|  |
| --- |
|  |
| ONR Procedure  Resolving Differences of Regulatory Opinion |



|  |
| --- |
| ONR Procedure  Resolving Differences of Regulatory Opinion |
| Authored by: Regulatory Intelligence and Oversight (RIO)  Approved by: Technical Director  Process Owner: RIO Lead  Publication Date: Nov-2022  Next Major Review Date: Nov-2025  Issue No.: 5.1  Doc. Ref. No.: NS-INSP-PROC-001  Record Ref. No.: 2018/404298 |

Table 1: Revision Commentary

|  |  |
| --- | --- |
| Issue No. | Description of Update(s) |
| 5.1 | Minor content and textual updates.  Reviewed to conform with new ONR template and requirements of the ONR Style Guide.  Document type changed from ONR Instruction to Procedure to bring it line with the document types of the management system – former document reference NS-INSP-IN-002. |

Contents

[1. Introduction 4](#_Toc120027931)

[1.1. Purpose, Scope and Applicability 4](#_Toc120027932)

[1.2. Definitions 5](#_Toc120027933)

[2. Resolving Differences of Regulatory Opinion 6](#_Toc120027934)

[2.1. Stage 1 – Initiation 8](#_Toc120027935)

[2.2. Stage 2 – Review 9](#_Toc120027936)

[2.3. Stage 3 – Appeal 9](#_Toc120027937)

[2.4. Stage 4 – Closure 10](#_Toc120027938)

[3. Roles and Responsibilities 11](#_Toc120027939)

[3.1. Delivery Leads (DLs) 11](#_Toc120027940)

[3.2. Professional Leads (PLs) 11](#_Toc120027941)

[3.3. Regulatory Oversight Manager (ROM) 11](#_Toc120027942)

[3.4. Resolution Manager (RM) 11](#_Toc120027943)

[3.5. Chief Nuclear Inspector (CNI) 12](#_Toc120027944)

[4. Records 12](#_Toc120027945)

[References 13](#_Toc120027946)

# Introduction

1. A major strength of ONR is the range of expertise that can be brought to bear in resolving technical and regulatory issues or setting regulatory strategies. ONR values the diverse opinions of its staff. It encourages them to make known their professional opinions, even when they differ from the prevailing view.   
   ONR recognises the benefit of well-argued, objective questioning of our regulatory decision‑making processes when those exchanges take place in accordance with our behavioural framework. Importantly, such exchanges are an indicator of a healthy professional culture across all our regulatory purposes.
2. ONR employs professional people to use their diverse knowledge, skills, experience and judgement to achieve our mission. When making decisions on regulatory strategies, technical issues, or regulatory action, the aim is to make appropriate decisions at the lowest appropriate level. These decisions should be consistent with the scheme of delegated authority and through consensus wherever possible.
3. Consensus does not mean that decisions are made by committee rather than through ONR’s system of delegated authority, nor that it is necessary that everyone involved agrees with the final decision. Rather it recognises that people may not agree completely with all aspects of the decision, but the extent of their disagreement is not such that they object to it taking effect.
4. Professional differences of regulatory opinion are welcome and encouraged; not least as they usually improve the robustness and/or broaden the basis of our decision-making in a helpful manner. Where the objection persists beyond these discussions, this ONR procedure (Resolving Differences of Regulatory Opinion) provides a mechanism to resolve the disagreement at the lowest appropriate level. Where necessary, matters may be escalated, with the Chief Nuclear Inspector (CNI) acting as the final arbiter within ONR in the most complex cases.

## Purpose, Scope and Applicability

1. This ONR procedure describes the processes for resolving differences of regulatory opinion within ONR.
2. The procedure should be invoked in situations where there are differences in opinion over regulatory strategies, technical judgements or regulatory action to be taken (or not taken) which cannot be resolved through discussion at the normal working level. It supplements ONR’s Regulatory Directorate management structure, human resources policies, and arrangements in the ONR Staff Handbook for resolving problems at work (ref. [1]).
3. This procedure is designed to ensure that differences of regulatory opinion are fairly and objectively arbitrated to ensure the integrity of ONR’s regulatory decision making. The processes are not intended to be used for minor difference of opinion or for matters inconsequential to ONR’s reputation or ability to deliver effective, independent regulation.
4. The procedure is not designed for the retrospective review of permissioning, or enforcement decisions already enacted. In the event of objections to past decisions, the relevant delegated person should instead consider initiating a regulatory oversight review [2] to provide assurance and identify relevant organisational learning.
5. The procedure **does not apply** to:

