement letter, both from the title and in the body of the letter.

- The relevant RD divisional governance processes for producing and issuing letters should be followed; email transmission to a dutyholder is generally acceptable.
- There is no overarching requirement to copy RLT members into letters; the relevant delivery lead should however be on the distribution list.
- Relevant external stakeholders, in particular other regulatory bodies/agencies, should be informed of the letter.
- The enforcement letter will also require an associated Level 1, 2 or 3 regulatory issue (Ref. 7) to track any associated actions with the dutyholder (note that a regulatory issue number is required when requesting a unique identifier).
- The contents of an enforcement letter should be discussed with the dutyholder in advance of sending it, so that they are clear why ONR is taking this action and the response required. The letter should be addressed to include managers in the dutyholder organisation who have the authority to remedy the contravention.
- An enforcement letter unique reference number should be obtained from the Regulatory Directorate administrative team (ONR.Enforcement@ONR.gov.uk).

7.5.4 Other regulatory letters

7.5.5 There are a number of other regulatory letter types associated with legislation relevant to ONR; examples are listed below. Inspectors wishing to utilise these should notify the ONR legal contact within ONR's Investigation Resource Group in the first instance to discuss the process.

- ONR inspectors have the power (as the competent authority) to issue a 'notice in writing' under the Carriage of Dangerous Goods Regulations 2009, specific to Schedule 2 and in relation to requiring certain dutyholders to test, rehearse or revise their emergency arrangements.
- ONR inspectors have the power to issue a 'notice in writing' under the Ionising Radiation Regulations 2017, specific to Regulation 5 requiring the employer to provide additional particulars of specified work as ONR may reasonably require.
- ONR inspectors have the power to impose particular safeguard provisions upon a dutyholder (Operator) under Regulation 5 of the Nuclear Safeguards (EU Exit) Regulations 2019.

7.6 REGULATORY ADVICE

7.6.1 The nature of ONR's oversight of the nuclear industry means that there are routine and regular opportunities for ONR inspectors to provide dutyholders with feedback on their performance. This feedback is termed Regulatory Advice and may in fact encompass low-level non-compliance with legal duties that should be addressed. Regulatory Advice covers a broad range of actions, including letters (though these are not classed as Enforcement Letters as described in section 7.5).

- Regulatory advice can be written or be oral.
- For both oral and written advice (usually an e-mail) ensure that it is clear;
 - What the compliance matter is.
 - Why this is an issue.
- It may be appropriate to have an associated Level 3 (if there has been a breach) or Level 4 regulatory issue (Ref. 7) to track remedial action(s) by the dutyholder.

7.6.2 The nature of the risks associated with the nuclear industry activities or transport of radioactive material and the expectations of the public, means that ONR expects dutyholders to respond positively to all regulatory advice given by ONR inspectors. Where dutyholders persistently fail to respond to regulatory advice, inspectors should consider targeted interventions to determine the underlying organisational issues and/or consider escalation of the BEL.

7.6.3 Complementary Regulatory Tools

7.6.3.1 Verbal Warnings

7.6.3.1.1 Verbal warnings are a type of regulatory advice; usually used in relation to the action of individual employees of the dutyholder which has resulted in a breach. Verbal warnings must be recorded within the inspector's notebook; this enforcement will not be formally held on any central system but will be monitored by the relevant ONR inspector during their routine interventions and captured within their handover document. The notebook should be clear in regards to;

- The date and time
- The inspector's warrant card number
- What the verbal warning relates to, including any reference number e.g. INF1 number
- Who it is being given to (including the dutyholder's name)
- A summary of the verbal warning given:
 - which will include clarity on the breach,
 - which will include a statement that this may be further taken into consideration when determining the enforcement action of any subsequent breach and;
 - signed by the inspector
- A statement that the verbal warning has been received and understood, signed by the person receiving the warning, including any witness signature(s), should be gained if possible, but we cannot compel this.

7.6.3.1.2 The verbal warning must be recorded in the inspector's report of regulatory activities, either within a contact record or intervention record. A scan of the inspector's notebook can be referenced within the record.

7.6.3.2 Holding to Account Meetings

7.6.3.2.1 In line with ONR's role to hold the nuclear industry to account on behalf of the public, delivery leads should consider inviting the dutyholder to a 'holding to account' meeting, following any legal breach where we have applied the EMM formally.

7.6.3.2.2 It is important to recognise that the 'holding to account' meeting is not the same as a routine regulatory interface meeting with the dutyholder, as the intent of the 'holding to account' meeting is to ensure that the dutyholder is made absolutely clear as to the regulatory position of ONR, and our regulatory expectations. This type of meeting supports ONR's [Guide to enabling regulation in practice](#) and compliance with the [Regulators Code](#).

7.6.3.2.3 These meetings are especially useful when it is appropriate to make clear to duty holder management, details of the enforcement action being taken and further clarifying that it is subject to escalation if not complied with. The dutyholder representative should be empowered to speak for the company and should be in a position to control the resources and/or actions needed for compliance.

7.6.3.2.4 Whilst delivery leads will decide, dependent on the particular circumstances, if convening a 'holding to account meeting' is merited, the default position should be to apply this enforcement tool in the following circumstances:

- Where the enforcement decision is below the BEL.
- Where there is reduced confidence in the dutyholder's ability to address the identified legal shortfalls within a reasonable timeframe.
- Where the enforcement decision has been de-escalated from the use of a Notice or Direction (enforcement powers).

