

CHAPTER 2

POLICY

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THE CONTEXT OF SECRETARY OF STATE'S POLICY STATEMENT

1. Secretary of State's policy statement identifies the key Ministerial responsibilities for aspects of environment and safety management. It requires the delivery of environment and safety performance to be implemented via line management and the chain of command (i.e. through duty holders) and for these matters to be treated as part of normal business.
2. The policy statement provides that authority shall be given to Functional Safety Board (FSB) chairmen (i.e. defence discipline leads) for the provision of end-to-end assurance and, where appropriate, assistance in the development of policy, the setting of standards, and for ensuring that appropriate scrutiny and regulation is applied to all defence activities.
3. The strategic principles set by the policy statement and its Ministerial expectations are to be applied by all organisations within the Ministry of Defence (MOD) to all defence activities. This Joint Service Publication (JSP) is the primary repository of the policy statement, which can be found at Annex A.

THE DEFENCE PLAN

4. Objectives for environment and safety management are set out in the Defence Plan 2008-2012. A principal aim is to minimise non-combat fatalities and injuries and to aspire to achieve zero fatalities from health and safety failures. It also provides that the Department aims to work with other Government departments to contribute to the Government's wider agenda, which includes sustainable development. The Defence Plan includes specific targets on personal safety, safe equipment and systems of work, energy use, fuel use and travel, procurement, waste management, water management, and biodiversity.

THE LEGISLATIVE FRAMEWORK AND HOW IT APPLIES TO MOD

5. As a general principle, environment and safety legislation applies to the MOD and to defence activities. Secretary of State has directed that, within the UK, MOD will comply with all applicable legislation (including legislation giving effect to the UK's international obligations). Overseas, MOD will apply UK standards where reasonably practicable and, in addition, comply with relevant host nations' standards.
6. There are a number of pieces of domestic and international legislation where MOD can rely on exemptions or derogations. In these circumstances, it is MOD policy to introduce standards and management arrangements that are, so far as is reasonably practicable, at least as good as those required by legislation.
7. Where legislation applies to defence activities, it may detail any powers of exemption granted to the Secretary of State which may, in the interests of national security, include an ability to introduce specific exemptions by certificate. Applications for such exemption certificates shall be made, in writing, via the relevant FSB chairman, in consultation with the Safety Sustainable Development and Continuity Division (SSD&C).
8. Where exemptions are granted, MOD accepts there may be a higher degree of risk; this shall be managed appropriately, taking into account operational considerations. Specific conditions attached to the exemption shall be met and existing legislative or MOD requirements shall still apply so far as is reasonably practicable.
9. Where MOD has put in place its own standards and management arrangements in lieu of legislation, etc, authority to grant variations and exemptions from these shall be vested in FSB chairmen. Applications for these shall be made, in writing, to the relevant FSB chairman or in accordance with any FSB specific process.
10. In addition to meeting the requirements of legislation, international treaties and protocols, the MOD seeks to comply, so far as is reasonably practicable, with Government policy.
11. FSB chairmen shall ensure that all emerging policy and legislative proposals relevant to their functional safety domain are identified, their nature, scope and potential impact are assessed, and, where appropriate, feedback (including proposed amendment or exemption for defence activities) is provided via an authorised route. The Central Legal Services legislation tracking database is the primary MOD repository for information on emerging policy and legislation. Nominated policy leads for each functional safety domain are responsible for updating the database to ensure it contains current, accurate and comprehensive information on impacts and actions necessary to manage change. FSB chairmen shall ensure there is a standing agenda item for emerging legislation and policies for which they have responsibility at each board meeting.

THE POLICY FORMULATION PROCESS

12. Secretary of State has delegated to the Permanent Under Secretary (PUS) the duty of ensuring that effective management arrangements are in place for compliance with his Policy Statement. The Defence Board, under PUS's direction, is to ensure that the MOD achieves and maintains high standards in environment and safety performance. As directed by the Secretary of State, PUS has appointed the Second Permanent Under Secretary (2PUS) to develop and maintain a consistent system of policies, standards, MOD regulations and work practices as chair of the Defence Environment and Safety Board (DESB). Thereby, the Secretary of State achieves high-level separation of implementation (under PUS) and policy (under 2PUS).
13. The DESB is the primary Departmental board for environment and safety policy, and for providing the necessary assurance on these matters to PUS. The Chairman, with the assistance of the Board, shall provide direction, set objectives, monitor, review and report on performance to the Defence Board. The DESB is supported by a series of FSBs covering all functional safety domains.

