

CHAPTER 14

ENCROACHMENTS

General

1401. This chapter is the authority by which encroachments are approved and registered. It must be read in conjunction with PUS letter (PUS/A97/968/11/1) dated 30 Sept 1997 concerning the "Use of Public Assets" at Annex A and Chapter 15 JSP 362 Public Use of MOD Property for Social, Recreational or Commercial Purposes. Paragraphs 1535 - 1547 of Chapter 15 cover Shooting and Fishing rights (sporting rights) and they are therefore not to be treated as encroachments.

Definitions

1402. "Encroachment" means the authorised temporary use of MOD land and buildings by off-duty Service personnel, MOD civilian employees or Department associated bodies such as Cadet Force units and Wives' Clubs for recognised recreational, sporting, and welfare purposes beyond agreed Service scales. The term does not include land or buildings used for the purpose of bringing a unit or establishment up to JSP scales, or occupied under a commercial lease or licence. TAVRA properties must be dealt with in accordance with TAVRA Regulations.

1403. "Appropriate Authority" (AA) means the Budget Holder(s) (BH(s)) in whose area the encroachment is to be registered. Bhs are assisted by a Budget Manager (BM) who will provide advice on financial management, scrutiny, propriety, and regularity issues. In some cases there may be more than one AA e.g. where a facility is owned by one BH but its services are funded by another. "Encroachment Holder" (EH) is the individual who requests the encroachment and signs the encroachment agreement. The EH must not hold a post within the management chain responsible for authorising the encroachment nor may he permit third parties to use MOD land or buildings.

Policy

1404. It is MOD policy to make spare capacity on the Defence Estate (i.e. that which is inalienable or not capable of being let commercially) available on encroachment terms to members of the Armed Forces (including their Reserves, Auxiliaries and Cadets - although specifically RAF ATC and Volunteer Glider School units are legitimate public-funded activities) - civilians employed by MOD (including, where practicable and sensible, long-term contract staff employed on site) and the dependants of those mentioned for sport, recreational or welfare activities. An encroachment can only exist where the majority of the members/participants belong to the aforementioned categories. Examples of such activities are at Annex B.

Oversea

1404A In overseas areas while adhering to the principles of the guidance contained in this chapter, local variations may apply. BHs are advised to consult DE as soon as possible about the use of MOD facilities by prospective EHs. In Germany, under the terms of the Supplementary Agreement to the NATO Status of Forces Agreement, MOD is not allowed to make financial profit by letting out properties for commercial use,

therefore DE(G) should be consulted to ensure that a proposed encroachment cannot be as a letting.

1405. An encroachment must not be approved when it will interfere with the security of the unit or the disposal or demolition of any part of the Defence Estate. Neither may an encroachment be approved where it is intended to erect a building or structure which would exclude MOD use for any other purpose. The AA must fully document the basis on which the encroachment is to be granted and the facilities to be used. Encroachments are a traditional means by which the Department has acted as a good employer but they are concessions not conditions of service. As Service Families Quarters (SFQ) are leased from Annington Homes Ltd (in England and Wales only), the DHE Area Manager will advise whether the misappropriation of temporarily void SFQ is feasible.

1406. The AA must, in consultation with the Property Manager (PM) and Defence Estates (DE), consider whether the facilities to be used by the EH can be brought into more effective official use thus possibly enabling other property to be released for disposal. Exclusive use of land or buildings for encroachment activities must be the exception rather than the rule. Usage must be reviewed annually to ensure that the most appropriate use is being made of every area of the Defence Estate.

1407. The AA may exercise discretion consistent with proper financial and management control when permitting and financing encroachments. The AA must ensure that he holds sufficient personal delegation in writing to grant waivers and write-off charges applicable to all encroachments. Authority is to be sought from the appropriate higher budgetary level if insufficient delegation is held. Details of waiver procedures are given in Chapter 15 of this JSP and Part IV Chapter 8 of JSP 414.

1408. When considering a request for an encroachment the AA will take into account primarily the welfare, sporting, and recreational needs of personnel. The AA must also ensure that duplication of, and competition with, other facilities at the unit which are publicly funded is avoided. Consideration must also be given to the effect of the proposed encroachment on existing locally provided public facilities. The AA must be assured that the unit or establishment can afford to support the encroachment. All applications for encroachments must be subject to a documented requirement and financial scrutiny prior to approval.

1409. The AA and, where necessary, the BH who has the delegated power to waive/write off the amount assessed for each encroachment must retain written records of requests for encroachments, justifications, approvals, and renewals of waiver of rents. The AA must also retain a copy of the formal agreement (see para **1417**) and the insurance policy (see para **1419**). All documents must be made available for inspection when required. It is recommended that records are kept for a minimum of 6 years.

