

From Jon Day CBE



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SECOND PERMANENT UNDER SECRETARY OF STATE

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To: **Daniel Applegate, DSEA Director**

LETTER OF DELEGATION FROM 2nd PUS to DIRECTOR, DEFENCE SAFETY & ENVIRONMENT AUTHORITY

INTRODUCTION

1. The Secretary of State's (SofS) Policy Statement on Safety, Health & Environmental Protection gives me specific responsibilities for policy setting and regulation for safety and environmental protection in Defence, and PUS has appointed me as Process Owner for these issues. The Defence Safety and Environment Authority (DSEA) has been created to discharge non-aviation aspects of these responsibilities.
2. This Letter of Delegation to you as Director, DSEA is an interim measure pending a Charter from SofS which will set out the DSEA's status and authority and make provision for its structure, roles and responsibilities. The Charter will provide for you to have direct access to SofS.
3. SofS's Policy Statement requires that "where there are exemptions or derogations from either domestic or international law applicable to Defence, we will introduce standards and management arrangements that produce outcomes that are, so far as reasonably practicable, at least as good as those required by legislation"; this requirement applies to the regulation of safety and environmental protection. The DSEA is to manage the regulation of safety and environmental protection across all Defence activities¹, other than aviation², focussing predominantly on activities which are beyond the remit of statutory regulators. This will be achieved by maintaining appropriate regulatory regimes aligned as closely as

¹ Defence activities may be conducted worldwide by TLBs, TFAs or Defence contractors employing military, MOD civilian or contractors' personnel. Where Defence activity requires the use of equipment, its design shall be within the scope of regulation. In general, it is not expected that hazards associated with enemy or hostile action are to be scoped within safety and environmental protection regimes.

² Defence aviation safety & environmental protection regulation is provided by the Military Aviation Authority (MAA).

reasonably practicable with those required by UK legislation. The DSEA is to be independent; its staff are to be Crown servants since they will exercise authority on behalf of SofS.

MISSION

4. The DSEA is to regulate safety and environmental protection for those conducting Defence activity in compliance with the Secretary of State's Policy Statement; it will do this by implementing MOD regulatory regimes in all safety domains outside aviation. It will also produce Departmental Policy for safety and environmental protection and provide high-level assurance on whether Defence is meeting statutory and internal regulatory requirements.

STRUCTURE

5. The legal and technical requirements for safety and environmental protection in the UK are governed by different regimes; there is considerable variety in regulatory practice. The DSEA is, therefore, to comprise a federation of independent MOD regulators. You will be the head of the DSEA and responsible for its leadership, management, direction and overall regulatory outcome, but you will not be the regulator for specific domains. You are personally to appoint a suitably qualified and experienced Crown servant, who will be accountable to you, to lead regulation in each of the following areas:

- a. fuels & gases;
- b. land systems;
- c. maritime (including diving);
- d. movements & transport³;
- e. nuclear;
- f. ordnance, munitions & explosives;

You are to ensure that the rank/grade of each regulator and the resources available are commensurate with the regulatory regime and the scale of Defence activities to be regulated. Regulatory decisions are the responsibility of the independent MOD regulators; should you consider overruling the regulatory decision of a MOD regulator, I require that this be brought to my attention.

6. Maritime regulation has not yet been defined and will not therefore be part of the DSEA at this stage. I have delegated regulatory authority to Director of Safety and Engineering (DS&E), DE&S, who I have asked to take responsibility for maritime regulation until 31 March 2012, after which you are to appoint a regulator in accordance with paragraph 5. During the interim period DS&E is to conduct a review in conjunction with you and other stakeholders to define maritime regulation and recommend the structure that will be required to carry it out in the DSEA.

7. You are to ensure that existing support to DE&S operations provided by the teams that have transferred from DE&S to the DSEA continues to be delivered.

³ Includes: movements by air, rail, road & water; road safety; load safety; railway operations; transport of dangerous goods.

8. You are to maintain a team responsible for supporting me in my Process Owner role; promulgating Departmental Safety Policy and undertaking high-level assurance to determine the extent to which Defence is complying with the requirements of statutory and internal regulation.

GOVERNANCE

9. You are to chair relevant safety domain stakeholder committees, which must include representatives of those being regulated and which should provide for observer status for relevant statutory regulators. The committees are to provide a consultative forum by which stakeholders can offer views on emerging legislation, MOD regulatory regimes, policies, requirements, guidance and processes and can consider high-level safety performance matters. You are to manage the transition from the Functional Safety Boards (FSBs) to stakeholder committees ensuring that TLBs understand the need to undertake the assurance activities where previously carried out by FSBs.

10. In line with the recommendations of the Defence Reform Report, the Defence Environment and Safety Board has ceased to exist. It has been replaced by a committee of Duty Holders and regulators which I have convened to assist me in reaching decisions in my capacity as Safety Process Owner. You will be a member of this committee.

RESPONSIBILITIES

11. You are to manage the DSEA so that it develops, promulgates and enforces MOD regulatory regimes: in particular, DSEA is to:

- a. understand and, where appropriate, influence safety and environmental protection legislation and statutory regulatory regimes where relevant to DSEA's remit; examine emerging proposals relevant to Defence, assess their impact and consider the need for and where necessary apply for Defence exemptions;
- b. understand and, where appropriate, influence Departmental policy which may affect safety and environmental protection, including the SofS's Policy Statement;
- c. develop and promulgate safety and environmental protection regulatory regimes for Defence activities on a domain basis; where practicable, each regime should maximise coherence with its statutory equivalent (or near-equivalent) and with other MOD regulatory regimes (including those of the MAA);
- d. maintain and implement processes, consistent with the regulatory regime, to inspect and audit Defence activities for compliance with regulatory policies, requirements and standards;
- e. maintain and implement processes, consistent with the regulatory regime, to certify, license, authorise, approve, agree and / or permission Defence

activities; where appropriate, MOD regulatory permission is to be necessary prior to conducting a Defence activity. If such permission is withheld or withdrawn, the activity is to cease where this is provided for in the regulatory regime;

f. maintain and implement processes, consistent with the regulatory regime, to enforce MOD regulatory policies, requirements and standards; the imposition of significant sanctions is to be reported to you and me, and where appropriate, to SofS;

g. maintain and implement processes, consistent with the regulatory regime, to investigate any incident or emergency occurring during the conduct of Defence activities;

h. develop and promulgate guidance to those conducting Defence activities to facilitate their compliance with legislation, statutory and MOD regulatory policies, requirements and standards;

i. promote and foster appropriate culture and continuous improvement in safety and environmental protection by those conducting Defence activities;

j. provide an annual report to me which includes: a summary of safety and environmental protection performance within DSEA's remit (scrutinising duty-holders' assurance reports as necessary), the identification of issues (with associated regulatory risk) and an account of the health of MOD regulation; based on this, I will report to the Defence Board, the Defence Audit Committee and SofS;

k. notwithstanding the annual report, alert me and, where appropriate, SofS, if any serious issue threatens safety or environmental protection within DSEA's remit;

l. promote and foster peer relationships with relevant statutory regulators and government departments; establish liaison arrangements; where appropriate, develop and maintain joint regulatory regimes to secure complete regulation of Defence activities;

m. promote and foster peer relationships with relevant foreign regulatory authorities or government agencies.

12. I should be grateful if you would write to confirm that you understand and accept the extent and terms of your delegated authority.

JON DAY