

## Written Evidence submitted by the Health and Safety Executive (HSE) (DOC0014)

### Executive Summary

The Health & Safety Executive (HSE) is the national statutory regulator for health & safety at work in Great Britain. Its authority derives from the Health and Safety at Work etc Act 1974(HSWA). HSE is responsible for the enforcement of health and safety legislation for work activities undertaken by the Ministry of Defence (MoD), but the regulatory relationship takes into account the ways in which the law applies to the MoD, and the nature of their activities.

A number of specific legal derogations, exemptions and disapplications from health and safety at work apply. MoD have their own internal regulator, the Defence Safety Authority (DSA), to provide assurance that arrangements are in place to produce outcomes at least as good as those required by all relevant UK health and safety at work legislation.

HSE recognises that operational training is essential to properly prepare military personnel for combat but expects MoD to comply with its legal duties under the Health and Safety at Work Act 1974 during these training activities.

### How HSE interacts with MoD

1. HSE and MoD have a formal written agreement, the General Agreement between The Ministry of Defence and The Health & Safety Executive, which outlines how regulatory arrangements work in practice. HSE has staff with specific responsibility to deal with MoD both strategically and in day to day liaison. HSE operational staff also engage MoD, predominantly through investigation work.

## How Health and Safety at work legislation applies

2. The application of HSWA to MoD differs from its application to other employers in that certain derogations, disapplications and exemptions apply and that MoD (as with all other Crown bodies) has Crown Immunity from statutory enforcement. Administrative arrangements exist to mirror this.
3. These arrangements comprise of Crown Improvement and Prohibition Notices, and Crown Censure. Censures take place when, but for Crown immunity, the evidence of the failure to comply with health & safety at work law would have been sufficient to provide a realistic prospect of conviction in the courts.
4. HSWA applies within the baseline (the low water line) of Great Britain and extends a further 12 nautical miles out to sea to cover certain defined work activities by virtue of HSWA Application Outside Great Britain Order 2001. It does not apply to MoD's activities overseas.

### HSE's position regarding training, exercises and selection events

5. In 2018, HSE published 'HSE's position on Realistic Training in the Military', setting out the policy position that HSE fully recognises the importance of properly managed realistic training as an essential element in building and maintaining competence. HSE equally recognises that there will still be a risk of injury even when properly planned and managed realistic training is delivered.

<https://www.hse.gov.uk/services/armedforces/realistic-training.htm>

### HSE's Programme of Work to assess delivery of training

6. In 2016/17, HSE carried out a programme of work, including inspections, to assess the adequacy of MoD's risk control measures for centrally delivered training exercises (Basic and Phase 1 training)
7. The programme arose from Crown Censures, findings from HSE investigations, and a commitment in response to the Defence Sub Committee's report 'Beyond endurance? Military Exercises and the duty of care', to ensure that remedial actions had been completed by MoD.
8. Prior to carrying out the inspection aspects of the programme, a review of previous crown censures and investigations was undertaken. The aim was to identify and analyse failings, determine underlying issues, any common themes and establish what post incident actions were taken by MoD.
9. Two high risk topic areas were chosen where MoD had demonstrated failures to manage risks - the planning and management firstly, of arduous training activities, and secondly, of live firing training activities. These activities are carried out tri-service so provided an opportunity to benchmark.
10. The inspection aspect of the programme involved a series of interventions at training establishments across the Front-Line Commands (FLCs) with the following aims and objectives:
  - Assurance that MoD had acted on recommendations following recent crown censures and investigations;
  - Scrutiny of MoD's systems to manage high risk training exercises;
  - Work with MoD's internal regulator to help establish any future internal monitoring regime;
  - Take appropriate enforcement action if breaches were identified.
11. HSE initially visited Phase 1 (basic) training establishments, followed by Phase 2 training establishments and Reservist training. The training activities at these establishments are centrally delivered.

12. A short report was prepared following the inspections. Recommendations were fed back to senior management of the FLCs by way of presentations, incorporating question and answer sessions. Feedback was also provided to the DSA, as MoDs internal regulator. The key findings were:

- At all the establishments visited, the inspection team was assured that the risks associated with live firing and arduous training were understood, and the centrally delivered training was adequately managed and delivered by competent personnel in accordance with JSP 539 'Heat Illness and Cold Injury: prevention & management' and PAM21 'Planning, Conduct and Supervision of firing & training with infantry'.
- There was sufficient evidence that MoD had acted upon recommendations from crown censures and investigations, and from the Defence Sub Committee Report 'Beyond Endurance? Military exercises and the duty of care' for centrally delivered training exercises
- No enforcement action was taken as a result of the interventions, and the establishments were provided with individual reports.

