



Ministry  
of Defence

# JSP 815 Volume 2

## Element 5: Supervision, Contracting and Control Activities



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### Amendment record

This chapter has been reviewed by the Directorate for Defence Safety (DDS) together with relevant subject matter experts and key Safety stakeholders. Any suggestions for amendments **should** be sent to [COO-DDS-GroupMailbox@mod.gov.uk](mailto:COO-DDS-GroupMailbox@mod.gov.uk).

Version No	Date	Text Affected	Authority
1.0	Dec 22	BETA version for consultation	Dir HS&EP
1.1	7 June 23	Final version of Volume 2	DDS

### Terms and definitions

General safety terms and definitions are provided in the Master Terms and Definitions Glossary which can also be accessed via the [GOV.UK](#) page.

### Must and should

Where this element says **must**, this means that the action is a compulsory requirement.

Where this element says **should**, this means that the action is not a compulsory requirement but is considered good practice to comply with the policy.

### Scope

This policy applies to all those employed by Defence (military or civilian) as well as those working on behalf of Defence (for example, contractors). It applies to all Defence activities carried out in any location (UK or overseas).

## Introduction

1. This element provides the direction that must be followed and the guidance and good practice that should be followed and will assist users to comply with the expectations for supervision, contracting and control activities that are set out in Element 5 of Volume 1 of JSP 815 (this JSP).

## Purpose and expectations

2. This element will assist Defence organisations to implement safe systems of work to control activities and to meet their legal duty of care requirements. Defence organisations are to have arrangements for the application of these safe systems of work that include the supervision of all the workforce and contractors. Defence organisation senior leaders are to have effective frameworks in place to ensure that they have sufficient and timely oversight of their organisation and its supply chain using the four Cs (coordination, co-operation, communication and control). This should also apply to Duty Holding where there is a credible and reasonably foreseeable Risk to Life (RtL) and where other statutory arrangements are considered to be inadequate.

## Safe Systems of Work

3. All activities across Defence must be conducted within the elements of a Safe System of Work (SSW). The SSW must be in place for activities undertaken by all those employed by Defence (military or civilian) as well as those working on behalf of Defence (for example, contractors). It applies to all Defence activities carried out in any location (UK or overseas). JSP 375 Chapter 8 sets out the requirements for all activities in Defence to be conducted within a Safe System of Work.

## Duty of Care

4. Duty of care is a legal concept whereby individuals are owed, and owe, an obligation to ensure that they and others do not suffer any reasonably foreseeable harm. Under the Health and Safety at Work etc Act 1974 every employer has a duty to ensure that, so far as is reasonably practicable, the health, safety and welfare of employees (including Crown servants, such as Service personnel) are protected.

5. The statutory duties are often bound by geographical location, application will usually be restricted to the UK but the common law duty is often driven by the nature of the relationship between the person who owes the duty and the person to whom it is owed. As such the common law duty of care owed by Defence will apply irrespective of the location of Service personnel, civil servants and others (e.g., cadets, contractors or visiting personnel) who undertake activities under the auspices of Defence or may be affected by such activities.

6. Under their duty of care, those responsible for the control of Defence activities have a duty to mitigate risk to ALARP and tolerable and also have the authority to pause or cease activity where a risk is no longer ALARP and tolerable. Risk mitigation and tolerability are covered in more detail in Element 4 of this Volume 2.

7. The duty of care extends to operations and exercises in the UK and overseas and whilst on deployments. Full details of the duty of care requirements on deployments can be found at Annex C to this Volume 2.

8. All Defence organisations who sponsor or are accountable for Defence activities conducted in their area of responsibility (AoR) must be able to:
- a. demonstrate that UK arrangements for H&S are applied so far as reasonably practicable;
  - b. in addition, respond to host nation's relevant H&S expectations; and
  - c. demonstrate that the H&S arrangements, so far as is reasonably practicable, afford all personnel undertaking Defence activities at least the same level of protection from work related hazards as would be afforded to them if they were undertaking the activity in the UK.

## Duty Holding

9. Duty Holding<sup>1</sup> was introduced following the Nimrod Review<sup>2</sup> initially in the aviation domain but is now applied across all Defence domains. The principle of Duty Holding is to establish an organisational construct of trained and accountable individuals who are competent and empowered to manage safety risks across the spectrum of military activities<sup>3</sup> where it has been decided that Duty Holding applies.

