

Foreword

This document explains how the DSA sets regulations. It is subordinate to DSA 01 The DSA Sub-Operating Model and complements the other documents in the DSA 01 series. Together, the 01 series provides people in the DSA and across Defence an understanding of how the DSA conducts its activity and what can be expected from its outputs.

This document should be referred to as required to educate and inform stakeholders and guide activity. It is coherent with the Secretary of State for Defence's policy statement for Health, Safety and Environmental Protection (HS&EP) and the DSA Charter. Departmental HS&EP policies are detailed within the relevant Joint Service Publications. Should there be a conflict between these documents and the DSA 01 series, contact the DSA (DSA-Enquiries@mod.gov.uk).

Organisation

The DSA was established by a Charter issued by the Secretary of State for Defence as independent regulator, investigator and assurer for HS&EP within Defence. The DSA's vision is to protect people, the environment and operational capability through effective and independent HS&EP regulation, assurance, enforcement and investigation. The DSA derives its independence and authority from the DSA Charter.

The DSA's regulators are responsible for setting Defence HS&EP regulations. The eight Defence regulators are:

- Defence Environmental Protection Regulator (DEPR).
- Defence Fire Safety Regulator (DFSR).
- Defence Land Safety Regulator (DLSR).
- Defence Maritime Regulator (DMR).
- Defence Medical Services Regulator (DMSR).
- Defence Nuclear Safety Regulator (DNSR).
- Defence Ordnance, Munitions and Explosives (OME) Safety Regulator (DOSR).
- Military Aviation Authority (MAA).

Principles

Hampton Principles. In March 2005 the Hampton report was published by the Treasury. It aimed to address the burden of regulation and focussed on inspection and enforcement in the areas of environmental protection and health and safety. The report made several recommendations and put forward principles for regulatory activity. In due course, these have become known as The Hampton Principles and are summarised as follows:

- Proportionality.
- Accountability.
- Consistency.
- Transparency.
- Targeting.

The Regulators' Code. In addition to The Hampton Principles, the Regulators' Code was developed following the Autumn Statement in 2012. It specified that regulators must have due regard to the Code when developing their regulation sets but they are not bound to follow it if they have good reason. The broad principles in the Regulators' Code are as follows:

- Regulatory activity should support those they regulate to comply and grow; they should avoid imposing unnecessary regulatory burdens.
- Regulators should provide simple and straightforward ways to engage with their regulated community.
- Regulatory activity should be based on risk.
- Regulators should share information about compliance and risk.
- Regulators should provide clear information, guidance and advice to those they regulate.
- Regulators should ensure their approach to regulatory activities is transparent.

Application in the DSA

The DSA bases its regulations on the above principles to provide a set of Defence regulations that:

- Are proportional and targeted based on risk.
- Are consistent and coherent in look, feel and content (with legislation and the statutory regulator in the first instance; within the DSA after that).
- Have identifiable provenance.

- Are proportionate to, and trusted by, the regulated community.
- Are applicable wherever Defence operates.
- Can evolve to meet new and changing technologies and risks and to incorporate best practice.
- Are accessible, practical and easy to use.

“As similar as possible, as different as necessary”. Where reasonably practicable, the DSA’s regulators operate regimes that are aligned with statutory equivalents to produce outcomes that are at least as good as those required by UK legislation. This alignment makes working with statutory regulators and compliance with both legislation and Defence regulations easier for both the DSA and the regulated community. Whilst this does lead to necessary differences between its parts, the DSA seeks to harmonise its approach where there is benefit in doing so.

Defence Policy and Regulations

Defence policy

Defence is required to comply with UK HS&EP statutory requirements. To do so, the Defence policy which must be met, and the guidance that should be followed, is detailed in Joint Service Publications (JSP). The JSPs provide the overarching policy and frameworks for complying with all HS&EP statutory requirements. To ensure compliance, statutory bodies such as the Health and Safety Executive (HSE) and the Environment Agency (EA) may conduct assurance or enforcement activity against Defence.

