



**Ministry
of Defence**

**JSP 418
Management of Environmental Protection in
Defence**

Part 1: Directive

Foreword

The Secretary of State for Defence (SofS) through his Health, Safety & Environmental Protection (HS&EP) Policy Statement requires each Top Level Budget Holder or Trading Fund Agency Chief Executive to be the Senior Duty Holder for the safety of defence activities conducted in his/her area of responsibility in addition to his/her wider HS&EP responsibilities. They are required to set down and implement HS&EP management arrangements for activities in their area of responsibility. The policy statement also requires there to be organisational separation between those who conduct defence activities and those who provide regulation, so that the latter are independent whilst being part of the Department.

It is the responsibility of commanders and line managers at all levels to ensure that personnel, including contractors, involved in the management, supervision and conduct of defence activities are fully aware of their environmental protection responsibilities.

J C S Baker

Director Defence Safety & Environment Authority
Defence Authority for Health Safety & Environmental Protection
September 2014

Preface

How to use this JSP

1. JSP 418 is intended as the lead Departmental publication for the management of environmental protection in defence. It is designed to be used by all staff. This JSP contains the policy and direction on environmental protection in defence and guidance on the processes involved and good practice to apply to ensure defence meets its' regulatory obligations. This JSP will be reviewed at least annually.
2. The JSP is structured in two parts:
 - a. Part 1- Directive, which provides the direction that must be followed in accordance with Statute, or Policy mandated by Defence or on Defence by Central Government.
 - b. Part 2 - Guidance, which provides the guidance and best practice that will assist the user to comply with the Directive(s) detailed in Part 1.

Related JSPs	Title
JSP 815	Defence, Health, Safety & Environmental Protection
JSP 375	Management of Health & Safety in Defence
JSP 392	Management of Radiation Protection in Defence

Coherence with other Defence Authority Policy and Guidance.

3. Where applicable, this document contains links to other relevant JSPs, some of which may be published by different Defence Authorities. Where particular dependencies exist, these other Defence Authorities have been consulted in the formulation of the policy and guidance detailed in this publication.

Training

4. Details of relevant training and competence can be sourced from TLB/TFA Chief Environment and Safety Officers (CESO) Organisation or equivalents. Defence specific Environmental Protection training is also available through the Specialist Training School at RAF Halton¹.

Further Advice and Feedback- Contacts

5. The owner of this JSP is DSEA-CPA. For further information on any aspect of this guide, or questions not answered within the subsequent sections, or to provide feedback on the content, contact:

Job Title/E-mail	Project focus	Phone
DSEA-CPA-Safetyenquiries@mod.uk	JSP 418 Authors	

¹ <http://defenceintranet.diif.r.mil.uk/Organisations/Orgs/RAF/Organisations/Locations/Halton/Pages/STSTrgSupp.aspx>

FMC-Cap-InfraPolEnvComplAH@mod.uk	Lead for Part 2 Leaflet 3	
DESTECH-QSEPEnv@mod.uk	Lead for Part 2 Leaflets 5, 6, & 7	
TLB/TFA CESO organisation or equivalent	TLB/TFA central health & safety function and advice.	
Local environmental protection advisors	Site specific environmental protection advice.	

Contents

Foreword	i
Preface	ii
How to use this JSP	ii
Training	ii
Coherence with other Defence Authority Policy and Guidance	ii
Further Advice and Feedback – Contacts	ii
Contents	iv
Chapter 1 - Introduction, Maintenance and Disclaimer	1
Chapter 2 - The Legislative Framework and Formulation of Departmental Policy	3
Chapter 3 - Organisational Roles and Responsibilities	6
Chapter 4 - Risk Management	8
Chapter 5 - Regulatory Organisations	10
Chapter 6 - Corporate Records, Notifications and Investigations	13

