

Table of Contents

Table of Contents	1
3. Identifying Compliance Obligations and Demonstration of Compliance	2
3.1. Procedural Overview	2
3.2. Procedure	2
3.2.1. Step 1: Identify Environmental Compliance Obligations and their Requirements	2
3.2.2. Step 2: Assess Level of Compliance	3
3.2.3. Step 3: Build Compliance Argument	3
3.2.4. Step 4: Documented Compliance Argument	3
3.3. Responsibilities	4
3.4. When	4
3.4.1. Initial Application	4
3.4.2. Review	4
3.5. Required Inputs	4
3.6. Required Outputs	4
3.6.1. Legacy Systems	4
3.6.2. Warnings and Potential Project Risks	5
3.7. Version Control	5
3.7.1. Version 2.3 to 3.0 uplift	5
3.7.2. Version 3.1 uplift	5
3.7.3. Version 3.2 uplift	5
3.7.4. Version 3.2 to 3.3 Uplift	5
3.7.5. Version 3.3 to 3.4 Uplift	5
3.7.6. Version 3.4 to 3.5 Uplift	5
3.7.7. Version 3.5 to 3.6 Uplift	5
3.7.8. Version 3.6 to 3.7 Uplift	5
3.7.9. Version 3.7 to 3.8 Uplift	5
3.7.10. Version 3.8 to 3.9 Uplift	6

3. Identifying Compliance Obligations and Demonstration of Compliance

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Summary:

It is important to identify environmental compliance obligations that apply to projects in order to demonstrate compliance. This procedure better enables Delivery Teams to identify relevant environmental compliance obligations, understanding how compliance is achieved and how compliance arguments should be built and recorded.

3.1. Procedural Overview

3.1.0.1.

It is important to identify any environmental compliance obligations that potentially apply to the project in order to be able to meet their demands and demonstrate compliance. In the context of this procedure, compliance obligations can arise from the following:

1. Legal requirements (to ensure products, systems or services are legal to procure, legal to operate, legal to support, and legal to dispose of);
2. Defence specific requirements, such as defence regulations, strategy commitments, MOD policy, and commercial policy;
3. DE&S requirements, such as DE&S organisational commitments or policy; and
4. User and wider stakeholder requirements.

Details of how compliance is achieved shall also be recorded. The completed Form [EMP03/F/01 SMP01/F/03 - Register of Legislation and Requirements](#) [1] should be used to detail this.

3.2. Procedure

3.2.0.1.

The following information should assist you to complete this procedure:

1. Domain of operation of the project (air, land, water);
2. The country (or countries) in which the Product, Service or System (PSS) is likely to be deployed;
3. The potential environmental issues associated with the project (e.g. air pollution, use of non-renewable resources);
4. The life cycle stages the project is likely to pass through (e.g. CADMID/T);
5. Other projects or platforms with which the project may be closely associated.

3.2.0.2.

Information regarding potential environmental issues need not be detailed at this stage. The duty holder shall be able to produce a preliminary list which may use simple terms such as: air emissions, emissions to water, emissions to land or resource use. This will help identify the regulatory framework and requirements.

3.2.0.3.

With regard to the transfer of equipment to other agencies or if equipment is to be sold, it should be recognised that duty of care, especially in respect to harmful substances, will endure beyond ownership. The 'polluter pays' principle will apply ad infinitum, wherever and to whomever the equipment is subsequently transferred. Therefore, restricted materials, and the legislation pertaining to any potentially harmful substance, shall be captured in [Form EMP03/F/01 SMP01/F/03 - Register of Legislation and Requirements](#). [2]

3.2.1. Step 1: Identify Environmental Compliance Obligations and their Requirements

3.2.1.1.

This stage identifies all the environmental compliance obligations and their requirements that may realistically apply to the project over its entire life cycle.

3.2.1.2.

[Form EMP03/F/01 SMP01/F/03 - Register of Legislation and Requirements](#) [1], shall be used to list and document these standards for each of the life cycle stages. If the Operating Centre, Delivery Team or equivalent proposes using an alternative approach to recording environmental compliance obligations, this will require agreement from the applicable Executive Environmental Responsible (EER) individual.

Useful information sources for identifying relevant environmental compliance obligations include:

1. [JSP 418](#) [3] for UK operations;
2. [Defence Regulations](#) [3];

3. Stakeholders, particularly in regard to non-UK environmental legislation and agreements;
4. Environmental Committee.

3.2.1.3.

It is expected that in the majority of cases required inputs will be adequate for identifying relevant legislation. However, gaps and omissions may occur and in particularly sensitive cases the duty holder may wish to have assurance that any listing is comprehensive. Where operations or activities are planned overseas, the [Register of Legislation and Requirements](#) [1] shall be expanded to include this.