7.6.3.2.5 The delivery lead and relevant inspector(s) (normally including the nominated inspector if one is appointed) should convene the 'holding to account' meeting. In planning the meeting, the delivery lead should consider whether they require specialist inspector assistance. These meetings will:

- review what happened and what has been learned;
- provide opportunity for a senior and suitably empowered dutyholder manager to explain and justify why there will be no repeats;
- on nuclear sites, consider the internal regulator's views on future compliance and whether anything more is needed;
- clarify how ONR will be regulating this topic, area etc. going forward;
- allow the delivery lead and supporting inspectors to gain assurance / secure commitment in the dutyholder's response and set ONR's expectations for future compliance.
- be captured in a contact record or an intervention record

8. APPLICATION OF DUTYHOLDER FACTORS

8.1 The way in which ONR regulates nuclear licensees means that in most cases we have regular interactions with these dutyholders in terms of compliance with the law. As such there are numerous opportunities for us to provide advice on safety, security and safeguards matters, and this will affect how dutyholder factors are used in determining proportionate enforcement action. In other cases, for example, transport, ONR has limited interactions with dutyholders, which also affects our application of dutyholder factors.

8.2 Having identified the BEL relative to the circumstances; the inspector now needs to ensure relevant dutyholder factors are considered to arrive at the most appropriate enforcement action. *These duty holder factors have the potential to only escalate the enforcement action;* the inspector will be best placed to consider these factors given their ongoing interactions with the duty holder.

8.3 Table 5 lists a series of dutyholder factors which may escalate the enforcement decision; note that not all factors may apply. This is a further aid for inspectors in reaching an enforcement decision.

8.4 In the EDR it is important that the inspector makes it clear which factors have been applied, and why. ONR will utilise what is recorded in the EDR to support consistent and transparent enforcement decision making.

TABLE 5 –DUTYHOLDER FACTORS

Factor	Descriptor
What is the inspection history of the dutyholder?	<p>Inspection history may vary as follows:</p> <ul style="list-style-type: none"> • Poor – The dutyholder has an inspection history of significant problems, copious relevant advice and poor inspection ratings in relevant areas. • Reasonable – The dutyholder has an inspection history of nominal or piecemeal problems in relevant areas. • Good – The dutyholder has an inspection history of generally good compliance, effective response to advice and consistently high standards.
What is the level of confidence in the dutyholder?	<p>Level of confidence may vary as follows:</p> <ul style="list-style-type: none"> • Little or no confidence – There is a concern that the dutyholder does not have the intent, capacity, or commitment, to comply with the law and ensure the effective management of security / safety / safeguards. • Confident – it is clear that the dutyholder is both fully capable of and is strongly committed to, compliance with the law through the effective management of security / safety, and can be trusted to put the matter(s) right.
Does the dutyholder have a history of relevant, formal enforcement being taken or relevant advice being given?	<p>Formal enforcement action has been taken against the dutyholder on the same or similar issues, by prosecution, direction (security or safety), notice, specification or enforcement letter.</p> <p>Non-formal enforcement action – advice, has been taken on the same or similar issues, by telling the dutyholder what they have to do in order to comply.</p>
Is there a relevant incident history?	The dutyholder has a history of related incidents, or there is evidence of related incidents.
Is the dutyholder deliberately seeking economic advantage?	The dutyholder is deliberately avoiding minimum legal requirements for commercial gain
What is the standard of general compliance, relevant to the legal shortfall?	<p>Compliance relevant to the shortfall is generally:</p> <ul style="list-style-type: none"> • Good - full compliance across a range of indicators with no notable omissions. • Reasonable - Almost all our issues are adequately

TABLE 5 –DUTYHOLDER FACTORS

Factor	Descriptor
	<p>addressed, with only minor or occasional omissions.</p> <ul style="list-style-type: none"> • Poor – compliance levels are neither Good nor Reasonable (as defined in the previous bullets)

8.5 The level of escalation from the application of the dutyholder factors should be taken into account by the inspector and a judgement made for the specific dutyholder. There is no formulaic approach here. Importantly, just identifying one factor doesn't necessarily mean that the BEL should be escalated or equally that only finding one factor means that it should not; it is for the inspector to judge based on their knowledge of the dutyholder what is proportionate in the circumstances. There must be evidence to support the inspector's application of the dutyholder factors, e.g. the inspector should be able to demonstrate if challenged why they are confident in the commitment of the dutyholder to resolve an issue. Application of dutyholder factors should be performed consistently within ONR; inspectors should seek advice from more experienced inspectors if unsure.

9. APPLICATION OF STRATEGIC FACTORS

- 9.1 There is a range of strategic factors which may impact on the enforcement decision. For example, inspectors have to ensure that the public interest and vulnerable groups (e.g. children and patients) are considered.
- 9.2 In addition to the consideration of any vulnerable groups and the public interest test, strategic factors might include the effect of the proposed enforcement on other national regulators regulating in similar circumstances, the effect of the decision on other dutyholders and the balance of risk between different sites including across different dutyholders. For example, preventing or delaying an activity on one site could lead to an increase in risk elsewhere, which is outside an individual dutyholder's control.
- 9.3 There is a difference between strategic factors and strategic imperatives, and this is covered further in guidance on ONR's [Risk informed regulatory decision making](#). In summary, *'strategic factors are those for which we have sufficient authority and knowledge, supplemented by consultation with others as necessary, to take into account in our decision-making. There can also be other wider factors, such as 'in the interests of national security' that we term strategic imperatives, where we do not have the authority or sufficient knowledge of the considerations involved to judge the significance of such factors. Strategic imperatives would not normally change our regulatory decision, but may mean a different course of action is followed. In such circumstances we would work collaboratively to ensure the best safety outcome within the constraints of the imperative, but also ensure all relevant stakeholders understand the implication of following the course of action. Such circumstances have been, and are likely to remain, extremely rare'*.
- 9.4 Public interest is sometimes a difficult issue to assess. Inspectors should ask themselves: 'What would a reasonable person expect from ONR in these circumstances?' A further test is whether the particular decision could be justified in any later public forum or inquiry.
- 9.5 The inspector should test the proposed enforcement action against the strategic factors in Table 6. Application of the strategic factors may leave the recommended

enforcement action unaffected, escalate or deescalate it (potentially below the BEL – see Section 12). If the factors draw the recommended action into question the inspector may wish to consult with their delivery lead who will advise on how to proceed, which may also include consultation with the relevant Professional Lead.

