

Understanding COMAH: How COMAH
Operators can challenge regulatory decisions
made by the Competent Authority
A guide for COMAH operators

the Competent Authority



About this leaflet

This leaflet has been produced by the Competent Authority (CA) for the Control of Major Accident Hazard Regulations 1999 (COMAH) for Great Britain. The CA for non-nuclear sites comprises: for Scotland, the Health and Safety Executive (HSE) and the Scottish Environment Protection Agency (SEPA); for Wales, HSE and Natural Resources Wales (NRW); and for England, HSE and the Environment Agency (EA); and for nuclear sites: for Scotland, the Office for Nuclear Regulation (ONR) and the SEPA; for Wales, ONR and NRW; and for England, ONR and the EA.

This leaflet is for COMAH establishment Operators and describes how they can seek clarification on and where they disagree, challenge CA regulatory decisions aimed at bringing them into compliance with the law. This challenge mechanism was developed jointly by the CA and industry.

CA inspections determine how well a COMAH Operator is controlling risk by sampling and testing critical areas of their safety management arrangements. Where CA Inspectors identify issues of non-compliance with the law, they will ensure that the COMAH Operator takes the necessary action to close these gaps in the onsite arrangements. Where an Operator feels the action the CA requires is not justified, they can use the arrangements described in this leaflet to challenge the CA's decisions.

Where a COMAH Operator wishes to dispute CA costs, notices or make any other general complaint about CA Inspectors, the existing arrangements should continue to be used. Details on these can be found at the following links:

HSE

- Cost recovery – www.hse.gov.uk/charging/comahcharg/disputes.htm
- Notices – www.hse.gov.uk/enforce/enforcementguide/notices/tribunals-intro.htm
- Behavioural issues – www.hse.gov.uk/contact/regulatory-complaints.htm

NRW

- <http://naturalresourceswales.gov.uk/about-us/how-to-contact-us/complaints/?lang=en>
- <http://naturalresourceswales.gov.uk/about-us/how-to-contact-us/complaints/?lang=cy>

EA

- www.gov.uk/government/organisations/environment-agency

SEPA

- www.sepa.org.uk/about_us/customer_services_directory/customer_satisfaction/complaints.aspx

An Operator's ability to challenge regulatory decisions is an important element in the major hazard regulatory environment. This mechanism allows the Operator to check its understanding of how to comply with regulatory actions (these are important health & safety concerns that require further action by the duty holder) and supports early communication between the CA and Operator. Industry challenges also act as a check on the consistency of the CA's approach and ensure the legal obligations placed on businesses are being applied in a proportionate way.

How the challenge mechanism works

The mechanism is sequential; each stage should be completed before a challenge is progressed.