14. FSB chairmen are appointed by 2PUS. They are members of the DESB and shall provide it with an annual assurance report on safety and, where appropriate, environmental protection performance. Top Level Budgets (TLBs) and Trading Fund Agencies (TFAs) nominate representatives to sit on FSBs to ensure there is proportionality in their outputs.

PUBLICATIONS IN ENVIRONMENT AND SAFETY MANAGEMENT

15. The policies, standards, and regulations developed by the FSBs are applicable to all defence activities. They shall consequently be published with authority across the MOD, most commonly in the form of a JSP. Each TLB and TFA shall ensure specific documents that they sponsor are compliant with MOD-wide policy and doctrine as sponsored by a FSB.

16. A number of documents have been published that deal with aspects of environment and safety policy. A hierarchy of 3 levels has been identified as forming the basis for a model supporting the MOD environment and safety management system:

- Level 1 – A single JSP (this one) containing strategic, overarching environment and safety policy and principles applicable across the MOD.
- Level 2 – Publications (including JSPs) containing policy, procedures, regulations, principles and arrangements for assurance specified by the FSB.
- Level 3 – Publications containing standards, processes, detailed guidance and advice for line management on how implementation of level 1 and 2 requirements can be achieved and those JSPs relevant to environment and safety but owned by organisations other than FSBs. For the latter, it is essential that they align with FSB requirements.

17. The JSPs identified as contributing to MOD's environment and safety management system have been assigned to the relevant FSB as illustrated at Annex D. This arrangement is dynamic and will develop as JSPs are published, amended and superseded. Board secretariats shall maintain an up to date list of JSPs and other related documents for their Board.

18. FSB chairmen shall ensure that the content of the documents published under their authority is consistent and coherent. In constructing their level 2 JSPs, FSB chairmen shall take cognizance of the principles laid down in paragraphs 20 to 29 and expand on them as they see fit.

19. FSB chairmen shall have no authority over documents detailing duty holder management arrangements. These shall align with FSB requirements, where appropriate (e.g. detailing implementation arrangements) and will be of interest to FSBs when they undertake their assurance activities.

ENVIRONMENT AND SAFETY WHEN CONDUCTING DEFENCE ACTIVITIES

20. TLB and TFA duty holders shall conduct defence activities in a way that minimises the:

- Risk to their own personnel and others, including members of the public, to As Low as is Reasonably Practicable (ALARP).
- Impact on the environment,

21. To achieve this, duty holders shall:

- Ensure compliance with environment and safety legislation and all requirements set by the FSBs.
- Maintain a suitable environment and safety management system.
- Ensure that roles and responsibilities are defined and clearly understood and individuals are competent to undertake the tasks required of them.

- Ensure that due consideration is given to any cross-cutting environment and safety issues.
- Include an environmental impact statement in project submissions and, where necessary, undertake proportionate environmental impact assessments
- Liaise with safety management offices, regulatory authorities and others.
- Where appropriate, obtain and maintain safety certificates and ensure that any conditions of certification continue to be complied with.
- Communicate and co-operate with the relevant equipment and facility authorities, particularly with regard to defects, accidents or incidents.
- Operate equipment, processes and systems and use facilities within identified environment and safety constraints.

22. Where duty holders wish to operate equipment, processes, systems and facilities outside their environment and safety constraints, or these are unclear for a particular set of circumstances, then they shall engage with the relevant authorities to ensure the environmental and safety implications are fully considered and risk assessments conducted before any deviation is authorised. Risk assessments shall justify the increased environment and safety risks against the operational need before proceeding with operations, subject to the time available.

FUNDING AND CONTRACTUAL ARRANGEMENTS FOR EQUIPMENT AND SYSTEMS

23. Those seeking approval for investment in equipment, systems or facilities shall provide a declaration that the relevant Safety Management Offices have been appropriately engaged during the initial and main gate business case or review note and that environment and safety management requirements for the project have been addressed. Consideration should also be given to obtaining the views of the relevant FSB chairmen, in particular, where environment and safety issues may be novel or contentious.