* Regulatory permissions already granted. For example, those which have already resulted in the issue of a licence instrument, or an approval under the Nuclear Industries Security Regulations (NISR) etc.
* Enforcement decisions already enacted by the issue of an improvement or prohibition notice, a security direction, or use of powers in accordance with a nuclear site licence.
* Decisions made by other organisations to which ONR has contributed advice.

1. The procedure, which provides for resolution of differences of regulatory opinion through arbitration, is not intended to accommodate anonymous concerns. ONR’s whistleblowing process [3] provides an alternative mechanism for staff who wish to protect their anonymity. This process is consistent with the UK Regulators’ Code and international regulatory guidance [4, 5].

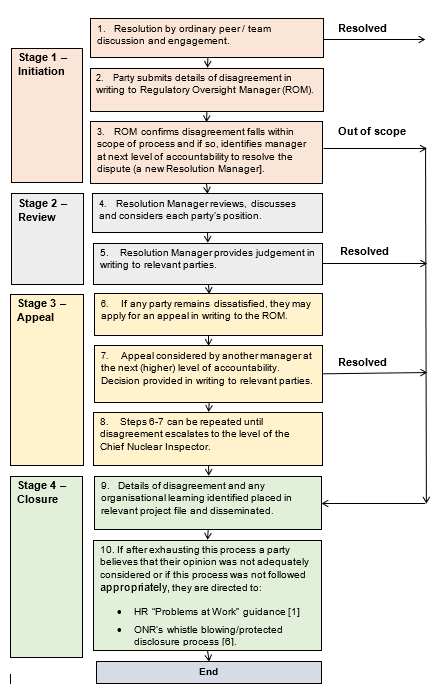
## Definitions

Table 2 - Table of Definitions

|  |  |
| --- | --- |
| Term/Acronym | Description |
| CNI | Chief Nuclear Inspector |
| DL | Delivery Lead |
| NISR | Nuclear Industries Security Regulations |
| PL | Professional Lead |
| RM | Resolution Manager |
| ROM | Regulatory Oversight Manager |

# Resolving Differences of Regulatory Opinion

1. Leaders are expected to create an environment which fosters open discussion, where diverse views are respected and valued, free from fear of negative consequences. All staff are expected to act in accordance with ONR’s values and the relevant code of conduct of their professional body. We expect our staff to recognise that others may not always share their views on technical judgements and regulatory issues, or strategic factors. Regulatory decisions on such issues that need to be taken within ONR may not accord fully with an individual’s own judgement of the evidence and argument. This is especially when wider considerations are considered.
2. In forming their own view as to what action needs to be taken in a particular case, inspectors are expected to discuss issues with their peers, the Delivery Lead(s) and relevant Professional Leads. This is particularly important where there are likely to be differing views. Inspectors should be alert to such situations so that every opportunity is taken to resolve areas of disagreement early through discussion.
3. In cases where the PL and/or DL changes during the assessment process, the new PL and/or DL should satisfy themselves with the approach taken prior to this change. This is expected to take place at the earliest opportunity to eliminate any potential differences of opinion which could delay permissioning.
4. The process for resolving differences of regulatory opinion within ONR is set out in Figure 1.



**Figure 1: Resolving differences of regulatory opinion in ONR**

## Stage 1 – Initiation

1. Where staff have strong concerns about regulatory strategies, technical judgements or regulatory issues they should raise these with their DL and/or PL in the first instance. Only after this approach has been exhausted should the individual request that the process for resolving differences of regulatory opinion be initiated.
2. The process may be initiated by any party submitting a written request to the ROM. The request should include the following information:

* A summary of the prevailing view or position, together with principal legal, policy, or technical arguments, evidence and judgements on which it is founded
* Name(s) and role(s) of those staff holding this view
* A summary of the alternative view, together with key underpinning arguments, evidence, and judgements on which it is based
* Name(s) and role(s) of staff holding this alternative view
* Their assessment of the consequences of ONR failing to adopt either view or position

