



Defence
Safety Authority

DSA 03-OME Part 1 (JSP 520)- Defence Code of Practice (DCOP) and Guidance Notes for OME Acquisition

Defence OME Safety Regulator

DOSR



DSA VISION

Protecting Defence personnel and operational capability through effective and independent HS&EP regulation, assurance, enforcement and investigation.

PREFACE

AUTHORITY

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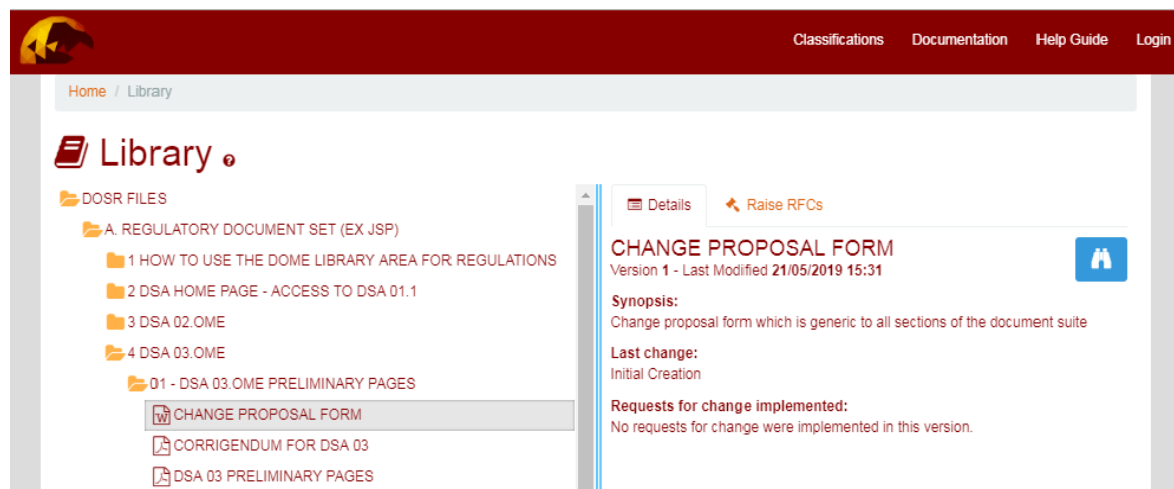


Figure 1. Change Proposal Form (Word version) Location

4. Any post and grammar change proposals can be approved or rejected by the DOSR PRG Authors without involvement of the associated Working Group.
5. Technical change proposals will need to be submitted to the associated Working Group for review and approval or rejection.
6. When incorporating changes care is to be taken to maintain coherence across regulations.
7. Changes effecting Risk to Life will be published immediately.
8. Other changes will be incorporated as part of routine reviews.

REVIEW PROCESS

9. The DOSR PRG team will ensure these OME Regulations remain fit for purpose by conducting reviews through the DOSR Governance Committees, involving all Stakeholders.

FURTHER ADVICE AND FEEDBACK

10. The document owner is the DOSR. For further information about any aspect of this document, or questions not answered within the subsequent sections, or to provide feedback on the content, contact:

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1 Overview

1. The Secretary of State (SofS) for Defence Policy, as detailed in DSA01, requires that Ordnance, Munitions and Explosives (OME) system used by the UK Armed Forces, both in design and use, is compliant with all legislation:
 - a. That extends to the UK.
 - b. That is made in the UK and extends outside its boundaries.
 - c. That is applied by host nations to UK Armed Forces operating abroad.
2. Whilst it is recognised that Ministry of Defence (MOD) can rely on exemptions or derogations (permissive exemptions) from either domestic or international law, the SofS requires that:
 - a. *“Where there are exemptions or derogations from either domestic or international law applicable to Defence, we introduce standards and management arrangements that are, so far as reasonably practicable, at least as good as those required by legislation;”*
 - b. *“We seek to disapply legislation on the grounds of national security as far as possible only when such action is essential to maintain operational capability;”*
 - c. *“Where there is no relevant legislation, our internal standards aim to optimise the balance between risks and benefits. This does not mean avoiding risks but managing them responsibly, on the basis of impact and likelihood.”*

Compliance Assessment

3. In order to fulfil statutory requirements and to comply with the SofS for Defence Policy, it is essential that all current and reasonably foreseeable legislation is addressed in the acquisition and operation of Defence systems. DSA 03.OME identifies the principal legislation applicable to explosives and may be used as a starting point in the identification of relevant legislation where applicable. In addition, a Legislation List is contained in the Weapon Operating Centre Quality Management System.
4. It is the responsibility of the Project Team (PT) and the supplier of OME system to ensure that all relevant legislation is identified and applied accordingly. A compliance assessment will be undertaken for the OME system, which will lead to the endorsement of any exemptions should these become necessary and justifiable.
5. The purpose of the compliance assessment is to:
 - a. Record all legislation deemed applicable to the OME system.
 - b. Apply scrutiny to its design features to ensure compliance.
 - c. Ensure that SofS for Defence Policy is adhered to where compliance cannot be achieved for operational reasons
 - d. Compliance is assessed in three stages:
 - 1) Stage 1 Prior to contract award.

