



Ministry
of Defence

Consultation

Defence Safety Authority: Protection of Evidence Obtained During Defence Safety Authority Convened Service Inquiries.

A consultation seeking views on potential legislation to amend the Armed Forces (Service Inquiries) Regulations 2008 to provide protection to evidence obtained during Defence Safety Authority Service Inquiries.

Opening Date: 18 January 22

Closing Date: 28 February 22

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SECTION ONE: OVERVIEW

1 Introduction

1.1 The Armed Forces (Service Inquiries) Regulations 2008 (the 2008 Regulations) direct that, in the event of the death of a person subject to service law, Defence must conduct a Service Inquiry where it is considered anything of consequence may be learned from the death. It is also MOD policy (in accordance with Joint Service Publication 832 – Guide to Service Inquiries) that a Service Inquiry will be held in the event of either: the MOD being in some way connected to the death of a civilian, an incident resulting in serious injury to either a Service person or a civilian.

1.2 The person charged with convening the inquiry, the Convening Authority, will be dependent on the nature of the matter to be investigated. Where the matter is deemed to be safety related (safety related deaths, serious injuries, near misses and major equipment loss or damage) the Director General (DG) of the Defence Safety Authority (DSA) will be the primary convening authority. The DSA are an independent authority established by Charter of the Secretary of State for Defence and are responsible to him for health and safety and environmental assurance across Defence. These independent Service Inquiries provide a way for defence to learn from accidents and identify recommendations to prevent them from happening again. You can read more about the DSA [here](#).

1.3 In accordance with the 2008 Regulations, when a Service Inquiry is formally convened, it will consist of a president and at least two other members. They are known as the Service Inquiry panel. Only Crown servants or military personnel can be appointed to serve on a panel.¹ Where the Director General of the DSA convenes a panel, they will also be advised by professional investigators from the Defence Accident Investigation Branch (DAIB). The DAIB are the investigative arm of the DSA and, like the DSA, are independent of the three Services.

1.4 The civilian accident investigation branches (AIB), organisations equivalent to the DAIB, are the Air, Rail, and Maritime Accident Investigation Branches (AAIB, RAIB and MAIB respectively) (funded by the Department of Transport) and the Healthcare Safety Investigation Branch, currently funded by the Department of Health and Social Care. AIB inspectors are accorded a wide range of statutory powers under their regulations to have immediate and unrestricted access to sources of evidence such as accident sites, debris, recording devices and witnesses to facilitate their investigations. The respective regulations require that AIBs shall not disclose certain types of information other than for the purposes of a safety investigation. For example, an AIB is not permitted to share with the police the identities of, and statements made by witnesses it has interviewed, nor to disclose sensitive personal information such as medical records, unless ordered to do so by the High Court. The AAIB is similarly prevented from sharing cockpit voice and image recorder data. However, the police are not prevented from sharing witness statements and other information with the AIBs.

1.5 The reason for protecting evidence gathered in safety investigations is to ensure that those who are able to help the AIB understand why the incident occurred, and how it

¹ When a Service Inquiry is convened by the DG DSA, the panel members are reassigned from their respective Services and placed under the command of the DG DSA to avoid, as far as it is possible to do so, any potential influence from their parent Service.

may be prevented from happening again, are not afraid to be completely candid with the AIB.

1.6 What the DSA seeks to do is emulate, in DSA convened Service Inquiries, the protections for evidence accorded to the equivalent civilian AIBs. It is not proposed that the protections would apply to Single Service Service Inquiries² or Non-Statutory Inquiries.³ The reason for this is because the DSA deal solely with safety related investigations, which are already deemed worthy of this statutory protection outside of Defence, and the matters investigated by it are those of the most serious consequence. The reason for the protection is to ensure best evidence is secured when investigating safety incidents and maintain a robust safety culture in Defence. To achieve this, it is essential that witnesses are not afraid that evidence they provide to a DSA convened Service Inquiry under oath (but not under caution) could be used against them, or others, in support of a criminal prosecution. This is the same protection given to evidence obtained by other AIBs. Protecting the DSA convened Service Inquiry evidence would not prevent police or other authorities conducting their own parallel investigation.

