



**Date:** 07/05/2025

**Version:** 1.0

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**Comments:** Document first published

# Foreword

This document explains how the DSA conducts enforcement. 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 colleagues in the DSA and across Defence with 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 enhance operational capability through effective and independent Defence HS&EP regulation, assurance, enforcement, and investigation. The DSA derives its independence and authority from the DSA Charter.

Enforcement is a whole DSA effort involving:

- DSA Headquarters
- Defence Themed Assurance Branch (DTAB)
- Defence Accident Investigation Branch (DAIB)
- 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 enforcement activities on the above principles to ensure that enforcement is:

- **Targeted.** Regulatory activity is focused, through risk-based assurance plans, on those activities giving rise to the most serious risks or where hazards are least well controlled. Enforcement action is served to the person in the most appropriate position to control the risk.
- **Proportionate.** Any action taken by the regulator should be proportionate to the risks, accounting for circumstances particular to each case. The actual or

potential for harm will be considered when determining the seriousness of any non-compliance.

- **Consistent.** Enforcement action should be consistently and fairly applied. Consistency does not however mean uniformity; effective enforcement action should be bespoke to reflect the individual nature of each case, thereby ensuring consistent enforcement outcomes for regulated entities.
- **Transparent.** The recipient of enforcement action will be advised about what is expected of them and what they are to expect from the DSA. This includes distinguishing between mandatory requirements and good practice advice, being informed of on-going actions, and knowing what is expected to rectify any non-compliances.
- **Accountable.** The DSA regulators are accountable for their actions; meaning that enforcement action should be based on policies, standards and procedures that encourage efficiency, allow improvements to be made and mistakes to be avoided.

## Defence Regulation and Enforcement

**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. Defence policy which relates to Safety is authored and maintained by the Directorate of Defence Safety (DDS), whilst the Directorate of Levelling Up, The Union, Climate Change and Sustainability (D-LUCC&S) maintains oversight and responsibility for policy relating to Environmental Protection (EP). To ensure compliance, statutory bodies such as the Health and Safety Executive (HSE) and the Environment Agency (EA) may conduct enforcement activity against Defence.

**Defence regulations.** Defence regulations are put in place to manage risk, protect our personnel, reduce harm to the environment and preserve our operational capability. Defence can set regulations where: Defence has Disapplications, Exemptions or Derogations (DEDs) from legislation; the Regulator has a delegation from the Statutory Regulator and/or is directed by authorised local authorities; the Regulated Community has requested regulation and it is accepted by a Regulator that an area of Defence Activity is not sufficiently regulated; there is a “gap” in legislation that needs to be “filled” when considering Defence Activity or following Lessons Identified; or activities are considered as high risk and the DSA decides that the Statutory Regulator does not do enough to assure compliance. This ensures full compliance with the Secretary of State for Defence's policy statement for HS&EP, and produces outcomes that are, as far as reasonably practicable, at least as good as those required by UK legislation. The DSA Charter empowers the DSA's regulators to assure compliance with and, when necessary, enforce these regulations.



**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 JSP 815 (Defence Safety Management System) and JSP 816 (Defence Environmental Management System). Where a statutory regulator has evidence of non-compliance with statutory regulations, they may issue notices as laid down in law and summarised in a General Agreement or Memoranda of Understanding (MoU) with that body.

**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.

# DSA Enforcement Activity

Each DSA regulator maintains an Enforcement Management Model (EMM) to enable their teams to make enforcement decisions. The DSA regulators are generally aligned to their equivalent statutory regulator. The purpose of enforcement is to ensure those responsible:

- Act to deal immediately with serious risks.
- Achieve sustained compliance with Defence regulations.
- Are held to account for failing in their HS&EP duties.

Enforcement action, issued due to a non-compliance with a Defence Regulations, should be proportionate to the risk of harm and the urgency required to take corrective action. It is directed at the individual who, in the view of the regulator, is most appropriate to take corrective action to reduce the risk of harm and comply with Defence regulations. Enforcement is there to ensure that the immediate issue is dealt with and importantly that corrective action is conducted to prevent re-occurrence.

