



Defence  
Safety Authority

# **Guide to Legislation Compliance within the Land Domain**

Defence Land Safety  
Regulator

***DLSR***

## Amendment Record

1. This document will be reviewed on a regular basis for accuracy (at least annually). This is a live document and amendments may be published at any time in response to changes in legislation, MOD policy and/or information.

Amendment Table			
Version Number	Version Date	Author	Change to Previous Version
1.0	Jun 21	DSA-LSSR-LG	Nil, initial release

## Background

2. Defence personnel must operate on behalf of the Crown compliant with UK Legislation and Standards. Overseas, there is a requirement to comply with the laws of Host States, where they apply to us. In circumstances where such requirements fall short of UK requirements, UK standards are to be applied so far as it is reasonably practicable to do so.

3. In the event of an accident, near miss or audit the organisation and or individuals may be held to account with the consequence of possible legal proceedings. While operating overseas every member of the MOD (that includes direct or indirect employees) deserve and is expecting to have the same standard of safety applied as they would have in the UK, it is the responsibility of the employer to ensure this happens.

4. For Defence to demonstrate its commitment to Legislation Compliance the SofS issues a Health, Safety and Environmental Protection (HS&EP) Policy Statement, this statement lays out how Safety and Legislation will be applied across Defence. Everyone with Safety and Environmental responsibilities must adhere to the Policy statement. Not to do so may jeopardise safety, the Organisations reputation and any legal flexibility afforded to Defence.

5. This guide is a supplement to Defence Policy and Regulation and not a replacement. It can be used to help when contracting, assessing, or reviewing Legislation Compliance for Land Systems.

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<b>LCA</b>	<b>Legislation Compliance Assessment.</b>
<b>DEDs</b>	<b>Disapplication's, Exemptions, Derogations.</b>
<b>LEC</b>	<b>Land Exemptions Committee.</b>
<b>SofS</b>	<b>Secretary of State</b>
<b>HS&amp;EP</b>	<b>Health, Safety and Environment Protection.</b>
<b>DSA</b>	<b>Defence, Safety, Authority</b>
<b>DLSR</b>	<b>Defence, Land, Safety, Regulator</b>
<b>LSSR</b>	<b>Land, Systems, Safety Regulator</b>

## Aim

6. Legislation Compliance can be a very difficult area to get right for the best interests of Defence. The aim of this document is to enhance and emphasise extra information that may be required to produce and evidence a successful Legislative argument to support a robust System Safety and Environment Case. This document aims to do the following:

- a. add context from a Land perspective for the SofS HS&EP Policy Statement.
- b. enhance the information already provided by the LSSR Regulations.
- c. provide a handrail that can be used to set and complete a Legislation Compliance Assessment (LCA).

## SofS HS&EP Policy Statement

7. A large proportion of Defence activity is unique, as such the UK Government recognises that in certain situations it may require to use Disapplications, Exemptions and Derogations (DEDs) from legislation. Defence's policy on legislation and what will happen where DEDs exist is applied and communicated through the SofS HS&EP Policy Statement. This policy outlines the requirements for the safe management of all Defence activity including:

- a. activities that are, for Operational reasons, in the Interests of National Security but have no direct civilian regulatory body.
- b. direction on the application and management of DED's.
- c. a commitment that all Non-operational activities should be carried out in full compliance with UK Legislation.

8. The Policy Statement is issued to ensure Defence has a consistent process to apply UK Legislation. Where legislation does not apply as a matter of law and where voluntary compliance is impracticable, it allows an alternative means of compliance. Managers are empowered to ensure that the Policy is applied across Defence, with the aim of ensuring its people are safe, ensuring where possible the MODs reputation is preserved.

9. Failing to operate in line with the SofS HS&EP Policy Statement, may risk Defence losing the exemption provisions in Legislation afforded to it for the management of its unique activities.

## How should the words "where practicable" be used

10. The words "where practicable" are used in the SofS HS&EP Policy Statement, this has a different interpretation for different circumstances and scenarios. What is practicable in the UK during peace time may be very different to what is practicable overseas or on Operations.

11. The word practicable in these examples can be interpreted as "what is able to be done, or what can be put into practice", in relation to the time, location and resource available in line with the capability to be produced. If there are any gaps in Legislation Compliance due to any of the factors mentioned, then this is to be documented and managed so residual risk is clearly identified.

## Overseas

12. When Defence operates equipment or uses systems overseas, it is to comply with the Law where practicable (if it applies) of the Host State. Where the standards fall short of what is expected in the UK, then where practicable the UK standard is to be used.

13. The process for the applicability and assessment of the Legislation and Standards to be followed overseas is the same as in the UK. If a non-UK Law or Standard is to be used for the employment of Equipment or Systems then, it is to be assessed to see if it is as good as the one as required in the UK.

14. If the Law or Standard is not as good as required in the UK and it is deemed that it will be used, then it is to be mitigated so outcomes are so far as reasonably practicable as ones required by UK Legislation.

15. The emphasis is to ensure that the Defence employee is not disadvantaged by the process used to deem the compliance of the Equipment or System.

### **Legislation Compliance**

16. The default position is as a minimum within the UK all members of the MOD will comply with the applicable HS&EP legislation.

17. Overseas, the MOD will comply where practicable the highest standard possible, this may be from the Host State. Where there are circumstances that the Host State standards fall short of what is required in the UK, then Defence must apply so far as it is reasonably practicable the UK standard.

