



Ministry
of Defence

JSP 375
Management of Health & Safety in Defence

Part 1: Directive

Foreword

The Secretary of State for Defence (SofS) through his Health, Safety & Environmental Protection (HS&EP) Policy Statement requires each Top Level Budget Holder or Trading Fund Agency Chief Executive to be the Senior Duty Holder for the safety of defence activities conducted in his/her area of responsibility in addition to his/her wider HS&EP responsibilities. They are required to set down and implement HS&EP management arrangements for activities in their area of responsibility. The policy statement also requires there to be organisational separation between those who conduct defence activities and those who provide regulation, so that the latter are independent whilst being part of the Department.

It is the responsibility of commanders and line managers at all levels to ensure that personnel, including contractors, involved in the management, supervision and conduct of defence activities are fully aware of their health and safety responsibilities.

Preface

How to use this JSP

1. JSP 375 is intended as the lead Departmental publication for the management of health & safety in defence. It is designed to be used by all staff. This JSP contains the policy and direction on health & safety in Defence and guidance on the processes involved and good practice to apply to ensure Defence meets its regulatory obligations. This JSP will be reviewed at least annually.
2. The JSP is structured in two parts:
 - a. Part 1- Directive, which provides the direction that must be followed in accordance with Statute, or Policy mandated by Defence or on Defence by Central Government.
 - b. Part 2 - Guidance, which provides the guidance and best practice that will assist the user to comply with the Directive(s) detailed in Part 1.

Related JSPs	Title
DSA01.1	Defence Policy for Health, Safety and Environmental Protection
JSP 418	Management of Environmental Protection in Defence
JSP 392	Management of Radiation Protection in Defence

Coherence with other Defence Authority Policy and Guidance

3. Where applicable, this document contains links to other relevant JSPs, some of which may be published by different Defence Authorities. Where particular dependencies exist, these other Defence Authorities have been consulted in the formulation of the policy and guidance detailed in this publication.

Training

4. Details of relevant training and competence can be found in the Chapters in Part 2 or from TLB/TFA Chief Environment and Safety Officer (CESO) organisation or equivalents.

Further Advice and Feedback- Contacts

5. The owner of this JSP is Defence Safety Authority Headquarters Policy (DSA-HQ-Pol). For further information on any aspect of this guide, or questions not answered within the subsequent sections, or to provide feedback on the content, contact:

Job Title/E-mail	Focus	Phone
DSA-HQ-Safety-enquiries@mod.uk	JSP 375 Authors.	
DIO Coordinating Senior Authorising Authority	Part 2 Volume 3 – High Risk Activities.	0121 311 3770
TLB/TFA CESO organisation or equivalent	TLB/TFA central health & safety function and advice.	

Local Health & Safety Advisors

Site specific health & safety
advice.

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1 Introduction, Authority, Maintenance and Disclaimer

Introduction

1. The Policy Statement by the Secretary of State (SofS) for Defence for Health, Safety and Environmental Protection (HS&EP) in Defence¹ has as a fundamental objective that those who deliver or conduct defence activities minimise work-related fatalities, ill-health and reduce health and safety risks so that they are as low as reasonably practicable (ALARP). The Policy statement applies to everyone and all organisations within Defence who conduct defence activities.
2. The Policy Statement provides that authority is given to the Director General, Defence Safety Authority (DG DSA) for the regulation of HS&EP in Defence where there is a Departmental responsibility.
3. DSA 01.1 – Defence Policy for Health Safety and Environmental Protection, amplifies the SofS's Policy Statement and describes the arrangements for the management of HS&EP throughout Defence, provides strategic direction to TLB Holders and TFA Chief Executives responsible for conducting defence activities and provides an overview of the arrangements for the regulation of defence activities.
4. JSP 375 is the corporate publication that provides rules and guidance to Defence in meeting its health & safety obligations. It focuses on the application of adequate health and safety arrangements to meet our legal obligations and prevent or minimise work-related health effects; the treatment of any such effects is addressed in other policy, rules and guidance². JSP 375 has two parts. Part 1 - Directive which provides the direction that must be followed in accordance with Statute, or Policy mandated by Defence for the management of health & safety. Part 2 – Guidance consists of a series of volumes on specific areas of health & safety; the Chapters contained in the volumes provide detailed guidance and Defence Codes of Practice (DCoP) on how TLB/TFAs and Heads of Establishment/Commanding Officers comply with regulatory or policy requirements. DCoPs set out rules to aid TLB/TFAs in complying with regulations and represent good practice for defence.

