



Ministry
of Defence

Element 3: Legislation, Policy, Regulations and Guidance



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Amendment record

1. This chapter has been reviewed by the Directorate of Levelling Up, Climate Change and Sustainability together with relevant subject matter experts and key environmental stakeholders. Any suggestions for amendments should be sent to:
SPO-LUCCS@mod.gov.uk

Version No	Date	Text Affected	Authority

Use of must and should

- Where this chapter says must, this means that the action is a compulsory requirement.
- Where this chapter says should, this means that the action is not a compulsory requirement but is considered best practice to comply with the policy.

Scope

4. 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

5. This element provides the guidance and best practice that should be followed and will assist users to comply with the expectations for legislation, policy, regulations and guidance that are set out in Element 1 of Volume 1 to JSP 816 (this JSP).

Purpose and expectations

6. This element ensures that the Defence Organisation identifies and communicates the requirements of legislation, policy, regulation and guidance surrounding environmental protection (EP). Leadership should set out how EP contributes to their organisation's success and the achievement of their objectives. This should inform and support a framework for making balanced decisions at all levels both within the organisation and across other Defence Organisations.

E3.1 The Defence Organisation has mechanisms in place to identify and maintain its environmental compliance obligations.

E3.2 The Defence Organisation has mechanisms in place to comply with all relevant Defence Environmental Management expectations.

E3.3 The Defence Organisation's policy and guidance is consistent with Defence EMS and avoids duplication.

E3.4 The Defence Organisation has mechanisms in place to communicate with internal and external stakeholders the requirements to comply with environmental legislation, Defence policy and guidance and Defence regulations.

E3.5 Policies and guidance are reviewed regularly to reflect any significant changes.

E3.6 The Defence Organisation has a process in place to manage exemptions from statute, and exemptions / waivers / concessions from Defence regulation.

Legislation and policy

7. Within the UK, Defence is required to comply with all applicable EP legislation and any additional requirements arising from international treaties and protocols to which the UK is a signatory. It will comply with all Acts of Parliament as interpreted by the relevant regulations, rules and orders, except where it can demonstrate that it would be prejudicial to national security to do so. This includes legislation giving effect to the UK's international obligations. As Defence operates across national boundaries, we need to be aware of our international obligations.

8. Devolved Administrations have the right to bring forward their own EP legislation. Within the UK there are four differing regulatory regimes for environmental protection; the differences can be subtle, but the impact of non-compliance may be significant.

9. In accordance with the SofS's policy statement, when deployed overseas, Defence will comply with the laws of host states, where they apply. Where such requirements fall short of UK requirements, Defence commits to apply environmental standards at least as good as those required by UK legislation, so far as it is reasonably practicable to do so. In cases where UK and overseas laws or regulations conflict, organisations should consult with MOD legal to discern an appropriate response.

10. Any questions regarding the application of EP laws to visiting forces in the UK, or to UK Defence personnel who are operating overseas under a Status of Forces Agreement (SOFA), should be directed to MOD Legal Advisers through their chain of command.

The Environment Act: Strategic Principles

11. The [Environment Act 2021](#) outlines a new and ambitious domestic framework for environmental governance in response to an urgent and clear scientific case, the increasing public demand and required action to address environmental challenges.

12. Embedded in law throughout this Act, policy making that seeks to prevent or minimise environmental damage will be promoted by five internationally recognised environmental principles: the **integration principle, prevention principle, precautionary principle, rectification at source principle and polluter pays principle**. The Environmental Principles Policy Statement delineates the proportionate interpretation and application of the principles for Ministers of the Crown. The Defence organisation should ensure that the five environmental principles are embedded in their EMS and policy making.

Compliance obligations

13. Compliance obligations can result in risks and opportunities that need to be addressed. Defence Organisation leaders should establish and maintain a process to identify compliance obligations that are related to the environmental aspects of its activities. This process should enable the MOD to consider and prepare for new or changing needs and expectations, so that preparatory action can be taken, as appropriate, to maintain conformity. They should also consider how planned or new developments and new or modified activities can affect its compliance status.

14. Defence Organisation leaders should ensure that appropriate information about compliance obligations is communicated to persons working under the MOD's control (including external providers, such as contractors or suppliers) whose responsibilities relate to, or whose actions can affect, fulfilment of compliance obligations.

15. There is a wide range of environmental legislation covering air, water, land, waste, natural resources, flora, fauna and human activity which have the potential to impact on Defence. Such requirements can often be complex both individually and collectively and because of the unique position of Defence and the need to maintain outputs including Operational Capability. Defence's environmental protection compliance obligations can be found throughout differing levels of legislation.

