

JSP 602 Instruction	1014	Applicability	Legislation
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JSP 602: 1014 – Legislation

Outline

Description: This policy leaflet identifies the specific items of legislation that MOD projects must comply with.

Reasons for Implementation: All CIS must be delivered in accordance with law, not least the Public Records Act, the Data Protection Act, the Freedom of Information Act and the Environmental Information Regulations. MOD lawyers must be consulted if any doubt arises.

Issues: This leaflet is intended to contain sufficient information to enable projects to determine which legislation is applicable to them and to provide references to more detailed information contained within the AMS. It covers the principle items of UK legislation of which all projects must be aware. As such it is not intended as an exhaustive list because individual projects may be required to follow more specific legislation. It is, therefore incumbent upon each project to ensure that they are aware of all other legislation that may be applicable to them.

Guidance: Specific guidance is contained within the AMS. This policy is outside the scope of both the e-GIF and the NC3TA.

Policy

Strategic

1014.01: Freedom of Information Act and Environmental Information Regulations

1014.01.01 The FOI Act 2000 and the Environmental Information Regulations 2004 impose a duty on UK public authorities to disclose information that they hold on request unless it is exempt under the terms of the legislation and to maintain a Publication Scheme and release information proactively in accordance with its terms. All parts of MOD and the Armed Forces (except the Special Forces and units providing assistance to GCHQ in the exercise of its functions) are subject to the Act and Regulations, whether they are based in the UK or abroad. Failure to comply will therefore mean that MOD is in breach of the law. In some instances this could constitute a criminal offence.

Comment: The FOI Act 2000 impose a duty on UK public bodies to disclose information that they hold.

1014.02: Data Protection Act

1014.02.01 All MOD systems that hold personal data shall ensure that personal data is processed lawfully and in accordance with the conditions for processing set out in this Act. Even stricter responsibilities pertain to the processing of "sensitive" personal data such as race, religion, sexual history, medical details, and offences.

Comment: DPA 98 is the UK Parliament's implementation of the European Directive 95/46/EC which deals with the processing and protection of personal data.

1014.03: Public Records Act

1014.03.01 All MOD projects shall comply with the Public Records Act of 1958 which places the following responsibility on all government departments:

1014.03.01.01 to review the records which are generated within the department;

1014.03.01.02 to select those which are worthy of permanent preservation and transfer them to the National Archives or other approved place within 30 years of creation;

1014.03.01.03 to destroy all records which are not selected or required for further administrative use;

1014.03.01.04 to appoint a Departmental Records Officer who is responsible for ensuring that the records generated within their department are properly reviewed and that the appropriate records are selected for permanent preservation and transferred to the National Archives or other approved place.

Comment: The law on public records is set out in the Public Records Acts of 1958 and 1967. Public records are defined in the Acts as "administrative and departmental records belonging to Her Majesty's Government, whether in the United Kingdom or elsewhere". These include electronic and paper records, photographic material, film, video, and samples and models, which have been made for the purpose of conveying and recording information.

Strategic (continued)

1014.04: Other requirements concerning Government Records

1014.04.01 The FOI Act requires Departments to implement the Lord Chancellor's Code on record keeping, to ensure that proper records are created and kept. The Re-use of Public Sector Information Regulations 2005 are due to be enacted in July 2005 to implement Directive 2003/98/EC. To comply with the regulations, information that might be of commercial value to industry, should be listed on MOD's Information Asset register.

1014.05: Intellectual Property Rights

1014.05.01 IP Rights concern statutory and common law mechanisms that protect novel work and ideas. Protection is given in the form of the exclusive right to either use the information, or to permit (license) the information to be used. All MOD projects must respect third party IP rights. Both civil and criminal proceedings may be brought in cases of infringement, including using protected information without permission, or deviating from the terms of a licence. Similarly, any MOD-owned IP that arises during a project must be appropriately protected. For example, documents that are generated by Crown Servants during the course of their work, if published, should be marked with an appropriate Crown Copyright legend.

Comment: IP is protected by a multitude of laws, and these are subject to continual and piecemeal change. Always make sure you are using a up-to-date consolidation of the law. The references below only relate to the key pieces of legislation. Overseas jurisdictions will have similar rights, although the particulars of the details of their legislation will differ from jurisdiction to jurisdiction.

1014.06: Copyright

1014.06.01 All MOD projects shall comply with the legislation on copyright, which applies equally to electronic material (e.g. documents, software, images) and paper documents, and can be found in the Copyright, Designs and Patents Act 1988 as amended. There is no official consolidation of this Act of Parliament; it has been amended on a number of occasions since it came into force on 1 August 1989.

Anyone wishing to use a copyright work will usually need to approach the copyright owner and ask for a license to cover the required use, although some minor uses may fall within the scope of one of the exceptions to copyright. Any use going beyond an agreed license will require further permission.

