



Ministry  
of Defence

# JSP 815

## Element 3: Legislation, Policy, Regulations and Guidance



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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 Published	Text Affected	Authority
1.0	Dec 22	BETA version for consultation	Dir HS&EP
1.1	7 Jun 23	Final version	DDS
1.2	10 Sep 24	Annual revision and combined element and assurance framework	DDS

## Terms and definitions

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

### 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.

## 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 requirements of legislation, regulation, policy and guidance that are set out in this Element.

## Purpose and expectations

2. This element is to assist Defence organisations to identify and communicate the requirements of legislation, policy, regulation and guidance surrounding safety in Defence and to assist Defence organisations to put in place good practices and drive continual improvement within their organisation.

## Legislation and policy

### Compliance with safety legislation

3. Within the UK, Defence is required to comply with all applicable safety legislation unless covered by a disapplication, exemption or derogation (DED). This includes legislation giving effect to the UK's international obligations. Most safety law applies across GB, with complimentary statute in the Northern Irish assembly (NI).

4. In addition, the Health and Safety at Work etc Act 1974 (HSWA) requires employers to "prepare and as often as may be appropriate, revise a written statement of his general policy with respect to the health and safety at work of his employees". For these purposes, the Secretary of State (SofS) for Defence is regarded as the employer and complies with this duty through a Policy Statement. The SofS's Policy Statement identifies the key requirements and high-level responsibilities for Health Safety and Environmental Protection (HS&EP) which applies to all Defence activities and personnel, as such the senior leader of each Defence organisation must set down and implement their safety management arrangements through a Safety Management System (SMS) for activities under their area of responsibility.

5. In accordance with the SofS's Policy Statement, when deployed overseas, Defence will comply with the laws of host states, where they apply, and where such requirements fall short of UK requirements, Defence commits to apply UK standards so far as it is reasonably practicable to do so.

6. Domestic legislation will not always extend beyond the UK's geographical limits. However, there are exceptions where UK legislation expressly extends beyond that. For example, the Health and Safety at Work etc Act 1974 (Application outside of Great Britain) Order 2013 sets out several situations where the jurisdiction of safety law is extended, including to the territorial sea and offshore installations. Furthermore, the application of the safety legislation to UK flagged vessels will depend on the ship's role and location. For example, the Merchant Shipping Act 1995, which imposes obligations to do with safety, health and welfare, generally applies to the Royal Fleet Auxiliary (RFA). If further clarification is required, then advice should be sought from the Defence organisation chain of command and where appropriate referred to the relevant Defence regulator or the Directorate of Defence Safety (DDS).

7. Any questions regarding the application of safety 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.

## Defence safety policy

8. The Director of Defence Safety (DS) is responsible for developing and maintaining effective Safety policies and guidance on behalf of the SofS for Defence. These [policies](#) are published in Joint Service Publications (JSPs) or Defence Instructions and Notices (DINs). JSP 815 (this JSP) is the overarching Defence Safety Management System (SMS) Framework and JSP 375 (Management of Health and Safety in Defence) is the JSP that covers the basic arrangements for complying with safety law. Each chapter covers a separate hazard or work environment in which health and safety measures are needed to protect employees.

9. Defence safety policy provides the direction that must be followed to help Defence organisations comply with (keep to) safety law, primarily the Health and Safety at Work etc Act 1974 (HSWA) and its underpinning statutory regulations. It also provides guidance on the processes to be applied in discharging their duties of care required by law and good practice that should be followed to help Defence organisations to apply the policy.

10. Defence organisations are to develop their own SMS to reflect the safety policy requirements of JSP 815 - Defence Safety Management System (Framework) and JSP 375 - Management of Health and Safety in Defence. As part of their overall assurance activity Defence organisation's must make sure that Defence safety policy is being followed and put into practice effectively and in line with their own SMS. Defence organisations are to notify the Director DS if they are permanently unable to comply with any parts of Defence safety policy. In such circumstances, the head of the relevant Defence organisation is to send a detailed request to apply an 'alternative acceptable means of compliance' for specific parts of the policy to the Director DS, as set out in [JSP 375 - Directive & Guidance](#).