If an enforceable non-compliance is identified as part of assurance activity (for example, through an audit or inspection), then enforcement is the mechanism for recording and tracking resolution via the Regulator's enforcement trackers. This ensures a clear means of recording significant issues and their resolution. If the issue is resolved in a timely manner, this can be reported as a positive response and the enforcement can be closed but the enforcement must still be recorded as part of the activity. The records of enforcement also allow for trend analysis.

## Enforcement options

- **Corrective Action Requirement (CAR).** A CAR is issued to drive corrective action. CARs are normally linked to the outcomes of assurance activity and enable the recipient to work with the regulator to formulate targets to ensure compliance. Regulators may issue two levels of CAR (Level 1 and 2) based on the severity of a

non-conformity. The details of CARs are not routinely reported outside of the DSA.<sup>1,2</sup>

- **Improvement Notice (IN).** An IN is served by a regulator where they have identified that non-compliance with their Defence regulations exceeds that acceptable for a CAR, or the response to CARs is unsatisfactory and/or there are systemic compliance failures. Regulators can also issue an Urgent IN (UIN) where the level of risk associated with non-compliance is considered high and urgent corrective action is needed. UINs provide regulators with greater flexibility to enforce and escalate high risk or urgent non-compliances, without requiring activity to stop completely, as is mandated by Prohibit Notices (PNs). The details of INs are routinely reported outside of the DSA.<sup>3</sup>
- **Prohibit Notice (PN).** A PN is served by the regulator, after agreement with the Regulator Head, where they feel that the risk associated with an activity is too high for the activity to commence or continue.<sup>[1]</sup> **The DG is not required to endorse a PN but is to be informed at the earliest opportunity, to cohere the effect of aggregated pan-DSA enforcement activity.** A PN does not have to be attributed to non-compliance with Defence regulations; the trigger is the regulator's perception of the risk of harm. The PN requires the activity to cease while the corrective action is completed. The details of PNs are routinely reported outside of the DSA.<sup>[2]</sup>
- **Immediate Stop Notice (ISN).** An ISN can be issued either verbally or in writing, to immediately cease an activity that is already underway, when an auditor or inspector determines that there is an immediate risk to life or the environment. An ISN does not have to be attributed to non-compliance with Defence regulations; the trigger is the auditor or inspector's perception of the risk of harm. **The DG is not required to endorse an ISN but is to be informed at the earliest opportunity, to cohere the effect of aggregated pan-DSA enforcement activity.**

In response to enforcement action, the recipient should develop a Corrective Action Plan (CAP) and agree it with the regulator. The purpose of a Corrective Action plan is to eliminate the cause of a non-compliance and to prevent recurrence (ISO 9000 13.12.2). While the specific requirements of a CAP are detailed by the relevant regulator, the CAP should:

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<sup>1</sup> For Fire Safety, in accordance with National Fire Chiefs' Council guidance, DFSR will issue a *Deficiencies that Warrant an Action Plan* letter instead of a CAR. On completion of all the actions detailed within the letter, DFSR will issue a *Fire Safety Completion of Action Plan* letter.

<sup>2</sup> For Fire Safety, in accordance with UK Fire Safety legislation, DFSR may also issue an *Alterations Notice*. An Alterations Notice does not necessarily mean that there has been a failure to comply with UK fire safety legislation but is issued where DFSR considers that the premise constitutes a serious risk or may constitute a risk if changes are made.

<sup>3</sup> For Fire Safety, in accordance with UK Fire Safety legislation, DFSR will issue an *Enforcement Notice* instead of an Improvement Notice.

<sup>[1]</sup> For example, where there is a reasonably foreseeable risk of death, serious personal injury or risk of hazardous substances / pollution entering controlled environments (e.g. groundwater, protected areas or impact on protected species)

<sup>[2]</sup> For Fire Safety, in accordance with UK Fire Safety legislation, DFSR will issue a *Prohibition Notice* instead of a Prohibit Notice.

- Include clear reference to the original enforcement issued to allow this to be tracked.
- Identify the root cause of the non-compliances.
- Identify the immediate containment action(s).
- Identify the performance indicators to restore sustained compliance.
- Include the owner(s) and, if appropriate, the timeframes to complete the action(s).
- The DSA regulators will use the CAP as the baseline for assessing progress during their regular reviews of extant enforcement action.