Comment: Copyright gives economic rights allowing the creators of a wide range of material, such as literature, art, music, sound recordings, films and broadcasts, to exercise control over the use of their work (material protected by copyright is termed a "work"). This may include preventing others from making copies of it, issuing copies to the public, performing it in public, broadcasting it and using it on-line. It also gives moral rights to be identified as the creator of certain kinds of material, and to object to distortion or mutilation of it.

1014.07: Designs

1014.07.01 Design law generally protects three-dimensional shapes, other than sculptures. This includes shapes designed for a technical purpose, as well as shapes designed to appeal to the eye. Designs rights arise automatically, although additional rights can be obtained by registration. Protection is afforded across the EU, although additional protection is provided by UK law. See:

1014.07.01.01 Council Regulation (EC) No 6/2002 of 12 December 2001 on Community Designs (Registered Community Design and Unregistered Community Designs)

Strategic (continued)

1014.07.01.02 Registered Designs Act 1949 as amended by the Registered Designs Regulations 2001.

1014.07.01.03 Copyright Designs and Patents Act 1988 - Part III (Unregistered Design Rights)

1014.07.01.04 Design Rights (Semiconductor Topographies) Regulations 1989

1014.08: Registered Trade Marks

1014.08.01 Trade Marks protect the business reputation of a firm. There are restrictions on using or reproducing a third party's trade mark. Of principal importance to the MOD is a requirement to avoid using a registered trade mark (for example "Velcro") in place of a generic term (such as "hook-and-loop fastening tape").

The common law protects "goodwill" in unregistered trademarks through the torts of "passing off", "trade libel" and "supplying an instrument of fraud". It is generally unlawful to damage or divert business through the misleading application of a trade mark.

See:

1014.08.01.01 Trade Marks Act 1994.

1014.08.01.02 Council Regulation 40/94/EC of 20 December 1994 on the Community Trade Marks

1014.08.01.03 The Trade Marks (Proof of Use etc.) Regulations 2004

1014.08.01.04 The leading precedent setting out the common law of "passing off" is: Reckitt and Colman (Products) v Borden Inc (1990).

1014.09: Patents

1014.09.01 Patents protect new inventions and processes for up to 20 years, in return for disclosing to the public how the invention or process works.

1014.09.01.01 See The Patents Act 1977.

1014.09.01.02 Significant amendments include: Patents Act 2004.

1014.10: Confidential Information

1014.10.01 The duty of confidence is imposed by common law, and protects confidential "know-how", and "trade secrets".

1014.10.01.01 The leading precedent setting out the common law of confidence is: Coco v AN Clarke (Engineers) (1969)

1014.11: Export Controls on Technological Information

1014.11.01 Technical information about military and other sensitive technologies - even if unclassified - must not be taken or transmitted overseas without the appropriate export clearances. Information relating to some less sensitive technologies is prohibited from being taken or transmitted outside the EU without export clearance.

Strategic (continued)
<p>1014.11.01.01 Export Control Act 2002</p> <p>1014.11.01.02 Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003</p> <p>1014.11.01.03 Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology.</p>
Deployed
As for Strategic domain.
Tactical
As for Strategic domain.
Remote
As for Strategic domain.

Responsibility for Implementing the Policy

Implementation of this policy shall be the responsibility of all MOD Projects.

Procedure

Not Applicable.

Relevant Links

AMS Guidance on the Freedom of Information Act can be found here.

(<http://www.ams.mod.uk/ams/content/docs/toolkit/gateway/guidance/fofi.htm>)

AMS Guidance on the Data Protection Act can be found here (not yet available).

(<http://www.ams.mod.uk>)

AMS Guidance on the Public Records Act can be found here (not yet available).

(<http://www.ams.mod.uk>)

AMS Guidance on Intellectual Property Rights can be found here.

(http://www.ams.mod.uk/ams/content/docs/toolkit/gateway/guidance/ipr_ov.htm)

AMS Guidance on Copyright can be found here (not yet available). (<http://www.ams.mod.uk>)

Guidance on the Environmental Information Regulations 2004 can be found here.
(<http://www.hmso.gov.uk/si/si2004/draft/20040331.htm>)

Lord Chancellors Code of Practice on the Management of Records can be found here.
(<http://www.dca.gov.uk/foi/codemanrec.htm>)

Information on IP law, including consolidated versions of legislation can be found here.
(<http://www.intellectual-property.gov.uk/index.htm>)

HMSO Guidance Notes can be found here.
(http://www.hmso.gov.uk/copyright/guidance/guidance_notes.htm)

A glossary of terms and abbreviations used within this document is available here.

Instructions on how to read a JSP602 leaflet are available here.

Compliance

Stage	Compliance Requirements
Initial Gate/DP1	MOD Projects shall submit a formal declaration that they have read and understood the policy and sought guidance from the SME(s).
Main Gate/DP2	MOD Projects shall submit high-level development processes and/or plans so as to demonstrate how the requirements of the legislation identified in this policy will be accommodated within the project.
Release Authority/DP5	MOD Projects shall submit detailed development processes and/or plans demonstrating how each item of legislation has been implemented within the project. They shall also present evidence from independent audit that these processes and/or plans have been followed correctly.