

Military activities

The Ministry of Defence (MoD) is one of the UK's largest landowners with an estate covering some 242,900 ha, much of which is used for military training. Much of this land constitutes coastal areas, and there are various restrictions on the activities and access permitted. There are a number of important RAF bases and firing ranges in Wales, and extensive areas of Welsh coastline and seascape have been used for such purposes, including the Castlemartin, Manobier and Penally ranges in south Pembrokeshire, which lie within the Pembrokeshire Coast National Park.

Ownership by the MoD and use for military training means that much MoD land has escaped other land-use pressures affecting many other stretches of open coast. Consequently, many areas of the Defence Estate maintain exceptional biodiversity and support many rare and uncommon plant and animal species. MoD land contains approximately 260 Sites of Special Scientific Interest (SSSIs), including over 140 sites with European nature conservation designations. This probably represents the greatest number of protected sites in single ownershipⁱ. The Defence Estate also contains many fine examples not only of individual monuments and cultural heritage, but of large archaeological landscapes. Public access to many of these sites is restricted by byelaws for operational safety and security reasons, and to safeguard the interests of MoD tenants.

As defence and military activities are largely national considerations, this paper does not address international and EU obligations. An overview is provided of the key primary legislation relating to military activities that impact upon the coastal and marine environment, and consideration is necessarily given to the influence of other planning and environmental protection statutes on military activities.

ACCESS AND RECREATION

The scenic qualities of the Defence Estate, along with its rich heritage and comparatively remote nature have created a valuable recreational facility. The Estate is used on a formal and informal basis by the public for walking, horse riding, cycling and other recreational activities.

Part II of the Military Lands Act 1892 empowers the Secretary of State for Defence to make byelaws in relation to Defence Estate land that is used for naval, military or air force purposes. Byelaws may be made for regulating the use of the land and protecting the public from danger, but may not adversely affect any common rightⁱⁱ. These byelaw-making powers were extended by the Military Lands Act 1900 (s.2) to apply to sea and tidal water that either abuts on defence land or over which firing takes place from defence land. The consent of the Secretary of State for Transport is required if the byelaws interfere with public rights of navigation, anchoring, fishing, bathing, walking or recreation, and anyone whose private rights are adversely affected is entitled to compensation. The consent of the Crown Estate Commissioners (CEC) must also be obtained in relation to any Crown foreshore or seabed affected by the byelaws.

The provisions of the 1900 Act in relation to byelaws was further extended by the Land Powers (Defence) Act 1958 (s.7) to cover sea areas not abutting on defence land or subject to firing from such land. Consequently, byelaws can now be made in relation to any area of sea, tidal water or shore used for defence purposes, provided that it lies partly within the seaward limits of territorial watersⁱⁱⁱ.

Box 1 Use of byelaws for defence purposes

The Manorbier Range on the south Pembrokeshire coast was established in 1972 and is now the main UK Close Air Defence (CAD) range for the British Army.

Set on its 41 ha cliff-top site, there is a large danger area around Manorbier of approximately 570 square kilometres. This danger area extends a maximum of 21 km out to sea, and up to 50,000 feet overhead. The sea danger area is protected by byelaws, and surveillance of the danger areas is achieved using both radar and visual observation.

Rights of way

The Countryside and Rights of Way (CRoW) Act 2000 (Briefing 6) includes a package of measures designed to allow people to enjoy more of the countryside, including the creation of a new statutory right of access to open country and registered common land, and modernisation of the rights of way system. There continues to be a presumption in favour of access to the Defence Estate where safety and security considerations permit, and where this is consistent with the interests of conservation and tenants. The CRoW Act makes provision for the exclusion powers contained in the 1892 and 1900 Acts under the term “*excepted land*”, which is defined as “*land the use of which is regulated by byelaws under section 14 of the Military Lands Act 1892 or section 2 of the Military Lands Act 1900*” (Sch.1 Part 1(13)).