9.6 At this stage, it is particularly important that all staff associated with the enforcement decision-making interact with one another and other colleagues consistent with ONR’s values. All four values are relevant here: Supportive, Accountable, Open-minded and Fair. In particular, the delivery lead should ensure that appropriate briefings are provided to all who need to know about the decision, including the relevant Divisional Director.

9.7 There is no ranking of importance in the strategic factors. However, the final question the inspector and delivery lead must ask is: ‘Does the proposed action meet the principles and expectations captured in the EPS?’ The inspector’s decision-making rationale should be captured in the EDR written to document the basis for the recommended enforcement action.

TABLE 6. STRATEGIC FACTORS	
Factor	Descriptor
Does the action coincide with the Public Interest?	Does the enforcement action result in a net benefit to the wider community in terms of targeting resources on security / safety risks and meeting the legitimate public expectations of ONR?
Are vulnerable groups protected?	Does the enforcement action results in suitable control of security / safety risks to vulnerable groups, e.g. children, the elderly and hospital patients?
What is the long-term impact of the action?	Is the enforcement action sufficient to achieve sustained compliance by the dutyholder?
What is the effect of action?	Does the action secure compliance with the relevant benchmark, e.g. regulations, LCs or security plan? Does the action result in a material misalignment of enforcement decision to other regulatory bodies in similar circumstances even when taking into account differences in how ONR regulates? E.g. HSE CH&S, COMAH and non-nuclear transport enforcement decisions? Does the action impact/affect other ONR purposes and have these been assessed?
What is the functional impact of the action?	There maybe; <ul style="list-style-type: none"> • an acceptable net benefit to those who might be affected, or • an unacceptable disadvantage to those who may be affected. For example; <ul style="list-style-type: none"> ○ circumstances where rigid application of

TABLE 6. STRATEGIC FACTORS

Factor	Descriptor
	<p>security standards may unacceptably compromise safety and vice versa.</p> <ul style="list-style-type: none"> ○ circumstances where rigid application of nuclear standards may unacceptably compromise CHS, and vice versa.
Does the action align with ONR’s formal regulatory strategy?	ONR may have targeted formal strategies for specific dutyholders (e.g. those in enhanced regulatory attention) or sectors (e.g. non-nuclear transport) in relation to achieving safety and security improvements.
Have the principles and expectations of the ONR Enforcement Policy Statement been met?	<p>The purpose of enforcement is to:</p> <ul style="list-style-type: none"> ● Ensure that duty holders take action to deal immediately with serious risks; ● Promote, achieve and sustain compliance with the law; ● Ensure that duty holders who breach regulatory requirements, and directors or managers who fail in their responsibilities, may be held to account, which may include bringing alleged offenders before the courts in England and Wales, or recommending prosecution in Scotland. <p>The Principles of Enforcement are proportionality, accountability, consistency, targeted and transparent.</p> <p>Sections 7.3.5 and 7.3.6 of this guidance identify the circumstances where ONR <i>expects</i> that it will normally prosecute, or recommend prosecution, following an investigation or other regulatory contact.</p>

10. ENFORCEMENT RECOMMENDATION

10.1 The inspector should ensure that the enforcement recommendation takes account of the following principles in relation to the priorities for action:

- Does the enforcement action deal with the most serious risks in order of priority, and in appropriate timescales?
- Are underlying causes addressed?
- Does the enforcement action take account of the scale of the failures, e.g. isolated or multiple failures?
- Does the enforcement action deal with the fundamental cause of the problem(s), e.g. workplace precautions, risk control systems or management arrangements?

10.2 When determining the recommended enforcement action, the inspector is expected to draw on appropriate specialist expertise relevant to the specific circumstances being considered. The delivery lead may also, or where prompted by the inspector, request a

peer review. Peer reviews should be considered where this would add proportionate value, where the decision making could potentially be contentious or in particularly complex cases. Any peer review undertaken should be completed in accordance with ONR guidance (Ref. 8) and done before the delivery lead considers the inspector's recommendation.

11. RECORDING THE APPLICATION OF THE ONR EMM

- 11.1 An EDR (found in ONR's Business Management System, Templates and Forms) must be completed for any decision where formal enforcement (BEL or final decision) is a realistic possibility.
- 11.2 Where the BEL is less than formal enforcement and has not been modified by the application of factors then an EDR is not necessary; however inspectors may still wish to utilise an EDR as a record of their decision.
- 11.3 The EDR is considered as a routine report as defined by ONR guidance on the production of reports (Ref. 9). This aim of the document is to support quality and timely decision making. The EDR is a fit for purpose approach and should generally support a one week turn around (from when the inspector takes the decision to apply the EMM to recommend an enforcement action) in order to provide timely enforcement decisions back to the dutyholder. There may, however, be situations involving complex enforcement decisions where longer turnaround timescales may be required.
- 11.4 The EDR will capture the detail and basis of the enforcement decision and the application of factors. This report will record all aspects of the development of the recommended enforcement action to a suitable level of detail to make the basis for it clear.
- 11.5 All EDRs must be filed to ensure that our enforcement decisions meet appropriate standards of transparency and accountability. As such the naming convention of the reports is important to ensure that these can later be found. The CNI Office will define the naming convention and provide report numbers upon requests made to ONR.Enforcement@ONR.gov.uk.

12. ENFORCEMENT DECISION

- 12.1 Once the inspector has recommended an enforcement action in the EDR, and a peer review (if one is to be performed) has been completed, the delivery lead should review it to and decide the most appropriate enforcement action to implement. This review should be proportionate to the action being recommended to provide additional robustness to the EMM process and support consistency and credibility of enforcement decisions in ONR.
- 12.2 Where relevant, the delivery lead should seek advice from the most relevant professional lead (or their nominee) to add specific expertise, consistency and independence to the decision making. Alternatively, that advice could be given by asking them to perform a peer review (see above). It should be noted that the expectation is for a timely enforcement decision to be made, and the decision review process should generally be completed within a week from when the relevant EDR sections have been completed by the inspector and where relevant, peer reviewer.
- 12.3 For more complex enforcement decisions or due to inexperience of inspectors in using the EMM, inspectors, delivery leads and professional leads may be discussing the application of factors during the development of the recommended enforcement action. During this time it is incumbent on the delivery and professional leads to strike the right balance, exhibit behaviours in line with ONR values and not to prejudice the independence of the inspector's impending enforcement recommendation.

