

**These regulations have been superseded as of 1st January 2019.
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Defence
Safety
Authority

DSA02-DMR - MOD Ports and Harbours Regulations for Safety and Environmental Protection

Defence Maritime Regulator

Initial Issue January 17

DMR

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PREFACE

Nothing contained within this Regulatory Framework for MOD Ports and Harbours removes the ultimate responsibility of any Duty Holder for any person's failures to comply with the law or other Defence Authority requirements. Any conflicts **should** be brought to the attention of the Defence Authorities affected. Neither MOD Holding to Account (H2A) nor absence of Assurance conducted by DMR, by its accredited Duly Authorised Organisations (DAO) or Recognised Organisations (RO) absolves any Duty Holder of their duties to supply suitable and sufficient evidence of compliance, when challenged, that they comply with these Regulations and with applicable law.

Equality and Diversity: The text has been reviewed for clarity and consistency so it complies with the Department's diversity and inclusion policy. This document has been equality and diversity tested in accordance with Departmental policy and no direct discrimination or adverse impact has been identified.

Authority: The Defence Safety Authority (DSA) DSA-01-1 is the Level 1 Policy document which expands the Secretary of State for Defence's statement. This is a *DSA Level 2 Regulatory Directive*, forming part of the **Defence Safety Regulatory Publications**. The Directive is labelled DSA02-DMR - MOD Ports and Harbours Regulations for Safety and Environmental Protection (named **Ports and Harbours Regulations** hereafter) applies governance to all Defence Ports and Harbours, by setting policy where Defence has Disapplications, Exemptions or Derogations (DEDs) from UK Statute.

The DSA Charter, authorises the DMR to set Regulatory goals, for Defence Maritime Activity that are at least as good as the legislative DEDs. The **Ports and Harbours Regulations** are supported by DSA Level 3 Defence Codes of Practice (DCOP) that specify an approved means of compliance with applicable legislation and with associated Defence Regulations. Each DSA03-DMR-DCOP seeks to guide assurance of safety and environmental protection for maritime activity. Compliance with this Defence Regulation may be achieved by following Defence Codes of Practice. As with any Approved Means of Compliance (ACOP) sponsored by statutory regulators, other means of compliance can be used by any Duty Holder, but each DCOP is the norm for assurance by DMR.

Glossary: Each of the DSA02-DMR-Regulations and associated DSA03-DMR-DCOPs use standard terms defined to outline generic roles. The names of the particular posts, created by organisations to carry-out those roles will vary. Common phrases will be placed in a single DMR Master Glossary of terms to compliment a single DSA Glossary of terms across the DSRP. Phrases defined in the DMR Master Glossary are in bold text and apply to all DMR DSRP Parts and supporting documents and align with the DSA Master Glossary.

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Document Data

Issue Status: These **Ports and Harbours Regulations** and are issued by the Defence Maritime Regulator (DMR), under the authority of the DSA Charter as directed by the Secretary of State for Defence. Printed copies of Defence Safety Regulatory Publications (DSRP) are uncontrolled.



Amendment History

Issue	Amdt	Authority	Date	Key Changes
Initial	-	DSA-DMR	Jan 17	

Feedback: Document amendment status is at www.nsass.org.uk/ and www.bmtdsl.r.mil.uk/nas/ or the Defence Maritime Regulator can be contacted with comments and queries about this publication addressed to:

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Important Note	<p><i>The term must indicates a legal requirement, and will have the legal provenance referenced.</i></p> <p><i>The term shall indicates a Defence Regulation and the provenance of the rule will be referenced.</i></p> <p><i>The term should indicates one or more Risk Control Option (RCO) considered to be good practice within a DCOP that will be considered sufficient to demonstrate compliance with the regulation. Other alternative approaches may be suitable where they produce an outcome to the mutual satisfaction of Duty Holder and Regulator that is at least as good as the means proposed.</i></p> <p><i>Phrases defined in the DMR Master Glossary are shown in the text by using coloured bold text. The phrases defined apply to all DSA02-DMR and DSA03-DMR publications.</i></p>
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PART A - INTRODUCTION and REGULATORY PRINCIPLES

Introduction

1. The Defence Maritime Regulator (**DMR**) is a fully independent regulator within the Defence Safety Authority (DSA). Operating under the Secretary of State's Charter¹ to provide Regulation, Authority and Enforcement in particular where high-risk activities are exclusively for the Crown or there are Disapplication's, Exemptions or Derogations (**DEDs**) from statute associated with **military activity**.