Authority

5. JSP 375 is the lead Departmental publication for health & safety in Defence under the SofS's Policy Statement for HS&EP and DSA01.1 – Defence Policy for Health, Safety and Environmental Protection.
6. JSP 375 is sponsored by DG DSA, and is produced and maintained, in consultation with stakeholders, by DSA Headquarters Policy (DSA-HQ-Pol).

Amendment Record

7. Amendments will be staffed by DSA-HQ-Pol together with lead areas, relevant subject matter experts and key stakeholders.

¹<http://defenceintranet.diif.r.mil.uk/libraries/0/Docs1/20140726.3/201408-SofS-Policy-Statement-Fallon.pdf>

² See, for example, MOD intranet: People Services: Health, Wellbeing & Sickness

8. Comments or proposed amendments to this JSP are to be made by e-mail to DSA-HQ-Safety -Enquiries using the following format:
- a. Senders reference
 - b. Date
 - c. Volume/Chapter/Page/Paragraph being addressed
 - d. Comment

Amd no.	Date	Text Affected	Authority
1	Jun 17	Corrected references of JSP 815 to DSA01.1 throughout document Corrected references of DSA-CPA to DSA-HQ-Pol throughout document Introduction: (1) corrected link to the Secretary of State's Policy Statement Equality and Diversity Impact Assessment Statement (1) Reviewed and assessed. Next review in 2018 The Legislative Framework and Formulation of Departmental Policy: (1) minor amendments to paragraph 11 to aid clarity (2) paragraph 13 amended Defence Environment and Safety Committee (DESC) to Defence Safety Committee (DSC)	DSA-HQ-Pol

Disclaimer

9. Nothing contained within this JSP removes the requirement on anyone to comply with applicable statutory legislation, Defence regulations and the Policy Statement.

Equality & Diversity Impact Assessing Statement

This policy has been equality and diversity impact assessed in accordance with Departmental policy. This resulted in a Part 1 screening only completed (no direct discrimination or adverse impact identified). This policy is due for review in 2018.

2 The Legislative Framework and Formulation of Departmental Policy

Introduction

1. Within the UK, Defence is required to comply with all applicable health & safety legislation (including legislation giving effect to the UK's international obligations). Overseas, Defence will apply UK standards where reasonably practicable and, in addition, respond to host nations' relevant health and safety expectations.
2. There are a number of pieces of health & safety legislation, international treaties or protocols which include exemptions (coverage excludes) or derogations (authority given to deviate) relevant to defence activities. Additionally, where legislation does apply, there may be powers of specific dis-application granted to the SofS which may be invoked in the interests of Defence and or national security. In these circumstances the Policy Statement requires the introduction of Departmental arrangements that produces outcomes which are, so far as reasonably practicable, at least as good as those required by legislation. Where applicable the guidance in Part 2 Volume 1 of this JSP outlines in detail the mandated and recommended processes through which an exemption can be granted for certain defence activities.
3. Under customary international law, Visiting Forces have state immunity from domestic legislation and this is outlined in more detail DSA01.1. Interface arrangements have been agreed between the Health and Safety Executive (HSE) for Great Britain and United States Visiting Forces (USVF)³; through a Memorandum of Agreement.

Legislation

4. There is a wide range of primary and secondary health & safety legislation covering management of and the undertaking of activities all of 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 not to constrain Defence outputs including Operational Capability. Defence's health and safety obligations can be found throughout the differing levels of legislation.

European Legislation

5. The majority of new UK health and safety legislation now originates at the European level; the main legal instruments are EU directives and regulations. European legislation is transposed into national legislation by each member state. For example the Workplace Health and Safety Directive (EC 1989) was implemented in the UK through the Management of Health and Safety at Work Regulations (1999) and the Minimum Requirements for Improving the Safety and Health Protection of Workers Potentially at Risk from Explosive Atmospheres Directive (EC 1999) was implemented in the UK by the Dangerous Substances and Explosive Atmospheres Regulations (2002).

