

November 2021

How we review our statutory decisions

This policy's purpose

This policy sets out our approach to reviewing statutory decisions made under or in relation to:

- Health and Safety at Work Act (2015) (HSWA) [s130-135](#) and [s220](#) exemptions
- Health and Safety at Work (Major Hazard Facilities) Regulations 2016 [s60-63](#)
- Health and Safety at Work (Asbestos) Regulations 2016 [s93-96](#)
- authorisations of a workplace/worker/plant/activity by licence, permit, registration, consent, certificate, or other authority as required by regulations
- energy safety regulations.

This policy should be read alongside the [Authorisations](#) policy.

This policy only covers the statutory decisions specified in Appendix 1. It doesn't cover decisions about whether or not we'll intervene following a notification or a health and safety concern.

What a statutory decision is

A statutory decision is a decision based on our interpretation of the law. Appendix 1 lists all of the statutory decisions that can be reviewed.

What a review is and why we undertake them

A review is a process that lets us take another look at the legal basis for, or accuracy of, a decision we've made if we're challenged.

It may consider:

- our original decision
- the process that led to that decision
- any new evidence presented to us.

We undertake reviews as they help us:

- improve the quality, efficiency, and effectiveness of our decision-making
- ensure fairness for duty holders, as it provides a means for checking our decisions and holding us to account
- develop and maintain public confidence in our decision-making process.

The impact of a review on a statutory decision

The original decision remains in effect until the review is complete, unless the applicant has made a request to stay for a notice under HSWA. A request to stay effectively suspends the notice until the review is complete.

If we receive a request to stay, we'll:

- acknowledge receipt of it
- make a decision within three working days, and
- advise the applicant of the outcome.

Who can apply for a review

A person affected by the decision, or that person's representative, can apply to us for a review.

What we expect of those seeking a review

Different legislation sets different requirements for applying for a review of a statutory decision. In some instances, we require applicants to complete an application form. We provide assistance to any applicant where needed/when requested to ensure that their application is completed correctly.

Where we don't have sufficient information to undertake the review, we request additional information from applicants.

Some of the provisions have timeframes for requesting a review. In general we won't accept late applications. The only exception is where:

- the application is made very soon after the deadline has passed, and
- there are extenuating or special circumstances for the late application, and
- the applicant provides evidence of the extenuating or special circumstances, and
- accepting the late application doesn't cause injustice to anyone else.

Who undertakes the review

Reviews are completed by people who weren't involved in the original decision.

Principles that guide us when reviewing a decision

We apply procedural fairness, or 'natural justice' when undertaking a review of a decision. This means we act fairly when exercising statutory powers that may affect a person's rights, interests, or legitimate expectations.

In order to make good decisions and maintain natural justice, we apply the following principles:

Openness

- We allow a reasonable opportunity for the applicant to be heard.
- We provide the applicant with the relevant information so they can make informed applications.
- We inform the relevant parties of the outcome and provide clear reasons for the decision reached.

Lack of bias

- We are impartial, unbiased, and independent when undertaking a review.
- We ensure people:
 - involved in the original decision are not involved in the review
 - conducting the review note any conflicts of interest and put a plan in place for how these will be managed.
- We keep an open mind and use all relevant insights available to us.
- We consider each application on its merits.

Timely

- We act promptly and meet statutory timeframes where applicable.
- Where statutory timeframes do not apply, we'll provide a timeframe to the applicant.
- If there are delays, we advise the applicant of the reason and when they can expect a response.

What happens after we make a final decision

After the review is complete, we:

- record our final decision and the reasons for it
- action it
- inform the applicant of our final decision, the reasons for it, and of their right to appeal through the courts
- share our findings with others in WorkSafe who need to know
- reflect on our findings, and adapt our policies, guidance, and practices (as needed).

We regularly review a sample of our reviewed decisions to ensure consistency in our decision-making.