1.7 To achieve this protection requires an amendment to Primary Legislation (section 343 of the Armed Forces Act 2006), to allow the Secretary of State to amend the Secondary Legislation (Armed Forces (Service Inquiries) Regulations 2008) to include protection of evidence.

1.8 The MOD wishes to understand the views of all parties who may be affected by these changes and is therefore publishing this consultation.

1.9 It is intended this consultation will help the MOD identify issues of concern and provide feedback on which further engagement may take place with relevant stakeholders before the proposal is finalised. There is the opportunity in the questions section to suggest alternative ways in which the MOD may achieve its policy intent.

2. Consultation scope

2.1 This consultation applies to all of the UK, the Isle of Man and the British Overseas Territories.

² The term 'Single Services' refers to the Navy, Royal Air Force and Army who may also convene a Service Inquiry into matters that fit the criteria set out at paragraph 1.1 but are not considered safety related incidents. They may deal with a wide range of matters such as fraud, security, environmental and bullying & harassment issues.

³ The term Non-Statutory Inquiry (NSI) refers to situations where an incident occurs that is not considered sufficiently serious to justify a Service Inquiry but warrants investigation because it is felt lessons of value may be learned. Such inquiries are not subject to statutory regulation and those conducting them have no statutory powers e.g. in relation to compelling witnesses to attend or taking evidence on oath. They are akin to unit level/departmental investigations. If, however, it becomes apparent that the matter is more serious than first envisaged or fits the category of incidents referred to in paragraph 1.1 above, it would be necessary to consider holding a Service Inquiry.

3. **Timetable**

3.1 The consultation closes to responses at 11.59pm on 28 February 2022.

4. **Responding to the consultation**

4.1 The UKG would welcome feedback from anyone with an interest in or view on this proposal. This can be provided by addressing the specific questions set out in Annex A.

4.2 Our preferred method of receiving your response is by completion of the response form at Annex A, returned to us at the following email address: DSA-HQ-Comms1a@mod.gov.uk

4.3 Given the ongoing constraints related to the Covid-19 pandemic, we strongly recommend that responses are sent electronically wherever possible. However, postal responses may be submitted and must be received by the closing date of the consultation. Postal responses should be sent to:

DSA Secretariat
Level 0 Wing 1 #5004 Juniper Building
MOD Abbey Wood (North)
Bristol
BS34 8QW
United Kingdom

4.4 When responding, you should state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, you should please make it clear who the organisation represents and, where applicable, how the views of the members were assembled.

4.5 A hard copy of this consultation document, and the corresponding response form is available on request, using the email address provided above.

5. **Consultation Principles**

5.1 This consultation is being conducted in line with Cabinet Office consultation principles published in March 2018. These principles give clear guidance to government departments on conducting public consultations. If you have any comments about the consultation process (as opposed to comments about the issues we are consulting on), including if you feel that the consultation does not adhere to the values expressed in the consultation principles or that the process could be improved, please respond by email to DSA-HQ-Comms1a@mod.gov.uk with “complaint” included in the subject line, or by post to the address listed above. A copy of the principles can be found online at: <https://www.gov.uk/government/publications/consultation-principles-guidance>

6. **Freedom of Information and Data Protection**

6.1 Information provided during this consultation, including personal information, may be published or disclosed in accordance with access to information regimes, primarily the Freedom of Information Act 2000 and the Data Protection Act 2018. If you want the information you provide to be treated confidentially, please be aware that, in accordance with the Freedom of Information Act, public authorities are required to comply with a

statutory code of practice which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you wish that information to be treated confidentially. If we receive a request for disclosure of that information, we will take account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

6.2 We will process your personal data in accordance with the Data Protection Act 2018 (and the UK General Data Protection Regulation) and, in most circumstances, this will mean that your personal data will not be disclosed to third parties. Details of the MOD's Personal Information Charter can be found at:
<https://www.gov.uk/government/organisations/ministry-of-defence/about/personal-information-charter>

6.3 In some consultations, external analysts may be contracted for the purpose of response analysis. If external analysts are used with this consultation, the MOD may share information you provided in response to the consultation, including personal data, with a third party of contracted external analysts. The MOD is the data controller in respect of any personal data that you provide and the Information Charter, which sets out the standards you can expect in respect of the handling of your personal data, can be found at:
<http://www.gov.uk/government/organisations/ministry-of-defence/about/personal-information-charter>

7. **Government response**

7.1 A summary of responses to this consultation and details of the action that the Government will take, or has taken, will be published on the Government website at <http://www.gov.uk/>.