11. The Director DS leads on the policy review process to make sure Defence safety policy remains in line with the relevant UK safety legislation. The Defence organisations provide the Director DS with resources and expertise for developing Defence safety 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 safety 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.

12. The default position should be that in keeping with MOD's policy simplification agenda, Defence organisations do not seek to duplicate Defence policy or regulation. Where Defence organisations feel that additional guidance is required, this should be discussed with DDS and/or DSA as appropriate with a sound justification provided. Defence organisations are responsible for making sure that any organisation-specific safety guidance is written in line with the overarching SMS and does not conflict with any Defence policy or regulations.

13. Defence organisations should:

- a. proactively identify and incorporate good practice from external sources, supply chain, and other relevant bodies when developing new safety guidance and processes;
- b. monitor existing policy, guidance and processes to make sure they are operating effectively;

- c. comply with all Defence safety policy and regulations and assure its use as part of their overall assurance activity, with an added focus on continual improvement; and
- d. inform the Director DS if they become aware of any relevant changes to legislation, incidents or other triggers which would require Defence safety policy to be updated.

## Regulation and statutory regulators

### Statutory safety regulation

14. Defence activities in the UK are subject to safety legislation (unless covered by a DED) and 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, will attract the greatest intervention from statutory or Defence regulators, many of whom 'license' or 'grant permission' for activities to be undertaken. In keeping with the Regulators' Code, statutory regulators provide advice where they decide it is appropriate. Statutory regulators may also investigate safety occurrences as part of their enforcement role and these investigations are used to support enforcement action.

15. Statutory regulators have enforcement powers granted to them by legislation. Whilst varied in scope (see relevant statutory regulator's publications), common elements are the ability to issue Improvement Notices, Prohibition Notices (or withholding or withdrawing a license, 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. However, because Defence as a Crown Body has immunity from prosecution, the enforcement powers of statutory regulators are modified to recognise this. Crown Censures can be issued where a statutory regulator believes that the safety occurrence would have led to a prosecution with a realistic prospect of conviction.

16. Where a Defence activity conducted by Crown servants (i.e. members of the Armed Forces or MOD civilians) is alleged to have breached the law, the statutory regulators' powers are, in general, modified to issuing a non-statutory Crown Improvement Notice or Crown Prohibition Notice or a Crown Censure (in lieu of a prosecution where it is considered to be in the public interest).

17. Importantly, where a Crown Censure is issued by a statutory regulator (for example the Health and Safety Executive (HSE)), it is the expectation that this is received in person at the Crown Censure hearing by the relevant Defence organisation. The exception to this is that a Crown servant can be prosecuted in circumstances where it is alleged that the offence has been committed with their consent or connivance or has been attributable to their neglect. However, a regulator is unlikely to seek to prosecute a Crown servant in place of the MOD. Crown servants remain subject to the criminal law and may also be prosecuted if it is alleged that they have committed a criminal offence, such as manslaughter. Furthermore, the MOD, as a corporate entity, may also face prosecution under the Corporate Manslaughter and Corporate Homicide Act 2007 (subject to certain exceptions relating to military activities set out under section 4 of the Act).

18. Armed Forces personnel are additionally subject to Military Law [JSP 830 Manual of Service Law](#) and may be prosecuted if it is alleged that they have committed a disciplinary offence. If it is alleged and subsequently proven that gross negligence or the failure of a Commanding Officer, Head of Establishment or Duty Holder to address or report HS&EP issues or safety occurrences within their AoR, disciplinary action may be taken against that individual where there is a breach under the Armed Forces Act 2006 or Civil Service Code of Conduct.

19. The statutory safety regulators who have powers in respect of certain Defence activities in the UK include (this list is not exhaustive):

- a. Health & Safety Executive (HSE) for Great Britain.
- b. Health & Safety Executive for Northern Ireland (HSENI).
- c. Maritime & Coastguard Agency (MCA).
- d. Driver & Vehicle Standards Agency (DVSA)
- e. Office for Nuclear Regulation (ONR).
- f. Local Authorities (LAs).

### **Disapplication, exemptions and derogations (DEDs)**

20. 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.

21. 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, or if there is a gap, in UK legislation, with agreement of the lead Department of State, appropriate DEDs can be included in the proposed legislation. Retrospective applications for a DED to existing legislation can also be applied for in certain circumstances.

