

INTERNAL REVIEW**“LATE APPLICATIONS” - DEALING WITH APPLICATIONS MADE MORE THAN 14 DAYS AFTER THE DECISION CAME TO THE NOTICE OF THE PERSON SEEKING REVIEW**

1. Purpose

The purpose of this guidance principle is to:

- a) Set out the process to be used by the Authority to deal with an internal review application which appears to have been made more than 14 days after the reviewable decision came to the notice of the applicant, and
- b) Provide guidance for the Internal Review Officer (“IRO”) when deciding whether to allow an eligible person to apply for internal review of a decision more than 14 days after the decision came to the notice of the person.

2. Background

Section 128 of the *Occupational Health and Safety Act 2004* (“the Act”)¹ enables an eligible person to apply to the Authority for internal review of a reviewable decision. Such an application should be made within 14 days of the date on which the decision first came to the notice of the eligible person (the “primary time period”), or within such longer period as the Authority allows.

Whilst this provision anticipates review applications will usually be lodged within the primary time period, it also recognises that a failure to lodge within that time period does not automatically exclude a person from internal review. It essentially gives the Authority discretion to decide whether to accept a review application outside that time frame. An IRO is authorised by the Authority to exercise this discretion on its behalf.

3. Policy

Whilst that discretion is to be exercised by an IRO on the basis of relevant material, the Authority as part of its commitment to being a consistent, accountable and transparent decision maker, seeks to provide guidance as to the manner in which an IRO will exercise that discretion.

4. Process

The issue of late lodgement can arise in the following instances:

- Most commonly, an eligible person will have submitted a review application which appears to have been made outside the primary time period, or
- Occasionally a potential applicant may contact the Internal Review Unit and indicate an intention to lodge an application for review which will be outside the primary time period. In most instances where this occurs, the person will be advised to lodge the application, and specifically seek acceptance out of time. In more limited cases the IRO may, after considering the circumstances of the case determine that an application will be allowed, provided it is lodged within a specified time period.

Consideration of whether to allow late lodgement requires the IRO to make findings on the following issues:

- The date on which the reviewable decision first came to the attention of the eligible person, and
- Whether more than 14 days have elapsed or will elapse by the time an application for internal review is received.

¹ See also similar provisions in the *Dangerous Goods Act 1985* (section 20A) and the *Equipment (Public Safety) Act 1994* (section 24A)

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If the IRO determines that the review application was made (or is proposed to be made) more than 14 days after the date it came to the notice of an applicant, the IRO must then determine whether to accept late lodgement of such application. If an IRO decides to accept a late lodgement where an application has not yet been made, the IRO should also determine the latest date by which an application must be lodged.

The Act does not specify the criteria upon which the IRO will determine whether to accept late lodgement, or the period in which such late lodgement will be allowed. Each case must be determined on its own circumstances, however consideration of this issue may include (but is not limited to) the following factors:

- The explanation offered for late lodgement.
- The length of time by which the primary time period is exceeded (for example was the application only a few days outside that period, or was it well outside the period).
- When the applicant first decided to challenge some aspect of the inspector's decision.
- The reason why the review is sought, and the relief sought (for example, does the applicant seek to challenge the substantive decision of the inspector, or simply seek additional time within which to comply with a notice issued by the inspector).
- Was failure to seek internal review in the primary time period something over which the applicant had control, or was it due to factors beyond the control of the applicant?
- What steps (if any) had been taken by the applicant to pursue internal review within the primary time period.
- In the case of an application to review an Improvement Notice issued by an inspector, whether the review application was made before or after the compliance date set out in the notice.
- Whether there is any prejudice, disadvantage or injustice caused to any person if the Authority was to allow late lodgement of the review.

In determining whether to accept lodgement outside the primary time period, the IRO will also take into account the view of the inspector whose decision is the subject of the consideration. Where the IRO considers it appropriate, the view of any other relevant workplace party affected by late lodgement (for example, a health and safety representative or employer affected by the decision) may also be taken into account.

5. Reasons for Decision

Where the IRO has to decide whether to allow late lodgement of an application for internal review, a written explanation of the decision and the reasons for that decision will be provided to the person seeking the review. That written explanation should conform to the general requirements for written reasons, which are set out in IRU Guidance Principle 05 “Reasons for decision”