SECTION TWO: CONSULTATION PROPOSALS

8. Why we are Consulting.

8.1 The proposal is to provide statutory protections to certain evidence obtained during DSA Service Inquiries, in order to bring Defence safety investigations in line with the principles of the legal protections currently afforded to the evidence gathered during civilian safety investigations.

8.2 In accordance with the [DSA Charter](#), DSA convened Service Inquiries are safety investigations. The purpose of the investigation is to establish the facts of a matter and to make recommendations to prevent reoccurrence. They should not attribute blame or express an opinion as to legal liability.

8.3 In order to be effective, the Service Inquiry panel is reliant upon being able to obtain the best evidence, particularly from those who witnessed the incident. It is a well-established principle that in order to do this, witnesses need to be confident that the evidence they provide to a safety investigation will be confidential and not used for purposes other than a safety investigation (i.e. it will not be used to inform a criminal investigation against either themselves or others).

8.4 There are limited statutory protections preventing the disclosure of evidence obtained during Defence Service Inquiries. While the Secretary of State has the power to make regulations about Service Inquiries, that power does not extend to regulations about the disclosure of evidence obtained during Service Inquiries.

8.5 At present, the only statutory protection is that evidence provided to a Service Inquiry panel will not be admissible against a person at a summary hearing (being a disciplinary hearing before a Service person's commanding officer) or proceedings before a civilian or service court, other than for an offence under section 2 or 5 of the Perjury Act 1911.⁴

8.6 There are no other provisions that prevent the police, the Health and Safety Executive, or any other body with investigatory powers from seizing evidence obtained during Service Inquiries to inform their own investigations. Not having this protection puts at risk the quality of the evidence obtained from witnesses as it could be tainted by the concern that the information provided could incriminate that witness or others.

8.7 Other nations also protect safety investigation information. Our allies with whom we conduct joint Defence activities, may be unwilling to share their own safety investigation evidence or findings, where there are implications for UK personnel (Service or civilian), due to the DSA inability to protect that information once shared. This directly jeopardises the safety culture in Defence.

8.8 The current law only provides limited protection to evidence obtained during a Service Inquiry. We consider that the existing power in section 343 of the Armed Forces Act 2006 is not sufficiently wide to enable the Secretary of State to make regulations that provide further protections for evidence obtained during Service Inquiries. We are therefore seeking to widen the power in section 343 to enable the making of regulations

⁴ [Armed Forces \(Service Inquiries\) Regulations 2008/1651, reg.12, restrictions on the admissibility of evidence](#)

that will prevent disclosure of certain evidence obtained during Service Inquiries to other bodies with investigatory powers without a court order.

8.9 We are seeking to insert a power into primary legislation that will enable the introduction, by way of regulations, of statutory protection for certain evidence obtained during DSA Service Inquiries. It is not intended that these protections would apply to Service Inquiries convened by parties other than the DSA.

8.10 Statutory protection for safety investigations already exists for civilian safety investigations. This ensures that information is only shared with non-safety focused organisations, e.g. the police, under certain limited circumstances or by the order of the High Court (or equivalent). The purpose of the protection is to ensure that witnesses and others required to assist a safety investigation feel confident to be open and honest. This principle, to protect the evidence of safety investigations, is enshrined in law for safety investigations conducted by many civilian authorities including the Rail, Maritime and Air Accident Investigation Branches and is included in the Health Service Safety Investigations Bill.

8.11 It is recognised, in law, that suitable safeguards for the protection of safety investigation evidence are essential to ensure the thoroughness and accuracy of those investigations.⁵ The changes sought by the DSA will enable the alignment of DSA Service Inquiries with those conducted by the government funded civilian equivalent organisations and will help to protect safety culture within Defence.