NATURE CONSERVATION AND SITE PROTECTION

Much of the Defence Estate has been designated as internationally, nationally or locally important for nature conservation. It is the MoD’s policy to comply with all environmental legislation, including the Habitats Regulations 1994, the Wildlife and Countryside Act 1981 (as amended), and the CRoW Act 2000 (for England and Wales). The latter introduced a more robust regime for the protection of SSSIs and, specifically, requires public bodies, including the MoD, to further the conservation and enhancement of the features for which SSSIs have been designated. Furthermore, the Act imposes procedures and restrictions on the MoD when carrying out or authorising activities which may affect a SSSI.

Declarations of Intent have been agreed between the MoD and the statutory nature conservation agencies for the management of these sites. Whilst the Declarations recognise the primary military role for the land, the MoD has undertaken to maintain and, where possible, enhance the nature conservation value for which a SSSI has been notified^{iv}.

As a *competent authority*, the MoD is also required to exercise those functions so as to ensure compliance with the Habitats Directive. The MoD has recently signed a revised Memorandum of Understanding (MoU) with the Department for the Environment, Food and Rural Affairs (Defra), the Office of the Deputy Prime Minister (ODPM), the Welsh Assembly Government (WAG), the Scottish Executive, and the Northern Ireland Office. This MoU reaffirms the MoD’s commitment to internationally important wildlife sites, and sets out liaison procedures for plans and projects that may affect the habitats and species found in designated sites.

Box 2 Conservation of biodiversity on MoD sites

The MoD’s commitment to conserve biodiversity, where practicable and in accordance with the primary requirement of land for military training, is set out in the *Strategy for the Defence Estate*, and the brochures *Respecting the Environment and Defending Biodiversity*. Biodiversity conservation is primarily implemented at the site level, through Conservation Management Plans, Integrated Local Management Plans and, since 2003, Integrated Rural Management Plans linked to the MoD Environmental Management System.

As well as ensuring biodiversity is considered in the day-to-day management of the Estate, the Secretary of State’s Policy Statement on the Environment commits the MoD to “*carry out environmental policy appraisals of all new or revised policies and acquisition programmes and environmental impact assessment of all new projects and training activities*”. Sustainable development initiatives are outlined in the Agency’s new *Sustainable Strategy and Policy*, which is spearheaded by the Defence Estate’s Sustainability and Environmental Advisory Team.

NAVAL VESSELS AND DOCKYARD PORTS

Dockyard ports^v are governed by the Dockyard Ports Regulations Act 1865. Each dockyard port is supervised by a Queen’s Harbour Master (QHM) appointed by the Secretary of State for Defence (s.4), who has significant powers to ensure the safe operation of the dockyard port. The limits of dockyard ports are defined by Orders

of the Privy Council (s.3). The scope of an Order in Council is wide-ranging, reflecting many of the major issues at the time of the 1865 Act.

The QHM is responsible for the movement control of all shipping within the Dockyard Port and the provision of navigational aids and maintenance dredging. As the relevant harbour authority, the powers vested in the QHM are directed towards the freedom and safety of navigation, whilst ensuring that the interests of the MoD are properly protected. The QHM also controls all moorings within his area by the issue of licences, the movement of recreational craft and fishing vessels, and recreational activity. While QHMs are exempt from complying with the Port Marine Safety Code (Briefing 5), a policy decision has been made to implement the Code as far as practicable within the statutory obligations arising from the Dockyard Ports Act 1865.

Although the MoD and vessels of the Royal Navy are exempt from certain provisions under Merchant Shipping legislation (Briefing 5) (e.g. compliance with the Port Waste Management Planning regulations and other MARPOL requirements), it is MoD policy to apply the legislation whenever possible^{vi}.

Military Maritime Graves

Some 11,000 British and Allied vessels, including those taken up from trade, were lost in the two World Wars. The Protection of Military Remains Act (PMRA) 1986 affords protection to the remains of military aircraft and vessels that have crashed, sunk or been stranded, and any associated human remains. The PMRA was passed following the high-profile disturbance of a number of naval vessels during the 1980s^{vii}. The Act is administered for the UK as a whole by the Ministry of Defence (MoD).