1410. When an encroachment will result in the exclusive occupation of land, buildings or individual rooms, the AA must seek the advice of the DE to ensure that a protected tenancy is not created.

1411. It is improper for publicly funded property to be used to support activities that would normally be regarded as profit-making nor those which operate as a unit-run "business" nor those where less than half of the participants are in the categories listed

in par **1404**. The AA must assess both a list of the proposed members and a forecast of potential income and expenditure before approving an encroachment. Before granting a renewal of an encroachment annual reviews must be conducted to ensure that activities remain non-profit making and continue to qualify in terms of membership and use. An encroachment must be terminated and a commercial lease issued in line with current rules if a profit is generated. At **Annex C** is a statement governing Service Sports Associations.

Charges

1412. EHs should not normally be charged for rent, council tax/CILOR, nor normal building running costs. When an encroachment increases the cost of maintenance or utilities to a level which the BH cannot bear the AA has discretion to demand that the EH meets the extra charges due directly to the encroachment. Advice must be sought from the HLB and TLB holders if appropriate. To enable the AA to assess whether normal costs are exceeded he must ensure comprehensive management information is gathered and retained by the appropriate PM and that the Accommodation Services Unit (ASU) is regularly consulted to confirm the level of current (or estimate of) running costs incurred by EHs. Management control must be exercised to ensure that all charges are current; correctly assessed; and reviewed (and, if necessary, reassessed) annually. Charges must be assessed in all cases (including rent, Council Tax/CILOR, normal building running costs etc.) as this will allow the extent of the waiver to be determined. All waivers must be the subject of formal write-off action as a Claim Abandoned (Category D2).

1413. Defence assets must not be used to run a business on encroachment terms, i.e. rent free as per para **1411**. Such businesses must occupy facilities under a commercial lease. Employing staff to assist in the running of an encroachment is also prohibited as it suggests that a business is being operated (except in the case of minor remuneration to playgroup/creche/nursery staff where the facility is for the children of entitled personnel at para **1404**). The public use of encroachment facilities (e.g. sports facilities) for payment is prohibited as it means that EHs are using MOD facilities to generate profit.

1414. All MOD property is maintained by the MOD to an appropriate standard including that occupied on encroachment terms. However, any additional improvements or alterations which arise as a direct consequence of the encroachment must come under the financial responsibility of the encroachment-holder. If such additional work is undertaken on behalf of the EH he/she must be billed accordingly. All work is to be co-ordinated by the PM.

1415. An encroachment may be permitted on property which MOD has to maintain against future requirements on a care and minimum maintenance basis or which cannot be disposed of even though there is no use for it. In such cases the EH must be charged for all property management, maintenance or furnishing costs incurred over and above those which MOD would have incurred if the encroachment had not been granted. In summary, normal maintenance falls to the MOD but the EH must meet the costs of any extra alterations/improvements he requires. All work is to be co-ordinated via the PM.

1416. When agreement cannot be reached on terms relating to charging for an activity which would normally be considered to be profit-making it may be considered for treatment under para **1412** where a welfare need can be demonstrated. Cases must be submitted to Finance Policy (Repayment) 1 for approval through the budgetary chain of command prior to granting an agreement of this type.

Formal agreement

1417. Every encroachment must be covered by a formal agreement between the AA and the EH. The agreement must state clearly the arrangements covering the operation of the encroachment including each party's responsibilities; the maintenance and other support which the unit or establishment will provide; and any charges to be made (together with the provision for review). The agreement must also cover termination arrangements (including the disposal of assets) when the encroachment is either no longer required by the EH or when the facilities being used are required for official MOD use or are to be disposed of. MOD rights to full and exclusive use at its discretion of the land and buildings must be incorporated into the agreement. The AA must ensure that the DE is consulted in drawing up the agreement.

1418. A request must be submitted immediately to the AA In the case of existing encroachments where no formal agreement exists. If approved, a formal agreement between the AA and the EH must be completed no more than one month after the application date.

Insurance

1419. The AA must decide, seeking advice when appropriate from DC&L(F&S) Claims and the DE, whether or not to insure buildings and contents (except in Germany where buildings are Federal property and insurance is mandatory). However, all encroachments must be covered by public liability insurance. The EH must produce to the AA an extant public liability policy and a current premium receipt before the encroachment agreement is completed and at any time thereafter on demand. All policies must be for a minimum of £2,000,000 (two million pounds) per claim (DC&L(F&S) Claims will advise if this amount can be reduced for overseas locations); must indemnify the EH, all encroachment members/participants, and the Secretary of State for Defence and his servants or agents (all of whom must be named as insured parties in the policy); and must include a "member to member" clause to enable both insured parties to claim against each other.