- 12.4 The review process requires the delivery lead to consider;
- that the application and evidence for dutyholder factors has been appropriately applied if the BEL has been escalated.
 - that the application of strategic factors is addressed by the proposed enforcement action.
 - whether the proposed enforcement action meets the EPS,
 - that, for consideration of prosecution, the enforcement action meets the Code for Crown Prosecutors in England and Wales or the Prosecutors Code in Scotland.
- 12.5 There may be specific circumstances where the delivery lead judges that an alternative enforcement approach to the recommendation is merited (including perhaps below the BEL). Examples might include where the site is under enhanced/significantly enhanced regulatory attention (Ref. 10) and so is subject to a specific enforcement strategy or where the dutyholder has already implemented adequate remedial actions to address the identified non-compliance(s) in advance of ONR enforcement action.
- 12.6 If the delivery lead's review concludes that a different enforcement outcome to that recommended is appropriate, or the enforcement outcome is below the BEL, then this should be justified explicitly by the delivery lead in the EDR and the relevant Divisional Director briefed. The justification should also be subject to a separate confirmatory review (usually by the Operational Inspection Professional Lead, as the Enforcement Process Owner), who will act as independently to advise the delivery lead and to ensure consistency in the use of such justifications.
- 12.7 If there is a difference of opinion between any party in relation to the enforcement decision then this should be rectified before the decision is enacted by utilising ONR's process for Resolving Differences of Regulatory Opinion (Ref. 11)

13. COMMUNICATE WITH THE DUTY HOLDER AND TAKE ACTION

- 13.1 In line with our ratings guidance (Ref. 2) there are clear prompts for when to apply the ONR EMM. We normally ensure that our inspection findings are shared with the dutyholder prior to leaving the site. If the inspection rating is 'red' or 'amber' then the ONR response is to inform the dutyholder that there is a potential for enforcement action.
- 13.2 Enforcement action must be communicated to the dutyholder, in line with divisional arrangements. Consider at what level of the organisation the enforcement action should be communicated. It will often require resources to deliver compliance and therefore, those who have the authority to deploy the necessary resources should be targeted for this communication. This should be completed in a timely manner as soon as the EDR is accepted (unless the decision has been challenged in line with ONR's Resolving Differences of Regulatory Opinion (Ref. 11)).
- 13.3 The Regulators Code states that 'Regulators should share information about compliance and risk' and 'Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply'. It also set out our obligations to work collaboratively with other regulators. Consider the relevant regulators, contact them, work with them, as appropriate, in areas of common interest and / or inform them of the enforcement outcome. In most cases this will be quite straightforward as we have agency agreements with the other appropriate regulators.
- 13.4 The most prominent formal enforcement decisions (i.e. notices, directions, specifications) will be published by ONR's Communications Team on the ONR

website, usually once the validity of the notice or direction etc. has been confirmed. Due to security considerations this may not be appropriate in all cases.

- 13.5 All formal enforcement actions need to be visible and accessible within ONR, to aid future enforcement decisions and to inform OPEX (operating experience) for inspectors. It also facilitates consistency across the ONR.
- 13.6 Inspectors should track and maintain visibility of formal enforcement actions with the dutyholder by raising an appropriately categorised regulatory issue and then apply the associated guidance, e.g. ensure that the enforcement actions are regularly followed up with the dutyholder in line with the agreed response plan.

14. GLOSSARY

Actual Risk	Inspectors assess the health and safety risks posed by the various activities being undertaken - where the dutyholder is. Takes into account the consequences of the harm / potential for harm resulting from each risk and the likelihood of occurrence.
Baseline Enforcement Level	The lowest level of enforcement considered necessary to deliver compliance; solely reflecting, and proportionate to, the risk to health, safety, security or safeguards, or the seriousness of any breach of the law.
Control Measures	Is the relative measure of the extent to which relevant good practice set out in benchmark standards have been satisfied. Categorised as broadly satisfied, weakened, absent/inadequate.
Delivery Lead	The inspector who provides leadership and management for specific packages of regulatory work within the divisions, typically Band 1 (Superintending Inspector), or Band 2 in some circumstances.
Dutyholders	The legal body with the responsibility for ensuring safe, secure and safeguarded operations. This includes the Operator, Supplier, Consignor/Consignee or Licensee
Enforcement Action	Is the outcome determined after following the EMM and applying factors, e.g. Notice, Enforcement Letter
Enforcement Decision Record (EDR)	A document written to record enforcement decisions, which incorporates all the EMM process steps. This document when completed will provide a transparent and accountable record of the basis for the enforcement decision and who made and contributed to the decision.
Enforcement Letter	An enforcement action; it should be clear to dutyholder upon receipt that this is an Enforcement Letter.
Enforcement Management Model (EMM)	ONR's framework for aiding consistent and proportionate decision making in relation to enforcement.

Enforcement Powers	Those powers identified in legislation to enable us to enforce.
Final Enforcement Conclusion	Having completed all the steps of the EMM, this is the conclusion, which may lead to an enforcement action.
Formal Enforcement	The EMM has been used formally, and the enforcement action is a written communication demanding or seeking improvement, or a legal instrument or process.
Holding To Account Meeting	A meeting with the dutyholder where the enforcement action is made clear and the potential for subsequent escalation, should timely compliance not be achieved, is understood.
Minor Consequence Level	Consequences that will not result in any permanent harm to workers; harm to the public; or civil disruption.
Non-Formal Enforcement	Our routine enforcement in managing day to day interactions with the dutyholder, e.g. giving advice or promoting/encouraging improvement. This is likely to be recorded in either IR/CRs. There is no need to use the EMM formally or complete an EDR.
Risk	Is the chance of a theft, sabotage or that somebody could be harmed by a hazard, together with an indication of how serious the harm could be.
Serious Consequence Level	Consequences that have or may result in death, major injury or significant permanent debilitation to workers; significant radiation exposure to members of the public; or significant civil disruption.
Significant Consequence Level	Consequences that can result in result in a permanent disability or permanent health effects to workers; a loss of control of nuclear material; or exposure of members of the public to risks arising from activities of the duty holder.