24. Those responsible for authorising expenditure and/or contractual commitments are to ensure that the appropriate information on all environment and safety issues (including reference to relevant MOD specifications) is included in contracts and that governance arrangements comply with the relevant FSB policy.

SAFETY CASES FOR EQUIPMENT AND SYSTEMS

25. A Safety Case and Hazard Log must be maintained through all stages of the lifecycle of equipment and systems, including all phases of the acquisition cycle and from introduction to service through to disposal. This requirement must be included in all relevant safety management plans.

26. Safety Case Reports should be produced before any significant decision point including preliminary reports before committing funds, pre-trial reports and pre-disposal reports. In-service safety case reports should be produced using evidence of actual in-service operation to demonstrate that:

- The System is being managed and used within defined limits;
- Assumptions made in previous safety case reports remain valid;
- The risk posed by the System remains ALARP;
- Support elements are in place to sustain operation through life;
- The use of the equipment and its emissions remains safe and consumables and parts used to run and maintain the equipment do not pose a high risk to life and the environment;

27. The operational TLB shall be the “Safety Risk Owner” for the in-service operation of military systems. Chairmanship of the Project Safety Committee should normally be taken by the operational TLB. Where equipment is used by more than one TLB, the “Safety Risk Owner” shall be that which has the majority of users.

28. Duty holders must establish a systems hierarchy in order to maintain coherence between safety cases.

29. TLBs must ensure, through the interfaces between them, that the delivery of safety in respect of military systems and equipment is not compromised as they pass through the various stages of their lifecycle, this includes:

- The allocation of responsibilities as Safety Risk Owner as they change through each stage of the lifecycle;
- Ensuring that equipment and systems are used and maintained in accordance with safety cases;
- Compliance with any requirements to interface comprehensively with Military Systems Safety Committees to ensure that change is managed effectively and performance and incident information is passed between Integrated Project Teams and users.

CONTRACTORS AND PARTNER ORGANISATIONS

30. MOD routinely engages contractors and partner organisations to undertake a wide range of activities on its behalf. Contractors and partners shall be competent to undertake the activities required of them. MOD shall provide sufficient information to contractors to ensure that environment and safety risks are minimised.

31. Any contractors or partners undertaking activities on behalf of MOD shall comply with the law as it applies. In any instances where the law does not apply, then contractors and partners shall comply with MOD requirements.

32. It shall be the responsibility of anyone who lets a contract or commits to a partner agreement to ensure that all MOD specific requirements are identified at the outset, made clear in any negotiations, and explicitly referenced in the contract or partner agreement. The wording shall ensure that the contract or partner agreement can encompass evolution of MOD environmental and safety requirements without the need for resorting to costly contract variations. When addressing these aspects, consideration shall also be given to the MOD requirements for the implementation of Government policy e.g. sustainable development and the extent to which it applies to contractors or partner organisations.

33. A primary duty holder of suitable rank shall be appointed to have overall responsibility for co-ordinating environment and safety aspects of each contract. Where a complex service or capability has been defined, the concept of a primary duty holder is essential to ensure all risks are owned. They shall be either competent or suitably advised.

NOVEL SYSTEMS IN ACQUISITION

34. New and emerging technologies, novel materials and processes may carry with them previously unrecognised environment and safety risks. It shall be the responsibility of the relevant duty holder to ensure that these are adequately managed, in accordance with the generic acquisition principles for risk management, and cover all aspects of the life cycle. The process shall start at “horizon scanning” during the concept definition phase when a duty holder shall be identified.

35. The lead for environment and safety policy for new and emerging technologies, novel materials and processes shall be allocated as they arise by the DESB Secretariat in consultation with the secretariats of the FSBs.

36. As new and emerging technologies are developed to Integrated Project and demonstration phases, the linkage to the lead FSB shall remain and its requirements shall be met. There shall also be an interface with other FSBs, as appropriate, and their requirements shall also be met. If, at any stage, a requirement for an additional FSB is identified, any proposals to establish one shall be submitted to the DESB Secretariat.