18. By applying the UK standard every member of the MOD will be afforded the same level of Safety, this includes and applies to the following:

- a. Anyone who is employed directly or indirectly by the MOD, this includes Locally Employed Civilians and Contractors in the UK or overseas.
- b. Systems, Equipment and Activities conducted, used, managed and maintained by MOD employees in the UK and overseas, irrespective of length of time used, operated and how it has been procured.
- c. Standards that are to be applied by visiting personnel or forces taking part in UK Defence activities in the UK or overseas are to be agreed before any access to UK MOD assets are allowed. It is then to be decided to the applicability of the SofS HS&EP Policy to them.

19. There is no requirement to be an expert to decide whether the assessment carried out against the applicable Legislation used is sufficient. All that is required is detailed planning and preparation, backed up with robust evidence to identify the following:

- a. What will its purpose be?
- b. Where will it be operated?
- c. Who and what will be at risk, including 3<sup>rd</sup> parties (members of the public)?
- d. Who holds the risk?
- e. What is the residual risk?
- f. Am I operating compliantly with UK Legislation and Defence Policy?
- g. Where can I get help?

20. Legislation Compliance activities should start as early as possible in the Life Cycle of the System or Equipment, this will guide how and to what Legislation it is to be compliant with.

## Legislation Compliance Assessment (LCA)

21. In regard to Legislation Compliance the LSSR Regulations (DSA03 DLSR LSSR) are set out to communicate the best outcomes required for systems or equipment and its activities in the Land Domain.
22. The current LSSR Regulation for Legislation states that “A suitable and sufficient LCA shall be in place for each Land System before its first used”. A suitable and sufficient LCA is judged to be one that satisfies the requirements of the SofS HS & EP Policy Statement.
23. The way Defence procures, uses and manages its systems and equipment for Combat can be complex, therefore it is deemed necessary that the best way to demonstrate compliance with Legislation is to complete an effective LCA.
24. The LCA needs to accurately reflect the status of the System or Equipment throughout its Life Cycle, being updated at the relevant times so it remains current. Confirmation needs to be documented at the appropriate Safety meetings to confirm this is the case, detailing remedial work if the LCA needs to be updated.
25. The LCA is to be seen as the culmination of the compliance journey at that particular point in time for the chosen System or Equipment, it links its employment with its construction and use in regard to HS&EP. The LCA demonstrates Defences commitment to operating Legally, in line with the standards and procedures in the applicable Legislation for its Construction, Operation and Performance.
26. In a lot of cases Defence Systems and Equipment are procured and then altered to meet a specific Capability or Requirement. The modification cycle can continue throughout its Life Cycle as the Capability required evolves or, changes are mandated to meet new or existing Legislation.
27. Over time Legislation is updated to reflect ever evolving standards and safety enhancements. These are driven by numerous factors and may need Defence to respond, showing its commitment to provide the safest environment for its employees. Not all Legislation changes are applied retrospectively, some systems may not need to comply due to their age, ownership, use or for a technical reason. The applicability and application of each Legislation change will communicate how it is to be applied.
28. If the Legislation change is practicable and able to be achieved then Defence should consider its inclusion, only disapplying it after careful consideration, with the correct accountability accepted and all decisions documented.
29. One of the major outputs from the LCA is the identification of any DEDs that are allowed in the applicable Legislation. These DEDs may only be used for Defence purposes, in the interests of National Security or be pertinent because of the way the System or Equipment is built, used, or employed.
30. The LCA brings together the following evidence to satisfy the Legislative requirements of the SofS HS&EP Policy Statement:
  - a. Demonstration of compliance with the applicable HS&EP Legislation, this may be supplemented by the use of other Civilian or Defence Standards i.e. British or Host State standards and DEFSTANs.
  - b. Identifies any DEDs that are applicable to Defence, allowing the Duty Holder to assess whether they are to be used.

- c. Provides assurance that credible Legislation Compliance activities have been conducted, for the best interests of Defence.
  - d. An LCA should not be onerous to read (succinct and to the point), it should be kept to the bare facts and not full of lengthy extracts from reports and trials.
31. The LCA should remain current and will require updating periodically through the life of the System or Equipment to reflect its current construction and use. LCAs should subsequently be reviewed and documented at the following stages:
- a. Prior to first use, e.g. test and trials.
  - b. During a yearly review, i.e. as an agenda point in the SEP, this will allow a decision to update the LCA or not for that time period.
  - c. When modifications and / or changes are made to the construction and / or use of system(s);
  - d. When there are new or changes to legislation which may apply retrospectively.
  - e. When systems used for Urgent Operational Requirements are being transferred into Core;
  - f. When the system is returning to service after a period of storage.

### Methodology for an LCA

32. To ensure Defence requirements for Legislation Compliance are met a clear Methodology is required to set out the LCA aims, objectives and deliverables. The Methodology needs to clearly communicate the following:
- a. The reason why an LCA is required by Defence.
  - b. Who is the accountable person for the completion the LCA and what will be criteria for its acceptance.
  - c. How will the LCA be conducted i.e. Physical inspection and performance, desk top document review or a blend of the two.
  - d. To whom is the LCA applicable i.e. Ministry of Defence Personnel, officially nominated Defence Procurement and Procurement Sub Contractors.
  - e. The System or Equipment Category needs to be supported by the Methodology used i.e. The System will predominantly be used on the Public Roads, so it will be measured against Road Going Vehicle Legislation. The System or Equipment's Category will be taken from within the Legislation being used.
  - f. May include (if known) compliance recommendations for the interaction with applicable Sub Systems i.e. Trailers to be towed by a Prime Mover or Communication Devices fitted etc.
  - g. An explanation of the compliance status of the System or Equipment against each piece of applicable Legislation. This may need be split down into each section of the Legislation and or, reference out to reports or further assessment to support the claim with evidence. Examples where this would be required.
    - (1) Legislation where its contents has different sections and standards that need to be met, making up an overall compliance picture i.e. The Road Going Vehicle (Construction and Use) Regulations 1986.