- 2) Stage 2 During development and manufacturer of OME system.
- 3) Stage 3 Before acceptance into service.

6. Further guidance is available for Defence Equipment & Support (DE&S) in Project Oriented Safety Management System¹ (POSMS).

Stage 1 – Prior To Contract Award

7. An initial compliance assessment should be made by the PT to support the requirements. This broad assessment will identify the key items of legislation that could be applicable and any areas of potential non-compliance.

8. The initial compliance assessment may be used by the PT to inform the requirements for a particular OME system or the down-selection process when examining options. In either case, it should be noted that compliance status could change throughout the development and manufacture of the OME system and that justifiable non-compliances may become apparent up to system acceptance.

Stage 2 – During Development and Manufacture Of OME System

9. A detailed compliance assessment will be undertaken and include all of the legislation for the OME system, managed through to compliance or to a justified position of non-compliance. The detailed compliance assessment is conducted during these phases of a project to coincide with the point at which the design has matured and trialling has been conducted to validate the design and prove reliability.

10. The detailed assessment is usually provided by the supplier, and this may be done through a direct contractual requirement. It will be kept open until the OME system is ready to be accepted into service in order that emergent legislation may be managed and to allow design proving activities to highlight any further compliance issues. Regular updates will be provided in order that guidance can be given by the PT, as necessary, regarding the status of compliance and any potential exemption(s).

Stage 3 – Before Acceptance into Service

11. The compliance assessment will be completed at System Acceptance to allow the OME system to be accepted into service. In particular, the supplier will have identified all non-compliances that will require the use of exemptions from legislation, where these are available to the MOD.

12. At all stages, the compliance assessment will record legislation in one of three categories:

- a. Directly applicable legislation for which there is no available exemption.
- b. Directly applicable legislation which details an exemption available for the Armed Forces.
- c. Legislation made applicable under a “duty-of-care” in order to fulfil the SofS for Defence Policy.

¹ ASG POSMS: SMP 01 - Project Safety Initiation.

2 Exemptions from Legislation

1. In cases where the compliance assessment has identified non-compliance(s) with legislation and exemption(s) or permissive exemption(s) is / are available, and these non-compliance(s) is / are considered to be essential for the maintenance of operational capability, an exemption case requesting approval to invoke the exemption(s) or derogations(s) will be submitted to the appropriate Authority. Further guidance on the delegated Authority is available through Defence OME Safety Regulator and JSP375².
2. A single exemption case will be formally presented for each piece of OME system, and this will be done in order to accompany the OME system into service. The presented exemption case will be in accordance with work carried out earlier in the project to manage compliance.
3. The exemption case should include a brief description of the system; its operational role; the programme and key milestones, including Out of Service Date; and a reasoned argument for exemption to cover the following issues:
 - a. The item of legislation from which exemption is being sought.
 - b. The technical reasons for non-compliance.
 - c. The specific operational requirement which necessitates such a non-compliance.
 - d. The perceived operational impact of enforced compliance.
 - e. The specific hazards and risks exposed by the non-compliance.
 - f. The proposed mitigating measures to be implemented to ensure that any residual risks are, so far as reasonably practicable, reduced to levels that would have been required by the legislation.
 - g. The cost of enforced compliance.
4. It is highly likely that non-compliance(s) will present a hazard which could lead to an accident. The above reasoned argument may come from the compliance assessment, but may also be required to come from the Safety Case, training materials and other evidence to validate a robust balance between risks and benefits.

² JSP375 MOD Health and Safety handbook.

3 Review

1. The PT will have arrangements in place for the periodic review of new legislation and changes to existing legislation. The legislation compliance assessment will be reviewed and updated as required.
2. When embarking on a programme of mid-life improvement or modification, the PT should review any exemptions that may have been previously endorsed by the appropriate Authority. Where changes are made to an item of the OME system, compliance will be re-assessed in that area and, if necessary, a case for continued use of exemption will be made according to the procedure contained within this leaflet.

4 Legal Review

The Requirement

1. The United Kingdom is legally obliged to ensure that all weapons and associated equipment that it obtains, plans to acquire, or develops, comply with the UK's treaty and other obligations under International Humanitarian Law. This legal review process is mandated by Article 36 of The First Protocol of 1977 Additional to the Geneva Conventions of 1949 (Additional Protocol I), to which the UK is a Party. Article 36 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.”

2. The purpose of the legal review is to determine the lawfulness of the equipment in the context of international armed conflict. It does not cover any domestic use of the equipment (i.e. within the UK). Legal advice concerning potential domestic uses should be sought, in the first instance, from CLS-OIHL Hd Div (DD) in MOD.