2. In common with civilian regulation, defence maritime regulation has evolved to reflect the outcomes of both civilian and military inquiries² and requires a risk based approach, underpinned by clear governance and assurance to operate safely.

The Legal and Regulatory Framework

3. **Legal framework.** All MOD Ports and Harbours operate within a legal framework:

- a. the three UK Dockyard Ports operate under "The Dockyard and Ports Regulation Act 1865"³, supported by their own secondary legislation;⁴
- b. overseas, MOD port and harbour has local legislation that defines their geographical limits and scope of operation; and,
- c. the Queen's Harbour Master is identified as Defence's representative to manage and enforce the safe operation of the port in accordance with the relevant legislation.

4. **Regulatory framework.** In accordance with DSA 01.1 this publication is a **Level 2 publication** providing regulation owned by DMR.⁵ Over time it will be supported by a Level 3 publication which will provide guidance on complying with these regulations, however, until this guidance has been published MOD Ports and Harbours should continue to use the Dockyard Ports Marine Safety Handbook⁶, the Port Marine Safety Code's Guide to Good Practice⁷ and HSE Port Guide.⁸

5. The MOD **must** also comply with the duties embodied in The Health and Safety at Work Act 1974, the Environmental Protection Act 1990 and Environment Act 1995 within territorial limits, and **should** comply with other international coastal maritime and environmental legislation. Where these regulations cannot be complied with the MOD Port or Harbour **must seek an appropriate DED** from the appropriate DSA regulator. A comprehensive interpretation of how the MOD Port/Harbour will comply with its legal responsibilities, defence and civilian regulation should be contained within its safety and environmental management system.

¹ [Secretary of State's Charter](#)

² Herald of Free Enterprise (1987), Piper Alpha (1988) and Clapham Junction Rail Crash (1988) leading to the Carver Report (1992) resulted in several reforms including the delivery of Defence Regulations.

³ <http://www.legislation.gov.uk/ukpga/1865>

⁴ UK Dockyard Ports and their Port Orders are as follows: [Portsmouth](#), [Plymouth](#) & [Clyde](#).

⁵ DSA01.1 page 6, para 6.

⁶ [Dockyard Ports Marine Safety handbook](#)

⁷ [Port Marine Safety Code's Guide to Good Practice](#)

⁸ [INDG446](#), [HSE Port Guide](#) and ACOP-25, [Safety in Docks - Approved Code of Practice](#)

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6. So far as practicable these regulations seek to reflect the civilian Port Marine Safety Code whilst reflecting the specific risks that exist within a MOD Port and Harbour.
7. Any conflicts in complying with these regulations should be brought to the attention of **DMR**.

Leadership Principle

8. Each **Command shall** define a **Duty Holding** construct for their ports and harbour that is supported by **competent authorities**. It shall demonstrate leadership by example, commensurate with status, with evidence that a strong and just safety and environmental protection culture exists and is continuously developed. Governance structures are to be sufficiently resourced and base decisions on objective evidence from 1st, 2nd and 3rd party assurance.
9. The Secretary of State for Defence requires that work related fatalities, injuries, ill health and the adverse effects on the environment are minimised and health and safety risks are reduced to as low as reasonably practicable (**ALARP**). In accordance with the leadership principle and in order to declare **risks** are ALARP, the MOD is to demonstrate an inherent and appropriate knowledge and understanding of the design and operation of MOD **Ports and Harbours**, both as the operator and controller of **activities** within MOD **Ports and Harbours**.
10. Where a DED has been sought from the appropriate Defence Safety Regulator the outcome **shall** be at least as good as equivalent statute, where reasonably practicable.