³ In the UK, United States Visiting Forces (USVF) operate under the terms of the *Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces (London 19 June 1951)* (NATO SOFA) and The Visiting Forces and International Headquarters (Application of Law) Order 1999 which exempts visiting forces from UK Law or from various provisions of the law. USVF implement management systems and processes which provide the same substantive protection as required by UK legislation and MOD environmental protection policy. When there is a variance between US and UK standards it is USVF policy to apply the more environmentally protective standard.

United Kingdom (UK) Legislation

6. In the UK, legislation comprises Acts and statutory instruments with the latter being referred to as regulations. Acts generally provide policy principles and broad requirements while statutory instruments (SIs) are specific and detailed. SIs can be updated to take account of changes at the operating level.
7. In Great Britain the primary piece of occupational health and safety legislation is the Health and Safety at Work etc. Act (1974) and the Health and Safety at Work Order (1978) in Northern Ireland. The Acts lay down general principles of the management of health and safety at work defining corporate and individual roles and responsibilities, and enable the creation of specific requirements through regulations enacted as Statutory Instruments. One of the principle regulations is the Management of Health and Safety at Work (MHSW) Regulations (1999) or Management of Health Safety at Work Regulations (Northern Ireland) (MHSW(NI)) 2000 which focuses on risk assessments and how to use them effectively, assessing the risks posed to workers and any others who may be affected. The MHSW/MHSW(NI) regulations also outline the responsibilities for temporary workers, expectant mothers and young people. Further guidance on meeting specific health and safety regulation's requirements can be found in Part 2 Volume 1 of this JSP.
8. The Health and Safety at Work etc Act 1974 (HSWA) applies up to the baseline (the baseline is the low water line around the coast of the United Kingdom. Certain bays and islands are included within the baseline as defined by the Territorial Waters Order in Council 1964) of GB territorial waters. Beyond the baseline, but within territorial waters (generally out to 12 nautical miles), paragraph 8 of HSWA applies the HSWA to certain activities carried out by, or associated with, ships. Beyond GB territorial waters HSWA does not apply to ships. The safety of those serving in UK registered merchant vessels is provided for by the Merchant Shipping Acts (MSA) and regulations.

Devolved Administrations

9. Unlike Defence, which is a wholly reserved matter, health and safety is a mix of reserved and devolved powers. Within the UK there are two differing regulatory regimes for health and safety although any differences tend to be subtle. Northern Ireland has its own Health and Safety legislation and regulator and can bring forward their own legislation, while the remainder of the UK is regulated by the Health & Safety Executive under the Health and Safety at Work Etc. Act. Defence operates throughout the UK and needs to be aware of the differing requirements in Great Britain and in Northern Ireland to ensure we are compliant in meeting statutory requirements⁴.
10. Where the standards in the legislation differ between the UK territories, to ensure a consistency across the UK, Defence will adopt the most stringent requirement to abide by. Part 2 Chapters are written to ensure that their guidance meets the most stringent requirement where applicable.

Defence Regulations

11. Defence Regulators provide for regulation of safety for defence activities where this is a Departmental responsibility because of exemptions to legislation or where legislation does not apply to certain Defence activities. Defence regulators are empowered by SofS by Charter (DG DSA) to operate regimes that are aligned, where reasonably practicable, with statutory equivalents or near equivalents. These defence regulations are contained in the regulators appropriate Level 2 documents as set out in Para 14.

⁴ For example reserved matters include preventing work-related accidents and ill health while employers' promoting healthy lifestyles is a devolved matter.