3. Potential use of equipment outside the UK in a situation not amounting to an international armed conflict will require careful consideration of a number of issues (e.g. policy, diplomatic and legal). Legal advice must always be sought prior to seeking to deploy equipment in such circumstances, but ordinarily a legal review will be conducted as a matter of policy.

Terminology

4. The key terms in Article 36 are not defined, but for the purposes of a legal review:

- a. A 'weapon' is a device designed to, and/or with the capability to, kill, injure or disable people and/or to destroy or damage property.
- b. In this context, 'new' weapons includes newly developed weapons, new versions of, or significant modifications to, existing weapons and also weapons which are in service with the armed forces of other States, and/or manufactured overseas, but which the UK is now seeking to acquire (see Paragraph 14 below).
- c. 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 and software used for processing target data would all fall within this category and would require legal review. Novel uses of existing capabilities or equipment may also require legal review. This list is not exhaustive; where there is doubt about whether a legal review is required, legal advice must be sought.

When to Seek Legal Advice

5. Within the procurement cycle, it is MOD policy that there should be a legal review at Initial Gate, Main Gate and before entry into service. It is the responsibility of the appropriate MOD procurement staff (ordinarily the Project Team or the relevant Capability Area) to seek a legal review at these points.
6. Urgent Operational Requirements (UORs) are also subject to this process and a legal review must always be obtained before the UOR equipment enters into service; ideally it should be requested early in the UOR staffing process, in order to avoid nugatory effort and, potentially, unnecessary expense to MOD.
7. It is imperative that a request for legal advice is not left until late in the procurement staffing process. It is not possible to conduct a Main Gate legal review without the appropriate level of technical information, test data etc. to hand (see Paragraph 12 below), and this can often take some time to obtain. Plainly, at Initial Gate, less information will be available and thus the legal review will be in more general terms. In project management terms, the legal review should always be on the critical path.

How to Seek Legal Advice

8. Legal reviews are conducted on behalf of the MOD by the Legal Team at the Development, Concepts and Doctrine Centre (DCDC) at Shrivenham. All queries about the necessity or conduct of a legal review should be addressed to DCDC Legal; contact details are at Paragraph 16 below.
9. The team comprises three lawyers, one each from the RN, Army and RAF. They are specialists in International Humanitarian Law and have a broad background as deployed operational legal advisers. The Joint nature of the DCDC Legal team, together with the expertise and experience of its members, provides a capability to conduct legal reviews of weapons and means or methods of warfare across the Land, Maritime, Air and Space and Electromagnetic environments.

The Legal Review Process

10. The legal review will consider the equipment in the context of certain key legal principles, in particular:
 - a. Whether it is prohibited, or whether its use is restricted, by any specific treaty provision or other applicable rule of international law.
 - b. Whether it is of a nature to cause superfluous injury or unnecessary suffering.
 - c. Whether it is capable of being used discriminately.
 - d. Whether it may be expected to cause widespread, long-term and severe damage to the natural environment.
 - e. Whether it is likely to be affected by current and possible future trends in the development of International Humanitarian Law.
11. The lawyer conducting the legal review may need to engage widely. This may include the relevant Project Team, the nominated desk officer in the appropriate

Capability Area, scientific subject matter experts (e.g. at Dstl), single Service central staffs, operational groups or commands and, where appropriate, front line users.

Data Required to Support a Legal Review

12. Put simply, the lawyer needs to know, in some detail, what the equipment is, what it is designed to do, how it does it and what its effect is. The nature and extent of the information required will vary according to the characteristics of the equipment, the stage of development and other factors. Information requested might include:

- a. The Business Case; or in a UOR, the USUR;
- b. A full technical description of the equipment – this should include a statement of the design purpose and intended method of use, including types of targets envisaged;
- c. Evidence of its accuracy – this will invariably be informed by trials and testing;
- d. Its effect – this should include the nature of expected injury to persons, likely damage to property and any secondary effects; this may need to be supported by biomedical assessments, terminal ballistics studies, etc., as required;
- e. Its reliability – data may be required in respect of failure rates, sensitivity of fuses etc;
- f. Its impact on public health and the natural environment – in some cases a bespoke environmental assessment will be required.

13. This provides a flavour of the type of information that will be required by the lawyer before conducting a legal review. The precise requirements will inevitably differ from case to case and generally the larger and more complex the project the more material will be needed. However, generally the legal review should not require information beyond that usually obtained in any event during the normal course of the project.

Legal Reviews Conducted by Other States

14. Occasionally, the UK will seek to acquire equipment which is already in service with the armed forces of another State. That State may itself have conducted an Art 36 legal review. The UK is, nevertheless, legally obliged to conduct its own legal review; it cannot rely on any legal review(s) conducted by other State(s). The main reason for this is that obligations under international law sometimes differ between States (e.g. the UK might be legally bound by a treaty prohibiting or restricting the use of certain weapons whereas another State/States might not have agreed to be bound by that treaty).

Keeping Records

15. A copy of any legal review(s) must be kept permanently with the papers relating to the equipment. This is the responsibility of the Project Team / relevant Capability Area.