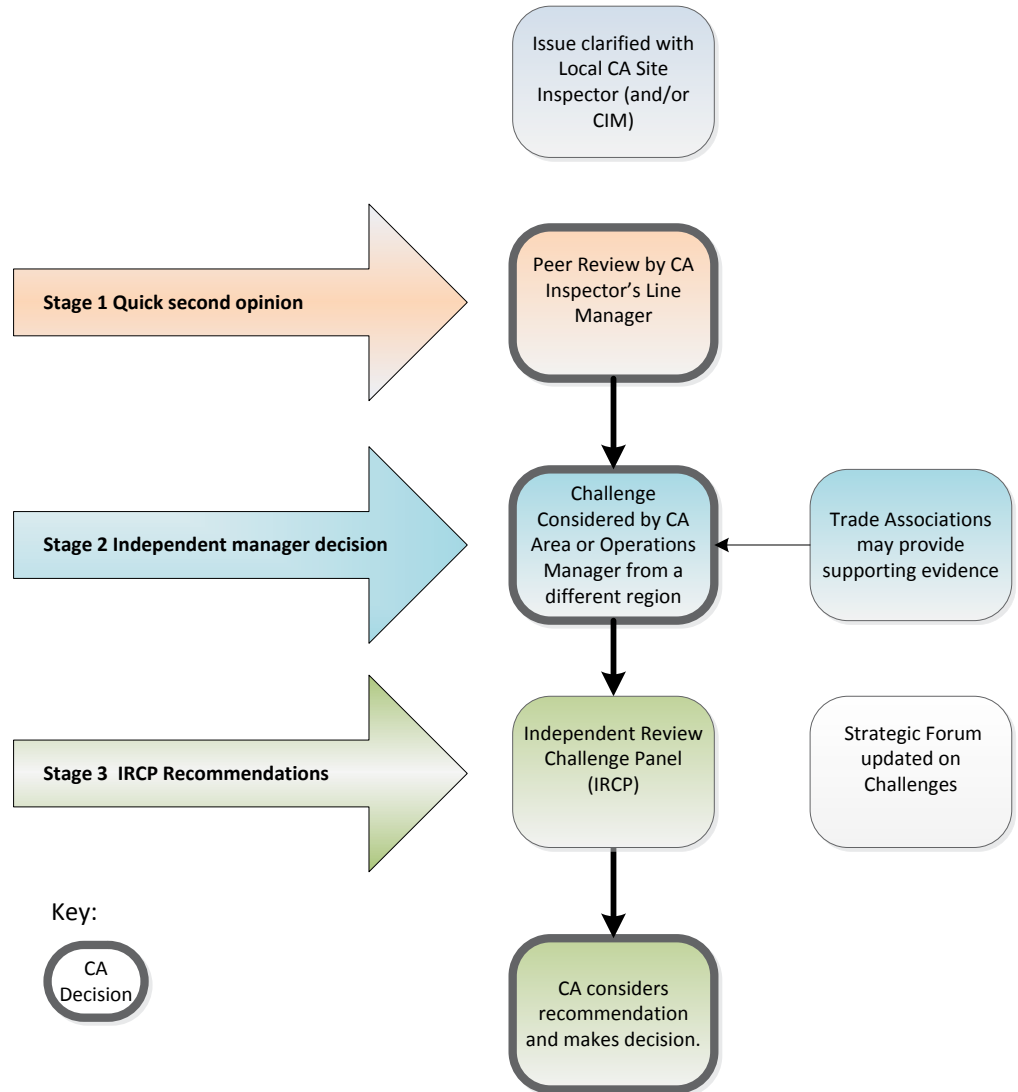


Figure: 1 The Challenge Mechanism

How you should use the challenge mechanism

Before challenging a regulatory decision:

- Ensure the actions placed upon you have been raised under the COMAH regulations, and not under another regime
- Your CA inspector should give you feedback following an inspection to clarify any actions put upon you, what is required and why. If you can, raise any issues you have with the actions at this stage. Or you can contact the CA inspector and if it is a different person, the COMAH Intervention Manager (CIM), following the receipt of the visit report and/or letter to clarify what is expected of you and to voice your concerns. We would hope for the majority of disagreements, to be solved at this stage. Please see www.hse.gov.uk/comah/guidance.htm, for information on the role of the CIM.

Following this clarification phase, if you still do not agree with the CA approach, you should set out your concerns in writing to the CA inspector's line manager (your inspector/CIM will provide you with the contact details). This will be supplemented by information drafted by the CIM on a common understanding of the issue. Your challenge will now enter Stage 1 of the mechanism.

If a challenge is submitted, the CA inspection team will decide whether it is appropriate to delay or put on hold the Actions placed on the duty holder. In making this decision, inspectors will seek legal advice where necessary and will consider the risks relating to any postponement. Operators and inspectors should discuss the timetable at the clarification stage. If the actions are not put on hold, costs for CA time spent following up an action will be recovered in the usual way. Time required to handle challenges will not be cost recovered once a challenge has been submitted to Stage 1 of the challenge mechanism

Challenging the regulatory decision

Stage 1 – Review by Line Manager

The CA inspector's line manager will review the inspector's regulatory decision, this will include checking:

- the operator's understanding of the action
- the legal basis for the action
- the standards for compliance
- the information collected that provides evidence of the operators non-compliance; and
- based on the above, whether the actions are appropriate and timescales reasonable

We will communicate with you, in writing, within 10 working days, and provide our decision regarding your challenge and the reasons for that decision. If we are unable to reach a decision within this deadline, we will contact you to inform you when a decision will be made and provide the reason for the extension. If you do not understand any part of the communication, you should seek clarification in writing.

If the initial regulatory decision has not been amended and you are still not content with the explanation given, you may continue to challenge the decision by entering Stage 2.