Defence Policy & Formulation

12. It is essential that Defence is aware of, and can appropriately influence, emerging health and safety legislation and consider, should the potential consequence be a severe constraint on capability, the need for exemptions for Defence activities. DSA-HQ-Pol co-ordinates processes aligned with HS&EP domains with TLBs, TFAs and Defence Regulators to track and influence legislation and exemptions. The requirement for exemptions in health and safety legislation will only be considered where a significant impact on Defence activities has been identified. The Department is supportive of the principles underpinning the UK's health and safety legislation and where exemptions are in place in the legislation they are rarely utilised for routine business.
13. The Defence Safety Committee (DSC) is the senior Departmental committee for HS&EP; it is chaired by the PUS and provides advice on high-level policy including DSA01.1 from which this JSP takes its lead.
14. DSA-HQ-Pol, as JSP 375 author, will utilise the Department's existing informal processes to consult on the development of the JSP with stakeholders and experts groups; these will include the TLB/TFA etc. CESO organisations or equivalents and appropriate subject matter expert groups.

Departmental Publications

15. The Department produces publications (typically in JSPs) on HS&EP in a hierarchy of four levels.
 - a. Level 1 – Departmental Policy (e.g. DSA01.1)
 - b. Level 2 – Defence Regulations owned by Defence Regulators
 - c. **Level 3** – Rules and guidance (including where appropriate Codes of Practice) provided by Defence Regulators on Legislation and Defence regulations; DSA-HQ-Pol provides rules and guidance to Defence on corporate requirements and compliance with legislation (this JSP).
 - d. Level 4 – procedures and arrangements, normally produced within TLBs and TFAs, containing more detailed advice for line management on how implementation of Levels 1-3 can be achieved.
16. DSA-HQ-Pol will ensure that the contents of JSP 375 are consistent with DSA01.1. TLBs and TFAs are to ensure consistency with higher level documents including this JSP.

3 Organisational Roles and Responsibilities

Corporate Roles and Responsibilities

1. As part of their commitment to achieving and maintaining high HS&EP standards; SofS and the Defence Board regularly receive information on and consider HS&EP matters. This information includes interventions by Statutory and Defence regulators for health and safety.
2. The PUS is responsible for ensuring that effective management arrangements are in place to deliver compliance with the Policy Statement. The term arrangements is used to encompass any set of 'systems' or 'procedures' that would be put in place to comply with the Policy Statement. For H&S this includes the requirement for sites to have a health and safety management system in place; further guidance on management systems can be sought from the TLB/TFA central HS&EP function e.g. CESO organisation.

Corporate Policy and Assurance

3. DG DSA through DSA-HQ-Pol is responsible for:
 - a. Drafting the SofS's Policy Statement, DSA01.1 and providing other Corporate guidance including this JSP.
 - b. Co-ordinating the tracking and influencing of legislation.
 - c. Managing the Strategic relationship with HS&EP statutory regulators e.g. HSEGB/HSENI, Environment Agency, Natural Resources Wales etc.
 - d. High level assurance processes including the compilation of the Departmental HS&EP Annual Assurance report.
 - e. Providing the Secretariat for the DSC.
 - f. Ministerial, Parliamentary and public information business relating to health and safety.
 - g. Proposing corporate approaches to improve health and safety performance.
 - h. Maintaining a central record of health and safety enforcement action and risks referred to the SofS.

Health and Safety Management Duties

4. The Policy Statement requires that TLB/TFA holders are to set down and implement HS&EP management arrangements for activities in their areas of responsibility and that commanding officers and managers to whom they may delegate HS&EP authority are competent and have adequate resources at their disposal. TLB/TFA holders should ensure that their organisations have processes and systems in place to minimise work related fatalities, injuries and ill-health, to report, collate and record incidents from their activities.
5. Processes and procedures are to be put in place at site level to eliminate or reduce the potential for incidents however, should an incident occur it should be reported immediately at in line with Departmental and TLB/TFA requirements. Further guidance on accident/incident reporting and investigation, including minimum data requirements can be found in Part 2

Volume 1 of this JSP. In the unfortunate event of a fatality the SofS must be informed using the template contained in DSA01.1.

6. TLBs are to put in place specific procedures to manage high risk activities that cannot be adequately controlled by the guidance contained in Part 2 Volume 1. Part 2 Volume 3 provide Defence Codes of Practice that are considered good practice for high risk activities Defence and TLB procedures must provide an equal or better level of protection for staff and contractors to that outlined.
7. Commanding Officers/Heads of Establishments must ensure that the establishment has a health and safety management system and that suitable establishment procedures are in place to enable effective reporting, investigation and management of health and safety incidents and near misses.
8. For acquisition Project Team leaders must ensure that their project has or is covered by a Project Orientated Safety Management System (POSMS)⁵.
9. Employees have duties under H&S legislation and should be made aware of those through site procedures and systems.