Purpose of Defence regulations

Defence regulations are put in place to manage risk, protect our personnel, reduce harm to the environment and preserve our operational capability. They are complementary to the legislative and policy framework and must be considered as part of a continuum of documentation that underpins all activity undertaken within Defence. There are various reasons why Defence may decide that the statutory and policy frameworks put in place are insufficient and a regulation is required. Defence regulations can be put in place for one or more of the 5 reasons outlined below:

- A derogation (a relaxation of a statutory requirement, to allow the law to be applied differently for justifiable practical or operational reasons), an exemption (a formal written authorisation for all or a part of specific legislation or Defence regulation to not apply) or a disapplication (where all or part of specific legislation does not apply to Defence) – collectively known as DEDs – applies.
- The DSA regulator has a delegation from the statutory regulator or is directed by authorised local authorities.
- The Director HS&EP or a Defence organisation has requested, and the DSA has accepted, that an area of Defence activity is not sufficiently regulated.

- There is a gap in UK legislation that needs to be filled when considering Defence activity or following lessons identified.
- For activities that are considered as high risk, Defence organisations (via the DSEC) have decided that the legislation does not provide enough regulation for specific military activities.

Disapplications, exemptions or derogations

Of the five reasons outlined above, the most complicated and also most frequently used reason for implementing a regulation is where Defence has been granted a DED from statutory HS&EP requirements. Where it is identified and can be justified during the development of legislation that Defence may not be able to comply with a legal requirement, with agreement of the lead Department of State, appropriate DEDs will be included in the proposed legislation.

Where there is a DED from UK HS&EP legislation or where Defence activities are conducted overseas (outside of the requirement to respond to host nations' relevant HS&EP expectations and cooperate with their HS&EP authorities), the HS&EP Policy Statement requires Defence to put in place arrangements that produce outcomes which are, so far as is reasonably practicable, at least as good as those required by UK legislation. Accordingly, a fundamental responsibility of the DSA is to regulate activities through Defence regulations where there are DEDs from statute.

For a disapplication or derogation, legislation will normally state that the legal requirement either does not apply to Defence; or applies to a limited extent. On most occasions, Defence will have put in place policy or regulation to define the Defence requirement. Where there is no specific corresponding Defence policy or regulation for a disapplication or derogation, applying the Defence Secretary's HS&EP policy statement, Defence is required to follow the original legislation to the extent that is reasonably practicable to do so. Any associated risk is to be reduced to as low as reasonably practicable (ALARP), best practicable environmental option (BPEO) or similar, and must always remain tolerable.

Where exemptions are sought from UK HS&EP legislation on the grounds of national security, this can be achieved in accordance with the requirements set by the legislation itself. This will tend to require the exemption to be authorised by a certificate issued by the Secretary of State or a Relevant Authority named in the legislation. Within Defence, some exemptions are considered by an exemption committee. Legal advice should be sought if doubt exists as to the appropriate approval authority or process for a particular exemption.

Legislation will normally state that an application for an exemption must be made on a case-by-case basis. To utilise an exemption for a Defence activity or military equipment, the responsible individual is to raise an exemption application which (when appropriately justified in accordance with the exemption application process) is transmitted to the appropriate departmental minister or statutory authority for consideration. The departmental minister or statutory authority will either reject the application or grant the exemption in writing. Timelines for this process are variable and the relevant DSA regulator should be engaged at the earliest opportunity.

Duty Holding

In some cases, UK legislation and statutory regulators such as the HSE refer to those with specified legal responsibilities for managing safety of activities as duty holders. The use of this term should not be confused with any Duty Holding requirements outlined in Defence regulations. Within the DSA, Duty Holding has its roots in the outcomes of *The Nimrod Review* and refers to enhanced duty of care arrangements and clearly defined roles and responsibilities that are required so that legally accountable individuals can carry out their duties to mitigate and make judgments on risk effectively. Where a Defence regulation requires Duty Holding, the details of the requirement will be included in the regulation.