1 Introduction, Authority, Maintenance and Disclaimer

Introduction

1. The Policy Statement by the Secretary of State (SofS) for Defence for Health, Safety and Environmental Protection (HS&EP) in Defence² has as a fundamental objective that those who deliver or conduct defence activities protect the environment when undertaking those activities. The Policy Statement applies to everyone and all organisations within Defence who conduct defence activities.
2. The Policy Statement states that authority is given to the Director General, Military Aviation Authority (DG MAA) and the Director, Defence Safety and Environment Authority (Director DSEA) for the regulation of HS&EP in Defence where there is a Departmental responsibility.
3. JSP 815 amplifies the SofS's Policy Statement and describes the arrangements for the management of HS&EP throughout Defence, provides strategic direction to TLB Holders and TFA Chief Executives responsible for conducting defence activities and provides an overview of the arrangements for the regulation of defence activities. JSP 815 defines the requirements of the Policy Statement in respect of Environmental Protection as being 'based on the UK environmental legislative framework not encompassing sustainable development'. Therefore sustainable development requirements are not addressed within this JSP; Departmental policy for which is the responsibility of the Defence Infrastructure Organisation.
4. JSP 418 is the corporate publication that provides guidance to Defence in meeting its' Environmental Protection Policy and Regulatory obligations. JSP 418 has two parts. Part 1 Directive, which provides the direction that must be followed in accordance with Statute, or Policy mandated by Defence or on Defence by Central Government. Part 2 Guidance, which provides the guidance and best practice that will assist the user to comply with the Directive(s) detailed in Part 1. These leaflets provide guidance and Defence Codes of Practice (DCoP) on how TLB/TFAs and Commanding Officers / Heads of Establishment comply with regulatory or policy requirements. DCoPs set out rules to aid TLB/TFAs in complying with regulations and represent good practice for defence.

Authority

5. JSP 418 is the lead Department publication for Corporate Environmental Protection under the SofS's Policy Statement for HS&EP and JSP 815.
6. JSP 418 is sponsored by Director DSEA, and is produced and maintained, in consultation with stakeholders, by DSEA Corporate Policy and assurance (CPA).

Amendment Record

7. Amendments will be staffed by DSEA-CPA together with lead areas, relevant subject matter experts and key stakeholders.

²http://defenceintranet.diif.r.mil.uk/libraries/corporate/Ministry%20of%20Defence/20120920.1/20130601_SofS_HSEP_Policy_Statement_signed.pdf

8. Comments or proposed amendments to this JSP are to be made by e-mail to DSEA-CPA-Safety enquiries using the following format:
- a. Senders reference
 - b. Date
 - c. Chapter/Leaflet/Page/Paragraph being addressed
 - d. Comment

Amd no.	Date	Text Affected	Authority

Disclaimer

9. Nothing contained within this JSP removes the requirement on anyone to comply with applicable legislation, Defence regulations and the Policy Statement.

Equality & Diversity Impact Assessing Statement

This policy has been equality and diversity impact assessed in accordance with Departmental policy. This resulted in a Part 1 screening only completed (no direct discrimination or adverse impact identified). This policy is due for review in 2017.

2 The Legislative Framework and Formulation of Departmental Policy

Introduction

1. Environmental legislation provides the cornerstone for protecting both the environment and human health from harm. Within the UK, Defence is required to comply with all applicable environmental protection legislation (including legislation giving effect to the UK's international obligations). Overseas, Defence will apply UK standards where reasonably practicable and, in addition, respond to host nations' relevant environmental protection expectations.
2. There are a number of pieces of environmental protection legislation, international treaties or protocols which include exemptions (coverage excludes) or derogations (authority given to deviate) relevant to defence activities. Additionally, where legislation does apply, there may be powers of specific dis-application granted to SofS which may be invoked in the interests of Defence and or national security. In these circumstances the Policy Statement requires the introduction of Departmental arrangements that produces outcomes which are, so far as reasonably practicable, at least as good as those required by legislation. In the few cases where applicable the guidance in Part 2 of this JSP outlines in detail the mandated processes through which an exemption, derogation or dis-application can be granted or utilised for certain defence activities.
3. Under customary international law, Visiting Forces have state immunity from domestic legislation and this is outlined in more detail JSP 815 Part 2. Interface arrangements have been agreed between the Environment Agency and United States Visiting forces (USVF)³; these form an annex to the Ministry of Defence / Environment Agency Memorandum of Understanding.