The Act applies to all military aircraft and to specified military vessels lost from World War I onwards in British waters and, with respect of the conduct of British nationals, to British military aircraft and vessels lost in international waters from World War I onwards. Wreckage of ships has to be designated as a 'Protected Place' or as a 'Controlled Site' by the Secretary of State for Defence. It is an offence to tamper with, damage, move, remove, unearth or enter any remains designated under the Act. Divers are allowed to visit Protected Places on a 'look but don't touch' basis, but require authorisation from the Secretary of State for Defence to visit a Controlled Site. A Statutory Instrument (SI) identifies vessels designated as a Controlled Site.

Following a public consultation in 2001, the Secretary of State for Defence identified 16 vessels within UK jurisdiction to be designated as Controlled Sites; five vessels in international waters to be designated as Protected Places; and that there would be a rolling programme of identification and assessment to designate all other British vessels meeting new designation criteria.

Other Legislation

Although the Crown is at present exempt from the provisions of the Town and Country Planning Act 1990 (Briefing 1), it is a matter of public policy for all

Government departments to subscribe to the principles of planning control as if they were applicable statutorily to the department. Consultation arrangements exist between Local Planning Authorities (LPAs) and the MoD in order to ensure that a comprehensive evaluation of the relevant issues can be made in cases where proposed developments impinge upon the needs of the MoD. The most obvious examples affect flight safety, particularly with regard to wind farms, and the creation of new open water or landfill sites and the consequent increase in bird activity^{viii}.

Box 3 MoD Strategy for the Defence Estate

The MoD's aims and detailed objectives relating to access and recreation are set out in *In Trust and On Trust – The Strategy for the Defence Estate 2000*. The Strategy states that the MoD will meet its declared presumption in favour of safe public enjoyment of its Estate wherever this is compatible with operational and military training uses, public safety, security, conservation and the interests of its tenants. Stewardship reports provide annual updates of progress against the Strategy's goals.

The MoD intends to revisit the Strategy every 5 years to ensure that it is kept up-to-date. A review programme involving a scoping exercise is now in progress aimed at producing a refreshed Strategy for publication in 2005. The Directorate of Estate Strategy and Policy's strategy team has the lead role in producing the Strategy, supported by a working group made up of key Estate stakeholders.

ADMINISTRATION

All matters relating to the defence of the United Kingdom remain the direct responsibility of the UK Government. This is to provide for a strong integral defence policy and a seamless and effective defence capability for the UK as a whole. A central Memorandum of Understanding (MoU) sets out common provisions for the working relationships between the UK Government and the three devolved administrations. Under the MoU a concordat between the WAG and the Secretary of State for Defence covers the general principles of the Welsh devolution settlement as they affect defence, and sets out arrangements for consultation, exchange of information, confidentiality and security, access to services, resolution of disputes, and review of relations. Where a matter is not capable of being handled bilaterally, the matter will be referred to the Joint Ministerial Committee (JMC), as described by the MoU. The concordat is non-statutory, however, the Secretary of State for Defence and the WAG agree to abide by the provisions and obligations set out in it wherever practicable.

The MoD is one of the largest landowners in the UK and currently spends over £1bn per annum on its estate. The Defence Estates was re-launched as an Agency of the MoD in April 2003. The Estate can be broadly classified as being "built" or "rural". The built estate covers around 80,000 ha, including more than 45,000 buildings (excluding housing), and it is on this that most expenditure is concentrated. The remaining 160,000 ha is relatively undeveloped rural land, which includes 21 major armed forces training areas and 39 minor training areas.

Box 4 Conservation value of the Castlemartin Range

The Castlemartin Tank Firing Range occupies some 2400 ha of freehold land within the Pembrokeshire Coast National Park, and runs along the rocky coastline with sea cliffs which are of national geological interest. The site maintains the highest concentration of seabirds on the Pembrokeshire mainland (including guillemots, razorbills and kittiwakes) and qualifies as a Special Protection Area under the Birds Directive for supporting the Chough. The Chough is a species of European Importance which is now extinct in England.

The limestone coast of SW Wales Special Area of Conservation (SAC) was selected for its vegetated sea cliffs, grey dunes, Greater Horseshoe Bats and Early Gentian, a flowering plant classified as nationally scarce in the UK. The Pembrokeshire marine SAC also recognises that the rich habitats and species found around the Pembrokeshire coast and islands are of European importance.

