

Schedule of provisions in Chapter 3A of Part 3 of the Armed Forces Act 2006
as amended by clause 2 of the Armed Forces Bill 2015

November 2015

Introduction

To assist MPs and peers in preparing for debates, the Ministry of Defence has prepared this informal schedule of some of the provisions in the Armed Forces Act 2006, as amended by clause 2 of the Armed Forces Bill 2015. It has not been approved by Parliamentary Counsel.

Below, the Ministry of Defence has reproduced relevant extracts of the Armed Forces Act 2006 to illustrate how provisions in the 2006 Act will work once amended by the Bill.

Text inserted by the Bill is highlighted.

Where text is omitted or substituted by the Bill, it is struck through and presented in red.

PART 3
POWERS OF ARREST, SEARCH AND ENTRY

CHAPTER 3A
TESTING FOR ALCOHOL AND DRUGS **IN CONNECTION WITH A
SUSPECTED OFFENCE OR ACCIDENT**
~~ON SUSPICION OF OFFENCE~~

Preliminary testing for alcohol and drugs

93A Commanding officer's power to require preliminary tests

(A1) This section applies in the situations described in subsections (1) to (3C).

(1) **The first situation is** ~~This section applies~~ where the commanding officer of a person subject to service law has reasonable cause to believe that that person—

- (a) is committing a **safety-critical duty offence** ~~relevant offence~~; or
- (b) has committed **such an a-relevant** offence and still has alcohol or a drug in the body or is still under the influence of a drug.

~~(2) In this section “relevant offence” means—~~

- ~~(a) an offence under section 20A; or~~
- ~~(b) an offence under section 20(1)(a) in respect of a safety-critical duty (as defined by section 93I).~~

(3) **The second situation is** ~~This section also applies~~ where the commanding officer of a person who is a civilian subject to service discipline has reasonable cause to believe that that person—

- (a) is committing an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under section 78, 79, 92 or 93 of the Railways and Transport Safety Act 2003 (maritime and aviation offences); or
- (b) has committed such an offence under section 42 and still has alcohol or a drug in the body or is still under the influence of a drug.

(3A) The third situation is where the commanding officer of a person subject to service law or of a person who is a civilian subject to service discipline has reasonable cause to believe that—

- (a) there has been an accident involving an aircraft or a ship; and**

(b) at the time of the accident, the person was carrying out an aviation function in relation to the aircraft or a marine function in relation to the ship.

(3B) The fourth situation is where the commanding officer of a person subject to service law or of a person who is a civilian subject to service discipline has reasonable cause to believe that—

(a) there has been an accident involving an aircraft or a ship;

(b) before the accident, the person carried out an aviation function in relation to the aircraft or a marine function in relation to the ship; and

(c) it is possible that the carrying out of the function by the person may have caused or contributed to—

(i) the occurrence of the accident;

(ii) any death, injury to a person, damage to property or environmental harm resulting from the accident; or

(iii) any risk of death or of such injury, damage or harm created by the accident.

(3C) The fifth situation is where the commanding officer of a person subject to service law or of a person who is a civilian subject to service discipline has reasonable cause to believe that—

(a) there has been an accident which resulted in or created a risk of—

(i) death;

(ii) serious injury to any person;

(iii) serious damage to property; or

(iv) serious environmental harm;

(b) the person—

(i) was carrying out a safety-critical function at the time of the accident; or

(ii) carried out a safety-critical function before the accident; and

(c) it is possible that the carrying out of the safety-critical function by the person may have caused or contributed to—

(i) the occurrence of the accident;

(ii) the death, injury, damage or harm; or

(iii) the risk of death, injury, damage or harm.

- (4) Where this section applies, the commanding officer may require the person mentioned in subsection (1), (3), (3A), (3B) or (3C) (“the affected person”) ~~subsection (1) or (3) (“the suspected person”)~~ to co-operate with any one or more of—
- (a) a preliminary breath test (see section 93B);
 - (b) a preliminary impairment test (see section 93C);
 - (c) a preliminary drug test (see section 93D).
- (5) The Defence Council may by regulations provide for the delegation by a commanding officer of the commanding officer's functions under this section.
- (6) A person who, without reasonable excuse, fails to comply with a requirement imposed under subsection (4) commits an offence.
- (7) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.
- (8) For the purposes of this section, a person does not co-operate with a preliminary test unless the person's co-operation—
- (a) is sufficient to enable the test to be carried out; and
 - (b) is provided in such a way as to enable the objective of the test to be satisfactorily achieved.