Legislation

4. There is a wide range of environmental legislation covering air, water, land, waste, natural resources, flora, fauna and human activity which have the potential to impact on Defence. Such requirements can often be complex both individually and collectively and because of the unique position of Defence and the need to maintain outputs including Operational Capability. Defence's environmental protection obligations can be found throughout differing levels of legislation. Comprehensive lists of relevant environmental protection legislation are required as part of the Environmental Management System (EMS) covering the site; further information on EMS can be found in Chapter 4.

International Treaties

5. International treaties are usually signed by national governments (Westminster Parliament not Devolved Administrations) and they may or may not be binding legal requirements on signatories. As Defence operates across national boundaries we need to be aware of our international obligations and these include, amongst others, the Basel Convention on the Transboundary Movements of Hazardous Waste and Their Disposal and the Stockholm Convention on Persistent Organic Pollutants.

³ In the UK, United States Visiting Forces (USVF) operate under the terms of the *Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces (London 19 June 1951)* (NATO SOFA). USVF implement management systems and processes which provide the same substantive protection as required by UK legislation and MOD environmental protection policy. When there is a variance between US and UK standards it is USVF policy to apply the more environmentally protective standard.

European Legislation

6. The majority of new UK environmental protection legislation now originates at the European level; the main legal instruments are EU directives and regulations. European legislation is transposed into national legislation by each member state. For example the Integrated Pollution Prevention and Control (IPPC) (EC 1996) was implemented in the UK by the Pollution Prevention and Control (PPC) Act (1999) and supporting statutory instruments such as the Environmental Permitting (England & Wales) Regulations (2010). European regulations tend to apply directly on a member state and do not necessarily need to be transposed through specific national legislation for example the Transfrontier Shipment of Waste Regulations (EC 1994).

United Kingdom (UK) Legislation

7. In the UK legislation comprises Acts of Parliament and statutory instruments with the latter being referred to as regulations. Acts generally provide policy principles and broad requirements while statutory instruments (SIs) are specific and detailed. SIs can be updated to take account of changes at the operating level.
8. In the UK the primary piece of environmental protection legislation is the Environmental Protection (EPA) Act (1990). The EPA defines within England, Scotland and Wales the legal framework for duty of care for waste, contaminated land and statutory nuisance. One of the principal regulations in England and Wales is the Environmental Permitting Regulations (EPR) (2010). EPR provides a consolidated framework for environmental permits and exemptions covering industrial activities, waste operations and water discharge activities amongst others. EPR also sets out the powers, functions and duties of the regulators⁴. In Scotland and Northern Ireland the principle permitting regulations are the Pollution Prevention and Control (PPC) Regulations.

Devolved Administrations

9. Unlike Defence, which is a reserved matter, environment is a devolved power and the Devolved Administrations have the right to bring forward their own environmental protection legislation. Within the UK there are four differing regulatory regimes for environmental protection; the differences can be subtle but the impact of non-compliance maybe significant. Defence operates throughout the UK and needs to be aware of the differing requirements in each of the four UK territories to ensure we are compliant in meeting differing statutory requirements⁵.

Defence Regulations

10. Defence Regulators provide regulation of EP for Defence activities where this is a Departmental responsibility. Defence regulators are empowered by SofS by Charter (DG MAA) or via a delegation from PUS and Director DSEA (DSEA Regulators). Defence regulators operate regimes that are aligned, where reasonably practicable, with statutory equivalents or near equivalents. These defence regulations are contained in the regulators appropriate Level 2 documents. Further information on the role of Defence Regulators can be found in Chapter 5.

⁴ The Environment Act (1995) established the regulatory bodies of the Environment Agency and Scottish Environment Protection Agency.

⁵ For example England, Wales and Northern Ireland brought in Hazardous Waste Regulations in 2005 to replace the Special Waste Regulations (1996); whereas Scotland took the decision to amend the Special Waste Regulations (1996) in 2004 rather than bring in new Hazardous Waste Regulations.