(2) Where a physical inspection and performance test is required i.e. A report on the compliance with The Lifting Operations and Lifting Equipment Regulations 1998 (LOLER) or a Vehicles Brake performance.

h. The Compliance status System will be communicated as per the layout found in DSA03 DLSR LSSR, including the following definitions to show the level of compliance:

1. OK, the System is fully Compliant.
2. NOK (Not OK), the System is Non-compliant and requires remedial action to take place to gain compliance or a DED is to be appropriately employed.
3. To Be Established (TBE), further information or activities are required to confirm compliance, the following rule should be used:
  - a. The compliance status of TBE is only acceptable for Systems that are going through the early stages of the procurement cycle or System upgrades, where Tests and Trials are being used to confirm performance or conformity.
  - b. The compliance status TBE should not be present when Systems are In Service, where people can be put at increased risk.
  - c. The compliance status of TBE is seen as an unknown and as such a non-compliance.
4. A technical and or operational justification narrative is to be included to explain the compliance status (OK, NOK or TBE), this can include pictures if it helps understanding.
5. DEFSTANS, and or additional Defence Standards along with other Defence Policy or Process can be used to supplement and support compliance. These may be already accepted practices that provide demonstration of a standard that is as good or better, Examples of these are:
  - i. DEFSTANS that lay out the criteria to be met for Defence Systems or Equipment i.e. DEFSTANS that layout the Mobility Category for Combat Vehicles.
  - ii. Defence Regulations for specific Systems or Equipment i.e. Blue Light Regulations for Special Forces Vehicles.
  - iii. Maintenance Policy that is required by defence to sufficiently mitigate a DED afforded to Defence i.e. DSA03 ESRS

i. The status of compliance should be communicated in 2 separate parts (an example of both parts is provided in the LCA contents and layout section):

(1) Part 1 is a summary of the Legislation and a simple compliance status i.e. (OK, NOK or TBE) and identification of any DEDs. See example in LCA contents and Layout in section.

(2) Part 2 providing a more detailed section that includes a narrative to back up the for the compliance claim (pictures can be included if it helps) See the examples provided in the LCA Layout and Contents section.



j. The identification and communication of any DEDs that are applicable, Stressing DEDs should only be used as a last resort and for a Military Capability reason only. The following DEDs should be considered:

- (1) DEDs that are unique to Defence i.e. Owned by, operated by or under the control of the Secretary for State for Defence.
- (2) DEDs that extend to Defence because of the Systems or Equipment's Construction, Use or Employment i.e. Constructed or adapted for Combat.
- (3) DEDs that extend to any (including non-military) Systems or Equipment because of its Construction, Use or Employment i.e. it's an Ambulance, Firefighting appliance or is capable driving as a 4x4 vehicle.

k. Who will be accountable for the decision to use any DED that is identified during the LCA? This is usually the Capability Sponsor.

33. The exact Methodology for the System or Equipment will differ due to its Construction, Use and Employment.

34. For more guidance on the content of an LCA you can use the guidance found in DSA03 DLSR LSSR and the Legislation Compliance Process Map and LCA Considerations Chart at the end of this guide.

### **LCA Layout and Contents**

35. The exact layout and contents of each LCA will be dependant on the system or equipment use and the Legislation selected to demonstrate compliance.

36. The Legislation Compliance Process Map and LCA Considerations Chart (located at the end of this guide) have been developed to support the completion of an LCA.

37. The following headings will give the best chance of successfully communicating enough information for a credible LCA:

38. **Introduction** – This section should contain enough information to set the scene for the LCA, it should be written so it can be understood by a varying level of Engineering ability. The introduction should contain as a minimum:

- a. The aim and Scope of the assessment
- b. A clear LCA Methodology (how the LCA was conducted)
- c. A detailed description of the system or equipment, this should match what is in the Operating Manual and or Planning Material. Items to include could be, but not restricted to:
  - (1) Concept of Operation, or Concept of Employment, or a description of the Capability to be delivered.
  - (2) Important dimensions or outputs of the System or Equipment, like:
    - (a) Weight, Height, Width etc.
    - (b) Axle Weights.
    - (c) Emissions standard.
    - (d) Is it Tracked or Wheeled?
    - (e) What is its load Capacity?
    - (f) Does it carry Passengers, if so, how many?

- (g) Will it carry both a Load and Passengers?
- (h) What qualification do you require for safe operation i.e. What Driving licence do you require or a specific qualification to demonstrate competence.

d. An overall system or equipment Category, this will decide what Legislation will be followed to gauge compliance and Standards. This is the standard compliance is to be measured against during the LCA.

39. Any issues encountered during the conduct of the LCA and non-compliance should be highlighted in this area, with the reason summarised into language that can be understood by non-technical Stakeholders.

40. **Executive Summary** – This is where the compliance status in summary is explained so that it gives confidence to the Stakeholders of the system or equipment. This section is especially pertinent to the Duty Holder as they will want to see what the headline issues are at a glance.

41. If any DEDs have been identified during the assessment, then they should be summarised to how they could be managed in the future employment of the system or Equipment.

42. If any solutions are identified or recommendations that could avoid the use of DEDs then they should also be listed against the relevant section.

43. Recommendations and Conclusions should be communicated here for the ongoing management of Legislation compliance for the System or Equipment.

44. **Compliance with Applicable Legislation** – Demonstration of compliance with the applicable Legislation may be best communicated in 2 parts. Part 1 will show compliance at a glance, with Part 2 going into detail and providing a narrative to substantiate any claims.

