

## Public Consultation Record

The Department received the following communications from members of the public during the Consultation Period between 17 August 2007 to 21 September 2007 in respect of the proposed new byelaws for AWE Blacknest.

### Generic Comments and MOD response re AWE Blacknest:

	<b>Summarised Comment</b>	<b>MOD Response</b>
1	The recently introduced AWE Aldermaston Byelaws are now subject to an application for a Judicial Review with papers having been lodged at the High Court by both sides (Ref. AFM/LT71362F/3B). I urge you to wait for the outcome of those proceedings before considering these byelaws, because it may be that a ruling is made which would affect the decision in this case.	MOD are waiting for the result of the initial scrutiny by the judge before deciding whether to proceed further. MOD are confident that the changes that we made to the draft Aldermaston byelaws will be supported by the judicial review which is limited to
2	These byelaws repeat powers found in other primary legislation, for example, The Serious Organised Crime and Police Act (trespass on a nuclear licensed site) and The Criminal Justice and Public Order Act 1994 (aggravated trespass).	In respect of SOCAP and Criminal Justice Act and Byelaws the powers are complementary and give a layer of enforcement, i.e. the full sanction of imprisonment under SOCAP can be avoided by MOD raising a byelaw contravention rather than criminal trespass.
3	As they do not add any legal protection against intrusions on to the site, the main effect of the byelaws will be to restrict behaviour outside of the site boundary fence on land next to the highway with public access.	See above, but also correct that they regulate public use of MOD private land
4	There is a conflict with Highway rights which is expressly prohibited under the enabling act. Some of the land in the Controlled Areas is highway, taking the definition of highway as being from hedge to hedge or fence in this case.	The boundaries have been carefully checked against title deeds and the highway records.
5	The Military Lands Act 1892 has been accepted by the MoD (Hansard, 2000) as being "long in the tooth" and problematic as primary enabling legislation due to the contractorisation of the site and the modern context.	In DPP v, JOHN and ANOTHER 1999 Jan. 15 the High Court found that the Act was perfectly capable of interpretation and use
6	In 2000 the MoD made these comments at a Defence Committee hearing: "We have decided that we ought to do a review of whether we need primary legislation to cover defence lands. The main reason is that at the moment the situation of setting bylaws is governed by the Military Lands Act of 1892 and 1900, which are getting a bit long in the tooth, and they do not sit easily with modern methods of procurement and management of MoD land, such as, Public Private Partnerships and	MOD has examined the MLA in the light of recent law cases and decided that there is as yet insufficient evidence to ask Parliament for a rewrite of the MLA.

	Private Finance Initiatives and contracting out. We have begun to find there are problems and we need to look at whether we ought to introduce primary legislation.	
7	Having looked at the AWE Act 1991 and other related legislation, I believe that the derivation of power to make these byelaws is flawed. The MoD are aware that there are problems as shown in their comments to the Defence Select Committee. These byelaws have been made in the full knowledge that the power to do so under the Military Lands Act, even with the AWE Act 1991 in place, is questionable and in the full knowledge that the decision to make the AWE Aldermaston byelaws under the same power is currently the subject of a legal challenge which may illuminate the issue.	Incorrect interpretation. The AWE Act specifically includes MLA 1892 in section two of the schedule
8	The site is not military land. It has no commanding officer. None of the military services have a presence on site. Parts of the site are used to assemble nuclear warheads which are then transferred to military control. AWE Burghfield is managed by a private company, not the Secretary of State for Defence, for a commercial purpose which may involve defence procurement, but nevertheless this does not make it a military purpose. Sites where private companies are engaged in defence procurement are not necessarily military sites. Nuclear weapons technology is developed at other places, for example, by INSYS, now owned by Lockheed Martin (who also manage AWE) at Ampthill in Bedfordshire. Ampthill does not have byelaws and is not on the list where byelaws are proposed.	The site is owned by the Secretary of State for Defence. It is controlled by a MOD Project Team with MOD staff on site and Policed by MOD staff. It is operated by a contractor. Is therefore held for a military purpose as defined in the MLA 1892.  Ampthill is not a MOD site so Byelaws under MLA 1892 cannot be made over it.
9	These Byelaws will be invalid because it is a civil site	MLA 1892 section applies.
10	These byelaws are aimed at deterring protest and freedom of expression, freedom of the press and any public awareness of activities at the site for political and not security reasons. In any case, security reasons are not a reason under the Military Lands Act for creating byelaws.	the draft byelaws have followed the amendments made during the Aldermaston consultation and specifically allow public access and protest in the controlled areas
11	The enforcement of the byelaws: "removal of people from the Controlled Areas (including land adjacent to the highway) and taking people into custody includes: a) the Appointed Person; b) any officer, warrant officer, or non-commissioned officer in uniform and acting under the instructions of the Appointed Person; and c) any other Crown servant authorised in writing by the Appointed Person;" This is an unacceptable extension of power to detain and use force	Enforcement of byelaws can be by different classes of people who do not need to be on the site at any one time. In times of emergency there may well be armed military personnel on site.  Whilst the powers will generally be operated by Police (Civil and Military) there are many sites where MOD crown servants or Military staff are the only effective site controllers. Contractors cannot enforce MOD byelaws merely ask contraveners to comply.