Before entering Stage 2 of the mechanism

Trade Association input

If you are a member of a Trade Association (TA), or other industry body, you can contact that TA or industry body to ask for advice/support. The TA or industry body may use its normal network and communication routes to gather and collate information about current industry practice relating to your concerns. The TA or other industry body can use this information as the basis for advising you on the validity of your challenge and whether you should proceed. However, the final decision will rest with you. If supportive, the TA will send this information to the CA Area/Operations manager reviewing the challenge.

If progressing your challenge to stage 2

You should inform the CA inspector's line manager that you wish to continue the challenge to Stage 2. You should also inform them if you are being supported by your TA who will provide information in support of your challenge. The CA inspector's line manager will provide the contact details of the CA Area/Operations manager who will be reviewing your challenge and will forward relevant documents to them.

Stage 2 – Review by CA Area/Operations Manager, independent to the inspection team

The challenge will be considered by a CA Area / Operations Manager from a different operational region. The CA Area / Operations Manager will review the information provided by you, your TA and the inspection team to reach a decision. We will confirm the decision in writing within 20 days of receipt. If we are unable to reach a decision within this deadline, we will contact you to inform you when a decision will be made and provide the reason for the extension. If you do not understand any part of the communication, you should seek clarification in writing.

If the initial regulatory decision has not been amended and you remain unsatisfied – you may progress the challenge to Stage 3 where it will be considered by the Independent Regulatory Challenge Panel. Please inform the Area / Operations Manager that you intend to progress the challenge to Stage 3.

Stage 3 – Challenge considered by the Independent Regulatory Challenge Panel

Independent Regulatory Challenge Panel (IRCP)

The challenge panel provides an independent means for any person (whether companies or individuals) to challenge the actions of Health and Safety Executive (HSE), or Local Authority (LA) health and safety regulators. The IRCP will consider any challenge relating to COMAH regulatory decisions or actions, including those that are environmentally based.

The IRCP will not consider COMAH regulatory challenges that have not already been reviewed at Stages 1 and 2.

To submit a challenge to the panel, please complete the online form at: <http://www.hse.gov.uk/contact/contactchallengepanel.htm>

For further terms of reference of the panel, please visit: <http://www.hse.gov.uk/contact/ircp-terms.pdf>

The IRCP will consider the challenge using independent expertise as required and will send its recommendations to yourself and the regional Area/Operational manager who carried out the stage 2 review of the challenge, as soon as possible.

The CA will take seriously any recommendations provided by the panel before deciding what action to take. However, the CA is not obliged to amend its regulatory decision following recommendations provided by the IRCP. Where an IRCP recommendation has not been adopted the CA will explain the reason for its decision to you.

If you are still not satisfied with the findings of the Independent Regulatory Panel or the CA decision not to adopt an IRCP recommendation, you can follow the existing complaints procedures including writing to the Chief Executive of HSE.^[2] ^[3]You can also write to your MP ^[4] and, if necessary ask them to contact the Office of the Parliamentary and Health Service Ombudsman ^[5] to investigate cases relating to HSE.

Strategic Forum oversight

The Strategic Forum (SF) was created in 2013 in response to the Better Regulation Executive's review of the Competent Authority's regulation of the chemical sector in England and supports strategic engagement between industry and the Competent Authority. It is attended by CA senior management and senior trade association representatives, and is chaired by an independent, ex industry representative with relevant technical expertise.

The Forum will be informed of any challenges received and will ensure any resulting lessons are learnt and where necessary, the CA will ensure these are reflected in regulatory interventions and supporting guidance.

Publishing the findings from challenges

Information on the numbers of challenges received and the outcomes will be made available on the HSE website.

Feedback on this mechanism

We would welcome your feedback on this challenge mechanism. The questions below provide an opportunity for you to send us your initial views. Additional feedback will be sought from companies who use the challenge mechanism. This information will be used to review the process on a regular basis.

Please email this form to your Trade Association or directly to

BREprogramme@hse.gsi.gov.uk

- 1 Do you understand the challenge mechanism?
Yes/No Comments:.....
.....

- 2 Do you understand the COMAH Intervention Manager's (CIM) role in the challenge mechanism?
Yes/No

- 3 Would you consider using this process to challenge a regulatory decision?
Yes/No If no, please explain why not.....
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- 4 On a scale of 1 to 5, with 1 being none and 5 being complete confidence, what level of confidence do you have in the system?
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- 5 Do you think the mechanism could be improved, if so, please explain which aspects you would like to see improved and how
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