45. **Part 1 Summary of Legislation Compliance Status** – This section is to serve as demonstration of the Legislation Compliance Status at a glance. Each piece of Legislation needs to be listed with a simple communication of the compliance status (OK, NOK, TBE), no narrative is to be included at this stage.

46. If the section is Not Applicable then N/A can be used, this needs to be fully explained in part 2 with justification.

47. The following Table is an example of how the Table at Part 1 Summary of Legislation Compliance Status should be compiled:

Subject	C&U Reg.	Compliance	DED Recommended
<b>The Road Going Vehicles (Construction and Use) Regulation 1986</b>			
<b>Fuel Tanks</b>	<b>C&amp;U 39</b>	<b>OK</b>	<b>No</b>
<b>Rear protective devices</b>	<b>C&amp;U 49</b>	<b>OK</b>	<b>Disapplication available</b>
<b>Steering</b>	<b>C&amp;U 13, 29</b>	<b>OK</b>	<b>No</b>
<b>Audible warning</b>	<b>C&amp;U 37</b>	<b>OK</b>	<b>No</b>

**Table 1 Example how the Table at Part 1 Summary of Legislation Compliance Status**

48. **Part 2 Detailed Legislation Compliance Status** – This section of the LCA is where a detailed demonstration is presented, it should contain a narrative to how the compliance status (OK, NOK, TBE) is communicated.

49. Below is a list of guidance for the contents of Part 2 Detailed Legislation Compliance Status:

- a. Defence Standards can be entered to supplement evidence or as an alternative means of compliance, this is especially useful when there may not be an equivalent civilian standard i.e. Tracked Vehicle Brake Testing.
- b. This section is an ideal place to put in small pictures to enhance the compliance argument i.e. where a compliance mark is required on a particular area of a system or equipment.
- c. Applicable Legislation should be broken down to support compliance, referencing out to reports or trials to validate any claims made. Short statements from reports for clarity, not complete sections.

51. The information in the narrative should be sub-synched and only contain enough information that is needed

52. The following Table is an example of how the Table at Part 2 Detailed Legislation Compliance Status should be compiled:



Road Vehicle (Construction and Use) Regulation 1987					
Section/Regulation	Narrative to support Compliance	Additional Comments	Status	DED available	DED Recommendation & Justification
Reg. 49 C&U Rear under-run device	Vehicle fitted with sufficient under-run device to support its Category.	See VCA inspection report <a href="#">VCA123</a> 	OK	Yes	Derogation available <b>but not used</b> . Rear under-run protection is not required if vehicle owned by the M.O.D. and used for naval, military or air force purposes
Reg. 33 C&U Indirect Vision	Measurement of field of vision in accordance with annex III, sections 5.3.1,5.3.1.1, 5.3.2, 5.3.2.2, 5.4.1 and 5.5 of C&U, vehicle is fully compliant to support its Category.	See VCA inspection report <a href="#">VCA123.1</a> 	OK	No	N/A

Table 2 Part 2 Detailed Legislation Compliance Status

## Disapplication's, Exemptions and Derogations (DEDs)

### Interpretation

53. There will be circumstances where meeting every requirement within UK Legislation is not mandated, where these occur there may also be reasons where voluntary compliance is impracticable. The reasons for this and the Legislation affected are numerous but, the justification for non-compliance must only be for Operational Capability and in the interests of National Security.

54. There are certain areas within Legislation that allow Defence to use alternative compliance route or remove the requirement to comply all together, these are called Disapplications, Exemptions and Derogations (DEDs). Not every piece of Legislation contains these provisions, if defence is afforded the permission to use a DED then it will be expressed in the text of the legislation.

55. The permission to use a DED sits with the MOD, the responsibility belongs to the organisation that holds the risk for the System, Equipment or Activity, usually the Capability Sponsor (Army, Navy or Air Force). They then determine if the DED is required and using it is in the best interests of Defence, for an Operational reason and in the interests of National Security.

56. **Rules for the use of DEDs** - The following rules should be used for the management of DEDs, doing so may assist in compliance with Defence Policy and Regulation.

- a. DEDs referred to in the SofS HS&EP Policy Statement are only applicable from UK Legislation.
- b. DEDs are to be identified through conducting a Legislation Compliance Assessment (LCA), the requirement for this is found in DSA 03 DLSR LSSR Regulation 9.
- c. DEDs are only to be used for Defence purposes.
- d. A DED should only be used as a last resort, if there is no other way to comply with Legislation and its use fulfils an Operational Capability and it is in the interests of National Security.
- e. All DEDs need the permission of the person who is going to be the risk holder (usually the Capability Sponsor) before they are used.
- f. DEDs need to be presented to the appropriate Regulator (as described in DLSR SOP 3) for approval in the form of a Non-compliance case, unless a prearranged agreement is in place. More information can be found in DSA 03 DLSR LSSR Regulation 10.
- g. A Certificate in writing from the SofS for Defence may be required to authorise any Legally permitted Exemption from Legislation, depending upon what the Legislation requires. For example, any exemption from The Road Going Vehicle (Construction of Use) Regulations 1986 will always require a certificate from SofS (through the Land Exemption Committee).
- h. Each DED needs to be controlled by achievable, realistic departmental arrangements that mitigate the risk where practicable as good as those required by Legislation.
- i. DEDs are to be reviewed on a regular basis to assess whether they are still applicable, allowing opportunities to remove them or find a more compliant solution.

## Disapplications

57. A Disapplication is when a piece of UK Legislation includes a provision that allows an Organisation, Person, Activity or Type of Equipment to disapply the standard or process within it.