Defence EP policy

16. The Director LUC&S is responsible for developing and maintaining effective HS&EP policies and guidance on behalf of the SofS for Defence. These policies are published in JSPs or Defence Instructions and Notices (DINs). [JSP 418](#) (Management of

Environmental Protection in Defence) is the JSP that covers the arrangements for complying with EP law.

17. Defence EP policy provides the direction that must be followed to help Defence comply with EP law. It also provides guidance on the processes to be applied in discharging their duties of care required by law and best practice that should be followed to help Defence to apply the policy. Defence must make sure that EP policy is being followed and put into practice effectively as part of their overall assurance activity.

18. The Director LUCC&S leads on the policy review process to make sure Defence EP policy remains in line with the relevant UK EP legislation. The Defence Organisation provides the Director LUCC&S with resources and expertise for developing Defence EP policy as part of the stakeholder consultation process. Views and input from SMEs and personnel are essential to make sure that the Defence Organisation's requirements are considered in new and emerging EP legislation or Defence policy and the potential impact that this may have on the capabilities of the organisation, its personnel and those working on behalf of the organisation, for example, contractors.

19. The Defence Organisation may own and maintain specific EP policy that is contained in their own publications. Policy owners are responsible for making sure that any specific EP policy is written in line with this JSP.

20. The Defence Organisation should:

- a. proactively identify and incorporate good practice from external sources, supply chain, and other relevant bodies when developing new EP policy, guidance and processes.
- b. monitor existing policy, guidance and processes to make sure they are operating effectively.
- c. comply with all Defence EP policy and regulations and be able to demonstrate that compliance goes above and beyond the minimum requirements where reasonably practicable with an added focus on continual improvement.
- d. inform the directorate via mailbox if they become aware of relevant changes to legislation, incidents or other triggers which would require Defence EP policy to be updated.

Compliance with EP legislation and policy

21. The Defence Organisation must make sure that EP policy is complied with and provide assurance of this; its use must be guaranteed. As part of their overall assurance activity Defence must make sure that EP policy is being followed and put into practice effectively.

22. Defence must notify the Director LUCC&S if they are permanently unable to comply with (or keep to) parts of any EP policy. In such circumstances, the head of the relevant Defence Organisation must send a detailed request to apply an 'alternative acceptable means of compliance' for specific parts of the policy, giving the reasons for the request, to Director LUCC&S. They must also be notified if there are any relevant changes to legislation, incidents or other triggers which would require EP policy to be updated. The

process of tracking the legislation in order to influence Defence's response is carried out through tools such as the Defence Legislation Support Tool which is managed by the DSA.

23. Defence must operate within the confines of the law. Exemption from legislation may still be granted but only in circumstances where it is absolutely essential to maintain operational capability, or in the interest of National Security. The scope and demands of environmental legislation continue to increase, imposing stricter limits on negative impacts such as air emissions, effluent discharges, noise, and waste.

24. There are no formal legislative requirements for EMSs in UK law. However, within the Environmental Permitting Regulations 2016 core guidance document (Chapter 9) it is recommended sites should have an EMS in place. Environmental Regulators may refuse to grant a permit if an operator's management system is deemed inadequate.

25. The Specialist Training School at [RAF Halton](#) provides training in implementing Environmental Management Systems and Environmental Auditing, also Cranfield University offers POEMS training for acquisition, which are tailored towards MOD sites and policy.

Regulation and statutory regulators

Statutory EP regulation

26. Defence activities in the UK are subject to EP legislation, unless covered by a disapplication, exemption or derogation (DED). The regimes operated by statutory regulators are dependent on the legislation that empowers them, and there is considerable variety. In general, activities with the highest consequences, should there be a failure, attract the greatest intervention from statutory or Defence Regulators, many of whom 'licence' or 'permission' activities. In keeping with the Regulators' Code, Statutory Regulators provide advice where they decide it is appropriate. Statutory Regulators may also investigate occurrences as part of their enforcement role and these investigations are used to support enforcement action.

27. Individual environmental protection legislation refers to terms such as 'As Low As Reasonably Achievable', 'Best Available Techniques', Best Practicable Environmental Option.

28. All have subtle variations of meaning and application. Where establishments undertake defence activities requiring permits or authorisations under statutory regulations the appropriate Statutory Regulator or statutory guidance for the activity will be able to advise on the applicable risk management technique to be utilised.

29. Statutory Regulators have enforcement powers granted to them by legislation. Whilst varied in scope (see relevant statutory regulators publications), common elements are the ability to issue Improvement Notices, Prohibition Notices (or withholding or withdrawing a licence, permission or permit, either fully or in part, where an activity is or is to be licensed, permissioned or permitted) or prosecution in criminal courts.