15. REFERENCES

1. The Purpose and Use of Permissioning – NS-PER-GD-001.
2. General Inspection Guide - ONR-INSP-GD-064.
3. Conducting Investigations – ONR-ENF-GD-005.
4. Guidance on the Demonstration of ALARP (As Low As Reasonably Practicable) – NS-TAST-GD-005.
5. Incident Notification and Reporting Process – ONR-OPEX-IN-001.
6. Obtaining Legal Advice – ONR-GEN-GD-004.
7. Management of Regulatory Issues – Guidance – ONR-RI-GD-003.
8. Guidance on Peer Review and Acceptance Review of Reports for Permissioning – NS-PER-GD-016.
9. Guidance on Production of Reports for Permissioning – NS-PER-GD-015.
10. Guidance on the assignment of Dutyholder attention levels – ONR-GEN-GD-013.
11. Resolving Differences of Regulatory Opinion – NS-INSP-IN-002.

16. APPENDIX 1 CONSEQUENCE LEVEL EXAMPLES

16.1 Consequence Levels

16.2 Serious consequences

16.2.1 Serious consequences should be selected in circumstances that have or may result in death, major injury or significant permanent debilitation to workers; significant radiation exposure to members of the public; or significant civil disruption.

16.2.2 Examples of serious consequences include:

- A fatal injury.
- An injury or ill health effect which results in permanent disabling or requires immediate / intensive treatment in hospital. [Note- for health effects relating to exposure to ionising radiations, see the specific dose examples associated to each consequence categorisation.]
- There is an impact on the public due to emergency plan countermeasures being instigated as part of an off-site nuclear emergency.
- A number of casualties are expected should a fire occur.
- Theft/Sabotage relating to Category I/II Nuclear Material (NM) or Vital Areas.
- A whole body effective dose or Committed Effective Dose Equivalent in excess of 100 mSv.
- An equivalent dose in excess of a relevant threshold for deterministic health effects.
- A significant contamination in an area not expected by design, with a probability of public exposure.
- Radiation dose rates that are sufficiently high so as to exceed a dose limit in a short period of time.

16.3 Significant consequences

16.3.1 Significant consequences should be selected in circumstances that do not satisfy the criteria for serious consequences, but have or may; result in a permanent disability or permanent health effects to workers; a loss of control of nuclear material; or exposure of members of the public to risks arising from activities of the duty holder.

16.3.2 Examples of significant consequences include:

- An injury or ill health effect which result in permanent disabling, leading to a lifelong restriction in work capability or a major reduction in quality of life.
- Theft/Sabotage relating to Category III NM, Group A/B Sources/Other Radioactive Material (ORM) or Baseline Areas
- Compromise of Sensitive Nuclear Information classified SECRET.
- Injury or ill health effect due to inadequate fire protection arrangements as described in Article 4 of the Regulatory Reform Order.
- An uncontrolled release of nuclear material on site that leads to a site incident being declared.
- Public not protected by emergency plans for the transport of radioactive sources.
- An event where elevated / significant radiation levels (>10mSv/hr) on a transport package.
- An exposure to ionising radiation in excess of three tenths of a relevant statutory dose limit as described in schedule 3 of the IRR17.
- Release or spread of significant quantities of radioactive materials into an area not expected by design.

16.4 **Minor consequences**

16.4.1 Minor consequences should be selected in circumstances that do not satisfy the criteria for serious or significant consequences and will not result in any permanent harm to workers; harm to the public; or civil disruption.

16.4.2 Examples of minor consequences include:

- A person being unable to perform their normal work for more than 7 days.
- A health effect that causes non-permanent or reversible health effects, non-progressive conditions or results in temporary disability.
- An event where the inappropriate configuration of the plant unduly challenges its duty.
- An event where less than the minimum safety related plant / equipment is available for a period of time e.g. fire alarms out with no back-up, minimum staffing levels not met which leads to an increase in risk.
- Inadequate packaging of a sealed source.
- An isolated event which is a threat to the safe condition of a nuclear facility, e.g. from an internal or external hazard, human performance.
- An event resulting in degraded radiological control barriers.
- An event which leads to a worker receiving a radiation dose much greater than the expected dose, but below three tenths of a relevant statutory dose limit as described in schedule 3 of the IRR17.
- Theft of Cat IV NM or Group C/D Sources/ORM
- Compromise of Sensitive Nuclear Information classified OFFICIAL SENSITIVE: SNI

16.5 **Control Measure Levels**

16.6 **Absent/Inadequate**

16.6.1 Select absent/inadequate where all the key control measures necessary to satisfy relevant good practice have been, or are likely to be compromised.

16.7 **Weakened**

16.7.1 Select weakened where the key control measures necessary to satisfy relevant good practice have been significantly weakened, but not to the extent that the criteria for absent/inadequate controls measures have been satisfied.

16.8 **Broadly Satisfied**

16.8.1 Select broadly satisfied in cases where all of the key control measures necessary to satisfy relevant good practice remain effective.