58. The wording within the Legislation will need to be scrutinised (taking legal advice as necessary) to understand whether it is a disapplication or an exemption. As mentioned above and detailed further below, there is a specific process to be followed in respect of an exemption requiring SofS certification (LEC). The disapplication may be from all, part or specific sections of that Legislation, it may be communicated in the following ways:

- a. The following (insert type of system or organisation) is Exempt or the Legislation does not apply too, the part of the Legislation affected will be communicated within the text.
- b. The wording that confirms the applicability in UK Legislation for Defence will vary, wording found (but not exhaustive) can be:
  - (1) Army, Airforce, Navy.
  - (2) The Crown.
  - (3) Owned by or operated by or on behalf of the SofS for Defence.
  - (4) Home Forces or Forces HQ.
  - (5) There may be mention of a particular part of Defence i.e. Special Forces.

59. **Examples** - The following are examples of Disapplications from specific UK Legislation, these are available to Defence that could be used to provide an Operational Capability that is in the interests of National Security.

- a. Road Vehicles (Construction and Use) Regulations 1986 (specific examples).
  - (1) Regulation 49 – Rear Under-run Protection
  - (2) Regulation 51 – Side Guards.
- b. Lifting Operations and Lifting Equipment Regulations 1998 (LOLER).
  - (1) Under Regulation 12 Exemption for the Armed Forces, Disapplication to disapply all or any part of the Regulation.
- c. Supply of Machinery Regulation 2008.
  - (1) Disapplication to disapply all or any part of the Regulation.

## Exemptions

60. Exemptions are permitted for Defence from specific UK Legislation where it has been identified that certain scenarios for Operational reasons may not be able to comply. It is to be noted that the Legislation that the Exemption will be requested from must have the provision included.

61. There are 3 routes for Defence to seek an Exemption from UK Legislation.

62. The 3 routes are as follows:

- a. Routes 1 & 3 will be applicable to the whole of Defence and should not ideally be for a localised problem.

- b. Route 2 will only be applicable to the System or Equipment named in the Non-compliance Case, any others that wish to use the same or similar permission will need to apply for their own Exemption.

63. **Route 1** – For General Defence (non-road going) Activities specific Legislation may contain a provision for an Exemption. The Provision will communicate to whom and from what the Exemption will be allowed, identifying who any request it to be made to (in most cases this will be the SofS for Defence). To apply for an Exemption in this case the following process needs to be followed:

- a. The provision within the specific Legislation needs to be identified, every avenue then needs to be explored to find a way of compliance without affecting the capability.
- b. The Exemption ideally needs to benefit the whole of Defence, not just a localised problem.
- c. If no means of compliance can be found, the specific chapter pertinent to the management of the activity in JSP 375 Volume 1 will inform you of your next steps.
- d. If an Exemption is still to be explored at this stage (post consulting JSP 375), a letter is to be drafted to the SofS for Defence in line with the direction given in DSA01.2 Chapter 6 Legislation Exemption Process.
- e. Consultation should be sought with LSSR before the letter is processed to the SofS, this will allow help to be offered.
- f. Before the Exemption is legal and used, a Certificate from the SofS for Defence needs to be issued in writing and received.

64. **Example** – The following is an example of an Exemption for General Defence Activities:

- a. There is provision for a Military Exemption within the Lifting Operations and Lifting Equipment Regulations (LOLER).
- b. In this instance if a compliant solution could be found to satisfy LOLER, an Exemption could be requested from the SofS for Defence. The direction in JSP 375, Volume 1, Chapter 24 (Lifting Operations and Lifting Equipment) and the guidance in DSA01.2 Chapter 6 (Exemption Process from UK Health, Safety and Environmental Protection Legislation) would need to be followed.

65. **Route 2** – For Exemptions for Military Road Going Vehicles a Land Exemptions Committee (LEC) has been established within the Defence Land Safety Regulator (DLSR).

66. Operational military vehicles are a recognised category of special vehicles in any case, where compliance with any regulations made under section 41 of the Road Traffic Act 1988 by any such vehicle would directly compromise the vehicle's operational capability.

67. This provision allows Operational Military Vehicles to be a Special Type as designated within the Road Vehicles (Authorised Special Types) (General) Order 2003 (STGO).

68. STGO Regulation 53 (Operational Military Vehicles) gives the SofS for Defence (the LEC) authority to issue Exemptions for Operational Military Vehicles that cannot comply with the following Road Going Legislation:

- a. The Road Vehicle (Construction & Use) Regulation 1986
- b. The Road Vehicle Lighting Regulation 1989