3.2.1.4.

When identifying environmental compliance obligations consideration shall be given to future environmental legislation within the boundaries of the project. Operating Centres and Defence Regulators can be a useful source of information as can a number of external environmental legislation update services.

3.2.2. Step 2: Assess Level of Compliance

3.2.2.1.

The projects' compliance level shall be assessed against the requirements identified in Step 1. This must be undertaken by a body of suitably qualified & experienced personnel (See [EMP04](#) [4] for more detail on forming a SQEP body) (this may be the PSEC). There are two outcomes from this assessment:

1. **Project assessed and demonstrates compliance:** If the SQEP assess the project as compliant they should progress to Step 3 and develop a compliance argument to provide assurance to duty holders;
2. **Project assessed as partially or non-compliant:** If the SQEP assess that a project is non-compliant, actions shall be established and recorded in order to achieve compliance. If it is agreed that compliance is not possible the appropriate regulator must be contacted for guidance. Where contact with external regulators is required QSEP must be consulted in the first instance.

3.2.2.2.

It should be noted that only a regulator can determine if a project is compliant or not. Therefore, consultation between the Delivery Team and the relevant regulator must occur. Projects can determine a level of confidence in compliance and present a body of evidence in respect of that to provide assurance to stakeholders.

3.2.3. Step 3: Build Compliance Argument

3.2.3.1.

The compliance argument shall be proportionate and relative to anticipated environmental impacts. For example, a relatively concise argument is entirely acceptable where the project is environmentally benign or its impacts and risks are small when compared to domestic household activity. Conversely, a full, complete and well evidenced compliance argument is necessary where significant environmental impacts are anticipated.

3.2.3.2.

The compliance argument shall:

1. Demonstrate understanding of the requirements and their applicability;
2. Outline the measures that an organisation is taking/has taken to meet the requirements;
3. Provide evidence to underpin the claim that appropriate measures are being taken.

3.2.3.3.

Robust evidence is required to support the compliance argument. Evidence can include, but is not limited to:

1. Certification;
2. Standard Operating Procedures;
3. Regulatory Consents;
4. User statement regarding operating environment;
5. Known performance data;
6. Original Equipment Manufacture supplied information.

3.2.4. Step 4: Documented Compliance Argument

3.2.4.1.

The compliance argument shall be produced to inform the Environmental Case. The compliance argument shall use the following outline approach:

1. "The 'organisation' has carried out an evaluation of compliance against the requirements of...";
2. "The 'organisation' is confident it has taken all necessary measures to meet the identified requirements because...";
3. Provide evidence of the measures that are in place.

3.2.4.2.

Details of how compliance with the identified compliance obligation is maintained shall be summarised in Form [EMP03/F/01 SMP01/F/03 - Register of Legislation and Requirements](#) [1], and detailed explanation of any compliance issues shall be described in the Environmental Case Report.

3.3. Responsibilities

3.3.0.1.

The Senior Environmental Responsible (SER) individual, the Delivery Team Leader (or equivalent), is responsible for ensuring adequate resources are dedicated to environmental management activities within their area of responsibility, and for facilitating appropriate arrangements to successfully exercise and discharge their overarching responsibilities to ensure the product, system or service delivers sound environmental performance. The responsibility for ensuring the product, system or service delivers sound environmental performance, may be formally delegated in writing to a named, competent individual(s), identified as Environmental Responsible (ER), within the team.

3.3.0.2.

The SER individual, the Delivery Team Leader (or equivalent), is also responsible for facilitating appropriate arrangements to discharge responsibilities relating to this procedure in an efficient and effective manner. Responsibility for ensuring those arrangements are implemented, and achieve outputs which fully satisfy legislative and departmental requirements for environmental management (including compliance with this procedure), may be formally delegated in writing to a named, competent individual(s), identified as ER, within the team.

3.4. When

3.4.1. Initial Application

3.4.1.1.

For new projects this procedure should be undertaken as early as possible in the Concept Stage, prior to Outline Business Case approval.

3.4.2. Review

3.4.2.1.

The outputs of this procedure will require periodic review and possible revision throughout the lifetime of the project. The appropriate timings for such reviews will be determined through following Procedure [EMP09 - Continuous Review](#) [5].

3.5. Required Inputs

3.5.0.1.

Useful information sources for identifying relevant environmental compliance obligations include:

- a. [UK Government Legislation Database](#) [3]
- b. [JSP 418](#) [3] for UK operations;
- c. [Defence Regulations](#) [3];
- d. Stakeholders, for example: Defence Regulators;
- e. Environmental Committee.