37. In any event, those developing new technologies, materials and processes shall not proceed without suitable and sufficient risk assessments to cover ongoing activities. The processes and requirements mandated by the FSBs are likely to be sufficiently generic to apply to the majority of situations encountered. Where initial risk assessments reveal that specific requirements are less appropriate than envisaged, then the reasons and any proposed alternatives shall be justified in supporting documentation when seeking authorisation to proceed.

FATALITIES, SERIOUS INJURIES AND ENFORCEMENT ACTION

38. In line with the objectives set out in the Defence Plan 2008-2012 to avoid fatalities and minimise serious injuries, the Defence Board has agreed that the MOD shall aspire to a target of zero fatalities from health and safety failures, and it should strive to minimise the risks involved in operational training to ALARP without compromising the necessary degree of realism. It follows that the MOD seeks to minimise the risk of serious injuries in a similar vein. These aspirations extend to others, not employed by the MOD, but who may be affected by defence activities

Fatalities Serious Injuries and Environmental Incidents

39. In the event of a fatality or serious injury at work, the immediate action will primarily be directed to notification of the emergency services, or equivalent emergency contingency protocol when on operations, and in accordance with local procedures, to deal with the immediate demands of the incident. Where the fatality or serious injury is work-related, other authorities shall be notified in accordance with level 2 JSP requirements for the purposes of investigation and recording of performance data. FSB chairmen shall ensure that their requirements for notification of fatalities and serious injuries are reflected in their level 2 JSPs. TLBs and TFAs shall ensure that they develop arrangements and procedures for notification of these occurrences. In any event, all health and safety related fatalities shall be notified to SSD&C.

40. Wherever practicable, action shall be taken to isolate and secure the site of the incident in order to preserve evidence for subsequent investigation. Fatalities, serious injuries and environmental incidents shall be the subject of investigation, typically in the form of an independent investigation or inquiry into the reasons and causes, including Service Inquiries. There may be separate criminal investigations conducted by police and/or the Health and Safety Executive (HSE), and, in the case of accidents involving MOD vessels, the Maritime Accident Investigation Branch. Where necessary, a FSB chairman shall instruct that an investigation or inquiry be established if such action has not already been taken. Wherever possible, there shall be a single investigation but, where this is not possible, every effort must be made to ensure that they do not conflict with each other.

41. FSB chairmen shall set out any specific requirements they may require to be addressed by investigations or inquiries affecting their functional safety area.

Enforcement Action

42. Breaches of environment and safety legislation are criminal offences. As a Crown body, MOD is exempt from prosecution for such breaches. However, external regulators are still able to undertake a number of enforcement actions against the MOD. The nature of the action varies with the regulator. Enforcement action (including copies of notices and other correspondence) shall be reported in accordance with duty holder arrangements to SSD&C, FSBs and others as required. Correspondence from regulators on routine matters, including observations from visits requesting that certain actions be undertaken, does not constitute enforcement action.

43. Both the HSE and the Environment Agency (EA) have undertaken, through their Memorandums of Understanding, not to prosecute individuals in lieu of corporate responsibilities under criminal law. Individuals can still be prosecuted in circumstances where they would have been prosecuted had they been individuals in a private company (i.e. individually negligent). Service personnel are additionally subject to Military Law which contain provision for prosecution (Courts Martial). It is a principle that any Service person shall not be prosecuted more than once for the same offence; precedence shall be given to prosecutions brought by external regulators.

44. Systemic failures in the environment and safety management system increase the risk of fatalities and serious injuries and the likelihood of enforcement action (including Crown censure) served against the MOD, in lieu of prosecution for breaches of environment and safety legislation. The Defence Board has agreed a target of zero Crown censures.

Health and Safety Executive

45. The enforcement mechanisms used by the HSE are Crown Notices and Crown censure as follows.

Crown Notices

46. These take the form of Crown Improvement Notices and Crown Prohibition Notices. They are self-explanatory and are reproduced at Annex F. Notices will only be used in circumstances where enforcement notices would have been used in the private sector. Inspectors will discuss with local management the type of remedial measures considered appropriate and the time in which they should be implemented. Crown Notices have no legal standing but their importance is not to be underestimated. It is the responsibility of all MOD employees, at all levels, to take full account of any danger, whether to their own staff or members of the public, notified to them by any means.