10. Duty Holding must be applied for military activities that the Defence organisation's most senior leader considers:

- a. are justified and present a credible and reasonably foreseeable Risk to Life (RtL)<sup>4</sup>; and
- b. the Duty of Care, or other statutory arrangements and/or the control of risks are considered to be inadequate and require enhanced safety management arrangements; or
- c. are mandated through regulation.

11. Defence organisations must maintain a record of all activities to which they have decided to apply Duty Holding other than those mandated by regulation and make that record available as part of the assurance process (set out in Element 12 of this Vol 2) or upon request by senior Defence leaders (for example the Secretary of State (SofS), Second Permanent Secretary, Dir DS or DG DSA).

12. Where Duty Holding is applied to an activity, it does not replace the duty of care held under law but enhances that duty of care held by the SofS, Defence organisations senior leaders and those formally appointed as Duty Holders. Full details on Duty Holding requirements on deployments can be found at Annex C to this Volume 2.

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<sup>1</sup> Duty Holding in Defence should not be conflated with duty holding as outlined in the HSWA74.

<sup>2</sup> Haddon Cave Nimrod Review.2009.

<sup>3</sup> Military activities - Are those that can be directly or indirectly linked to military outputs and are at the discretion of the Service Chief or the Defence organisation's senior leader.

<sup>4</sup> Risk to Life (RtL) - Is where the outcome of an activity has a high probability of resulting in a fatality. (People should only be exposed to risk of harm where a clearly defined benefit is expected and where the risks are adequately planned and controlled.)

## The Duty Holding construct

13. The fundamental elements of Duty Holding management arrangements are that there are three levels of accountable individuals for managing risk where a Duty Holding framework has been applied and they are the: Senior Duty Holder (SDH), Operating Duty Holder (ODH) and Delivery Duty Holder (DDH). When appointed, an MOD Duty Holder is responsible for the safe conduct of activities within their AoR by ensuring that RtL is ALARP and Tolerable.

14. The SofS for Defence requires that the Defence organisation's most senior leader is appointed as the Senior Duty Holder (SDH) and is ultimately accountable for RtL for the military activities for which that senior leader has decided to apply Duty Holding. The SDH is formally appointed by letter from the SofS and has right of access to the SofS. In addition to their legal responsibilities the SDH is personally accountable for ensuring that an effective SMS is resourced and implemented for any activity which has a Duty Holding framework applied. The SDH must be able to demonstrate:

- a. why Duty Holding has been applied to a military activity to supplement Duty of Care arrangements;
- b. that arrangements are in place to enable any Duty Holder to stop activities in the event that RtL is no longer considered to be ALARP and tolerable;
- c. that the risk escalation criteria is proportionate and appropriate to their area of responsibility and the escalation and acceptance of RtL is being effectively managed; and
- d. that accountable individuals have been appointed as ODHs and DDHs.

15. If a SDH considers that a risk from a military activity cannot be mitigated so that it is ALARP and tolerable they have the delegated authority to stop those activities and to inform the Second Permanent Secretary and refer it to the SofS. Where a risk has a pan-Defence or cross-cutting impact this must also be raised to the Defence Safety and Environment Committee (DSEC). Defence organisations should consult with Dir DS and where appropriate DG DSA before raising safety issues to the DSEC.

16. The SDH must formally appoint the ODH(s) through a letter of appointment which must be formally accepted, the SDH will also set the level of risk that can be held by the ODH and DDH. The SDH or the ODH must formally appoint the DDH(s) through a letter of appointment which must be formally accepted. The ODH and/or DDH must be able to demonstrate that:

- a. they have the ability to manage the RtL within their defined AoR<sup>5</sup>;
- b. they have direct access to their superior DH;
- c. they are suitably qualified and experienced to undertake their Duty Holding responsibilities;
- d. there is adequate safety management in place that considers Duty Holding and ensures ALARP and tolerable outcomes when managing RtL;

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<sup>5</sup> This includes the financial authority to prioritise resource within their AoR to deliver safe outcomes.