22. DEDs are defined as:

- a. **Derogation** – is a relaxation of a statutory requirement, to allow the law to be applied differently for justifiable practical or operational reasons. A derogation occurs where law is 'suspended' in certain circumstances, for example derogating from parts of human rights law when there is a threat of terrorism.
- b. **Exemption** – is a formal written authorisation for all or a part of specific legislation to not apply. An exemption creates the ability to 'step outside' of the law in certain circumstances (usually exemptions require the direct authority of the SofS, however some are done on behalf of the SofS through an exemption committee). Certain provisions in the legislation allow the SofS to exempt a person or class of persons from parts of its requirements by issuing an exemption certificate. The process for applying for an exemption certificate is contained in Annex B to this JSP.

**Note:** An exemption from legislation should not be confused with exemptions or waivers from Defence regulations, no exemption from Defence regulations can be obtained without the explicit approval of the relevant DSA regulator.

c. **Disapplication** – is where all or part of specific legislation does not apply to Defence (it is disapplied). For a Disapplication, legislation will normally state that the legal requirement does not apply to Defence and on most occasions, Defence will have put in place policy or regulation to define the Defence requirement. In the absence of a relevant Defence policy or Defence regulation, then the intent of the legislation is to be followed as if it were to apply to Defence.

23. Where there is a DED from UK Safety legislation or where Defence activities are conducted overseas, the SofS 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 against Defence regulations where there are DEDs. Defence regulators will consult with the key stakeholders from their respective domains when reviewing and updating Defence regulations.

### **Defence safety regulation**

24. The Director General of the Defence Safety Authority (DG DSA) owns, develops and maintains [Defence safety regulations](#) on behalf of the SofS. DG DSA is authorised through the DSA Charter to empower suitably qualified and experienced Crown servants to regulate safety activity across Defence. Defence regulations can be put in place for one or more of the following five reasons:

- a. Where Defence has a disapplication, exemption or derogation (DED) from UK statutory requirements.
- b. Where the Defence regulator has a delegation from the statutory regulator or is directed by authorised local authorities.
- c. Where the Director DS or a Defence organisation has requested, and the DSA has accepted, that an area of Defence activity is not sufficiently regulated.
- d. Where there is a gap in UK legislation that needs to be filled when considering Defence activity or following lessons identified.
- e. Where 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.

25. 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 organisations are to make sure that Defence safety regulations are followed, it should be part of their overall assurance activity to make sure that Defence safety regulation is being followed and put into practice effectively.

26. 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 environmental protection (EP) reporting, to deliver a coherent and consolidated view on EP 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 Services 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); and
- h. Military Aviation Authority (MAA) regulates all aspects of air safety across Defence.

### **Communication with stakeholders and collaborative effort to comply with safety legislation**

27. Good safety management relies on regular engagement with internal and external stakeholders to communicate and address safety issues and drive continual improvement. Defence organisations and chains of command should make sure that engagement exists across all levels of the organisation and that appropriate safety forums and meetings are put in place, for example stakeholder committees, review groups and consultation with recognised trades unions or staff representatives. Communications and stakeholder engagement are covered more in Element 11 of this JSP.

28. Defence organisations should consider the attendance and the frequency appropriate to the forum or meeting. In addition to programmed safety meetings, Defence organisations should conduct 'extraordinary' safety meetings in response to a major safety event to make sure that risks are being effectively managed, lessons learnt and communicated effectively. In addition to dedicated SHEF meetings, other senior leader committees and management boards are to have safety as a standing agenda item to make sure that key safety issues are brought to the attention of the senior leaders and to report on performance and compliance with safety legislation, Defence policy and regulations.

### **Combat Immunity**

29. 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.

30. Combat Immunity 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.



31. Defence organisations should be able to demonstrate that appropriate governance arrangements are in place for operations to which Combat Immunity could be applied. In the case of *Smith & Others v the Ministry of Defence*<sup>1</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 assurance framework**

32. The focus of this element requires that Defence organisations identify and communicate the requirements of legislation, policy and guidance surrounding safety. Leadership sets out how safety contributes to the organisation's success and achievement of objectives and puts in place a framework for making balanced decisions at all levels both within the organisation and across other Defence organisations.