Contractors and Partners

10. TLB/TFAs routinely engage contractors and partners to undertake a wide range of defence activities. Contractors and partners must be competent to undertake the activities required and will comply with all relevant H&S legislation and the employing commanding officer or manager is to ensure that this is the case.
11. Where a TLB/TFA appoints a Maintenance Management Organisation (MMO) the contracting organisation must ensure in the contract that the contractor is required to comply with Part 2 Volume 2. The requirements of which are mandatory on the DIO managed defence estate for all contractors undertaking any works on infrastructure plant or equipment. DIO shall provide assurance for activities under their control to the commanding officer/head of establishment.
12. If there are exemptions from legislation that are relevant to the contractor's or partner's defence activities, then Defence regulations apply. The Defence contracting organisation is to ensure that this is expressed in the contract or agreement and that relevant Defence regulators are empowered through the contract agreement to regulate the contractor's or partner's activities.

⁵ <http://www.aof.dii.r.mil.uk/aofcontent/tactical/safety/content/asems/part1.htm>

4 Risk Management

Introduction

1. The Policy Statement requires that work-related⁶ fatalities, injuries and ill-health are minimised. 'Work-related' activities in the defence context include operational training, which is to be conducted with an appropriate degree of realism, and routine operations. However, when conducting operations in conflict situations, and where there is engagement or the potential for engagement with a hostile party, wider considerations apply to risk management⁷, although the aim of minimising fatalities and injuries to those entitled to protection remains the same; commanding officers have discretion to operate beyond the constraints of the risk assessment or safety case (see para's 7 & 9) when necessary.

2. HSAW/HSW(NI)O requires an employer to:

'ensure, so far as is reasonably practicable⁸, the health, safety and welfare at work of all his employees' and 'to conduct [activities]...to ensure, so far as is reasonably practicable, that persons not in employment are not exposed to risks to their health and safety'.

Guidance on demonstrating that safety risk has been reduced ALARP is provided in DSA01.1.

Health and Safety Management Arrangements

3. A commanding officer is to put in place health and safety arrangements (see Chapter 3) to conduct their activities safely. Principles that inform these area:

- a. Clear delegation of authority (responsibility, however, cannot be delegated).
- b. Clear ownership of activity and its risk.
- c. Proportionate risk management.
- d. Auditable decisions.
- e. Clarity of standards.
- f. Appropriate peer review, monitoring, inspection and audit.

4. Health and safety management arrangements/systems are to address the following elements in a manner that is appropriate and proportionate to the organisation and the activities being carried out:

- a. Applicable legislation, Defence regulations, policy and guidance.
- b. Information management.

⁶ This is interpreted as 'whilst on duty', but the effect of work on subsequent activity (e.g. excessive tiredness when travelling home) may also be considered as 'work related'. A Commanding Officer or manager is to determine, in consultation with the workforce, which activities are done 'on duty'.

⁷ There is a body of case law relating to 'combat immunity' (see particular *Smith, Ellis, Allbut & Others v MOD*, June 2013); appropriate legal guidance in relation to these cases should be sought by those determining the necessary Defence capability for specific operations.

⁸ The HSAW phrase 'so far as is reasonably practicable' may also be termed 'as low as is reasonably practicable (ALARP)'; the terms are interchangeable and the latter is used. Other requirements of legislation or Defence regulations may be more rigorous than the proof that risk is ALARP or may include risk tolerability criteria.

- c. Organisational leadership, culture, capability and change management.
 - d. Personnel competence and training (e.g. 4Cs).
 - e. Risk assessments and safety cases.
 - f. Equipment/material and infrastructure design and manufacture.
 - g. Equipment/material and infrastructure maintenance.
 - h. Supervision and control of activities.
 - i. Incident management and learning from experience.
 - j. Emergency arrangements.
 - k. Self-assurance.
5. The above is not a definitive list and further guidance on the MOD Health and Safety system, that is aligned to the structure and principles of the HSE recognised safety management system HSG 65, can be sought from the TLB/TFA central HS&EP function e.g. CESO
6. Where Defence has exemptions, derogations etc. from legislation then Defence Regulators will provide guidance, usually through their level 2/3 documents, on the management of safety risk. This may be in the form of an equivalent process to statutory requirements or through a process of identifying the most appropriate environmental protection option for the Defence activity concerned. Where applicable the guidance in Part 2 Volume 1 of this JSP outlines in detail the mandated processes through which an exemption can be granted for certain defence activities.