### Recommendations

13. The following recommendations were made to the FLCs :-

- Risk control policies and procedures are reviewed to ensure they focus on significant risk, not all risks, and resources are directed towards managing the significant ones.
- The methodology for explaining and delivering the risk control policies and procedures are reviewed.

- An effective and simple way of sharing good practice across MoD is developed, particularly for common training activities.
- Peer review should be carried out across the services at both tactical and strategic level.
- A strategy to benchmark against external organisations be devised.
- Effective and targeted 3<sup>rd</sup> party assurance should take place. 2<sup>nd</sup> party assurance often appeared 'tick box' and not always directed at the significant risks arising from an activity.
- An effective mechanism to share lessons learned should be identified, and there should also be a focus on why activities go well.
- An effective method to ensure continuity and corporate memory should be established.
- At the appropriate governance level, a decision on the visibility of the DSA to provide 3<sup>rd</sup> party assurance for high risk training activities should be agreed.
- Central delivery of training for high risk activities is effective, but assurance could not be provided that training delivered elsewhere was of the same standard. MoD should ensure that internal monitoring processes provide such assurance.

14. HSE's expectation is that MoD will review the recommendations and produce time bound action plans to address them. We will expect to see evidence that this has taken place during future interactions with MoD.

#### Other matters

15. HSE staff were involved as team members for the external audit of the DSA in 2018 and an External Assurance Review of the Defence Accident Investigation Branch in 2019.

16. HSE have also engaged with the recently created pan- Defence Health, Safety and Environmental Protection team, and are jointly reviewing and revising the Memorandum of Understanding ( General Agreement) between HSE and MoD.

*20 April 2020*

## **Annex**

### Specific Question for HSE

From 1 January 2000 to the present day (broken down year by year)

**How many HSE Crown censures have the MoD and its agencies received?  
How many are related to training, exercise and selection activities?**

Since 2000, there have been 18 Crown Censures, of which 8 were training, exercise and selection related

**How many Notices of Contravention have the MoD and its agencies received linked to training, exercise and selection events?**

MoD have received 7 Notices of Contravention linked to training, exercise and selection events. Two of these are related to incidents where Crown Censures were also administered

**How many Improvement Notices and Prohibition Notices have the MoD and its agencies received linked to training, exercise and selection events?**

MoD have received 5 Improvement Notices and no Prohibition Notices linked to training, exercise and selection events. One Notice relates to an incident where a Crown Censure was also administered, and the other four relate to a single incident.

The number of investigations, prosecutions, enforcement actions and penalties imposed on the MoD and armed forces in respect of deaths or accidents involving Service personnel during training, exercise and selection events. This should be broken down on a year by year basis.

Year	All Notices	Training/ Exercise/ Selection related	Improvement Notices	Training/ Exercise/ Selection related	Prohibition Notices	Training/ Exercise/ Selection related	Crown Censure	Training/ Exercise/ Selection related	Noc Training/ Exercise/ Selection related Letters*
2000/01	4	0	3	0	1	0	3	1	-
2001/02	1	0	1	0	0	0	0	0	-
2002/03	8	1	5	1	3	0	0	0	-
2003/04	2	0	2	0	0	0	1	0	-
2004/05	1	0	1	0	0	0	4	3	-
2005/06	3	0	3	0	0	0	1	0	-
2006/07	0	0	0	0	0	0	3	1	-
2007/08	0	0	0	0	0	0	0	0	-
2008/09	5	2	5	2	0	0	0	0	-
2009/10	1	0	1	0	0	0	0	0	-
2010/11	2	0	2	0	0	0	2	0	-
2011/12	3	2	3	2	0	0	0	0	0
2012/13	2	0	1	0	1	0	1	1	1
2013/14	2	1	2	1	0	0	0	0	0
2014/15	1	0	0	0	1	0	0	0	0
2015/16	0	0	0	0	0	0	1	1	0
2016/17	0	0	0	0	0	0	2	1	3
2017/18	0	0	0	0	0	0	0	0	0
2018/19	4	4	4	4	0	0	0	0	1
2019/20	0	0	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>39</b>	<b>10</b>	<b>33</b>	<b>10</b>	<b>6</b>	<b>0</b>	<b>18</b>	<b>8</b>	<b>5</b>

\*Health & Safety (Fees) Regulations 2012 came into force in October 2012. Notices of Contravention served with Crown Notices not included