



Ministry
of Defence

UK Weapon Reviews

Conditions of release

1. This information is Crown copyright. The Ministry of Defence (MOD) exclusively owns the intellectual property rights for this publication. You are not to forward, reprint, copy, distribute, reproduce, store in a retrieval system, or transmit its information outside the MOD without permission from the sponsor.
2. This information may be subject to privately owned rights.

The process adopted by the UK for conducting 'weapon reviews' in accordance with Article 36 of 1977 Additional Protocol 1 to the Geneva Conventions

Additional Protocol 1 (AP 1), Article 36, requires States to determine whether new weapons, means or methods of warfare may be employed lawfully under International Law. The United Kingdom takes this obligation very seriously, and UK weapon reviews are undertaken by serving military lawyers on the staff of the Development Concepts and Doctrine Centre (DCDC) located in the UK Defence Academy in Shrivenham, on behalf of MOD Central Legal Services. Article 36 does not prescribe a method or format for weapon reviews: that is for States to determine. This document sets out how the UK gives effect to Article 36, but fully recognises that different States may need a different approach to suit their own procurement and development processes.

Development Concepts and Doctrine Centre

DCDC is part of Joint Forces Command and is completely independent of single-Service (Royal Navy, British Army, Royal Air Force) chains of command. It is a MOD think tank responsible for writing defence-level doctrine and strategic thinking on likely global future developments and possible future operating concepts for the UK Armed Forces.

DCDC is tri-service, as is its legal branch, with a lawyer from the Navy, Army and Air Force. The Service lawyers are qualified barristers or solicitors with current practicing certificates. Standard tour lengths are three years. The senior lawyer post is rotational between the three Services. All DCDC lawyers have experience and understanding of operations.

Interest in legal reviews

There is a growing interest in this area of work among academics and non-governmental organisations. Greater scrutiny from a number of bodies, including the UN Meeting of the High Contracting Parties to the Certain Conventional Weapons Convention, has increasingly focussed on the acquisition of new technologies and the legal weapon review process. Articles, comment, forums and blogs now routinely discuss these issues. Areas which have received particular attention of late include cyber capabilities, remotely piloted systems, environmental effects, collateral injury to civilians, automation and autonomous systems.

To date, there has been little published information about States' weapon procurement and review processes. Weapon reviews inherently deal with classified material relating to the performance and use of weapons. Accordingly, any trend towards openness will always be bounded by important concerns of national security.

Weapon Review Forum

UK DCDC held the first ever international Weapons Review Forum (WRF) in Autumn 2015 and intends to hold another in 2016. States, academics, the International Committee of the Red Cross (ICRC), the British Red Cross and key non-governmental organisations (NGOs) were invited to contribute, either in writing or by sending delegates as appropriate. The Forum enabled fourteen States, who were the primary participants, to discuss the weapons review process between themselves, as well as in open sessions with selected academics and other parties involved in the process, including procurement teams and defence industry representatives. The aim was to share and learn good practice between States and see how other States fulfil their Article 36 obligations. The 2015 Forum represented an important step forward in international co-operation, which we hope to build on in the 2016 Forum, especially as ICRC work to refresh their own guidance on Article 36 reviews in 2016.

The UK legal review process

Article 36 legal reviews ensure that commanders, soldiers, politicians, the UK public and our allies can be assured that UK weapons are lawful. Article 36 of AP 1 states:

‘In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party (i.e. the UK) is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.’

The expression ‘means or method of warfare’ includes weapons in the broader sense of that word but it also includes ways in which weapons are used and warfare is conducted. For example, sighting equipment, laser designators, target acquisition equipment, data links and software used for processing target data all require legal review. Novel uses of existing capabilities or equipment may also require legal review. This list is not exhaustive; where there is doubt legal advice is provided. Weapon reviews may record limitations on the use of a weapon or method of or means of warfare in order to ensure compliance.

Where the UK seeks to acquire equipment that is already in service with the Armed Forces of another State, even though that State may have conducted its own weapon review, the UK still conducts a review. Obligations under International Law differ between States and, even when subject to the same obligation, different States interpret or implement them differently.

UK legal reviews take place at key milestones in the procurement process of a piece of equipment. Broadly, these are at:

- MOD’s decision to commit funds to developing a specific capability (known as ‘Initial Gate’);
- MOD’s decision to commit fully to the procurement of a particular piece of equipment or weapon (known as ‘Main Gate’); and
- at the date the finalised equipment enters service.

However, the procurement process can change, most notably in respect of Urgent Capability Requirements (UCRs). Where these arise, weapons are often developed or altered in reaction to events on the battlefield very quickly. These weapons are still legally reviewed, orally if necessary, with more formal comprehensive advice to follow.

In the normal course of events, however, the procurement process is much slower, and reviewing lawyers are in constant contact with procurement teams. This assists the legal officer in understanding particularly complex, technical or novel issues early on and will enable any early concern to be pointed out, which could prevent wasting significant resources. To do this, DCDC require the disclosure of all relevant documents and information as soon as it is available. Such disclosure will include tests and trials, including live firing results and/or computer modelling. Some technical information will have to be explained. The disclosure will be listed as footnotes in the legal advice to ensure that the information upon which legal conclusions are reached is clear.

The life cycle of projects will vary enormously with some programmes taking many years of development and trials, whilst others might require only straightforward modifications to existing systems. Where there is any change in a systems’ use or capability, it will be subject to further review.

DCDC nominates one lawyer to monitor development and then be the lead reviewer for a new technology. Once the nominated lawyer has completed a draft review, that review is sent to the procurement team for them to consider: most importantly, to confirm that the reviewing lawyer’s technical understanding of the

system is correct and complete. No piece of equipment is reviewed in isolation and the legal team peer-review each other's work. This has recently been formalised such that every weapon review advice is now signed and approved by two lawyers: the lead reviewer, and a second reviewer.

Resources for weapon reviews

Article 36 requires new technologies to be assessed against all relevant rules of International Law. While the texts of relevant treaties and rules of customary law are applied, DCDC lawyers also take into account secondary sources, including relevant ICRC commentary, academic and scholarly publications and reports or investigations conducted by the UN or NGOs. We also maintain important links with our allies' weapon review lawyers. In some instances, the Navy, Army and Air Force have established exchange posts with sister services abroad, and these can be important tools in maintaining our close contacts.

Non-reviews

'Non-reviews' are written by DCDC when, after analysis, it becomes clear that a weapons review is not required. For example, a new tactical radio or piece of navigation equipment may not fall within the scope of Article 36 and not require review. A decision not to review is properly considered and is recorded, for the benefit of the particular procurement team and as a matter of Government record. Even where a decision is taken not to review a piece of equipment, DCDC legal will always consider whether any change or new technology affects the performance of a platform or related system such that the platform itself or any other piece of equipment should be subject to a new review.