Risk Assessment and Safety Cases

7. It is a legal requirement⁹ to conduct a risk assessment for work-related activities. The degree of rigour applied by a commanding officer or manager to risk assessment for an activity is to be proportionate to the consequences of failure. Five steps are applied to ensure effective assessment and management:
- a. The hazard which may affect the activity (e.g. extreme natural events) and are inherent within the activity are identified.
 - b. Those who might be harmed, and the degree of harm, are identified.
 - c. The identified hazards are assessed for their severity and likelihood, health and safety risks are evaluated and controls and mitigations are developed that reduce safety risks ALARP. If risks to life is identified in the assessment, the arrangements of the relevant Duty Holder hierarchy are to be activated.
 - d. The results are recorded (as necessary) and implemented: if a commanding officer or manager, at any level, considers that resources (financial, human, material) available to them do not provide for control or mitigations which reduce the safety risk ALARP, they are to refer it to a relevant higher commanding officer or manager¹⁰ for consideration and action and is not to proceed/continue with the activity.

⁹ The Management of Health and Safety at Work Regulations (1999) and other legislation.

¹⁰ Particularly applies within the Duty Holder hierarchy. A TLB holder / TFA Chief Executive (Senior Duty Holder for risk to life) is to refer such risks to the SofS; those risks accepted by SofS are to be notified to DSEA-CPA who maintain a central register.

- e. The assessment is reviewed: in particular control and mitigations are monitored to determine their continuing effectiveness; corrective actions are taken as necessary.

8. Detailed guidance on risk assessments is to be found in Part 2 Volume 1 of this JSP.

Safety Cases

9. If the work-related defence activity is complex and/or if the consequence of failure whilst conducting the activity are significant for the health or safety of the workforce or public, it may be appropriate to produce and document the risk assessment as a safety case¹¹; it is expected that many defence activities are in this category. The owning commanding officer or manager¹² is to decide whether to produce such a safety case in consultation with the relevant regulator(s) and recognising the requirements of legislation or Defence regulations. Further detail on the requirements on Safety Cases can be found in DSA01.1.

Defence Capability Development

10. The foregoing text in this chapter addresses risk management prior to the actual conduct of defence activities; this paragraph considers risk management during the development of defence capability. The discipline of reducing safety risk to ALARP encourages continuous improvement as understanding and technology advance. Reduction in health and safety risk may often be beneficially advanced at the introduction of a new defence capability or during a major upgrade to existing capability. Those responsible for capability development, including the future commanding officer(s), manager(s) or Duty Holder(s), are to address health and safety factors from the earliest stages; they are to engage as appropriate with the relevant Defence Regulators, noting that their views may be sought during the investment scrutiny process.

¹¹ To include health and safety risk assessment as appropriate.

¹² Where there is a Duty Holder for the activity, ownership of the safety case may rest with them.

5 Regulatory Organisations

Statutory Regulators

1. Most defence activities in the UK are fully subject to the requirements of health and safety legislation and are regulated by statutory regulators. Within the UK territories there are two main statutory regulators for Health and Safety, these are:
 - a. Health and Safety Executive (HSE) (for Great Britain)
 - b. Health and Safety Executive Northern Ireland (HSENI)
2. Further to the two main statutory regulators other organisations also have statutory roles for health and safety these include:
 - a. Local Authorities
 - b. Marine and Coastguard Agency (MCA)
 - c. Office of the Nuclear Regulator (ONR)
3. Co-ordinated by DG DSA the Department maintains a General Agreement with the HSEGB and HSENI; a copy of the General Agreements are contained in Annex A and B respectively.
4. These agreements help standardise interactions between the statutory regulators and Commanding Officers, Heads of Establishment and the Department as a whole; in certain areas the General Agreement provides interpretation of the regulators responsibilities in Defence.