93AA Section 93A: interpretation

(1) In section 93A(1), “safety-critical duty offence” means—

(a) an offence under section 20A; or

(b) an offence under section 20(1)(a) in respect of a safety-critical duty (as defined in section 93I).

(2) In section 93A(3A) and (3B)—

“aviation function” means a role or activity in connection with aviation that is specified, or of a description specified, by regulations made by the Defence Council for the purposes of those subsections;

“marine function” means a role or activity in connection with a ship or ships that is specified, or of a description specified, by regulations made by the Defence Council for the purposes of those subsections.

- (3) The Defence Council may specify a role or activity (or description of role or activity) under subsection (2) only if carrying it out with ability impaired by alcohol or drugs would result in a risk of—
- (a) death,
 - (b) serious injury to any person,
 - (c) serious damage to property, or
 - (d) serious environmental harm,
- but this is subject to subsection (4).
- (4) The Defence Council’s powers under subsection (2) include power to specify a role or activity that is undertaken in preparation for, or in connection with, the carrying out of a role or activity (or description of role or activity) that satisfies the test in subsection (3), either by specifying such a role or activity generally or by specifying a particular role or activity.
- (5) For the purposes of section 93A(3A) and (3B), an accident does not involve an aircraft or a ship simply because it takes place on an aircraft or ship.
- (6) In section 93A(3C), references to the carrying out of a safety-critical function are to—
- (a) the performance by a person subject to service law of a duty specified, or of a description specified, by regulations under section 20A(2) or of any other safety-critical duty (as defined in section 93I); or
 - (b) the carrying out by a person who is a civilian subject to service discipline, in the course of the person’s employment, of a role or activity which, if it were carried out by a person subject to service law in the course of his or her duty, would be a safety-critical duty.
- (7) References in section 93A and this section to a person carrying out a function include a failure by the person to carry out a function at a time when the person is responsible for carrying it out (and related expressions are to be read accordingly).

93B Preliminary breath test

- (1) In a situation described in section 93A(1) or (3), a preliminary breath test is a procedure administered by a service policeman under which—

- (a) the affected suspected person provides a specimen of breath; and
- (b) the specimen is used for the purpose of obtaining, by means of an approved device, an indication whether the proportion of alcohol in the person's breath or blood is likely to be such as is necessary for the commission of the suspected offence.

(1A) In a situation described in section 93A(3A), (3B) or (3C), a preliminary breath test is a procedure administered by a service policeman under which—

- (a) the affected person provides a specimen of breath; and
- (b) the specimen is used for the purpose of obtaining, by means of an approved device, an indication of the proportion of alcohol in the person's breath or blood.

(2) A preliminary breath test may be administered only—

- (a) at or near the place where the requirement to co-operate with the test is imposed;
- (b) at a service police establishment determined by the service policeman; or
- (c) at a medical establishment.

(3) In this section “the suspected offence” means an offence mentioned in section 93A(1)(a) ~~93A(2)~~ or (3)(a) which the commanding officer has reasonable cause to believe has been committed.

93C Preliminary impairment test

(1) A preliminary impairment test is a procedure under which a service policeman—

- (a) observes the affected suspected person performing tasks specified by the service policeman; and
- (b) makes such other observations of the affected suspected person's physical state as the service policeman thinks expedient.

(2) A preliminary impairment test may be administered only—

- (a) at or near the place where the requirement to co-operate with the test is imposed;
- (b) at a service police establishment determined by the service policeman; or

- (c) at a medical establishment.
- (3) The Provost Marshals (acting jointly) must issue, and may from time to time revise, a code of practice about—
 - (a) the kind of task that may be specified for the purposes of a preliminary impairment test;
 - (b) the kind of observation of physical state that may be made in the course of a preliminary impairment test;
 - (c) the way in which a preliminary impairment test should be administered; and
 - (d) the inferences that may be drawn by a service policeman from observations made in the course of a preliminary impairment test.
- (4) In subsection (3) “the Provost Marshals” means the Provost Marshals of each of the service police forces.
- (5) A service policeman administering a preliminary impairment test must have regard to the code of practice.
- (6) A service policeman may administer a preliminary impairment test only if the service policeman is approved for that purpose by a Provost Marshal of a service police force.
- (7) A code of practice under this section may include provision about—
 - (a) the giving of approval under subsection (6); and
 - (b) in particular, the kind of training that a service policeman should have undergone, or the kind of qualification that a service policeman should possess, before being approved under that subsection.