1. As a good practice, it is preferable for this written request to be agreed by both parties; although, it is recognised this may not be appropriate in all cases. If the act of producing an agreed request resolves the difference in opinion, then the process should be terminated at that point.
2. Within five working days, the ROM (or delegate) will, review the request, confirm whether it falls within the scope of this procedure and identify a suitable ‘Resolution Manager’ (RM) who will arbitrate on the disagreement. The RM will normally be a manager one level above those parties involved in the disagreement with accountability for the issue in question. For example, a disagreement between the author of an assessment report and the inspector peer-reviewing the report would be referred to the relevant PL. A disagreement between a specialist inspector and a project inspector regarding the treatment of specialist advice within a permissioning decision would be referred to the DL. The aim is to resolve areas of disagreement at the lowest level where possible.
3. The RM should not have any detailed prior involvement in the subject of disagreement. If the manager feels that they may have a potential conflict of interest (or this may be perceived), they should discuss these concerns with the ROM. In such circumstances, it may be appropriate for the ROM to identify an alternative person of similar authority and appropriate grade to fulfil the role of RM. The role of RM may also be assigned to other alternative persons for reasons of technical competence or workload.
4. Where the ROM judges that the request falls outside of the scope of this process, the ROM will discuss the basis for this judgement with relevant parties, together with alternative mechanisms.
5. On receipt of a written request to initiate this process, the ROM will inform relevant Directors, DLs, PLs and other internal stakeholders they judge appropriate.

## Stage 2 – Review

1. The RM should use their professional experience and take appropriate advice to consider objectively the differing professional opinions, respecting the views and professional standing of all parties. The RM should meet with the concerned parties to understand the basis for their position. The RM should also consult PLs, and other internal sources of regulatory or technical advice, and external independent advice as they consider necessary and appropriate to inform their judgement. This advice should be documented in writing. Any meetings convened should be recorded with agreed minutes.
2. Senior managers should avoid any direct involvement which could be perceived as adversely impacting their ability to hear a subsequent appeal.
3. The RM should document their final judgement and its technical basis in a writing which should be distributed to relevant parties. This written decision, together with relevant supporting documentation should be placed within the relevant project file.   
   These documents should be accessible to the ROM so they can maintain oversight of the overall process health.
4. The RM should arrange to meet with affected staff to discuss the basis for their final judgement.
5. The regulatory decision being challenged should be deferred until a final outcome is achieved, allowing time for any appeal. The process described above should, therefore, be conducted promptly, minimising any delay. The RM should agree a timescale for completion of their review with the ROM and relevant Director. Where application of this process may adversely impact our permissioning programme, DLs should ensure that dutyholders remain informed of any revised timescales.

## Stage 3 – Appeal

1. Should any party still disagree following the completion of this process, then they should lodge an appeal. Appeals should be lodged in writing to the ROM within three working days of the RM’s judgement. The RM will refer the appeal to another RM at a higher level of accountability. Given the need potentially to delay regulatory decisions to allow time for potential appeals, all parties should be proactive in advising colleagues if they are not minded to appeal.
2. This process may be repeated until the appeal is considered by the Chief Nuclear Inspector, who acts as the ultimate arbitrator for ONR.

## Stage 4 – Closure

1. The RM should ensure that good records documenting the application of this process are recorded and appropriately filed.
2. On completion of the process, the relevant DL (or PL, if the ROM considers this would be more appropriate) should ensure that any wider organisational learning is captured, for example via application of ONR’s Review Learn Improve process [6] or via a Regulatory Oversight review [2]. The objective of the review should be to contribute to ONR’s aim of continuous improvement. To this end, the ROM should brief the Technical Division Board on conclusion of the application of this process, confirming proposals for implementation of identified organisational learning.
3. If after following the process described above, the member of staff still feels that their concern has not been adequately resolved then he/she should seek redress from either the procedure set out in ONRs Staff Handbook [1] or ONR’s whistleblowing process [3].

# Roles and Responsibilities

## Delivery Leads (DLs)

1. DLs are responsible for ensuring that the views of regulatory staff are considered when decisions are made on technical and regulatory issues, and when regulatory strategies are set.
2. The relevant DL is responsible for ensuring the process outlined in this document is instigated whenever they become aware of a position where consensus cannot be reached within the timescales needed for the decision through routine discussion.