The Castlemartin Range is also of archaeological interest, with 7 scheduled monuments found on the site and fossil records of international importance. Farming as continued alongside the range's primary use, with flocks of sheep and cattle in winter. The Pembrokeshire Coast Path (National Trail) crosses Range East (during non-firing periods) and inland along some 8km of roads past Range West.

The MoD works closely with the statutory nature conservation agencies (Countryside Council for Wales, English Nature, Scottish Natural Heritage, and the Environment and Heritage Service Northern Ireland) to ensure that legal requirements for environmental appraisal are fulfilled and that designated sites on MoD land are managed in accordance with their conservation objectives. The MoD also maintains links with LPAs, local records centres, non-governmental organisations, and professional ecologists. At the local level, the MoD Conservation Groups aim to bring all relevant parties together to ensure the best possible advice on conservation management. At the national level, the DE Conservation Office is the focal point for MoD biodiversity policy and information, and co-ordinates the network of MoD Conservation Groups.

The MOD has a number of national, regional and local liaison fora to take on-board the views of others, including Range Recording and Advisory Groups at each major range or training establishment. Locally in Castlemartin this has unlocked jointly funded Ranger services, walk leaflets, and a cliff-climbing MoU with the British Mountaineering Council (BMC)^{ix}.

The administration of military ranges was the specific responsibility of the Defence Evaluation Research Agency (DERA) which, since July 2001, has been separated into two organisations: QinetiQ and the Defence Science and Technology Laboratory (DSTL, an agency of the MoD). QinetiQ, Britain's largest independent science and technology company, now runs military test facilities including firing ranges and marine testing facilities.

The Ministry of Defence Police (MDP) is the MoD's own dedicated civil Police Force of around 3,800 officers. The MDP is responsible for the waterborne security of all of Her Majesty's Dockyards and its marine units have the largest number of craft of any police force in the UK. MDP marine officers hold depositions from HM Customs & Excise which enable them to stop and search sea-going vessels.

ISSUES ARISING

In view of the special circumstances of defence, legislation has conferred a large number of exemptions, privileges and powers on the Secretary of State for Defence, the MoD, the Armed Forces or other defence organisations. There are cases where enacted legislation also has to take account of these special circumstances. In addition, the MoD as a Crown body enjoys exemptions and special privileges conferred on the Crown in legislation (for example in planning law and for the purposes of national security) and enjoys freedom from legislation which does not bind the Crown.

The use of these exemptions varies on a case-by-case basis. Some exemptions are invoked on a day-to-day basis as part of the UK's defence capability. In other cases, the Secretary of State complies with the relevant legislation using exemptions only in exceptional circumstances. It is the stated policy of the Secretary of State for Defence to comply with relevant legislation in all areas, reserved and devolved, and only to make use of exemptions or privileges where these are necessary to enhance or protect defence capabilities. Where the MoD has been granted specific exemptions or derogation from legislation, Departmental standards are introduced, which the MoD maintain are, as far as reasonably practicable, at least as good as those required by legislation.

References

- ⁱ MoD (2003) Conservation on the Defence Estate, website: <http://www.mod.uk/aboutus/keyfacts/factfiles/conservation.htm>
- ⁱⁱ UK Coastal Zone Law Notes, website: <http://web.uct.ac.za/depts/pbl/jgibson/iczm/notes/note15.htm> page last modified: 06/03/03.
- ⁱⁱⁱ *ibid.*
- ^{iv} MoD (2001) The Stewardship Report on the Defence Estate 2001. Ministry of Defence website: <http://www.mod.uk/>
- ^v A dockyard port is a port or other navigable water in or near which Her Majesty has a dock, dockyard, steam factory yard, victualling yard, arsenal, wharf or mooring (s.2).
- ^{vi} Boyes, S. *et al.* (2003) *Summary of current legislation relevant to nature conservation in the marine environment in the UK*. Report to the JNCC. Institute of Estuarine and Coastal Studies (IECS), University of Hull, p.57.
- ^{vii} DCMS (2004) Protecting our marine historic environment: making the system work better. Consultation document, March 2004
- ^{viii} *op cit.*, ref (v).
- ^{ix} N. Wheeler (Chief Executive, Pembrokeshire Coast National Park Authority) *pers. comm.* 10/12/04.