93D Preliminary drug test

- (1) A preliminary drug test is a procedure administered by a service policeman under which—
 - (a) a specimen of sweat or saliva is obtained from the **affected** ~~suspected~~ person; and
 - (b) the specimen is used for the purpose of obtaining, by means of an approved device, an indication whether there is a drug in the person's body.
- (2) A preliminary drug test may be administered only—

- (a) at or near the place where the requirement to co-operate with the test is imposed;
- (b) at a service police establishment determined by the service policeman; or
- (c) at a medical establishment.

Provision of specimens for analysis

93E Provision of specimens for analysis

- (1) This section applies in relation to an investigation into whether a person has committed—
 - (a) an offence under section 20A;
 - (b) an offence under section 20(1)(a) in respect of a safety-critical duty (as defined by section 93I); or
 - (c) an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under section 78, 79, 92 or 93 of the Railways and Transport Safety Act 2003.
- (2) In the course of the investigation a service policeman may require the person—
 - (a) to provide two specimens of breath for analysis by means of an approved device;
 - (b) to provide a specimen of blood or urine for a laboratory test.
- (3) A requirement under this section may be imposed only at a service police establishment or a medical establishment.
- (4) For the purposes of this section and section 93F, a person does not provide a specimen of breath for analysis unless the specimen—
 - (a) is sufficient to enable the analysis to be carried out; and
 - (b) is provided in such a way as to enable the objective of the analysis to be satisfactorily achieved.
- (5) For the purposes of this section and section 93F, a person provides a specimen of blood if and only if—
 - (a) he consents to the taking of such a specimen from him;

- (b) the specimen is taken from him by a registered medical practitioner or registered nurse; and
 - (c) the specimen is of sufficient quantity to enable it to be divided into two parts for the purposes of analysis.
- (6) For the purposes of this section and section 93F, a person provides a specimen of urine if and only if the specimen—
 - (a) is provided within one hour of the requirement for its provision being made and after the provision of a previous specimen of urine; and
 - (b) is of sufficient quantity to enable it to be divided into two parts for the purposes of analysis.
- (7) Where the provision of a specimen may be required under this section, the question of whether it is to be breath, blood or urine, and in the case of blood the question of who is to be asked to take it, is to be decided by the service policeman imposing the requirement.
- (8) But where a service policeman decides for the purposes of subsection (7) to require the provision of a specimen of blood, there shall be no requirement to provide such a specimen if—
 - (a) the registered medical practitioner who is asked to take the specimen is of the opinion that, for medical reasons, it cannot or should not be taken; or
 - (b) the registered nurse who is asked to take it is of that opinion and there is no contrary opinion from a registered medical practitioner;and where by virtue of this subsection there can be no requirement to provide a specimen of blood, the service policeman may require a specimen of urine instead.
- (9) A service policeman must, on requiring a person to provide a specimen in pursuance of this section, warn the person that a failure to provide it may render the person liable to proceedings for a service offence.
- (10) A person who, without reasonable excuse, fails to provide a specimen when required to do so in pursuance of this section is guilty of an offence.
- (11) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

93F Further provision about specimens under section 93E

- (1) Where two specimens of breath are provided by a person in pursuance of section 93E, the one with the lower proportion of alcohol in the breath is to be used and the other is to be disregarded.
- (2) If the specimen with the lower proportion of alcohol contains no more than a prescribed proportion of alcohol, the person who provided it may claim that it should be replaced by such a specimen of blood or urine as may be required under section 93E.
- (3) If the person then provides such a specimen, neither specimen of breath is to be used.
- (4) In subsection (2) “prescribed” means prescribed by regulations made by the Defence Council for the purposes of this section; and the regulations may prescribe different proportions of alcohol in relation to different kinds of offence.
- (5) On a request made at the time a specimen of blood or urine is provided under section 93E, the person who provided the specimen must be given a part of the specimen sufficient for the purposes of analysis.