17. APPENDIX 2 EXAMPLES OF ADMINISTRATIVE COMPLIANCE GAPS

Source of Compliance/ Administrative expectation		Extent of compliance shortfall (taken from definition in Table 4)		
Benchmark	Title/ Description	Absent	Inadequate	Minor
LC2	Marking of the site boundary	Complete lack of site boundary marking or marking that is wholly inadequate in form/function. Failure to recognise an area that requires marking, where that lack of compliance could have a potential significant impact on safety related operational performance	Signage in very poor state, with indications of ineffective maintenance of site boundary marking on a significant scale. Failure to have adequate/effective process for definition of site marking and related management.	Signage missing/in poor condition, but isolated shortfalls only. Plans/process for control of boundary marking not up to date.
LC7	Incidents on the site	Complete lack of site incident reporting process, or failure to adhere on a systemic and significant scale with any relevant process in force. Repeated failure to recognise significance of events and the required level/timescales for both external and internal reporting.	Repeated inability to sentence incidents adequately, and/or report such incidents at the correct level internally. Failure to carry out adequate investigations of serious events, or repeated failure to deliver adequate investigations against less significant events.	Inconsistent sentencing of incidents. Failure to report individual events where such events have a potential safety impact. Failure to carry out adequate monitoring and/or trending of incident data. Failure to carry out an adequate investigation.
LC10	Training	Complete lack of training (either identification or delivery) for significant safety related operations. Complete lack of training management function. Repeated failure to identify and/or training required by safety case.	Wholly inadequate training delivered against a specific area, where the operational task is of greatest safety significance within the plant safety case. Systemic failure to identify those activities that require training due to their safety significance or to maintain that training required for staff.	Shortfalls in recording training activities, or a number of individual (not repeated) failures to maintain training material to the required standard. Failure to maintain staff to the level of training qualification required for their role, where such failures do not potentially have a major safety impact.

Source of Compliance/ Administrative expectation		Extent of compliance shortfall (taken from definition in Table 4)		
Benchmark	Title/ Description	Absent	Inadequate	Minor
LC11	Emergency arrangements	Complete lack of emergency arrangements, or arrangements that are entirely inappropriate and/or ineffective.	Arrangements that do not, in a number of areas, address the more significant emergency scenarios. Systemic failure to connect emergency arrangements with output of any credible assessment of reasonably likely scenarios. Failure to deliver the more significant aspects of required arrangements. Repeated failure to deliver any aspect of the arrangements.	Failure to implement a number of individual (not repeated) aspects of the formal arrangements. Minor shortfalls in the scope of formal arrangements.
LC15	Periodic review	Complete failure to deliver a periodic and systematic review of the safety case. Failure to define clearly the scope of review and assessment work that has been undertaken.	Inadequate review of safety case, with multiple instances of failure to identify shortfalls in the case. Significant weakness in a key aspect of the assessment, indicating a failure to provide adequate internal assurance of the work. Failure to deliver declared safety significant improvements to the timescales initially declared.	Failure to deliver a number of the minor pre-identified safety improvements. Minor inconsistencies or shortfalls in the formal review, either in terms of scope, targets or written summary of work undertaken.
LC22	Modification or experiment on existing plant	Failure to identify any safety function(s) associated with a modification that is (are) considered significant in nature.	Failure to identify the cumulative impact of a number of related modifications, where the potential aggregated safety impact is considered significant in nature. Systemic failure to maintain plant configuration, related to either temporary or permanent modification.	Minor shortfall in the control of temporary plant modification (not repeated). Minor shortfalls in the content and/or delivery of plant modification, where the potential safety impact is minimal.

Source of Compliance/ Administrative expectation		Extent of compliance shortfall (taken from definition in Table 4)		
Benchmark	Title/ Description	Absent	Inadequate	Minor
LC23	Operating rules (conditions and limits in the interests of safety)	<p>Failure to identify any credible limits and conditions of operation (Operating Rules) for a safety related plant/system.</p> <p>OR set by licensee lack any ability to allow operator control and intervention to avoid safety significant events</p>	<p>Failure to comply with safety significant Rules, or systemic failure to comply with a number (or repeated) of less significant limits.</p> <p>OR set by licensee have only very limited ability to allow operator intervention in sufficient time to avoid related event(s).</p>	<p>Minor shortfalls in compliance, where the cause is identified and addressed to prevent re-occurrence.</p> <p>Minor issues with the quality and effectiveness of a Rule, or of the ability to demonstrate compliance with that Rule.</p>
LC24	Operating instructions	<p>Failure to ensure that safety critical operations are supported by adequate procedural documentation.</p> <p>Failure to adhere to procedural documentation for safety significant activities.</p>	<p>Failure to undertake adequate review and amendment in accordance with formal arrangements.</p> <p>Repeated and/or systemic organisational failure to adhere to documentation for operations with limited safety significance.</p>	<p>Failure to adhere to documentation on a single occasion (not systemic/cultural).</p> <p>Minor errors and shortfalls in procedural documentation, with limited potential impact on safety.</p>
LC26	Supervision/ Operational oversight	<p>Failure to undertake any form of control or supervision on safety significant activities.</p> <p>Repeated inadequate supervision of a range of safety significant activities.</p>	<p>Systemic failure to recognise and deliver adequate supervision of safety-significant activities.</p> <p>Failure to define the requirement for the level of supervision required for all tasks.</p>	<p>Shortfalls in the quality of supervision for any single (1) task that is not safety critical.</p> <p>Failure to identify the correct level of supervision required of any one task that is not safety critical.</p> <p>Single instance of poor standards of operational oversight within the control room of a plant/facility</p>