30. Defence as a Crown Body has immunity from prosecution and the enforcement powers of statutory regulators are modified to recognise this. Although the UK Statutory Environmental Regulator cannot take criminal enforcement action against the Crown, they can apply to the High Court for a declaration that any act or omission of the Crown is unlawful. This can have major detrimental impact on Defence's licence to operate and

reputational damage and should be avoided through the application of legally compliant and effective environmental management.

31. Armed Forces personnel are additionally subject to Military Law and may be prosecuted if it is alleged that they have committed a disciplinary offence. If it is alleged that gross negligence or the failure of a Duty Holder (safety), Commanding Officer or Head of Establishment to address or refer HS&EP issues within their AoR has occurred, disciplinary action under the Armed Forces Act or Civil Service Code of Conduct may be taken.

32. The Statutory Regulators and environmental advisory bodies who have powers in respect of certain Defence activities in the UK include (the list is not exhaustive):

- a. Environment Agency (EA).
- b. Scottish Environment Protection Agency (SEPA).
- c. Natural Resources, Wales (NRW).
- d. Northern Ireland Environment Agency (NIEA).
- e. Maritime & Coastguard Agency (MCA).
- f. Office for Nuclear Regulation (ONR).
- g. Local Authorities (LAs).
- h. HSE (for Great Britain).
- i. Health & Safety Executive for Northern Ireland (HSENI).

33. Co-ordinated by Director LUCC&S the MOD maintains Memorandum of Understanding (MoU) with the EA, SEPA and Natural England. These agreements help standardise interactions between the statutory regulators the Department as a whole; in certain areas the MoU provides interpretation of the regulator's responsibilities in Defence.

Disapplication, Exemptions and Derogations (DEDs)

34. Environmental regulation, assurance and enforcement are the activities conducted by regulators. Defence is required to comply with UK EP statutory requirements and is regulated by statutory bodies such as the Environment Agency etc.

35. It is essential that Defence is aware of and can appropriately influence emerging legislation and consider the potential for consequential constraints on Defence capability. Awareness of potential changes to legislation safeguard those circumstances where the protection of Defence interests may require the seeking of a DED.

36. Where it is identified that a DED may be required in either existing or proposed legislation and can be justified for overriding reasons of national security it may be possible for Defence to secure such a clause. If this need is identified Defence organisations through D-LUCC&S may be able to engage with the lead Department of State to explore whether appropriate DEDs can be included in the existing/proposed legislation. This process must be viewed as the last resort.

37. Many extant pieces of legislation do contain disapplications, exemptions, or derogations (referred to in policy as 'DEDs'), which can apply to MOD activities. The use of DEDs are a last resort and compliance with legislation, policy, regulations and guidance should be sought with due diligence before considering DEDs in line with SoS Policy Statement.

38. SofS's Policy Statement reinforces the requirement for Defence to comply with UK HS&EP legislation, (which includes legislation giving effect to the UK's international obligations). However, as a Department of the Crown, Defence has immunity from prosecution and there are provisions that allow total disapplication, specific disapplication, exemption or derogation from legislation:

- a. a non-application of legislation is where an entire set of statutory requirements do not apply to MOD.
- b. disapplications from specific parts of statutory requirements (e.g. Environmental Protection Act 1990, Explosive Regulations 2014).
- c. provisions within legislation for exemptions to be granted from specific requirements in recognition of a Defence imperative permits the SofS's to exempt the Department from any or part of the Act. Other EP regulations alternatively specify the exemption in the interests of national security.
- d. derogations are a lessening of a statutory requirement for justifiable practical or operational reasons.

39. **Visiting Forces.** Under customary international law, Visiting Forces are not bound by domestic legislation: This is described in the Visiting Forces Act 1952. Visiting NATO Forces are subject to the Articles of the NATO Status of Forces Agreement (SOFA) 1951; of specific relevance to health, safety and environmental protection are Articles II, VII and IX. There is no similar agreement for non-NATO forces who visit, although certain aspects may be addressed in a Memorandum of Understanding; in these circumstances, normal protocol is applied bearing in mind that such Visiting Forces are covered by state immunity. USVF (United States Visiting Forces) are not exempt in terms of EP incidents and will liaise with the HoE (RAF CC Liaison) or the Defence Infrastructure Organisation as the responsible landowner. Interface arrangements have been agreed between the Environment Agency and United States Visiting Forces (USVF); these form an annex to the Ministry of Defence / Environment Agency Memorandum of Understanding.

Defence EP regulation

40. The Director General Defence Safety Authority (DG DSA) owns, develops and maintains Defence HS&EP regulations on behalf of the SofS, through the Permanent Secretary. DG DSA is authorised through the DSA Charter to empower suitably qualified and experienced Crown servants to regulate HS&EP activity across Defence. This broadly falls into five areas:

- a. where Defence has a DED from UK statutory requirement.
- b. where there is a delegation from the statutory regulator to Defence and/or is directed by authorised local authorities.