33. The expectations and performance statements for this element are set out in the following pages.

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<sup>1</sup> Case citation: [2013] UKSC 41.

## Expectations and performance statements

### Element 3: Legislation, Policy, Regulations and Guidance

#### The Expectations in this element are:

**E3.1** The Defence organisation has mechanisms in place to identify and maintain compliance with safety legislation.

**E3.2** The Defence organisation has mechanisms in place to comply with all relevant Defence safety expectations.

**E3.3** The Defence organisation's policy and guidance is consistent and does not conflict with the Defence SMS Framework.

**E3.4** The Defence organisation has mechanisms in place to communicate with internal and external stakeholders the requirement to comply with safety 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.

#### Documents often associated with this element:

- Agenda and minutes of the safety committee meetings (Strategic, Tactical and Working)
- Command / Corporate plan
- Communications Plan (for safety information cascade)
- Compliance Registers
- Defence Codes of Practice (DCOPs) & other level 4 documentation
- Defence organisation business plans
- Defence organisation Operating Model
- Defence organisation SMS
- Exemptions log and process
- Leadership sign-off for policy
- Legislation review and implementation process
- Legislation risk register
- Management Plans
- Policy change process
- Policy tracker
- Risk register review process
- Role holder for horizon scanning and policy update

**Expectation 3.1** The Defence organisation has mechanisms in place to identify and maintain compliance with safety legislation.

Unsatisfactory	Limited	Moderate	Substantial
<ul style="list-style-type: none"> <li>• New safety legislation is only considered on a reactive basis once it has become a legal requirement</li> </ul>	<ul style="list-style-type: none"> <li>• Some but not all upcoming changes to safety legislation are anticipated with limited processes in place to assess the likely impact of changes.</li> </ul>	<ul style="list-style-type: none"> <li>• The Defence organisation identifies and anticipates new safety legislation and looks ahead to anticipate the potential impact on activities and standard operating procedures. Workforce, contractors and suppliers likely to be affected by the legislation changes are identified and consulted.</li> </ul>	<ul style="list-style-type: none"> <li>• The Defence organisation is aware of and engages with the consultation phases of emerging safety legislation to represent the requirements of its workforce, contractors and supply chain. It considers the potential impact that new legislation may have on its capabilities, both in the UK and overseas.</li> </ul>

**Expectation 3.2** The Defence organisation has mechanisms in place to comply with all relevant Defence safety expectations.

Unsatisfactory	Limited	Moderate	Substantial
<ul style="list-style-type: none"> <li>The Defence organisation cannot effectively demonstrate compliance with Defence safety policy and regulations.</li> </ul>	<ul style="list-style-type: none"> <li>The Defence organisation can only demonstrate some, but not enough compliance with Defence safety policy and regulations.</li> </ul>	<ul style="list-style-type: none"> <li>The effective operation of well-designed processes and controls demonstrates some compliance with Defence safety policy and regulations.</li> <li>Leadership reviews management information about compliance with Defence safety policy and regulations.</li> </ul>	<ul style="list-style-type: none"> <li>Leadership can demonstrate robust compliance that goes above and beyond the minimum requirements of Defence safety policy and regulations. It proactively identifies and incorporates good practice from external sources, supply chain, and other relevant bodies.</li> </ul>

**Expectation 3.3** The Defence organisation’s policy and guidance is consistent and does not conflict with the Defence SMS Framework.

<b>Unsatisfactory</b>	<b>Limited</b>	<b>Moderate</b>	<b>Substantial</b>
<ul style="list-style-type: none"> <li>Defence organisation’s safety policy and guidance is poorly developed, or non-existent or major levels of non-compliance identified.</li> </ul>	<ul style="list-style-type: none"> <li>Defence organisation’s safety policy and guidance is established and operating effectively except for some areas where significant weaknesses have been identified</li> </ul>	<ul style="list-style-type: none"> <li>Defence organisation’s safety policy and guidance is established and operating effectively with some minor weaknesses.</li> </ul>	<ul style="list-style-type: none"> <li>Defence organisation’s safety policy and guidance are mature and operating effectively, with an added focus on continual improvement.</li> </ul>

**Expectation 3.4** The Defence organisation has mechanisms in place to communicate with internal and external stakeholders the requirement to comply with safety legislation, Defence policy and guidance and Defence regulations.