93G Specimens of blood from persons incapable of consenting

- (1) A service policeman may request a registered medical practitioner to take a specimen of blood from a person (“the person concerned”), irrespective of whether that person consents, if—
 - (a) the service policeman would (in the absence of any incapacity of the person concerned and of any objection under section 93H) be entitled under section 93E to require the person concerned to provide a specimen of blood for a laboratory test;
 - (b) it appears to the service policeman that the person concerned has been involved in an accident that constitutes or is comprised in the matter that is under investigation or the circumstances of that matter;
 - (c) it appears to the service policeman that the person concerned is or may be incapable of giving a valid consent to the taking of a specimen of blood (whether or not consent has purportedly been given); and
 - (d) it appears to the service policeman that that person's incapacity is attributable to medical reasons.
- (2) It is lawful for a registered medical practitioner to whom a request is made under this section, if that practitioner thinks fit—

- (a) to take a specimen of blood from the person concerned irrespective of whether that person consents; and
 - (b) to provide the specimen to a service policeman.
- (3) The specimen must be of sufficient quantity to enable it to be divided into two parts for the purposes of analysis.
- (4) If a specimen is taken in pursuance of a request under this section, it must not be subjected to a laboratory test unless the person concerned—
- (a) has been informed that it was taken;
 - (b) has been required by a service policeman to give permission for a laboratory test of the specimen; and
 - (c) has given permission.
- (5) A service policeman, on requiring a person to give permission for the purposes of this section for a laboratory test of a specimen, must warn the person that a failure to give the permission may render the person liable to proceedings for a service offence.
- (6) On a request made at the time a person gives permission under this section for a laboratory test of a specimen, that person must be given a part of the specimen sufficient for the purposes of analysis.
- (7) A person who, without reasonable excuse, fails to give permission for a laboratory test of a specimen taken from the person under this section is guilty of an offence.
- (8) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

General provisions relating to testing

93H Patients in medical establishments

- (1) This section applies in relation to a person who is at a medical establishment as a patient.
- (2) The person shall not be required to co-operate with a preliminary test or to provide a specimen under section 93E unless the responsible medical professional has been notified of the proposal to impose the requirement.
- (3) If the responsible medical professional objects on medical grounds the requirement must not be imposed.

- (4) If the responsible medical professional does not object on medical grounds and the requirement is imposed, the requirement must be for co-operation with a preliminary test administered, or for the provision of a specimen, at the medical establishment.
- (5) No specimen of blood may be taken from the person under section 93G, and the person may not be required to give permission for a laboratory test of a specimen taken under that section, unless the responsible medical professional—
 - (a) has been notified of the proposal that the specimen be taken or of the proposal to make the requirement; and
 - (b) has not objected on medical grounds.
- (6) In this section “the responsible medical professional” means—
 - (a) the registered medical practitioner in immediate charge of the person's case; or
 - (b) if there is no such registered medical practitioner, the registered nurse in immediate charge of the person's case.
- (7) In this section “medical grounds” means—
 - (a) in relation to a requirement to co-operate with a preliminary test or to provide a specimen under section 93E, the ground that the requirement, or compliance with it by the patient, or any warning required by section 93E(9), would be prejudicial to the proper care and treatment of the patient;
 - (b) in relation to the taking of a specimen under section 93G or a requirement to give permission for a laboratory test of a specimen taken under that section, the ground that the taking of the specimen, the requirement, or any warning required by section 93G(5), would be so prejudicial.

93I Definitions for purposes of Chapter 3A

- (1) In this Chapter—
 - “approved”, in relation to a device, means approved by the Secretary of State;
 - “drug” includes any intoxicant other than alcohol;
 - “medical establishment” means any facility at which medical or surgical treatment for in- or out-patients is provided;

“preliminary test” means—

- (a) a preliminary breath test within the meaning of section 93B;
- (b) a preliminary impairment test within the meaning of section 93C; or
- (c) a preliminary drug test within the meaning of section 93D;

“safety-critical duty” means a duty which the commanding officer of the person mentioned in section 93A(1), 93AA(6)(a) or 93E(1) reasonably believes is such that performing the duty with ability impaired by alcohol or drugs would result in a risk of—

- (a) death;
- (b) serious injury to any person;
- (c) serious damage to property; or
- (d) serious environmental harm;

“service police establishment” means any building or part of a building, any structure, or any room (whether on land or on a ship) which is used by a service policeman for the performance of his duties.

- (2) In this Chapter any reference to a service policeman includes a Royal Navy coxswain.