Statutory regulators

The DSA engages regularly with statutory regulators that align to their respective area of regulatory activity. This ensures standardisation where required and coherence within regulated areas of activity. The role of statutory regulators is described in the HS&EP Operating Model, JSP 815 and 816.

Overseas Authorities

Notwithstanding the position of state immunity under customary international law, many host nations have HS&EP authorities with expectations (which may be expressed in written agreements) in respect of UK Defence activities conducted in their jurisdiction. Where host nations' HS&EP requirements do not apply, the DSA is empowered to regulate UK Defence activities overseas, and co-operates and collaborates with overseas authorities adjusting their regulatory regimes as necessary.

Structure of Defence Regulations

The DSA's regulation set includes the regulation, the means of compliance (including Defence Codes of Practice (DCoP), Acceptable Means of Compliance (AMC) or similar), and associated guidance. They are developed and published by the individual DSA regulator, normally in the DSA02 and DSA03 series of documents.¹

The DSA will, where appropriate, publish regulations in goal-setting form—that is, setting out *what* must be achieved, but not *how* it must be done. Sometimes it is necessary to be prescriptive, that is spelling out in detail *what* should be done. Some standards are absolute, such as classification of dangerous goods. Sometimes the legislation requires prescription, so the Defence regulation may need to be prescriptive to produce outcomes which are, so far as is reasonably practicable, at least as good as those required by UK legislation.

Regulation

The regulation is the rule or the authoritative direction. They are mandatory activities which have to be followed without exception (unless a concession/waiver/exemption has been formally issued). Where a regulation states that a person “shall” do something, the

¹ The MAA's regulations are published in the *MAA Regulatory Publications*. This format is more closely aligned with the Civil Aviation Authority publications.

regulated entity has no choice but to do it. Whenever possible, regulations are written in the positive sense. If this is not feasible then where the provision states that a person “shall not” do something, the regulated entity is prohibited from doing a certain act.

Acceptable Means of Compliance

Acceptable Means of Compliance (AMC) represent the preferred means by which the regulator expects the intent of the Regulation to be met. AMC are written in the permissive sense in order to allow a regulated entity the opportunity to consider alternative approaches.

Where the regulated entity believes there is a more effective way of showing compliance and satisfying the intent of the regulation, it may utilise an Alternative Acceptable Means of Compliance (AAMC) process to apply to the regulator for approval. However, AMC are strongly recommended practices; regardless of whether published AMC are used, or alternatives are proposed to the regulator, the burden of proof that the regulation is satisfied rests entirely with the regulated entity.

Defence Code of Practice

The Defence Code of Practice (DCoP), while not being too prescriptive, details the recommended compliance standards that are expected and provide appropriate regulatory advice and guidance that will allow those responsible for the activity the flexibility to decide how they are to be achieved. Where the cross-cutting nature of Defence activities mean that there may be some standards and/or procedures where compliance has been mandated, a Regulatory Schedule is used to detail the requirements to ensure a single standard for an activity.

Guidance Material

Guidance material is typically developed to accompany advice to provide additional explanation or good practice to assist the application of the regulation. Guidance material may be used to help illustrate the meaning of specifications, standards and requirements providing guidance and good practice on how compliance could be achieved and, where appropriate, provide the templates to allow for standard procedures across the Defence community.

Regulatory advice

The DSA's regulators also provide regulatory advice, normally through issuing Regulatory Notices or Regulatory Instructions. These are published by the individual DSA regulator as stand-alone documents. All regulatory advice is strongly recommended practice, the burden of proof that the regulation is satisfied rests entirely with the regulated community. Care is taken to ensure that regulatory advice details what is required and to what standard but is not prescriptive as to how it is to be achieved.