Appendix 1: Reviewable decisions

ACT/REGULATION	REVIEWABLE DECISION
Health and Safety at Work Act 2015 <u>s130-135</u>	A decision made by an inspector: <ul style="list-style-type: none"> - to issue a notice (including a subsequent notice) under this Act; or - to extend the time to comply with an improvement notice; or - in respect of a provisional improvement notice under section 81; or - of a type prescribed by regulations for the purposes of this section.
Health and Safety at Work (Major Hazard Facilities) Regulations 2016 <u>s60-63</u>	Any decision made under the following regulations: <ul style="list-style-type: none"> - regulation 18(6) (suitability of operator) - regulation 19 (mandatory designation as major hazard facility) - regulation 20 (discretionary designation of lower tier major hazard facility as upper tier major hazard facility) - regulation 22(1) (conditions on designation of major hazard facilities) - regulation 23(1) (revocation of designation as major hazard facility or decision as to suitability of operator) - regulation 50 (WorkSafe may impose limitations or conditions on safety case) - regulation 51 (WorkSafe may reject safety case) - regulation 56 (WorkSafe may withdraw acceptance of safety case).
Health and Safety at Work (Asbestos) Regulations 2016 <u>s93-96</u>	Any of the following decisions: <ul style="list-style-type: none"> - refusal to approve a relevant method for managing risk associated with asbestos (under regulation 8) - refusal to grant a licence (under regulation 64) - refusal to grant a licence (under regulation 68) - imposition of a condition when granting or renewing a licence (under regulation 69) - refusal to renew a licence (under regulation 83). The licence holder may apply for a review of any of the following decisions: <ul style="list-style-type: none"> - refusal to approve the nomination of a supervisor (under regulation 74(2)) - amendment of a licence, on WorkSafe's initiative (under regulation 75) - refusal to amend a licence on application (or a decision to make a different amendment) (under regulation 76) - refusal to issue replacement licence document (under regulation 80) - suspension of licence (under regulation 86) - cancellation of licence (under regulation 86) - disqualification of licence holder from applying for another licence (under regulation 86(4)).
Authorisations	Any authorisations made under: <ul style="list-style-type: none"> - Geothermal Energy Regulations 1961 - Health and Safety at Work (Adventure Activities) Regulations 2016 - Health and Safety at Work (Hazardous Substances) Regulations 2017 - Health and Safety at Work (Major Hazard Facilities) Regulations 2016 - Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016 - Health and Safety at Work (Petroleum Exploration and Extraction) Regulations 2016 - Health and Safety in Employment (Pipelines) Regulations 1999 - Health and Safety in Employment (Pressure Equipment, Cranes, and Passenger Ropeways) Regulations 1999 - Health and Safety in Employment Regulations 1995 - Electricity (Safety) Regulations 2010 - Gas (Safety and Measurement) Regulations 2010
Exemptions	Any decision made about exemptions under: <ul style="list-style-type: none"> - Electricity Act 1992 - Electricity (Safety) Regulations 2010 - Gas Act 1992 - Gas (Safety and Measurement) Regulations 2010 - Health and Safety at Work Act 2015 - Health and Safety at Work (Hazardous Substances) Regulations 2017 - Health and Safety at Work (Adventure Activities) Regulations 2016

ACT/REGULATION	REVIEWABLE DECISION
	<ul style="list-style-type: none"> - Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016 - Health and Safety at Work (Asbestos) Regulations 2016 - Health and Safety at Work (Major Hazard Facilities) Regulations 2016 - Health and Safety at Work (General Risk and Workplace Management) Regulations 2016 - Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016 - Health and Safety at Work (Petroleum Exploration and Extraction) Regulations 2016 - Health and Safety in Employment Regulations 1995 - Health and Safety in Employment (Pressure Equipment, Cranes, and Passenger Ropeways) Regulations 1999 - Amusement Devices Regulations 1978
Energy Safety	<p>Decisions made by WorkSafe under:</p> <p>Electricity (Safety) Regulations 2010</p> <ul style="list-style-type: none"> - Regulation 87 - Regulation 110 <p>Gas (Safety and Measurement) Regulations 2010</p> <ul style="list-style-type: none"> - Regulation 63 - Regulation 86