Defence Regulators

5. Defence Regulators provide regulations and guidance on health and safety for defence activities where there is a Departmental responsibility; this includes where these activities take place outside the UK but with due regard to host nation expectations. See DSA01.1 for further details on Defence regulators.
6. Although most defence activities are subject to the requirement of some form of health and safety legislation, there are areas where the Defence regulators do have regulations that cover areas of health and safety legislation e.g. JSP 309 - Fuels & Gases Environment and Safety Management.
7. Defence regulators' requirements can range from the requirement to submit an exemptions case for consideration and approval to a simple requirement that TLB/TFAs have systems and processes in place to manage an environmental protection requirement.
8. Defence regulators may also take account of compliance with statutory requirements as part of their activities e.g. DSA – Defence Land Systems Regulator (DLSR) JSP 454.

Overseas Authorities

9. Notwithstanding the position of state immunity under customary international law, many host nations have environmental protection authorities with expectations (which maybe expressed in written agreements) in respect of UK defence activities conducted in their jurisdiction. A Commanding Officer or manager should be fully aware of such agreements and the requirements placed on defence when undertaking their activities.

Enforcement

Statutory Regulators

10. Statutory regulators have enforcement powers and regimes granted to them by legislation. Where an allegedly offending defence activity is conducted by Crown servants i.e. members of the armed forces or MOD civilians, statutory regulators powers are, in general, modified to take account of that fact.
11. Where an allegedly offending defence activity is conducted by Crown servants (i.e. members of the Armed Forces or MOD civilians), statutory regulators' powers are, in general, modified to issuing Crown Improvement/Prohibition Notice or a Crown Censure; further detail of these processes as applied under the HSWA/HSW(NI)O can be found in Annex A to the MOD/HSEGB or HSENI General Agreement.
12. The relevant statutory regulator in the UK will consider action against the Department, as they would against a civil establishment, in accordance with their own individual enforcement guidance/statements¹³. However, the Department, as part of the Crown, cannot be criminally liable, including failure to comply with prohibition, enforcement or works notices. This does not reduce the impact of enforcement action taken against the Department.
13. Notwithstanding Crown immunity, the actions of Crown servants may constitute criminal offences and as such they may be prosecuted. The General Agreement with the HSE sets out that they will only prosecute individuals in circumstances where they would have prosecuted individuals of a private company; they will not be prosecuted in lieu of corporate responsibilities. A Crown Servant can still be prosecuted in circumstances where they have allegedly committed a breach of statutory duty. Crown servants remain subject to the criminal law and may be prosecuted if it is alleged that they have committed a criminal offence, such as manslaughter.
14. 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 commanding officer or manager to address or refer health and safety issues within his area of responsibility (AoR) has occurred, disciplinary action under the Armed Forces Act or Civil Service Code may be taken.
15. In the event of any of interventions by a statutory regulator: enforcement notices, works notices, prohibition notices; DSA-HQ-Pol should be notified by the TLB/TFA involved; usually through the central HS&EP function e.g. CESO. Further information can be found in Chapter 6.

Defence Regulators

16. Defence Regulators have enforcement powers granted by charter or delegations; see DSA01.1 and for further information on Defence Regulators requirements see their specific Level 2 documents. Where Defence is subject to health and safety legislation, the statutory regulator has ultimate jurisdiction.

¹³ HSE: <http://www.hse.gov.uk/enforce/enforcepolicy.htm> and HSENI: http://www.secure.hseni.gov.uk/register/enforcement_guidelines.pdf

6 Corporate Records, Notifications and Investigations

Introduction

1. In order to support routine and annual reporting (including to the Defence Board and for the Holding to Account Process) and to provide centrally-held data in the event of enquiries. DSA-HQ-Pol collates records for certain health and safety interventions by statutory regulators. DSA01.1 requires TLB/TFA holders to ensure that their organisations have systems in place to report, collate and record incidents from their activities.
2. As outlined in Chapter 3 processes and procedures are to be put in place at site level to eliminate or reduce the potential for health and safety incidents however, should an incident or near miss occur it should be reported immediately at site level in line with site procedures. These processes and procedures should be linked/incorporated in to the health and safety management system (SMS) covering the site and in the event of an incident or near miss recorded as part of the site SMS.
3. Commanding Officers/Heads of Establishments are to make sure that suitable establishment procedures are in place to enable effective reporting, investigation and management of health and safety incidents and near misses.