- c. The Road Vehicles (Authorised Weight) Regulation.
69. For an Exemption to apply to Defence the military vehicle must be the property of, or under the control of:
- a. the Secretary of State.
  - b. a procurement contractor; or
  - c. a procurement sub-contractor.
70. **Example** – For any Exemption to be legal a Certificate in writing needs to be issued by SofS for Defence (the LEC chair in this case is authorised as the SofS), the reason needs to be in the Interests of National Security, with no other practicable means of compliance.
- a. A common application to the LEC against the Road Vehicles (Construction & Use) Regulation 1986 is that certain Operational Military Vehicles can't comply the requirements for Width.
  - b. The lawful width in this case would be 2.55m, the LEC would be asked to consider an Exemption for anything above this. Mitigations would be needed to demonstrate how the risk of operating a vehicle that is wider than 2.55m is suitably managed, with an Exemption agreed if the LEC members are satisfied.
71. **Compliance post the granting of an Exemption** - Any Exemption granted by the LEC will be specific to the parameters requested in the Non-compliance case, in most cases it does not remove the applicability and compliance to a complete standard or requirement.
72. **Example** – An Operational Military Vehicle identifies that it is Non-compliant with the Road Going Vehicle (Construction & Use) Regulation 61 Emission of smoke, vapour, gases, oily substances etc.
- a. The minimum Euro emissions standard expected by Defence for this Regulation is Euro IV (4).
  - b. In this example for Operational Reasons the vehicle can only reach Euro III (3), so an Exemption is sought from the LEC (as per DLSR SOP 3) from the Euro IV standard.
  - c. The LEC grant an Exemption for the vehicle to operate at Euro III, Exempting the Euro IV standard.
  - d. The vehicle does not have a full Exemption from Regulation 61 and is to be tested at Euro III standards when it is inspected during its maintenance regime.
  - e. It is the responsibility of the Equipment Sponsor to ensure this information is communicated to all Stakeholders, including the correct provision in any inspection process used.
73. **Route 3** – Defence has the provision to apply to the SofS for Transport to change the Law in the interests of National Security that affects Road Going Vehicles. An application can be made to DLSR to facilitate a Business Case (BC), applying to change the applicability of a specific piece of UK Legislation to benefit Defence.
- a. **Example** – The Road Traffic Regulation Act 1984 was changed in 2015 post an application made by Defence. After a public consultation period, the speed limit for Military Tracked Vehicles was raised from 20mph to 40mph for Operational reasons.



74. For route 2 and 3 a Non-compliance case will need to be submitted to DLSR as per the guidance in DLSR SOP 3 to facilitate any consideration for an Exemption or change in Law.

### **Derogations**

75. The provision to use Derogations for Defence purposes are included in specific UK Legislation, these apply to areas of Law where full compliance for Operational reasons would be impracticable. Defence is permitted by the SofS to partially comply with the Legislation, putting in place robust departmental arrangement to compensate for any deficiencies.

76. Most Defence Derogations apply at Organisation level or specific special operators, they are only valid for a Military purpose.

77. **Examples** – The following are examples of where Defence has a Derogation permitted in Legislation:

a. The MOD has a Derogation from the Motor Vehicles (Driving Licences) Regulations 1999, this lowers the legal age for Military personnel holding a Category C Licence to 17.

(1) In this example Defence is allowed to disapply the age part of Legislation, extra mitigation is required to comply with the requirements in the SofS HS&EP Policy Statement.

(2) There is a Defence Regulation owned by MTSR that relates to the conditions for Licencing of drivers of Military vehicles that has to be complied with.

b. In 2015 the speed limit was raised from 20mph to 40mph for Military Tracked vehicles, this Derogation is now contained in The Road Traffic Regulation Act 1984.

(1) In this example Defence are allowed to disapply part of Legislation relating to the 20mph speed limit and travel up to 40mph in Military Tracked vehicles.

(2) The Road Traffic Regulation Act 1984 has been amended to accommodate the speed provision for Military Tracked Vehicles.

78. **Derogation Application Process** – Most Derogations are applied to Defence as a whole, therefore most have a Regulation in place to aid its consistent management.

### **Considerations and Mitigations for Commonly Issued Exemptions for Operational Military Vehicles through the LEC**

#### **Exemptions**

79. When applying to the LEC for an Exemption for an Operational Military Vehicle there needs to be a number of considerations and mitigations taken into place before sending a completed Non-compliance Case.

80. Before the case can be credibly considered the applicant should consider the factors below, the considerations and mitigations can also be applied to the management of all DEDs.

81. Common Exemptions that have been considered by the LEC (others can be applied for, as long as they are within their remit):

a. **Road Vehicles (Construction and Use) Regulations 1986.**

- (1) Vehicle Weight.
- (2) Combination Weight.
- (3) Vehicle Axle Weights
- (4) Vehicle Width.
- (5) Vehicle Length.
- (6) Vehicle Combination Length.
- (7) Track Vehicle Length for Towing.
- (8) Seat Belts.
- (9) Braking in general.
- (10) 10 Year Tyres Life.
- (11) Tyre Speed and Load Rating.
- (12) Emissions Standards.
- (13) Tyre Noise.
- (14) Noise limits.
- (15) View to the Front.
- (16) Indirect Vision.
- (17) Turning Circle.
- (18) VIN Plates.
- (19) Speedometers.

**b. The Road Vehicles (Authorised Weight) Regulations 1998**

- (1) Authorised Weights.
- (2) Authorised Axle Weights.
- (3) Authorised Combination Weights
- (4) Vehicle Lighting Regs.

**c. The Road Vehicles Lighting Regulations 1989**

- (1) Position of Lights.
- (2) Dipped Beam Headlights.
- (3) Marker Lamps.
- (4) Position of Indicators.
- (5) Conspicuous markings.
- (6) Rear Fog Lights.

**Considerations and Mitigations**

82. The following are considerations to be assessed before any application is made for an Exemption from the LEC:

- a. Is this for Operational reasons?
- b. Has the Capability Sponsor agreed for its use?

- c. Has the decision to peruse an Exemption been approved by the relevant Safety Panel?
- d. Can the risk of non-compliance be sufficiently mitigated?
- e. From what Legislation is the Exemption requested?
- f. Is this the only means of compliance?
- g. Has there been any remedial or investigatory work to find a solution or reduce the impact of the non-compliance?
- h. Is this Exemption request to be Time Bound so a solution can be sort?
- i. When was the Legislation review done?
- j. Is there a current and sufficient LCA available to required Stakeholders?
- k. Have associated Disapplication's and Derogations been sufficiently accepted and mitigated?

83. The following common Mitigations are to be assessed for applicability for any Exemption applied for from the LEC. Detail needs to be added to the specifics of each Mitigation, explaining how it adds value to the Exemption request and how it's employed in the current Safety Management of the Vehicle.