Defence Policy & Formulation

11. It is essential that Defence is aware of, and can appropriately influence, emerging EP legislation and consider the need for exemptions for Defence activities, should the potential consequence be a severe constraint on capability. DSEA-CPA co-ordinates processes aligned with HS&EP domains with TLBs, TFAs and Defence Regulators to track and influence legislation and exemptions. The granting of exemptions is a rare event in EP legislation and will only be considered where a significant impact on Defence activities has been identified. The Department is supportive of the principles underpinning environmental protection legislation including the principle that the polluter pays.
12. As the majority of new EP legislation originates from Europe DSEA-CPA represents MOD in DEFNET (DEFence environmental *NET*work) to ensure we are aware of upcoming European legislation that has the potential to impact Defence activities and, where appropriate, to influence its development through the established formal UK process. DEFNET is an informal, expert-level, forum which focuses on the environmental issues that through European legislation adversely affect, or could adversely affect, Member State's defence activities and operational capabilities.
13. The Defence Environment and Safety Committee (DESC) is the senior Departmental committee for HS&EP; it is chaired by the PUS and provides advice on high-level policy including JSP 815 from which this JSP takes its lead.
14. There is no formal Defence Committee for JSP 418. DSEA-CPA, as its authors, will utilise the Department's existing informal processes to consult on the development of the JSP with stakeholders and experts groups; these will include the TLB/TFA CESO organisations or equivalents and appropriate subject matter expert groups.

Departmental Publications

15. The Department produces publications (typically in JSPs) on HS&EP in a hierarchy of four levels.
 - a. Level 1 – Departmental Policy (e.g. JSP 815)
 - b. Level 2 – Defence Regulations owned by Defence Regulators
 - c. **Level 3** – Rules and guidance (including where appropriate Codes of Practice) provided by Defence Regulators on Legislation and Defence regulations; DSEA-CPA provides rules and guidance to Defence on corporate requirements and compliance with legislation (this JSP).
 - d. Level 4 – procedures and arrangements, normally produced within TLBs and TFAs, containing more detailed advice for line management on how implementation of Levels 1-3 can be achieved.
16. DSEA-CPA is to ensure that the contents of JSP 418 is consistent with the publications above it i.e. JSP 815. TLBs and TFAs are to ensure consistency with higher level documents including this JSP.

3 Organisational Roles and Responsibilities

Corporate Roles and Responsibilities

1. As part of their commitment to achieving and maintaining high HS&EP standards; SofS and the Defence Board regularly receive information on and consider HS&EP matters. This information includes interventions by Statutory and Defence regulators for environmental protection.
2. The PUS is responsible for ensuring that effective management arrangements are in place to deliver compliance with the Policy Statement. The term arrangements is used to encompass any set of 'systems' or 'procedures' that would be put in place to comply with the Policy Statement. For EP this includes the requirement that all MOD sites are covered by an appropriate Environmental Management System (EMS) based on the ISO 14001 standard. An EMS is an important tool in managing EP as it requires sites to identify, understand and keep a record of the regulatory requirements applicable to the activities conducted.

Corporate Policy and Assurance

3. Director DSEA through DSEA-CPA is responsible for:
 - a. Drafting the SofS's Policy Statement, JSP 815 and providing other corporate guidance including this JSP.
 - b. Co-ordinating the tracking and influencing of legislation.
 - c. Managing the Strategic relationship with HS&EP statutory regulators e.g. HSE, EA
 - d. High level assurance processes including the compilation of the Departmental HS&EP Annual Assurance report.
 - e. Providing the Secretariat for the DESC.
 - f. Ministerial, Parliamentary and public information business relating to corporate environmental protection.
 - g. Proposing corporate approaches to improve environmental protection performance.
 - h. Maintaining a central record of environmental protection enforcement action and risks referred to the SofS.

Environmental Protection Management Duties

4. The Policy Statement requires that TLB holders and TFA Chief Executives are to set down and implement HS&EP management arrangements for activities in their areas of responsibility and that commanding officers and managers to whom they may delegate HS&EP authority are competent and have adequate resources at their disposal. TLB/TFA holders should ensure that their organisations have processes and systems in place to minimise adverse effects on the environment, to report, collate and record environmental incidents from their activities.