Production and publication

In general, the following outlines how Defence regulations come into being:

- A requirement needs to be established, usually based on one or more of the five reasons to regulate (above).
- An author and editor will normally be appointed to staff the regulation through a series of drafts, stakeholder reviews and final publication. Ensuring technical accuracy is key during this process.
- A Regulatory Notice or Defence Instruction and Notices (DIN) may be promulgated to effect timely communication of regulatory changes to regulatory documents.² This notification will detail the reasons for the changes/amendments and include timelines.
- Each regulation set will normally consist of the following content:
 - An introduction that provides a foreword, content and preface. This should outline supporting information and the administrative framework for its use.
 - A section that provides an outline of the Defence regulations applicable to the activity covered. It will normally include the applicability of the regulation, the definition of the regulatory area/function, any definitions, details of organisations and arrangements, and finally the regulation title, detail, clauses, schedules, AMC and/or DCoPs and Guidance Material.
- When ready, the regulation will be published via electronic media. Notification to the community of interest will be disseminated and a final version will be uploaded to the relevant DSA GOV.UK pages. The regulation will then be subject to review as per the review schedule.

Requests for change

Requests for changes to Defence regulations are to be directed to the relevant Defence regulator.

² The MAA publish a *Notification of Approved Amendment* to communicate changes to regulatory documents.

Exemptions, waivers, concessions, and Alternative Acceptable Means of Compliance

Exemptions, waivers, concessions or Alternative Acceptable Means of Compliance may be employed at the request of a regulated entity and when agreed by the regulator.³ Requests are to be directed to the relevant Defence regulator. The signatory level will be dependent upon type, complexity or whether the request is novel and/or contentious. Requests should be supported by evidence of risk judgement, ownership and acceptance.

- **Exemption.** Enduring, written authorisation for all or a part of specific Defence regulation to not apply to meet or sustain operational capability. Where approved, the exemption may be written into the appropriate regulation as a disapplication. Notwithstanding that exemptions are enduring; they will be periodically reviewed by the regulator.
- **Waiver.** Temporary, written authorisation for all or a part of specific Defence regulation to not apply to meet or sustain operational capability. Waivers are issued for a specific period and/or activity.
- **Concession.** (DMR only) Authorisation for an Accountable Person to deviate from the requirement of a regulation.
- **Alternative Acceptable Means of Compliance.** An approved means of achieving the intent of the regulation other than the AMC.

Approved exemptions, waivers, concessions and AAMC are periodically reviewed by the approving regulator. Records of exemptions, waivers, concessions and AAMC must be kept in accordance with JSP 375, Chapter 39 Retention of Records.

DSA Regulation Set

The DSA's regulation sets can be found linked below:

- Defence Environmental Protection Regulator (DEPR).
 - [to be issued]

³ The DNSR do not use exemptions, waivers, concessions or AAMC as it regulates through the authorisation of activities. Authorisees seek regulatory permission before conducting specified activities.

DSA Standard 01 - Regulations

- DFSR
 - [DSA02 DFSR: Defence fire safety regulations](#)
 - [DSA03 DFSR: Defence fire safety regulatory guidance](#)
 - [DSA02 DFSR: Defence aerodrome rescue & fire fighting \(ARFF\) regulations](#)
- DLSR
 - [DSA02 DLSR: Policy and regulations for health, safety & environmental protection](#)
 - [DSA03 DLSR: Adventurous training safety Defence Codes of Practice and Guidance](#)
 - [DSA03 DLSR: Fuel and gas safety and environmental regulations Defence Codes of Practice](#)
 - [DSA03 DLSR: Land systems safety and environmental protection Defence Codes of Practice](#)
 - [DSA03 DLSR: Movement & transport safety regulations Defence Codes of Practice](#) (link only accessible by those with access to the MOD intranet)
- DMR
 - [DSA02 DMR: Defence maritime regulations for health, safety and environmental protection](#)
- DMSR
 - [DSA02 DMSR: Healthcare regulatory policy and healthcare regulations](#)
 - [DSA03 DMSR: Healthcare Defence Code of Practice](#)
- DNSR
 - [DSA02 DNSR: Defence nuclear safety regulations of the Defence Nuclear Enterprise](#)
 - [DSA03 DNSR: Defence nuclear safety regulations of the Defence Nuclear Enterprise – guidance](#)
- DOSR
 - [DOSR regulations and tool set](#) (defnet only)
- MAA
 - [MAA regulatory publications](#)

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