- a. Hard Mitigations to be considered:
  - (1) Physical Safe by Design barrier – Something that has been fitted to or part of the design features of the vehicle to enhance the vehicles safety, not needing any intervention from the user.
  - (2) Replacement or Alternative standard – A standard that is equivalent or better than the one required with Legislation.
  - (3) MEIs – A formal documented physical inspection of the vehicle that confirms the roadworthy condition for a set period (usually 6 months), carried out by a trained and qualified Inspector.
  - (4) Before Use Check – A formal documented physical check that happens at a set time (usually every 24hrs) before it is driven, confirming the vehicle is road worthy. The check carried out must be conducted by a trained person on a that specific Vehicle.
  - (5) Halt checks – An informal (usually undocumented) check that is required by the user in certain conditions or scenarios to confirm the vehicle is roadworthy for continued use, post or prior to adverse use.
  - (6) Signs and warnings – A physical sign or warning placed in a visible location to remind of an action or requirement for safe use, this does not negate the responsibility to carry out the instruction.
  - (7) Vehicle Modification – A physical change that is made to the vehicle to enhance safety that may bridge the gap between compliance with the required standard, the modification may enhance the outcome to be better than the one required in Legislation.
  - (8) Reduction in Speed – As part of the vehicle operating procedure a physical reduction in speed could significantly mitigate the risk of non-compliance with a set standard.

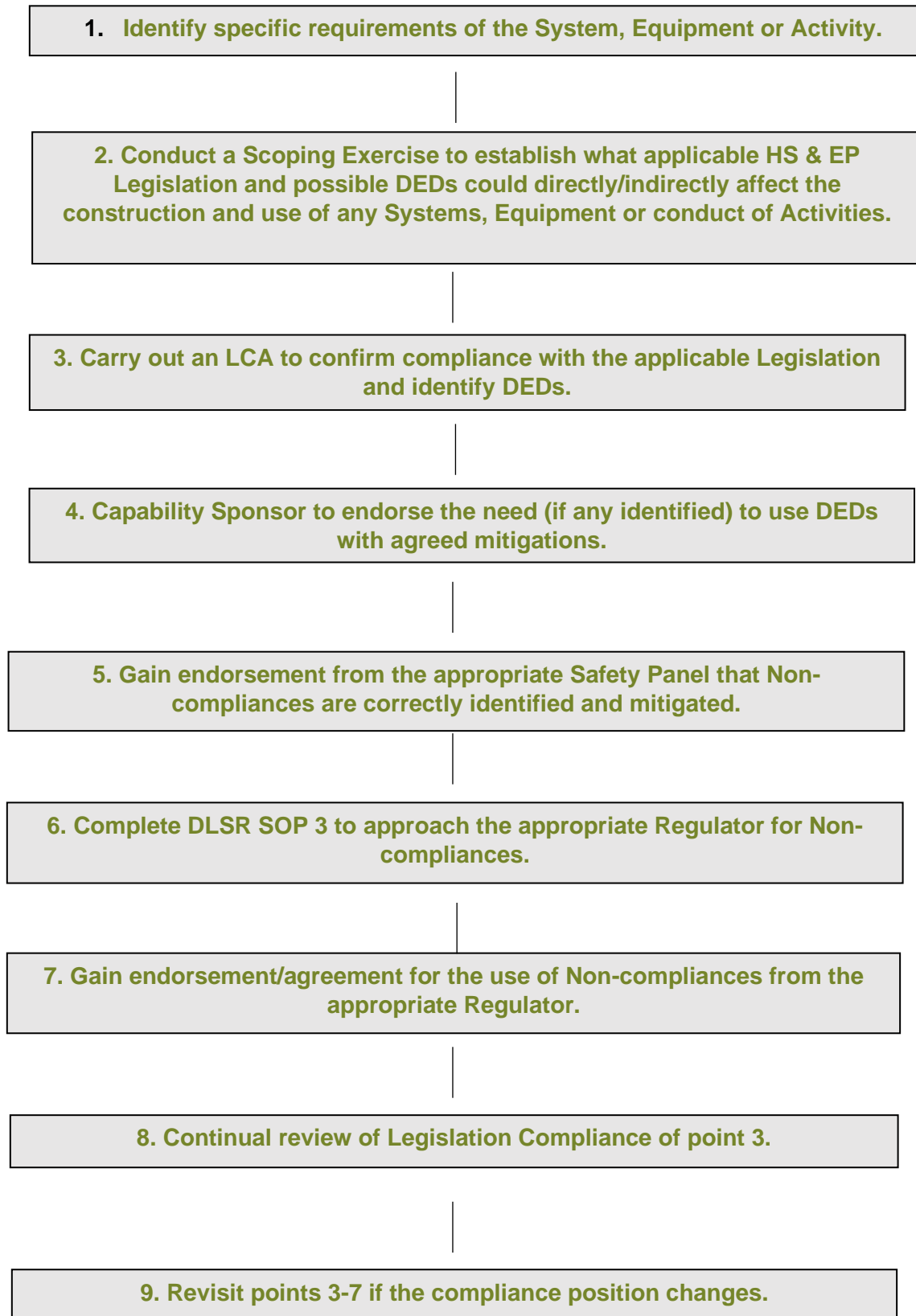
- b. Soft Mitigations to be considered:
- (1) Policy & Regulation – Showing evidence where appropriate that compliance has been achieved with mandated Defence Policy and Regulation, pertinent to the Exemption that is being sort.
  - (2) JAMES – How will JAMES be used to ensure the outcome of the Exemption process is communicated sufficiently.
  - (3) JSP 800 – Highlight the pertinent section of JSP 800 that the Exemption is relevant too, evidencing the correct mitigation measures to allow the correct management to occur.
  - (4) DEF STANS – Show compliance with a relevant DEF STAN that lays out the requirements for the best outcome for Defence.
  - (5) Specific Training requirements for Driver, Crew and Passengers – Detailed information is required to how Training is conducted and documented; this needs to be pertinent to the Exemption sort.
  - (6) Commanded Vehicle – How does this improve safety, detailing how this is delivered.
  - (7) Familiarisation Training – Who, what, how and at what times is this delivered.
  - (8) Route Planning – How does this improve the safety outcomes in relation to the Exemption sort.
  - (9) Emergency Planning – What in relation to Emergency Planning (including access and egress) is in place for the Safety Management of the vehicle.
  - (10) AESP updates – How are these managed and communicated to all Stakeholders, ensuring all Hazards, Warnings and Cautions are captured.
  - (11) SNvE's & ENvE's – How and where are these effectively communicated to sufficiently control any temporary deficiency in Legislation Compliance.