5. Each establishment (Site) shall have in place processes and procedures to eliminate or reduce the potential for environmental incidents however, should an incident occur it should be reported immediately at site level in line with site procedures. It is recommended that these processes and procedures are linked/incorporated in to the EMS covering the site. Commanding Officer / Heads of Establishments must ensure that the establishment has or is covered by an EMS.
6. Commanding Officer / Heads of Establishments must make sure that suitable establishment procedures are in place to enable effective reporting, investigation and management of environmental incidents and near misses including those which have the potential to migrate off site. Where there is imminent or actual threat of environmental damage⁶ occurring the relevant statutory regulator should be immediately informed.
7. For acquisition Delivery Team leaders must ensure that their project has or is covered by a Project Orientated Environmental Management System (POEMS)⁷.
8. Employees have duties under EP legislation and should be made aware of those through site procedures and systems.

Contractors and Partners

9. TLB/TFAs routinely engage contractors and partners to undertake a wide range of defence activities. Contractors and partners must be competent to undertake the activities required and will comply with all relevant environmental legislation and the employing commanding officer or manager is to ensure that this is the case. TLB/TFAs will monitor that its contractors and partners hold appropriate environmental permits and licences and, the contractor and partners have in place and implement procedures to comply with environmental protection legislation.
10. If there are exemptions from legislation that are relevant to the contractor's or partner's defence activities, then Defence regulations apply. The Defence contracting organisation is to ensure that this is expressed in the contract or agreement and that relevant Defence regulators are empowered through the contract agreement to regulate the contractor's or partner's activities.

⁶ Environmental Damage (Prevention and Remediation) Regulations 2009 – See Volume 2 Leaflet 2 for further information

⁷ <http://www.aof.dii.r.mil.uk/aofcontent/tactical/safety/content/asems/part1.htm>

4 Environmental Risk Management

Introduction

1. The Policy Statement requires that adverse effects on the environment are minimised; Defence must meet this requirement through legislative compliance and the implementation of Environmental Management Systems (EMS)⁸ on our sites and in our acquisition projects etc.

Environmental Regulations

2. Individual environmental protection legislation refers to terms such as 'As Low As Reasonably Achievable', 'Best Available Techniques', 'Best Practicable Environmental Option'; all have subtle variations of meaning and application. Where establishments undertake defence activities requiring permits or authorisations under statutory regulations the appropriate statutory regulator or statutory guidance for the activity will be able to advise on the applicable risk management technique to be utilised.
3. Many Defence activities requiring statutory authorisations or permits are undertaken by contractors or partnering organisations. In such cases Defence contracting organisations shall assure themselves and other TLBs/Duty Holders that their Industry Partners have all the appropriate permits and licenses. Commanding Officer / Heads of Establishments will need to assure themselves that the appropriate permit or licence has been granted for the activity; local or central TLB/TFA HS&EP advisors should be able to provide advice on the process for gaining that assurance.
4. Volume 2 of this JSP provides detailed guidance and DCoPs in the form of leaflets for how defence meets its' regulatory obligations. Volume 2 includes leaflets covering EP areas such as Environmental Management Systems, Pollution Prevention, Controlled Waste, Hazardous Substances & Restricted Materials and Contaminated Land.
5. Where Defence has exemptions, derogations or dis-applications from legislation then Defence Regulators will provide guidance, usually through their level 2 JSP documents, on the risk management for environmental protection. This may be in the form of an equivalent process to statutory requirements or through a process of identifying the most appropriate environmental protection option for the Defence activity concerned.
6. Where there is a need to identify the most appropriate environmental protection option the outcome decided on should be the result of a systematic and consultative decision-making procedure which involves customers and delivery organisations and defence regulators where appropriate. The final option should identify a level of management and engineering control that minimises, as far as practicable, the release of potentially polluting substances to the environment whilst taking account of a wider range of factors, including cost-effectiveness, technological status, operational capability, and environmental factors.