- e. all Duty Holder Facing organisations have been identified and arrangements are in place for the effective identification and management of RtL; and
- f. RtL risks can be readily escalated when required.

17. All SDHs, ODHs, and DDHs who have been in post for more than 3 months should be able to demonstrate that they hold a valid DSA approved Duty Holder Course certificate; and those with less than 3 months in post should be able to demonstrate that appropriate action has been taken to attend a DSA approved Duty Holder Course within 3 months of appointment. The course content includes demonstrating a clear understanding of the purpose of the Duty Holder role, specific hazards, safety risks and the technical understanding required for the role.

### **Duty Holder Facing organisations**

18. A Duty Holder Facing organisation is any organisation whose activities and decisions could affect the ability of a Duty Holder to mitigate associated RtL so that they are ALARP and Tolerable. This includes, but is not restricted to: providers of support and facilities; Financial / Military Capabilities (Fin/Mil Cap); Defence Equipment and Support (DE&S); Defence Infrastructure Organisation (DIO); and other Defence enabling organisations.

19. Duty Holder Facing organisations are responsible for assuring Duty Holders that equipment, platforms and infrastructure are safe to use by providing evidence in safety cases or equivalent safety evidence and/or providing the necessary support to Duty Holders, e.g., building regulatory compliance, in service (safety and compliance) inspections & assurance procedures.

20. Duty Holder Facing organisations are to report to the Duty Holder any failures to meet agreed safety criteria and agree a plan with the Duty Holder and be able to confirm that the associated risk has been mitigated to a level assessed as ALARP and tolerable. Safety and the acquisition of equipment is covered in more detail in JSP 376.

### **Accountable Person**

21. An Accountable Person is generally the person whose terms of reference state that they are responsible for making sure there are suitable and sufficient systems in place to control safety risks in their establishment, unit, or platform. The term 'accountable person' can sometimes be used in place of or to describe a Head of Establishment (HoE), Officer Commanding (OC), Station Commander and so on, which are all terms used by Defence organisations. However, generally those with safety responsibilities for Defence establishments are referred to as the HoE. Once appointed, all HoEs (or equivalent) should demonstrate that they have accepted their role and understand the associated responsibilities, to meet and support safety objectives.

22. Roles and responsibilities should be clearly outlined within job descriptions and terms of reference (ToRs). Defence organisation personnel should be made aware of who has delegated authority on a timely basis, and any changes made. This includes communicating how to manage potential overlapping risks, and co-ordination across Defence organisations. Further detail on the HoE safety responsibilities are covered in Annex D to this Volume 2.

## Combat immunity

23. Combat Immunity is a legal concept which establishes that there is no common law liability for negligence in respect of acts or omissions on the part of those who are actually engaged in armed combat. It is very much circumstance-dependent and will usually only be identified after the incident when Defence is facing an allegation that a duty of care has been breached and legal action is being taken. It is not a concept that can be invoked ahead of a situation to suspend the duty of care but rather it may be argued, subsequent to the incident, that the circumstances at the time of the incident constituted those that warrant Combat Immunity.

24. Defence organisations should be able to demonstrate that appropriate governance arrangements are in place for operations to which Combat Immunity could be applied.

25. In the case of *Smith & Others v the Ministry of Defence*<sup>6</sup>, the Supreme Court found that: 'the doctrine of combat immunity was narrowly construed to apply only to actual or imminent armed conflict and not to failures at the earlier stage of planning and preparation for active operations against the enemy'.

## Element summary

26. The Defence senior leadership should ensure that:

- a. They have mechanisms in place to delegate authority for the control of activity.
- b. Those holding delegation of authority are trained and competent to discharge their responsibilities and accountabilities.
- c. Those responsible for the control of activity have a mechanism in place to assess and elevate risk where necessary and leadership are actively involved in risk management.
- d. Delegated authority should be formally appointed via a letter of Delegation.
- e. Those responsible for the control of activity have a duty to mitigate risk to ALARP and tolerable.
- f. Those responsible for control of activity have the authority to pause or cease activity where a risk is no longer ALARP and tolerable.
- g. They have developed and implemented Safe Systems of Work (SSW), to safeguard those carrying out the work or affected by it.

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<sup>6</sup> Case citation: [2013] UKSC 41.