Source of Compliance/ Administrative expectation		Extent of compliance shortfall (taken from definition in Table 4)		
Benchmark	Title/ Description	Absent	Inadequate	Minor
LC28	Examination, inspection, maintenance and testing	<p>Failure to create an adequate maintenance schedule for safety related equipment.</p> <p>Repeated failure to maintain safety-critical equipment</p>	<p>Systemic shortfalls in maintenance documentation, covering management and/or delivery.</p> <p>Repeated failures to deliver adequate maintenance to timescales required.</p>	<p>Minor shortfalls in delivery of maintenance, either in terms of either the timeliness or adequacy of delivery.</p> <p>Minor shortfalls in the adequacy of maintenance staff, in terms of training, experience or delivery of task.</p>
LC32	Accumulation of waste on site	<p>Areas used for waste storage are inadequate, are not managed, and no account is made of the waste accumulated on site.</p> <p>There is no control of waste and/or no recognition that such management is required.</p>	<p>There are repeated or systemic failures in the management of waste, either in records, storage, or disposal route selection.</p> <p>Error(s) in the management of waste that could lead to a safety significant event.</p>	<p>Minor shortfalls in waste records.</p> <p>Minor issues or errors in the use of waste storage or lay-down areas, but for which there is minimal opportunity for elevated hazard.</p>
NISR 2003 Reg 4	Nuclear Premises Approved Security Plan	Complete lack of an approved Site Security Plan (SSP).	There are repeated, systemic failures or significant omissions in how the standards, procedures and arrangements in the SSP meet the expectations of NISR or SyAPs.	Minor shortfalls in how the standards, procedures and arrangements in the SSP meet the expectations of NISR or SyAPs.
NISR 2003 Reg 7	Nuclear Premises Maintenance of Security	The failure to maintain the SSP, in that the standards, procedures and arrangements described in the SSP bear little or no resemblance to those implemented.	There are repeated or systemic inconsistencies between the standards, procedures and arrangements implemented and those described in the SSP.	Minor inconsistencies between the standards, procedures and arrangements implemented and those described in the SSP.
NISR 2003 Reg 8	Nuclear Premises Temporary Security Plans	Complete lack of an approved Temporary Security Plan (TSP).	There are repeated or systemic failures in administration and governance of arrangements supporting the TSP.	Minor shortfalls in administration and governance of arrangements supporting the TSP.

Source of Compliance/ Administrative expectation		Extent of compliance shortfall (taken from definition in Table 4)		
Benchmark	Title/ Description	Absent	Inadequate	Minor
NISR 2003 Reg 11/21/22(7) b	Nuclear Premises, Approved Carriers, Sensitive Nuclear Information Directions	Complete failure to comply with a direction given by ONR.	There are repeated or systemic failures or significant omissions in the compliance with a direction given by ONR.	Minor shortfalls with the compliance with a direction given by ONR.
NISR 2003 Reg 13	Approved Carriers Approved Transport Security Statement	Transporting NM without an approved Transport Security Statement (TSS).	Transporting NM where there are repeated, systemic failures or significant omissions in how the standards, procedures and arrangements in the TSS meet the expectations of NISR or SyAPs.	Transporting NM where there are minor shortfalls in how the standards, procedures and arrangements in the TSS meet the expectations of NISR or SyAPs.
NISR 2003 Reg 17	Approved Carriers Maintenance of Security	The failure to maintain the TSS, in that the standards, procedures and arrangements described in the TSS bear little or no resemblance to those implemented.	There are repeated or systemic inconsistencies between the standards, procedures and arrangements implemented and those described in the TSS.	Minor inconsistencies between the standards, procedures and arrangements implemented and those described in the TSS.
NISR 2003 Reg 19/20	Approved Carriers Transport Security Plans	A complete lack of an approved transport security plan.	There are repeated, systemic failures or significant omissions in how the standards, procedures and arrangements in the TptSP meet the expectations of NISR or SyAPs	Minor shortfalls in how the standards, procedures and arrangements in the TptSP meet the expectations of NISR or SyAPs

Source of Compliance/ Administrative expectation		Extent of compliance shortfall (taken from definition in Table 4)		
Benchmark	Title/ Description	Absent	Inadequate	Minor
NISR 2003 Reg 10/18/22(e)	Nuclear licensed sites, Approved Carriers & Sensitive Nuclear Information Reports by Responsible Persons	The complete lack of reporting any events or matters of kind specified in the regulation. The wilful intent to withhold or delay reporting of events or matters of kind specified in the regulation	There are repeated or systemic failures in implementation or delay in the reporting of events or matters of kind specified in the regulation.	Minor shortfalls with the implementation or delay in the reporting of events or matters of kind specified in the regulation.
RRO Article 9	Fire Risk Assessment	Complete failure to carry out and produce a suitable and sufficient Fire Risk Assessment.	There are repeated or systemic failures in the implementation of the significant findings identified within a Fire Risk Assessment.	Minor shortfalls with the implementation of the expected actions to address the significant findings identified within the Fire Risk Assessment.
RRO Article 8	Relevant Fire Precautions	A complete failure to take such relevant fire precautions (as defined in Article 4) as will ensure, so far as is reasonably practicable, the safety of any employees.	There are repeated or systematic failures in applying the relevant fire precautions to such an extent as to endanger the safety of employees.	Minor shortfalls exist in the implementation of the expected actions to ensure that all the relevant fire precautions are provided.
RRO FSA	Warning in case of Fire	Failure of a fire alarm / detection system to operate and / or a lack of audibility of the fire alarm throughout the building.	Fire alarm / detection system provided but of an inadequate type for the conditions / circumstances in the building.	The sound emitted by the fire alarm can be confused with other alarms that may be used.
RRO FSA	Means of Escape	Blocked or locked final exit doors or an inability to travel along an escape route due to obstructions.	Repeated inability to maintain a clear and unobstructed route to a final exit and / or the introduction of combustible materials and / or ignition sources on a protected escape route.	Escape routes being used to store temporary items / materials.
RRO FSA	Fire Separation	Lines of compartmentation breached or found to contain significant open penetrations.	The use of materials to infill penetrations in compartment walls cannot be proven to be of a suitable standard to achieve the required level of fire resistance.	Failure to be able to demonstrate the adequate maintenance of fire dampers between compartments.
RRO FSA	Fire Risk Assessment	Failure to produce a suitable and sufficient FRA.	FRA produced but falls significantly short of adequately assessing the risks and identifying the	FRA actions falling out of the significant findings not being closed out in a timely fashion.