### Help Available

84. Any question about Legislation Compliance in the Land Environment or clarification on anything in this document can be sent to the Legislation Compliance Officer within LSSR (DSA-DLSR-LSSR-LG), or DSA-DLSR-LSSR Group Mailbox (MULTIUSER) DSA-DLSR-LSSRGroupMailbox@mod.gov.uk.

## Legislation Compliance Process Map

The following process map will aid compliance with the Legislative requirements mandated by SofS for Defences HS&EP Policy Statement and The LSSR Regulations.



## Legislation Compliance Assessment Considerations

**What Environmental Factors need to be considered.**

- What Hazardous substances are included in the system.
- Will there be any issues in meeting Emissions Legislation and Standards.
- Are there any cross-domain requirements for Legislation i.e. a system that operates on Land and Water.

**What Capability will the System provide**

- Must be documented in the CONUSE/CONEMP
- Will shape what direction the legislation will go
- Who needs to be protected

**Type of System**

- This will shape your primary Legislation i.e. Road Going or Pressure System Regulations etc

**Has a HFI assessment been done.**

- A HFI assessment will identify areas affecting people that will require addressing by compliance with H&S Legislation i.e. Vibration, Ventilation, Noise etc.

**Is this going to be an operational system**

- Dependant on whether this is going to be an operational System or not will depend on what DEDs may be available.
- Close liaison with the Capability Sponsor is needed to ensure Legislation applicability, ensuring compliance with the SoFS for Defences HS&EP Policy Statement.

**Is the system owned by the MOD or is it a shared venture**

- DEDs in Legislation applicable to Defence may not be able to be used by a partner in a joint venture when not operating on behalf of the SoFS.

**Where will the system be operating**

- If practicable UK Legislation and Standards are to be used as a minimum.
- Where practicable the host nations standards are to be applied.
- LCA is to consider all MOD employees and Contractors.
- DED approval is still required overseas.
- UK Roads with public access are on Military Training Estates.

**Is this a COTS, MOTS or bespoke procurement**

- A different approach may be needed for each method.
- COTS may already be at design freeze so influencing the direction of Legislation could be difficult.
- MOTS have more options to influence design Legislation and Standards.
- Bespoke procurement allows more decisions on how

**Legislation considerations are as follows, but not exhaustive**

- What Capability will the System provide.
- Type of System.
- Is this going to be an operational system.
- Where will the system be operating.
- Are there people at risk from the system, directly or indirectly.
- Who will operate the system.
- What is the methodology to gain Legislation Compliance.
- Is this a Road Going Vehicle.
- Is this a COTS, MOTS or bespoke procurement.
- Is the system owned by the MOD or is it a shared venture.
- Has a HFI assessment been done.
- What Environmental Factors need to be considered.

**Are there people at risk from the system, directly or indirectly**

- Who and how do people interact with the System.
- What Employment Legislation is required.
- What Health and Safety Legislation needs to be considered i.e. Vibration, Working at Height etc.
- Indirectly affected people need to be considered i.e. Non-military and Civilian 3<sup>rd</sup> Party people who may be affected.

**Is this a Road Going Vehicle.**

- Simple Yes or No.
- Is it a new vehicle or a Legacy one.
- How will you manage Certification, Consistency and Quality Control.
- Will you be needing to use any DEDs i.e. Weight, Width, Lighting.
- Roads with public access are on Military Training Estates.

**Are there people at risk from the system, directly or indirectly**

- Who and how do people interact with the System.
- What Employment Legislation is required.
- What Health and Safety Legislation needs to be considered i.e. Vibration, Working at Height etc.
- Indirectly affected people need to be considered i.e. Non-military and Civilian 3<sup>rd</sup> Party people who may be affected.

**What is the methodology to gain Legislation Compliance**

- How will you demonstrate Legislation Compliance against the SoFS HS&EP Policy Statement and the LSSR Regulations.
- A clear methodology is needed to address DEDs.
- Who is going to agree the use of any DEDs.
- When will you approach the LEC, if needed.

**Who will operate the system.**

- The number of people using the system may decide the legislation and standards used.
- What is the level of competence required i.e. Driving licence and Maintainers qualification.

## Initial Steps

- Gather Legislation to be included in your scoping exercise regarding the systems construction and use from the URD.
- Once you have a baseline of Legislation it can be reduced by WGs to determine relativity, this will formulate the basis of your LCA.
- The System LCA will recognise the compliance with the applicable UK Legislation, identifying potential DEDs.
- DEDs are to be addressed in line with the SoFS HS&EP Policy Statement and DSA Regulations.