## Professional Leads (PLs)

1. PLs are responsible for providing impartial advice on request to aid resolution of differences of regulatory opinion within ONR.

## Regulatory Oversight Manager (ROM)

1. The ROM is responsible for:

* Screening submissions and formally assigning a case number for submissions which fall within the scope of this process
* Identifying the manager at the next (higher) level of accountability who will be called upon to arbitrate the difference of regulatory opinion (known within this procedure as the Resolution Manager)
* Progressing the disagreement up the management chain if agreement cannot be reached at the current level, and ensuring that any later Resolution Managers receive a full account of the resolution process to date
* Effective record keeping by maintaining a register summarising the use of this procedure and the status of on-going cases
* Supporting and overseeing effectiveness of this process and its application within the organisation

## Resolution Manager (RM)

1. The RM is the manager at the next level of accountability, called to arbitrate a difference of regulatory opinion. In so doing, the RM is responsible for:

* Meeting with those on all sides of the difference of regulatory opinion to understand their positions
* Fairly and objectively consider the merit of arguments and evidence put forward by all parties
* Consulting PLs, Regulatory Oversight and other internal sources of regulatory or technical advice, and external independent advice as they consider appropriate
* Ensuring that all those involved in the process (including the ROM) are made aware of any independent advice taken and received, the decision reached, and its basis
* Ensuring that their review is adequately documented within the relevant project file

## Chief Nuclear Inspector (CNI)

1. The CNI will act as the final arbiter within ONR in resolving differences of regulatory opinion where these have not been resolved at an earlier stage, noted in this process. The CNI has the same responsibilities as other RMs but will make the final decision.

# Records

1. The following records should be produced and placed in the relevant project folder within ONRs electronic document and record management system (EDRMS):

* **Any party:** details of the disagreement that have been submitted to the ROM, including names/roles of parties holding differing views
* **ROM (or delegate):** will within five working days review the request, confirming whether it falls within the scope of this procedure or not. The ROM will identify the RM who will arbitrate on the disagreement
* **ROM:** will inform all interested parties of the arrangements
* **RM**: summaries of all meetings with Inspectors, DLs, PLs and other parties
* **RM** Thefinal judgement and its technical basis. This must be shared with all relevant parties
* **Appeals (if made)**: The reason for making the appeal (within three working days of a decision

# References

|  |  |
| --- | --- |
| [1] | ONR, “ONR Staff Handbook - Problems at Work,” [Online]. Available: https://onr.kahootz.com/ONRIntranet/view?objectId=21896176. |
| [2] | ONR, “ONR-TD-GD-001 - Regulatory Oversight Process,” [Online]. Available: https://how2.prod.onr.gov.uk/CtrlWebIsapi.dll/C619FC5214B34A719EAFAC8F2DAE959F.cwl?\_\_id=webFile.save&doc=FC4292D5D3F24F6FA0B8E4053BAEA82E&dpt=1&save=1. |
| [3] | ONR, “ESO-WB-PROC-001 - Whistleblowing,” [Online]. Available: https://how2.prod.onr.gov.uk/CtrlWebIsapi.dll/221C29994EBE4CDCAD115BF0C7B6A48F.cwl?\_\_id=webFile.save&doc=735537046A324E2C97EDEF60C976B15C&dpt=1&save=1. |
| [4] | NEA, “The Safety Culture of an Effective Nuclear Regulatory Body,” [Online]. Available: https://www.oecd-nea.org/jcms/pl\_14948/the-safety-culture-of-an-effective-nuclear-regulatory-body?details=true. |
| [5] | IAEA, “GSG-12 - Organization, Management and Staffing of the Regulatory Body for Safety,” International Atomic Energy Agency (IAEA), Geneva, 2018. |
| [6] | ONR, “ONR-RLI-GD-001 - ONR Review-Learn-Improve Process,” [Online]. Available: https://how2.prod.onr.gov.uk/CtrlWebIsapi.dll/4DCF79255EAE4D94A40F620CFE2D77F7.cwl?\_\_id=webFile.save&doc=EA2A9A8C905F414DACA7D58CC083B8F4&dpt=1&save=1. |