	against members of the public by people who do not have training to detain people while protecting their rights and therefore will put the public in danger of being mistreated, unlawfully detained or injured.	
12	The reference to warrant officers etc. is clearly a reference to people who may be present at a military site. This shows that it is inappropriately drafted, under The Military Lands Act for a site which is not a military site and does not have warrant officers, non-commissioned officers.	See above. We may at any time also have military staff on duty at a MOD site
13	This site has private contractors and private security guards. It is inappropriate and dangerous to extend the powers contained in these byelaws to any one other than a constable. Given the vagueness and poor wording of many of the provisions, it is unlikely that anyone other than a constable could interpret and use these byelaws correctly  Byelaws should be restricted to within the perimeter fence and not into the public access areas and The Highway).	See above. Contractors cannot enforce byelaws merely ask people to comply. The byelaws are written in a clear format.  They cover all MOD property that is not part of a public highway. They legitimise the public use of the MOD property and additionally prevent new rights of way being obtained by prescription.
14	Prohibited Activities in the Protected Areas. This area is already protected by an electric fence, armed police, the Serious Organised Crime and Police Act and other legislation. Therefore the byelaws are unnecessary and repetitive.	See above
15	Most of the provisions of byelaw 5 cover things which are illegal in any case e.g. "remove any property".	Incorrect assumption
16	Given that there is an assumption of public access to the Controlled Areas it is unreasonable to restrict activities with such broad and vaguely written sections as 7(2) (j) "act in any way likely to cause annoyance". The reality is that these provisions will only be used to harass protesters and people who oppose the making of nuclear weapons and are engaged in campaigns which involve visiting the site.	The provision is there to protect third parties who may also be using the property at the same time
17	Byelaw 5(e) prohibits taking of any photographs of any thing within the Protected Areas. It may be that section 5(e) would inadvertently be breached by a photograph taken in the Controlled Area which included a view of the Protected Area through the fence which is made of wire and largely transparent from some angles. Detailed maps of the site are available, not only in these byelaws, but in other public documents and photographs via Google Earth, so there are no security implications on any restriction on taking photographs of things which can be seen from the public highway. In fact, it is possible someone could breach this provision entirely inadvertently from outside the Controlled Area and while on the public	The prohibited activity in 5e relates to activities carried out in the protected areas not the controlled areas.  The prohibition of photography is not included in the list of conditions under controlled areas or the use of existing images obtained from electronic images such as Google Earth as these are not taken whilst in the protected area.

	highway or other surrounding land. Google Earth would be in breach of this provision.	
18	The power in relation to photographs should be made clear Byelaw 5 is headed 'Prohibited Activities' in the Protected Areas' which I had understood to mean that you would have to take part in the activity while in the Protected Area but I would appreciate if this could be clarified because it raises the question of where a photograph takes place.	<p>The prohibited activity in 5e relates to activities carried out in the protected areas not the controlled areas.</p> <p>The prohibition of photography is not included in the list of conditions under controlled areas</p>
19	I would like to point out that I have absolutely no intention of changing any of my activities at Aldermaston or Burghfield and will not be intimidated into giving up campaigning against the production of nuclear weapons.	The draft byelaws have specifically been modified to allow the right to public protest in the controlled areas provided that no annoyance is given to other equal third party users. This means that in practice an individual could stand on or walk around the controlled areas with or without protest placards.