Environmental Management Systems

7. Potential risk to the environment from a sites' day to day activities should be managed through the implementation of EMS on our establishments and the identification of environmental activities, their aspects and impacts and the assessment of significance. EMS should be proportional to the risks associated with the size of the site, and the types of activities undertaken on site. Under certain circumstances, e.g. small low risk sites, it may be appropriate for the site to be covered by either a nearby establishment's EMS or, as part

⁸ Further details can be found in Part 2

of a higher level EMS i.e. TLB level. EMS are the key tool in helping manage EP regulatory compliance in Defence. Commanding Officer / Heads of Establishments must ensure their establishment has or is covered by an EMS, this will usually be through the local environmental protection advisor. Further detail can be found in Volume 2 Leaflet 1.

8. During acquisition the SofS commitment to EP is met through implementation of a Project Oriented Environmental Management System (POEMS)⁹. POEMS ensures Delivery Teams identify potential environmental impacts and risks associated with equipment systems and services acquisition projects. POEMS states that DTs are responsible for providing information gathered on potential environmental impacts associated with their projects to other parties. E.g. emissions to the environment, including noise, provided to users and/or Defence regulators.

Major Accident and Control Regulations

9. The Major Accident Control Regulations (MACR) require a comprehensive Major Accident Environmental Risk Assessment (ERA) to be undertaken on establishments that fall under MACR in line with JSP 498¹⁰. MACR Sites with an ERA should incorporate the assessment in to the site EMS to aid in the management of EP on site.

Environmental Protection Overseas and in Operations

10. Defence recognises that it still has a requirement to minimise adverse impacts on the environment overseas and in Operations despite these posing unique challenges in the management of environmental protection. Part 2 provides further advice on managing EP on the overseas estate.
11. When on Operations personnel should apply UK standards where reasonably practicable and, in addition, apply the Host Nation's standards for Health and Safety, including EP. Whilst it is fully understood that total compliance with UK legislation is not always possible within the operational environment, Operational Commanders have a duty of care to ensure, as far as reasonably practicable, that the approach to EP, as part of Op Safety is proportionate with the understanding that it may not be possible to fully meet legislative and policy standards expected in the UK. Where this is the case, decisions shall be supported by a robust risk assessment process.

⁹ <http://www.aof.dii.r.mil.uk/aofcontent/tactical/safety/content/asems/part1.htm>

¹⁰ <http://defenceintranet.dii.f.r.mil.uk/Reference/DINsJSPs/Pages/JSP498MajorAccidentControlRegulations.aspx>

5 Regulatory Organisations

Statutory Regulators

1. Most Defence activities in the UK are fully subject to the requirements of environmental protection legislation and are regulated by statutory regulators. Within the UK territories there are four main statutory regulators for EP, these are:
 - a. Environment Agency
 - b. Scottish Environment Protection Agency
 - c. Natural Resources Wales
 - d. Northern Ireland Environment Agency
2. Further to the four main statutory regulators other organisations also have statutory roles for EP these include:
 - a. Local Authorities
 - b. Marine Management Organisation
 - c. Health & Safety Executive (UK Competent Authority for the Registration, Evaluation, Authorisation & Restriction of Chemicals (REACH) Regulation)
 - d. Office of the Nuclear Regulator (ONR)
3. The regimes operated by the statutory regulators are dependent on the legislation that empowers them, and there is variety in those. The Environment Act (1995) established the Environment Agency (EA) and the Scottish Environment Protection Agency (SEPA) as regulatory bodies for environmental protection; the Natural Resources Body for Wales (Establishment) Order 2012 established Natural Resources Wales as the environmental protection regulator for Wales. The Northern Ireland Environment Agency was launched in 2008 and is an Executive Agency within the Department of Environment in Northern Ireland.
4. Co-ordinated by Director DSEA the Department maintains Memorandum of Understanding (MoU) with the EA and the MMO while the Department also has a Radioactive Substances Agreement with SEPA.
5. These agreements help standardise interactions between the statutory regulators and Commanding Officers / Heads of Establishment and the Department as a whole; in certain areas the MoU provides interpretation of the regulators responsibilities in Defence.