8.12 The power in section 343 of the Armed Forces Act 2006 for the Secretary of State to make regulations about Service Inquiries is not wide enough to enable the making of regulations that would provide any form of protection to the evidence obtained during DSA convened Service Inquiries.

8.13 There is no provision in the Armed Forces (Service Inquiries) Regulations 2008/1651 for protection of evidence obtained during Service Inquiries, except for that created by regulation 12 limiting admissibility of evidence obtained during Service Inquiries in courts and service disciplinary hearings.

8.14 The Armed Forces Act 2006 applies UK-wide, to the Isle of Man and to the British Overseas Territories. The proposed provision will therefore apply UK-wide, to the Isle of Man and to the British Overseas Territories.

8.15 The proposed legislation does not affect matters that are within the competence of the devolved legislatures.

8.16 Civilian Accident Investigation Branches (AIBs). Similar provisions exist in the rules governing the investigation of air, rail and marine accidents by the relevant other

⁵ **Chief Constable of Sussex Police v Secretary of State for Transport [2016] EWHC 2280 (QB)**. In rejecting the police application to have copies of statements given to the AAIB by the pilot, Mr Justice Singh stated "...there would be a serious and obvious "chilling effect" which would tend to deter people from answering questions by the AAIB with the candour which is necessary when accidents of this sort have to be investigated by it. This would seriously hamper future accident investigations and the protection of public safety by the learning of lessons which may help to prevent similar accidents." On witnesses not being cautioned prior to being interviewed by safety investigations, another point noted by Mr Justice Singh in relation to AAIB statements: "This is hardly surprising, since the purpose of such an interview is to obtain the fullest possible information in an accident investigation. This contrasts markedly with the purpose of a police interview, which is to elicit evidence which may be capable of being used at a subsequent criminal trial"

government department-funded civilian investigatory authorities (see Annex B). Although their remit is narrower in scope than that of a DSA Service Inquiry (a DSA Service Inquiry could cover any safety related issue affecting Defence, whereas the civilian investigation branches focus solely on their particular area) the principle aim of the investigation is the same; they are all safety investigations aimed at preventing the reoccurrence of an accident or incident. Statutory protection for the evidence obtained by civilian investigation branches who conduct safety investigations is set out at Annex B.

8.17 AIB inspectors are accorded a wide range of statutory powers under their regulations to have immediate and unrestricted access to sources of evidence such as accident sites, debris, recording devices and witnesses to facilitate their investigations. The respective regulations require that AIBs shall not disclose certain types of information other than for the purposes of safety investigations. For example, an AIB is not permitted to share with police the identities of, and statements made by witnesses it has interviewed, nor to disclose sensitive personal information such as medical records, unless ordered to do so by the High Court. The AAIB is similarly prevented from sharing cockpit voice and image recorder data. However, the police are not prevented from sharing witness statements and other information with the AIBs.

8.18 None of the proposals would prevent other investigative bodies such as the police or the HSE from conducting their own parallel investigation.

8.19 The MOD believes that its proposals strike the right balance between protecting evidence collected in Service Inquiries and ensuring that coroners can conduct thorough, independent and effective investigations in accordance with their statutory duties. Schedule 5 to the Coroners and Justice Act 2009 sets out coroners' powers including the power to require evidence to be given and documents to be produced in connection with their investigations and inquests. Restricting access to information through a statutory bar such as is proposed here could therefore be perceived as cutting across coroners' statutory duties where information obtained by a Service Inquiry may be relevant to the coroner's investigation into a particular death. Furthermore, there is an argument that if coroners have to apply to the High Court to obtain information from Service Inquiries in order to carry out their statutory duties, this could create delay to proceedings and possible satellite litigation, the cost of which would be borne by local authorities. The MOD would therefore be grateful for thoughts on these matters.