The recipient of the enforcement action is required to demonstrate to the regulator that the required improvements have been made before the enforcement is lifted.

### Permissioning

The HSE define permissioning as a means to give 'permission' for certain work activities involving significant hazard, risk or public concern. For certain Defence activities, the DSA's regulators may include a requirement for permissioning of such activities.<sup>4</sup> Should a non-compliance be identified during the permissioning process, the regulator may issue enforcement action against the regulated entity, and/or withhold or withdraw permission until compliance has been achieved. Withholding permission until readiness review conditions are met (i.e. a standard hold point in the permissioning process) is not considered a form of enforcement.

### Operational imperative

Where a regulator has issued a PN, or the Duty Holder has identified that they are unable to deliver the required operational effect in a compliant manner, it may not be appropriate for the activity to cease immediately if there is an operational imperative. An Operational Commander<sup>5</sup> may decide to continue with operational activity where they judge that the operational benefits gained from a specific operational activity outweigh the high residual risk after mitigation. In arriving at such a decision, they should comply with the ALARP principle. Each Regulator may include a means to manage operational imperative within their EMM.

### Enforcement action against external organisations

It is acknowledged that it will not always be in the Service interest to impose a sanction which has the effect of terminating a commercial agreement; however, this remains a real and credible course of action in the event of serious and / or continuing non-compliance. If a DSA regulator considers suspending or revoking an approval the best course of action, this will be done in consultation with the MOD accountable person.

### Reviews, elevation and escalation

The DSA regulators conduct regular reviews of extant enforcement action to ensure that they remain appropriate to the current risk and that adequate progress is being made against an agreed CAP. Where the level of risk has changed, the regulator may change

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<sup>4</sup> Permissioning includes authorisation, certification and licencing. See DSA01.2 Assurance for detail.

<sup>5</sup> As authorised in a CDS Operational Directive.



the type of enforcement. Where the regulator is not satisfied with the progress being made, the issue can be escalated to DG DSA for further engagement at the appropriate level. This could be for either an individual enforcement action or where patterns of non-compliance are observed.

### Appeals

There may be occasions where the recipient does not agree with the enforcement action being taken; this could be based on the evidence used or the process followed. In these cases, informal engagement between the recipient and the regulator should be used in the first instance. If disagreement remains:

- The recipient should raise a written appeal with the regulator within 10 working days of the enforcement action being served.
- The regulator will then investigate the appeal and respond to the recipient within 20 working days of their appeal being received.
- If the recipient is not satisfied, the appeal may be escalated up their command/management chain to appeal to DG DSA. The appeal is to be raised in writing within 20 working days of the response to the original appeal being received by the recipient.
- DG DSA will investigate the appeal and respond within 20 working days of the appeal being received.

When appealing against enforcement action, any requirement to cease or modify activity remains extant while the appeal is being considered, unless an operational imperative exists.

### Recording and reporting

Information on enforcement action is collected and used by the regulators and the DSA to inform the wider assurance assessment. Improvement Notices, Urgent Improvement Notices, Prohibit Notices and Immediate Stop Notices can be made available to the Safety Centre/Chief Environment and Safety Officer (CESO) for that Defence Organisation.

### Links to disciplinary and administrative action

The DSA has no authority to initiate disciplinary or administrative action against individuals. Unsafe activity brought to the attention of the DSA may be taken into consideration in future enforcement or changes in regulatory requirements.

Where a DSA regulator becomes aware of significant unsafe activity which appears to be as a result of actions or omissions by an individual, the regulator will notify the individual's Chain of Command/Line Manager. The Chain of Command/Line Manager should take legal advice on what further action may be appropriate, such as notifying the Service Police under the Armed Forces Act 2006 of a potential disciplinary offence or commencing administrative action (Civil Service grievance and Managing Poor Performance) pertaining to professional failings. Where the Chain of Command/Line Manager has been so informed, the regulator is to be advised of the outcome.

Where a DSA regulator becomes aware of significant unsafe activity which appears to be contrary to statute, the regulator may notify the relevant statutory authority.