Defence Regulators

6. Defence regulators provide regulations and guidance of environmental protection for defence activities where there is a Departmental responsibility; this includes where these activities take place outside the UK but with due regard to host nation expectations. See JSP 815 Chapter 4 for further details on Defence regulators.
7. Although most Defence activities are subject to EP legislation, there are areas where the Defence regulators do have additional Defence regulations that cover areas of EP legislation

e.g. JSP 518 & 538 Annex C to Chapter 2 – Further Authorisation Conditions (FAC) 3: Radioactive Discharges.

8. Defence regulators' requirements can range from the requirement to submit an exemption case for consideration and approval to a simple requirement that TLB/TFAs have systems and processes in place to manage an environmental protection requirement.
9. Defence regulators may also take account of compliance with statutory requirements as part of their permissioning of activities e.g. DSEA – Fuels and Gases Safety Regulator (FGSR) licensing of fuel installations. For further information on Defence regulators requirements please see their specific Level 2 JSPs.

Overseas Authorities

10. Notwithstanding the position of state immunity under customary international law, many host nations have environmental protection authorities with expectations (which maybe expressed in written agreements) in respect of UK defence activities conducted in their jurisdiction. A Commanding Officer or manager should be fully aware of such agreements and the environmental protection requirements placed on defence when undertaking their activities.

Enforcement

Statutory Regulators

11. Statutory regulators have enforcement powers and regimes granted to them by legislation. Where an allegedly offending defence activity is conducted by Crown servants i.e. members of the armed forces or MOD civilians, statutory regulators powers can be modified to take account of that fact.
12. The relevant statutory regulator in the four territories of the UK will consider action against the Department, as they would against a civil establishment, in accordance with their own individual enforcement guidance/statements¹¹. However, the Department, as part of the Crown, cannot be criminally liable, including failure to comply with prohibition, enforcement or works notices. This does not reduce the impact of enforcement action taken against the Department.
13. Where, but for Crown immunity, the Department would have been prosecuted as a corporate body; the statutory regulators may apply to the High Court (England, Wales, Northern Ireland) or the Court of Session (Scotland) for a declaration that our acts or omissions were unlawful. The Environment Agency (EA) has undertaken, through the Memorandum of Understanding (MoU), not to prosecute Crown servants in lieu of corporate responsibilities.
14. Notwithstanding Crown immunity from prosecution, the actions of Crown servants may constitute criminal offences and as such they may be prosecuted individually. The MoU with the EA sets out that they will only prosecute individuals in circumstances where they would have prosecuted individuals of a private company. For senior managers only, this will normally be where it can be shown that an offence has been committed with the consent of or connivance of, or has been attributable to any neglect on the part of, any senior manager or a person who was purporting to act in such a capacity.
15. The Radioactive Substances Agreement with SEPA states that in the event of a compliance issue SEPA will deal with the matter using a similar approach to that outlined in SEPA's Enforcement Policy. In such an event SEPA will formally write to the Secretary of State for

¹¹ http://www.environment-agency.gov.uk/static/documents/Business/Enforcement_and_Sanctions_Guidance.pdf
http://www.sepa.org.uk/about_us/idoc.ashx?docid=48c35c8b-7a17-40da-80ed-f4637abbcf4c&version=-1
http://www.doeni.gov.uk/niea/niea_enforcement_policy.pdf
<http://naturalresourceswales.gov.uk/content/docs/word/our-work/about-us/enforcement-policy-en.doc?lang=en>

Defence and copied to the Commanding Officer / Head of Establishment, Director DSEA and Hd DNSR.

16. As part of the Crown, the Department cannot be made subject of a civil penalty under the Regulatory Enforcement and Sanctions Act 2008.
17. In the event of any of the following interventions by a statutory regulator: enforcement notices, works notices, prohibition notices, suspension or revocation of environmental permits or licenses; DSEA-CPA should be notified by the TLB/TFA involved; usually through the central HS&EP function e.g. CESO. Further information can be found in Chapter 6.