Source of Compliance/ Administrative expectation		Extent of compliance shortfall (taken from definition in Table 4)		
Benchmark	Title/ Description	Absent	Inadequate	Minor
			significant findings.	
LOLER reg. 9	Thorough examination and inspection of lifting equipment	Complete failure to identify equipment which requires a thorough examination, or ensure that lifting equipment is thoroughly examined for any defects by a competent person.	There are shortfalls in arrangements that could increase the likelihood of a piece of lifting equipment not being thoroughly examined by a competent person at suitable time intervals.	A thorough examination of lifting equipment has been completed by a competent person, but there is no physical evidence that the examination has been completed.
COSHH reg. 6	Assessment of the risk to health created by work involving substances hazardous to health	Complete failure to carry out an assessment of the risk created by work which is liable to expose employees to any substance hazardous to health and identify the steps that need to be taken to meet the requirements of the COSHH Regulations	Failure to carry out a suitable and sufficient assessment of the risk created by work that is liable to expose employees to hazardous substances, or a number of gaps present in the identification of the steps needed to meet the requirements of the COSHH Regulations.	Minor shortfalls in the suitability and sufficiency of the assessment and the identification of the steps needed to meet the requirements of the COSHH Regulations.
Work at Height, Regs 4 & 6. MHSWR Reg 3	Planning and avoidance of risks from work at height	Complete failure to carry out an assessment of risk arising from an activity that involves work at height.	Failure to carry out a suitable and sufficient assessment of risk arising from an activity that involves work at height, including failure to take into account the hierarchy of control measures within the Work at Height Regulations.	Minor shortfalls in the suitability and sufficiency of the assessment and the identification of the control measures needed to meet the requirements of the Work at Height Regulations.
COMAH Regs 8 & 9, Schedule 3	Production and submission of adequate Safety Report within the set timeframes	Complete failure to produce or submit a COMAH Safety Report to the Competent Authority.	Failure to submit an adequate Safety Report, such that it is unable to proceed to assessment due to significant omissions or errors. Submission of Safety Report significantly beyond the timeframes laid out in the regulations.	Shortfalls in the details and demonstrations provided within the Safety Report; which will require further work to confirm adequate systems and safety precautions are in place.

Source of Compliance/ Administrative expectation		Extent of compliance shortfall (taken from definition in Table 4)		
Benchmark	Title/ Description	Absent	Inadequate	Minor
The Nuclear Safeguards (EU Exit) Regulations 2019 Reg 3 / 4 / 7	Declaration of Basic Technical Characteristics	- The Operator has no appreciation of BTC/POA/ACP compliance and has an ongoing total absence of a BTC/POA/ACP in any form.	- The failings in timeliness or quality of the BTC/POA/ACP (it lacks key information and details) is considered by ONR to be substantial.	- Operator deviates from the prescribed BTC/POA/ACP format in Part 1 of Schedule 1. - Minor shortfalls with the information/quality of information declared in the BTC/POA/ACP.
The Nuclear Safeguards (EU Exit) Regulations 2019 Reg 6	Accountancy and Control of Qualifying Nuclear Material	- The Operator has no appreciation of compliance regarding retaining required nuclear material accountancy records.	- The Operator's failings in retaining appropriate nuclear material accountancy records is deemed by ONR to be substantial (records missing for no reason, incomplete records, records not fit for purpose etc.).	- Minor compliance shortfalls that are not considered to be substantial, such as minor errors in the records e.g. typos.
The Nuclear Safeguards (EU Exit) Regulations 2019 Reg 9	Operation of an Accountancy and Control Plan	- The Operator has no appreciation of implementation of their ACP, and has an ongoing total absence of ACP implementation.	- The Operator is not implementing key aspects of their ACP to the extent that ONR seem these failings to be substantial.	- Minor shortfalls with the implementation of the ACP that are not considered to be substantial.
The Nuclear Safeguards (EU Exit) Regulations 2019 Reg 12 / 14 / 15	Submission of Accounting Reports (ICR/MBR/PIL)	- The Operator has no appreciation of compliance regarding submission of accountancy records to ONR and has an ongoing total absence of ICR/PIL/MBR submissions.	- The Operator submits reports in a format that is not compliant with the regulations to the extent that the failing is considered to be substantial. - The failings in timeliness, quality or accuracy of the ICR/MBR/PIL (they lack key information and details) is considered by ONR to be substantial.	- Minor shortfalls with the accountancy reports submitted that are not considered to be substantial.

Source of Compliance/ Administrative expectation		Extent of compliance shortfall (taken from definition in Table 4)		
Benchmark	Title/ Description	Absent	Inadequate	Minor
The Nuclear Safeguards (EU Exit) Regulations 2019 Reg 16	Special Report	- The Operator has no appreciation of compliance regarding special reports and has an ongoing total absence of special reports that should have been raised.	- The failings in timeliness, quality or accuracy of the special reports (they lack key information and details) are considered by ONR to be substantial.	- There are minor shortfalls with the special report.
The Nuclear Safeguards (EU Exit) Regulations 2019 Reg 19	NCA Obligations	- The Operator has no appreciation of using obligation codes for nuclear material and has an ongoing total absence of obligation code tracking for nuclear material.	- The failings in usage or accuracy of the obligation codes tracking are considered by ONR to be substantial.	- There are minor shortfalls with the use and tracking of obligation codes.
The Nuclear Safeguards (EU Exit) Regulations 2019 Reg 21 / 22	Exports / Imports	- The Operator has no appreciation of compliance regarding notifications for exports and imports and has an ongoing total absence of notifications for such movements.	- The failings in timeliness, quality or accuracy of the notifications are considered by ONR to be substantial.	- There are minor shortfalls with the notifications.
The Nuclear Safeguards (EU Exit) Regulations 2019 Reg 33	Withdrawal from Civil Activities	- The Operator has no appreciation of compliance regarding withdrawing nuclear material from safeguards and has an ongoing total absence of following the prescribed process.	- The failings in timeliness, quality or accuracy of the requests for withdrawal from safeguards, or the implementation of withdrawal, are considered by ONR to be substantial.	- There are minor shortfalls with the request and implementation of withdrawals from safeguards.