- c. where the Director LUCC&S or a Defence organisation has requested, and the DSA has accepted, that an area of Defence activity is not sufficiently regulated.
- d. where no statutory requirement exists for a specific Defence activity, but a lesson learned within Defence identifies the need for regulation.
- e. where activities considered as high risk and when the DSA has decided the combination of the statute and statutory regulator does not provide sufficient regulation as is appropriate for meeting specific military activities, or for all activities undertaken overseas, unless these are covered by a host nation's arrangements.

41. DSA is required to have in place Defence regulators to provide regulation, assurance and enforcement in order to comply with the SofS's Policy Statement. Defence is to make sure that Defence environmental regulations are followed, it should be part of their overall assurance activity to make sure that it is being followed and put into practice effectively.

42. There are eight Defence Regulators which are as follows, their detailed and specific responsibilities are described in their respective Defence Regulations:

- a. Defence Environmental Protection Regulator (DEPR) has responsibility for assurance, regulation and enforcement, as well as coordination of EP reporting, to deliver a coherent and consolidated view on environmental protection compliance across Defence.
- b. Defence Fire Safety Regulator (DFSR) regulates fire safety and Fire & Rescue Services.
- c. Defence Land Safety Regulator (DLSR) regulates land systems, fuels, gases, movements and transport and adventurous training.
- d. Defence Maritime Regulator (DMR) regulates for Defence Maritime Activity, which includes MOD Shipping, Ports and Harbours and Defence Diving.
- e. Defence Medical Safety Regulator (DMSR) regulates patient and staff safety across Defence delivered healthcare.
- f. Defence Nuclear Safety Regulator (DNSR) regulates nuclear activities and radiological safety of the Defence Nuclear Enterprise.
- g. Defence Ordnance, Munitions and Explosives (OME) Safety Regulator (DOSR), regulates ordnance munitions and explosives, land ranges safety policy and major accident control regulations (MACR).
- h. Military Aviation Authority (MAA) regulates all aspects of air safety across Defence.

43. Whilst DEPR ensures coherent and consolidated view on environmental protection compliance across Defence; other DSA regulators own EP Defence regulations.

Communication with stakeholders and collaborative efforts to comply with EP legislation

44. Good environmental management relies on regular engagement with internal and external stakeholders to communicate and address EP issues and drive continual improvement.

45. The Defence Organisation and chains of command should make sure that engagement exists across all levels of the organisation and that appropriate EP forums and meetings are put in place, for example stakeholder committees, and review groups. Communications and stakeholder engagement are covered more in Element 11 of this JSP.

46. Defence Organisations should consider the attendance and the frequency appropriate to the forum or meeting. In addition to programmed EP meetings, Defence Organisations should conduct 'extraordinary' EP meetings in response to a major environmental event to make sure that impacts are being effectively managed, lessons learnt and communicated effectively.

47. In addition to dedicated SHEF meetings, other senior leader committees and management boards are to have EP as a standing agenda item to make sure that key EP issues are brought to the attention of the senior leaders and to report on performance and compliance with EP legislation, Defence policy and regulations.

External communication

48. Communication with external interested parties can be an important and effective tool for environmental management. Defence should take into account communication requirements associated with its compliance obligations and its communication processes, and communicate information relevant to the EMS externally, as required. It can also consider whether to communicate externally to its interested parties about its environmental aspects, including those that relate to the distribution, use and disposal of products.

49. Defence should have in place a process for communicating with external interested parties in case of emergency situations that could affect or concern them. This process for external communication should be effectively documented.

50. Communications to external interested parties regarding the organisation's EP should be accurate, reliable and verifiable. Claims related to EP can, for example, be in the form of sustainability reports, promotional literature or advertising campaigns. Defence should consider approaches to verify its EP claims (e.g. in appraising the state of its SSSIs).

Element summary

51. Defence Organisation leaders should ensure that their organisations:

- a. have mechanisms in place to identify and maintain compliance with EP legislation.
- b. have mechanisms in place to comply with all relevant Defence EP policy and regulations.

- c. policy and guidance is consistent with the Defence EMS and avoids duplication.
- d. have mechanisms in place to communicate with internal and external stakeholders the requirement to comply with EP legislation, Defence policy and guidance, and Defence regulations.
- e. policy and guidance is reviewed regularly to reflect any significant changes.
- f. have a process in place to manage exemptions from statute, and exemptions/ waivers/concessions from Defence regulation.

Plan- Do- Check- Act- (PDCA) Cycle

52. This diagram is designed to illustrate where this, and all the elements of JSP 816, fit into the PDCA cycle.