Defence Regulators

18. Defence regulators have enforcement powers granted by charter or delegations; see JSP 815 Chapter 4 and for further information on Defence regulators requirements see their specific Level 2 documents. Where Defence is subject to environmental protection legislation, the statutory regulator has ultimate jurisdiction.

6 Corporate Records, Notifications and Investigations

1. In order to support routine and annual reporting (including to the Defence Board and for the Holding to Account Process) and to provide centrally held data in the event of enquiries. DSEA-CPA collates records for certain EP interventions by statutory regulators. JSP 815 requires TLB/TFA holders are to ensure that their organisations have systems in place to report, collate and record environmental incidents from their activities.
2. As outlined in Chapter 3 processes and procedures are to be put in place at site level to eliminate or reduce the potential for environmental incidents however, should an incident occur it should be reported immediately at site level in line with site procedures. It is recommended that these processes and procedures are linked/incorporated in to the Environmental Management System (EMS) covering the site and in the event of an incident recorded as part of the site EMS.
3. Commanding Officer / Head of Establishments are to make sure that suitable establishment procedures are in place to enable effective reporting, investigation and management of environmental incidents and near misses including those which have the potential to migrate off site.
4. The UK Government is required to annually submit to the European Commission information on Ozone Depleting Substances (ODS) including Halon gases. Members of the MOD Montreal Protocol Task Force (MPTF) must collect and submit data annually so that Defence can meet its obligations; further guidance on the reporting requirements is to be found in Part 2 of this JSP.

Incident Notifications

5. Where there is imminent or actual threat of environmental damage¹² occurring the relevant statutory regulator should be immediately informed.
6. Dependent on the nature of an environmental incident Commanding Officer / Head of Establishment and environmental protection staff may be required to notify other Defence organisations or their partners, wider than their own TLB/TFA, of an incident.
7. These can include but are not limited to:
 - a. DSEA-FGSR in the event of fuel spills, in line with reporting protocols in JSP 317.
 - b. DSEA-DNSR in the event of a discharge to the environment in line with JSPs 518 & 538.
 - c. Incidents that have the potential to impact or relating to infrastructure assets failure should be reported to the asset owner; in the majority of cases this will be DIO or PPP/PFI partner.
8. All Contractors and Partners should be made aware of establishment emergency and incident reporting procedures in line with the 4Cs (Co-ordination, Co-operation, Communication and Control) process. Incidents should be reported to the establishment focal point and host TLB.

¹² Environmental Damage (Prevention and Remediation) Regulations 2009 – See PArt 2 Leaflet 2 for further information

9. Any incidents that have the potential or have actually resulted in any enforcement action against a PFI/PPP partner should be reported through their relevant contract monitoring organisation to DIO.
10. Further advice on incident notification can be sort from the TLB/TFA central HS&EP function.

Enforcement Notifications

11. Summaries of relevant statistics are included in the Departmental HS&EP Annual Assurance Report and enforcement actions by Defence and Statutory regulators are reported to the Defence Board on a monthly basis. TLB/TFA holders (or their central HS&EP staff) must notify DSEA-CPA of any enforcement action taken by statutory or Defence regulator as soon as possible after the action is taken.

Investigations

12. Following an incident an investigation should be undertaken by the Commanding Officer or senior manager under whose Area of Responsibility the activity resulting in the incident falls. Investigations should be appropriate to the incident under investigation.
13. Where an environmental protection incident also involves a health and safety related injury the investigations should be run in parallel so as to enable one incident report to be raised. In such an event the health and safety reporting requirements in JSP 375, Part 2 Volume 1, Accident/Incident Investigation and Reporting should also be followed.
14. Commanding Officer / Heads of Establishment are responsible for ensuring that the recommendations of an investigation are followed through and implemented on their site within a reasonable timeframe. Where the responsibility for actioning a recommendation falls on another TLB/TFA or a PPP/PFI partner Commanding Officers / Head of Establishments need to assure themselves the recommendation is being acted on. In the event that a recommendation is not being acted upon within a reasonable timeframe the Commanding Officer / Head of Establishment should escalate this through the management chain.