Principle of Independent Regulatory Authority

11. The **DMR shall** set and enforce **Defence Regulations for MOD Ports and Harbours**. Such defence regulation **should**, align with civilian codes of practice and be cognisant of extant civilian and defence regulation with which ports must also comply.
12. The Regulator **shall** have authority to approach any person or organisation pursuant to establishing that these regulations are being met. Those challenged **shall** demonstrate, they meet the specific **requirements** for safety and environmental protection, conduct assurance and are compliant with established departmental policy, standards and rules. Where appropriate, compliance with other DSA **Regulations** for the management of safety and environmental protection **shall** be demonstrated in the Maritime Domain.

Principle of People Empowered with Delegated Authority

13. Everyone involved in applying these **Ports and Harbours Regulations shall** be:
 - a. Suitably resourced;
 - b. Developed to have the right competencies to discharge their role; and
 - c. Where appropriate⁹, authorised through a safety and/or environmental protection delegation.

⁹ Appropriately delegated and recorded.

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14. Overall responsibility for safety and environmental protection within the MOD rests with the Secretary of State for Defence who has delegated the Defence Authority (the DSA) the duty of ensuring that effective management arrangements are in place to comply with the policy¹⁰. Therefore Top Level Budget Holders **shall** discharge the authority of the Secretary of State and Permanent Under Secretary by cascading appropriate authority throughout their organisation and in the case of **Duty Holding** and **duty holders** across organisational boundaries, so that the safety of personnel and protection of the environment will be ensured.

Simplicity Principle

15. When managing safety and environmental protection every opportunity **shall** be taken to simplify and sharpen documentation and advice so that it is proportionate, clear and remains so.

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PART B - PORTS and HARBOURS REGULATIONS

Regulation	Title	Regulation
1	Application	Each MOD Port and the activity within it shall be defined so that suitable management arrangements can be applied according to the Port Marine Safety Code and will be audited and reviewed against it.
2	Duty Holder	Each MOD Port shall have a nominated Port Duty Holder , appointed by Letter of Authority (LOA) with responsibility for the safe and environmentally sound operation of the MOD Port , and of all conduct within the MOD Port .
3	Designated Person	Each MOD Port Duty Holder shall have a nominated Designated Person for the port to provide independent assurance about the operation of its marine Safety and Environmental Management System . The Designated Person shall have direct access to the Port Duty Holder . The Designated Person shall audit the MOD Port annually.
4	Legislation	Each MOD Port Duty Holder shall periodically review and be aware of the legal duties they must comply with and the powers they hold based on local and national legislation applicable to that MOD Port.. They should seek additional powers if required to promote safe navigation.
5	Principles of PMSC	The MOD Port Duty Holder shall operate the port through a Safety and Environmental Management System in such a way that he complies with the Port Marine Safety Code or where this cannot be achieved apply for an applicable DED from DMR. Each MOD Port Duty Holder shall periodically review and be aware of the duties under any Defence Regulation applicable to the MOD Port .
6	Adequate resources	The MOD Port Duty Holder shall have in place an effective means of monitoring, reviewing and reporting safety and environmental protection performance.
7	Enforce port orders and directions	The MOD Port Duty Holder shall have clear and effective policies on the enforcement of Port Orders and Directions to users of the MOD Port , and should monitor compliance.
8	VTS	The MOD Port Duty Holder shall deliver and maintain a Vessel Traffic Service that complies with the appropriate international regulations for equipment and personnel, where the port Safety and Environmental Management System identifies the need for that system.