Corporate Records

4. JSP 441 - Defence Records Management Policy and Procedures, sets out defence's general record management policy. There are legal requirements to create and retain various health and safety related records. Records of risk assessments, training and other health and safety documents shall be retained and regulations can determine the time frame; while defence requires health surveillance and health records to be kept for 60 years from the date of the last entry or 100 years from date of birth for the latter. Further details on the requirement for the retention of health and safety records are to be found in Part 2 Volume 1 of this JSP.

Incident Notifications

5. The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) (2013)/ Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (Northern Ireland) (RIDDOR(NI)) 1997 require defence to report specified dangerous occurrences, ill health and accidents to the HSE within defined timescales. It is a legal requirement that a death, specified injury or dangerous occurrence shall be reported to the HSE as soon as possible; this requirement includes incidents that involve Service personnel where it would be reportable if they were civilian. Further guidance on accident and incident reporting and the mandatory reporting requirements can be found in Part 2 Volume 1.
6. All work related fatalities need to be reported to TLB/TFA for SofS and DSA-HQ-Pol to be notified as soon as possible in accordance with the requirements of DSA01.1.
7. Dependent on the nature of a health and safety incident Commanding Officers/Heads of Establishment and health and safety staff may be required to notify other Defence organisations or their partners, wider than their own TLB/TFA, of an incident. These can include but are not limited to:

- a. DSA-DLSR in the event of Serious Equipment Failure or Serious Incident, in line with reporting protocols in JSP 454.
 - b. DSA-DMR in the event of an incident or near miss in line with reporting protocols in JSP 430.
 - c. DSA-DNSR in the event of an incident or near miss in line with reporting protocols in JSPs 518 & 538.
 - d. Incidents that have the potential to impact or relating to infrastructure assets failure should also be reported to the asset owner; in the majority of cases this will be DIO or PPP/PFI partner.
8. All Contractors and Partners should be made aware of establishment emergency and incident reporting procedures in line with the '4Cs' process (for further guidance on 4Cs see Chapter 34 Part 2 Volume 1 of this JSP). Incidents should be reported to the establishment focal point and host TLB.
 9. Any incidents that have the potential or have actually resulted in any enforcement action against a PFI/PPP partner should be reported through their relevant contract monitoring organisation to DIO.
 10. Further advice on incident notification can be sort from the TLB/TFA central HS&EP function e.g. CESO.

Enforcement Notifications

11. Summaries of relevant statistics are included in the Departmental HS&EP Annual Assurance Report and enforcement actions by Defence and Statutory regulators are reported to the Defence Board on a monthly basis. TLB/TFA holders (or their central HS&EP staff) must notify DSA-HQ-Pol of any enforcement action taken by statutory or Defence regulator as soon as possible after the action is taken.

Investigations

12. In the event of an incident an investigation should be undertaken by the Commanding Officer or senior manager under whose Area of Responsibility the activity resulting in the incident falls. Investigations should be appropriate to the incident under investigation.
13. Trade Unions or other safety representatives may conduct investigations in relevant circumstances¹⁴. Service Inquiries may be instigated¹⁵ and Statutory and/or Defence Regulators may also choose to undertake an investigation, in some health and safety domains independent investigatory organisations have responsibilities. In the event of a fatality an appropriate police force¹⁶ may investigate potential breaches of the criminal law and the coroner¹⁷ may convene a hearing; in such a case the commanding officer or manager may not be able to investigate causation until agreed with the relevant body. The precedence of investigations and the authority of investigators may present complex issues potentially requiring legal advice and careful negotiation to reach a modus operandi in each case.

¹⁴ Health & Safety (Consultation with Employees) Regulations (1996).

¹⁵ JSP 832 and note the DG DSA can convene a Service Inquiry.

¹⁶ Including MOD or Service Police

¹⁷ In Scotland the Procurator Fiscal