3.6. Required Outputs

3.6.0.1.

The following outputs are required:

1. [Form EMP03/F/01 SMP01/F/03 - Register of Legislation and Requirements](#) [1].
2. The Environmental Case Report shall record compliance requirements or descriptions and the compliance argument.

3.6.1. Legacy Systems

3.6.1.1.

When applying this procedure to legacy systems the following questions shall be asked:

1. What is the remaining length of time of the PSS projected service life?
2. Has the legislation review highlighted a need for mitigation that has not already been put in place?
3. Are there future plans for major modifications, capability enhancements or a change of operating environment?
4. Is there historic evidence of actual environmental incidents and impacts, if so when, where and what?
5. Have there been any legal compliance problems to date or issues with regulators?
6. Has there been any stakeholder (particularly external to MOD) interest to date (for example Parliamentary Questions or enquiries regarding the equipments environmental performance)?

3.6.1.2.

Re-considering these questions should ensure that appropriate priorities are established for the legacy system and that the outputs from this procedure for legacy systems are neither over-engineered nor incomplete. For many legacy systems, with limited life, it is appropriate to concentrate on disposal arrangements and impacts especially where there is no evidence of environmental incidents or accidents associated with the system.

3.6.2. Warnings and Potential Project Risks

3.6.2.1.

If this procedure is not completed, and reviewed (see Procedure [EMP09 – Continuous Review](#) [6]), in a timely manner there will be an increase in risk that subsequent work will go ahead with unrecognised environmental liabilities. Equally important is that a poor impact evaluation may cause Delivery Teams to expend unnecessary time and effort on issues which could be considered as insignificant. Any short comings in the application of this procedure could compromise Outline Business Case procedures and approvals. In addition, short comings could also result in costly reworks, especially where opportunities to influence design decisions are missed.

3.7. Version Control

3.7.1. Version 2.3 to 3.0 uplift

3.7.1.1.

Major uplift from the Acquisition System Guidance (ASG) to online version. POEMS has undergone major revision. Refer to the [POEMS Transition Document](#) [7] for details.

3.7.2. Version 3.1 uplift

3.7.2.1.

Update to ensure correct engagement protocol with external regulators.

3.7.3. Version 3.2 uplift

3.7.3.1.

Addition of new content to para 3.2.1.4 to reflect the release of the Sustainable Procurement Tool to POEMS. See [POEMS Transition document](#) [7] for further details.

3.7.4. Version 3.2 to 3.3 Uplift

3.7.4.1.

Minor text changes to align with ASP taxonomy.

3.7.5. Version 3.3 to 3.4 Uplift

3.7.5.1.

Text change replacing Project Team with Delivery Team.

3.7.6. Version 3.4 to 3.5 Uplift

3.7.6.1.

Minor amendment to replace reference to Initial Gate and Main Gate and change these to Strategic Outline case, Outline Business Case and Full Business Case. This change brings terminology in line with JSP 655.

3.7.7. Version 3.5 to 3.6 Uplift

3.7.7.1.

Update to Form EMP03/F/01 - Register of Environmental Standards to align with the form available on the DLST.

3.7.8. Version 3.6 to 3.7 Uplift

3.7.8.1.

Amended wording to align with S&EP Leaflet 18/2023.

3.7.9. Version 3.7 to 3.8 Uplift

3.7.9.1.

Update of the Sustainable Procurement Guide link.

3.7.10. Version 3.8 to 3.9 Uplift

3.7.10.1.

Updated to remove references to the obsolete sustainable procurement toolkit

Source URL: <https://www.asems.mod.uk/guidance/poems/emp03>

Links

[1] https://www.asems.mod.uk/sites/default/files/documents/SMP/20220624%20EMP03_F_01_SMP01_F_03%20-%20Register%20of%20Legislation%20and%20Requirements.xlsx#overlay-context=node/81/edit

[2] https://www.asems.mod.uk/sites/default/files/documents/SMP/20220624%20EMP03_F_01_SMP01_F_03%20-%20Register%20of%20Legislation%20and%20Requirements.xlsx#overlay-context=

[3] <https://www.asems.mod.uk/ExtReferences>

[4] <https://www.asems.mod.uk/guidance/poems/emp04>

[5] <https://www.asems.mod.uk/guidance/poems/emp09>

[6] <http://www.asems.mod.uk/guidance/poems/emp09>

[7]

<http://www.asems.mod.uk/sites/default/files/documents/POEMS%20Transition%20Document%20for%20ASEMS%20Web.docx>