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9	Emergency response plans	<p>The MOD Port Duty Holder shall, as a minimum, publish emergency response plans for shore support to respond to:</p> <ul style="list-style-type: none"> a. An oil spill or other pollution incident from a ship or quay; b. A fire within a vessel when alongside or at anchor; c. Navigational emergencies such as grounding, collision, berthing, docking or salvage; d. Diving emergencies; e. Explosives incident; and f. Any other emergency responses deemed necessary for the specific MOD Port
10	Marine Safety Management Systems for specific high risk activity	<p>The MOD Port Duty Holder shall publish a Safety and Environmental Argument for the MOD Port based on formal risk assessment to demonstrate Port Operations are ALARP. It shall be supported by:</p> <ul style="list-style-type: none"> a. pilotage directions for MOD (owned or contracted) shipping including the criteria for pilotage exemption certificates and their operation according to the Shipping Regulations. b. towage guidelines produced in consultation with towage providers, including comprehensive procedures for the use of tugs in restricted visibility. c. procedures for diving operations within port limits. d. procedures for management of ship and submarine emissions (above and underwater); procedures to conform with Regulation 4.
11	Accidents and incident reporting	<p>The MOD Port Duty Holder shall record and investigate all incidents involving sea going vessels or other vessels, within their area of responsibility, to:</p> <ul style="list-style-type: none"> a. learn from an incident, improve safety of Port Operations and prevent reoccurrence; and, b. determine whether or not enforcement action under Regulation 4 is appropriate; c. notify the Marine Accident Investigation Branch/Maritime Regulator (MCA), Defence Accident Investigation Branch and DMR as appropriate, of accidents within their ports and harbours; and, support any external investigation by such agencies.
12	Assurance and Audit regime	<p>The MOD Port Duty Holder shall assure conformance with these regulations by a suitable verification and audit regime (conforming to DSA 01.1), to enable the issue of a Document of Compliance (DOC) by DMR, specifically by directing:</p> <ul style="list-style-type: none"> a. Level 1 or First party continuous audit process that takes place throughout the year; b. Level 2 or Second party audit conducted by the Designated Person or other suitably qualified individual typically annually, according to risk; and, c. Level 3 or Third party audit by DMR that typically takes place at least every 5 years, according to risk, and will result in the issue of the said DOC.

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<p>13</p>	<p>Enforcement Management Model</p>	<p>13.1 The results of any audit in accordance with Regulation 12 shall be reviewed by DMR. Any observations or non-conformities shall be reported and agreed with the MOD Port Duty Holder by the end of the audit and a formal audit report issued. A Corrective Action Report (CAR) shall be routinely issued following formal audit, inspection or investigation. Non-conformities against these Ports Regulations shall be identified within the CAR, supported by objective evidence.</p> <p>13.2 Corrective Action may exceptionally be issued, without a formal audit or inspection, where there is already sufficient and unequivocal objective evidence requiring corrective action once it is validated to be sufficiently unequivocal.</p> <p>13.3 Any CAR or enforcement shall be notified to the MOD Port Duty Holder according to the DSA Enforcement Management Model (EMM) and reported. DMR shall amplify the criteria that trigger the three levels of enforcement and the two levels of Advice within its EMM.</p> <p>13.4 Those in receipt of any enforcement or CAR shall agree timely corrective action with the auditor, including plans to address the longer-term shortfalls identified. Enforcement Action by the DMR shall be proportionate to the safety and environmental protection risk inferred by the non-conformity, its severity, the frequency of occurrence and the probability of its re-occurrence. Actions shall be agreed within three months of the observation or non-conformity being first reported.</p> <p>13.5 DMR shall consider immediate prohibition of activity where a significant Risk of Harm exists, or mandating longer term rectification improvement plans. Escalation shall be influenced by the timeliness and adequacy of responses to advice, the nature of the non-conformity or enforcement action. Failure to respond to any level of DMR Notices in a timely or sufficient manner or otherwise respond to risks observed, will accelerate escalation.</p> <p>13.7 DMR shall report and summarise emerging patterns and progress against Non-Conformities and responses to formal enforcement to Duty Holders, and the Department through the Director-General Defence Safety Authority. Any repeating patterns shall trigger Formal Advice, Non-conformity or further DMR Notices or may adjust certification or its removal.</p>
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