PROPOSED CHANGES IN LAW

9. Primary Legislation. The Armed Forces Act 2006.

9.1 It is proposed to widen the power in section 343 of the Armed Forces Act 2006, in order to permit amendment to the Armed Forces (Service Inquiries) Regulations 2008 (secondary legislation) to protect certain evidence obtained during DSA convened Service Inquiries.⁶ DSA Service Inquiries are safety investigations.

9.1.1 It should be noted the protections would not apply to Service Inquiries convened by the single Services (Navy, Royal Air Force, Army).⁷

9.2 Secondary Legislation. Following is a list of the proposed protections to be included in the Armed Forces (Service Inquiries) Regulations 2008:

9.2.1 Non-disclosure of evidence or information obtained during the course of a Service Inquiry by a member of the Service Inquiry Panel, or an appointed investigator, deemed sensitive and/or prejudicial to the intentions or outcome of the Service Inquiry, without a court order. This may, for example, include:

9.2.1.1 The name, address or other details of people providing information or evidence for use in (whether used or not) a Service Inquiry.⁸

9.2.1.2 Declarations, statements, notes or recordings of witness interviews.⁹

9.2.1.3 Medical or confidential information regarding persons involved in the accident/incident to which the Service Inquiry relates that has been obtained for the purposes of the investigation.¹⁰

9.2.1.4 Correspondence received during the course of, or relating to, the investigation. Correspondence produced by the Service Inquiry which is sent to the Convening Authority which, amongst other things, is used to identify those people who are going to be afforded protection under regulation 18¹¹ of the Armed Forces (Service Inquiries) Regulations and also those suspected to have been involved

⁶ Protection might also be sought for cockpit voice recorders, flight data recorders, voyage data recorders, image recordings or other such analogue or digital data recorders or transcripts from any such device. It is intended the power contained in the amended section 343 Armed Forces Act 2006 will be sufficiently wide to allow for the inclusion of data and voice recordings.

⁷ The reason for this is because the DSA deal solely with safety related investigations, which are already deemed worthy of this level of protection outside of Defence, and the matters investigated by it are those of the most serious consequence.

⁸ The protection of a witness's identity is common throughout the Rail, Maritime and Air Accident Investigation Branches (the AIBs). For the RAIB this falls under Reg 10(2)(b), for MAIB, Reg 13(1) and for AAIB, Art 14(1)(b).

⁹ The protection of witness evidence is common throughout the AIBs. For the RAIB this falls under Reg 10(2)(a), for MAIB, Reg 13(2)(a) and for AAIB, Art 14(1)(a).

¹⁰ Sensitive personal and medical records are protected from disclosure by the AIBs. For the RAIB this falls under Reg 10(2)(c) and (3)(a), for MAIB, Reg 13(2)(b) and for AAIB, Art 14(1)(c).

¹¹ In this regulation "potentially affected person" means a person who in the opinion of the president may be affected in relation to their character or professional reputation by the findings of the panel.

in activity which may constitute a Service or criminal offence.¹² If that correspondence were disclosable it would lead to those involved in the inquiry being identified.¹³ Paragraph 9.2.3 below is linked to this provision.

- 9.2.1.5 Notes taken by Service Inquiry panel members or appointed investigators.¹⁴
- 9.2.1.6 Any independent technical analysis commissioned by the Service Inquiry panel or appointed investigator or any comments and opinions based on such analysis (unless otherwise directed the Convening Authority (CA)). (There may be occasion where Defence are the only experts in a particular field, in which case it would be for the CA to determine whether they were content to release the factual information to other investigative bodies (to be used for any purpose). This would not include the report prepared, for the Service Inquiry, in which the factual analysis is discussed. It is anticipated that in most circumstances the factual testing results will be shared.)
- 9.2.1.7 Any referral made to any police force or Commanding Officer, of a person involved in the Service Inquiry who it is suspected may have been involved in the commission of a Service or criminal offence. (This is to specifically cover the issue referred to in the correspondence provision above at paragraph 9.2.1.4).
- 9.2.2 A requirement that the final Service Inquiry Report (Part 1 of the report only) will be published, where security classification permits, however, there will be no publication of the Part 2 materials which contain all the evidence that has been obtained by the Service Inquiry panel and would be prevented from being disclosed under the provisions mentioned above.
- 9.2.3 The ability for anybody involved in providing witness evidence to the Service Inquiry to have a copy of their statement provided to them and to permit them to cooperate with any other investigation (whether safety or otherwise) into the circumstances to which the Service Inquiry relates. (We do not wish to prevent individuals from taking part in other investigations conducted by, for example, police, statutory regulators or the Coroner. They should be permitted to do so and be provided with a copy of the evidence that they gave to the Service Inquiry.)
- 9.2.4 Nothing shall prevent the Convening Authority from providing any evidence obtained during the course of an investigation to another safety investigation subject to the Convening Authority being satisfied that such similar protections are applicable to that investigation as are provided for within these provisions. (There may be occasions where the Armed Forces of other nations are involved in the accident investigation, or where a Service Inquiry is conducted for their benefit following an incident. Where the appropriate safeguards are in place, the intention