1420. Where buildings form part of the encroachment, the AA can require the EH to take out fire insurance. This decision will be affected by whether or not the building or other departmental property is likely to be replaced if destroyed and whether its location is such that a fire would put other Departmental property or facilities at risk. The advice of the local MOD fire safety adviser must be sought by the AA. The same applies to insurance cover requirements for contents of an encroachment. The Department will accept no claims for the replacement of buildings or property or their contents destroyed by fire where no insurance has been purchased. In such cases any costs incurred must be met by the unit or establishment.

Health & Safety

1421. AAs must ensure that suitable Health & Safety (H&S) and Environmental Protection (EP) arrangements are made with regard to encroachments. In each case the EH is to be furnished with a copy of the AA's H&S and EP policy statements. Particular consideration must be given to activities producing waste products or emissions which have to be disposed of in accordance with the Environmental Protection Act 1990 or other relevant legislation.

Records

1422. The AA must keep a register, to be available for inspection by the DE, of all encroachments granted, the terms and conditions under which they were granted and the cost involved. F/Lands Form 510 - Encroachment Register - is available from CSE Llangennech via normal ordering procedures.

Service Sports Associations

1423. All units should be aware that Service Sports Associations have no special status and should be treated the same as other encroachment holders. They are, for example, not entitled to the loan of any equipment or personnel. The only exception to this is the RAF Gliding & Soaring Association (GSA) who, under a previous Treasury instruction, may loan "essential" equipment only, up to £7,000 in value. If an Association is unable or unwilling to adhere to the rules governing encroachments then it must operate under a commercial lease.

Annex A to Chapter 14

PUS

PUS/A97/968

11/1

30 September 1997

CDS* CDP*

CNS* CSA*

CGS* 2nd PUS*

CAS* TLB Holders

VCDS* Agency Chief Executives

Copy to:

PS/Secretary of State*

PS/Minister(DP) *

PS/Minister(AF) *

USOfS*

Press Secretary*

Special Advisers* (. * via CHOTS)

USE OF PUBLIC ASSETS

1. To judge from a recent case, there is a risk of misunderstanding over the uses to which public assets may be put and the basis of any "hire charge".

2. As a general principle, assets and other resources paid for from public funds are intended for use in the public service only. Government Departments must not use them to subsidise private organisations or individuals, nor the private activities of their own personnel. The only basis on which it is permissible for MOD, including the Services, to make assets or services available for private purposes is if the Department is reimbursed

an appropriate charge, as determined by the relevant budget manager. This applies as much to the use of Service manpower as it does to the provision of equipment. The general principles behind, and rules on, the raising of charges are set out in detail in JSP 368, which is shortly to be reissued in revised form.

3. There is an important distinction between public and non-public funds held within the Defence community. The two are not interchangeable. A payment into non-public funds (such as a Service charity or mess fund) is not a proper substitute for paying the Department for the, use of public assets.

4. None of this affects existing guidance on Expenditure on Staff Benefits (DAO 1/94), on the public funding of certain sports within the Services, or on the generation of receipts through the exploitation of unavoidable spare capacity. But the unreimbursed use of public, assets for private benefit is a misuse of Voted funds; is liable to attract adverse criticism from Parliament, the Press and the public; and, worst of all, casts doubt on the integrity of public servants, especially those who might appear to be beneficiaries.

5. I should be grateful if you would ensure that this guidance is circulated widely within your respective areas.

Richard Mottram

PUS

Annex B to Chapter 14

Examples of approved sports and recreational and welfare activities

Sports

Archery	Judo
Association football	Lawn Tennis
Athletics	Model aircraft
Badminton	Model engineering
Basketball	Mountaineering
Billiards and snooker	Netball
Bowls	Orienteering
Boxing	Parachuting (sport)
Canoeing	Rowing
Clay pigeon/skeet/target shooting	Rugby
Cricket	Sailing
Croquet	Skating
Cycling	Squash
Diving	Swimming
Equestrian events	Table tennis
Flying (powered/non-powered)	Volleyball
Golf	Water polo
Gymnastics	Weight lifting
Hockey	

Welfare activities

Cadet Forces
Caravans, storage of
Dances
Families' clubs

Keep fit
Nurseries/playgroups
Officers' clubs
(for Fleet personnel)

Scouts and Guides
Thrift shops
Wives' clubs
Youth clubs

Recreational activities

Amateur dramatics
Bell ringing
Board games
Carpentry
Cookery
Darts
Drawing and painting

Metalwork
Music
Photography
Pottery
Radio ("ham" activities)
Singing

Annex C to Chapter 14

Service Sports Associations

Service Sports Associations have no special status and must be treated in exactly the same way as other encroachment holders. They are not entitled to the provision of other forms of support. (The only exception to this is the RAF Gliding & Soaring Association (GSA) who, under a previous Treasury Agreement, may loan up to £7,000 of "essential" equipment).

If an Association is unable or unwilling to adhere to the rules governing encroachments then it must operate under a commercial lease.