47. Notices can be served in any MOD unit or establishment to a named person. It is that person's responsibility to undertake remedial action to the satisfaction of the HSE to enable the notice to be lifted. Failure to comply with the requirements of a Crown Notice can lead to Crown censure.

Crown Censure

48. The HSE will, if they consider it appropriate, on the committing of any offence relating to health and safety by MOD, action a Crown censure in lieu of prosecution. This action will only be taken where the HSE would have prosecuted a private company had they committed the same offence. SSD&C shall be notified of any impending Crown censure. The responsibility for undertaking remedial action and preparing briefing material in preparation for a Crown censure lies with the organisation on which the notification of censure has been served. PUS has directed that the appropriate Defence Board member in the management chain or command structure should represent the Department. Only in exceptional circumstances should the task be delegated, and then not to officers below TLB or TFA management board level. Details of the Crown censure procedure are at Annex G.

Environmental Agencies

49. For England and Wales, the EA will take enforcement action against MOD in accordance with its enforcement and prosecution policy. It can issue enforcement, prohibition and works notices. Again, these have no legal standing but their importance must not be underestimated. Instead of Crown censure, the EA may apply to the High Court for a declaration that MOD's activities were unlawful. The MOD shall be subject to that Agency's cost recovery charging schemes, regardless of whether Crown immunity applies. In Scotland, regulation is the responsibility of the Scottish Environmental Protection Agency (SEPA), and in Northern Ireland of the Environment and Heritage Service (EHS) which forms part of the Department of the Environment (Northern Ireland).

Other Regulators

50. Other external regulators, including Local Authorities, have an interest in MOD. Where there are regulators for a specific functional safety area empowered to undertake enforcement action, this shall be set out in formal agreements maintained under the authority of the relevant FSB chairman. Any MOD specific procedures, including reporting requirements, shall be included in level 2 publications. Where MOD has set in place its own regulations (e.g. for higher hazard activities) and an external regulator does not have enforcement powers, the arrangements for interface and joint working shall also be published in the FSB level 2 documents. Where a duty holder encounters an external regulator for whom no interface arrangements are in place, then the matter should be brought to the attention of SSD&C and the relevant FSB to determine the need for formalising interface arrangements.

Visiting Forces

51. Visiting NATO Forces are subject to the Articles of the NATO Status of Forces Agreement dated 19 Jun 1951. Of specific relevance to environment and safety law are Articles II, VII and IX. There is no similar agreement for non-NATO forces who visit. Under such circumstances, normal protocol shall be applied; it is likely, therefore, that such visiting forces will be covered by state immunity.

52. External regulators shall not routinely inspect visiting forces, ships and aircraft. In the event of an incident involving visiting forces, ships and aircraft being reported to external regulators, they shall make a judgement as to the requirement for and extent of any investigation which shall take into account the contents of legislation, treaties and protocols and agreements relating to visiting forces. Where MOD is identified as vicariously liable for the activities of visiting forces, ships and aircraft, external regulators may undertake further investigation and enforcement action against MOD in accordance with the relevant Agreement.

53. Interface arrangements for environment and safety between MOD and United States Visiting Forces (USVF) and the HSE are set out in an agreement reproduced at Annex H. Under the USVF agreement, enforcement action is limited to the issue of notices equivalent to Crown Notices and then only to a MOD representative.

CLAIMS

54. In the event of injury or loss sustained as a result of defence activities, individuals or organisations may bring an action against the MOD under civil law for compensation or other remedy. The standard of proof under such circumstances is lower than that of criminal law; it being on the balance of probability rather than beyond reasonable doubt. MOD is likely to be held vicariously liable for the actions of its employees and agents and, therefore, individuals acting in accordance with MOD policy and within the remit of their terms of reference at the time of the occurrence are unlikely to be subject to a personal claim against them. All claims are currently dealt with by the Chief Claims Officer.

55. Where an individual has, by his acts or omissions, been grossly negligent or derelict in his duties, then in addition to the risk of individual criminal prosecution by external regulators, there is a greater likelihood that they will be individually liable in the event of a claim. Under such circumstances they may be personally responsible for defending the claim.