Unsatisfactory	Limited	Moderate	Substantial
<ul style="list-style-type: none"> <li>• Safety legislation, Defence policy and regulations and the Defence organisation’s policy and guidance are not well understood beyond organisation safety specialists. There is little or no evidence that their importance has been communicated across the organisation.</li> <li>• Stakeholders do not appear to be aware of the safety legislation, Defence policy and regulations and their organisation’s policy and guidance, or why they are relevant to organisation activities.</li> </ul>	<ul style="list-style-type: none"> <li>• The importance of safety legislation, Defence policy and regulations and the Defence organisation’s policy and guidance is communicated within the organisation, but workforce have inconsistent understanding and interpretation of what it means for them.</li> <li>• The content and purpose of safety legislation, Defence policy and regulations and their organisation’s policy and guidance are not widely understood or applied consistently.</li> </ul>	<ul style="list-style-type: none"> <li>• The importance of safety legislation, Defence policy and regulations and the Defence organisation’s policy and guidance is clearly communicated across the organisation.</li> <li>• Amendments and updates are communicated on a timely basis, with leadership providing clear direction on how the organisation should prepare for new requirements.</li> </ul>	<ul style="list-style-type: none"> <li>• Safety legislation, Defence policy and regulations and the Defence organisation’s policy and guidance are well communicated to stakeholders.</li> <li>• The Defence organisation works with internal and external stakeholders to drive continual improvement in compliance with safety legislation, Defence policy and regulations and their organisation’s policy and guidance.</li> </ul>

**Expectation 3.5** Policies and guidance are reviewed regularly to reflect any significant changes.

Unsatisfactory	Limited	Moderate	Substantial
<ul style="list-style-type: none"> <li>• Safety policies and guidance are out of date, and there is little or no evidence that suitable mechanisms in place for them to be updated regularly.</li> </ul>	<ul style="list-style-type: none"> <li>• The majority of safety policies and guidance are up to date. There are mechanisms in place to involve appropriate stakeholders in some ad-hoc consultation and policy review after specific safety events or changes in the external environment, but the approach is inconsistent.</li> </ul>	<ul style="list-style-type: none"> <li>• Leadership recognises the importance of reviewing the policies and guidance proactively and at least annually, consulting stakeholders across the Defence organisation.</li> <li>• There is an effective change management process in place which identifies and manages changes in safety policies and guidance and communicates the impact of changes to the workforce.</li> </ul>	<ul style="list-style-type: none"> <li>• Safety policies and guidance is reviewed with stakeholder involvement to drive continual improvement in safety performance.</li> </ul>

**Expectation 3.6** The Defence organisation has a process in place to manage exemptions from statute, and exemptions / waivers / concessions from Defence regulation.

Unsatisfactory	Limited	Moderate	Substantial
<ul style="list-style-type: none"> <li>There is little or no evidence that the Defence organisation have a process for applying for, or managing, exemptions from statute or exemptions / waivers / concessions from Defence regulations.</li> </ul>	<ul style="list-style-type: none"> <li>The Defence organisation has a process with significant weaknesses for applying for, and managing, exemptions from statute or exemptions / waivers / concessions from Defence regulations.</li> </ul>	<p>The Defence organisation has a methodical and documented process with minor weaknesses for applying for, and managing, exemptions from statute or exemptions / waivers / concessions from Defence regulations.</p>	<ul style="list-style-type: none"> <li>The Defence organisation has an SMS in place which includes a clear statement of the scope and remit of the system, including the jurisdiction(s) for which safety legislation will be applied in the case of conflicting guidelines. Clear principles and good practice are communicated with achievable safety policies and practices to be applied where there are gaps in legislative frameworks.</li> <li>The Defence organisation has a methodical and documented process that is operating effectively for applying for, and managing, exemptions from statute or exemptions / waivers / concessions from Defence regulations. The list of exemptions / waivers / concessions, and any additional measures required to maintain them, is kept under regular review.</li> </ul>