¹² MOD policy Joint Service Publication 832 (JSP 832) requires that, if at any stage of the inquiry, it appears that the matter under inquiry may have involved the commission of an offence, the president should alert the Convening Authority who will decide whether it is necessary to inform the Police (Service and / or Civilian) and the suspected person's Commanding Officer.

¹³ The protection of correspondence within the inquiry is provided for by the MAIB under Reg 13(2)(e).

¹⁴ The protection of notes taken by appointed investigators is common throughout the AIBs. For the RAIB this falls under Reg 10(3)(b) and (c), for MAIB, Reg 13(2)(g) and for AAIB, Art 14(1)(d).

would be to share evidence and findings where possible – this would be limited to safety investigations and not in circumstances where a prosecution of an individual could take place as a result.)¹⁵

- 9.2.5 A Court (High Court, Court of Session or equivalent) may direct that the Convening Authority provide any information otherwise withheld under these provisions if the Court is satisfied that the disclosure is in the public interest and, having regard to the view of the Convening Authority, is satisfied that the interests of justice outweigh any prejudice, or likely prejudice, to the current safety investigation, any future safety investigation or relations between the UK and any other state or international organisation.¹⁶
- 9.2.6 It is anticipated that failing to comply with the requirements for non-disclosure would be an offence (capable of being committed by any person whether military or civilian) punishable in line with the current punishments available under regulation 16 of the Armed Forces (Service Inquiries) Regulations 2008.¹⁷
- 9.2.7 Protection might also be sought for cockpit voice recorders, flight data recorders, voyage data recorders, image recordings or other such analogue or digital data recorders or transcripts from any such device. It is intended the power contained in the amended section 343 of the Armed Forces Act 2006 will be sufficiently wide to allow for the inclusion of data and voice recordings.¹⁸
- 9.2.8 It is intended to legislate when Parliamentary time allows.

¹⁵ This position is common with the other AIBs who are also permitted under their respective regulations to share evidence for the purposes of safety investigations. For the RAIB Reg 10(7)(d) relates, MAIB, Reg 13(2) and AAIB, Art 14(1).)

¹⁶ The disclosure test is as stated for the MAIB (at Reg 13(5)). The AAIB and RAIB have similar provisions (at Art 14(3) and Reg 10(5) respectively) with the High Court (or equivalent) being the court with jurisdiction.

¹⁷ Offences are committed by those failing to adhere to the requirements of non-disclosure applicable to all the AIBs

¹⁸ Both the MAIB and AAIB protect the content of these devices where they are applicable to them. The MAIB protects the content of voyage data recorders from being released under Reg 13(2)(f). The AAIB, under Art 14(1)(9) protects evidence from cockpit voice recorders, image recordings, voice recordings in air traffic control units or any transcripts therefrom from being disclosed. Under Art 14(2) evidence from flight data recorders cannot be used for purposes other than a safety investigation.)

Annex A
To
Defence Safety Authority
Protections of evidence
Consultation Document

MOD DEFENCE SAFETY AUTHORITY STATUTORY PROTECTIONS CONSULTATION RESPONSE FORM

You should send the response form electronically as an attachment to: DSA-HQ-Comms1a@mod.gov.uk, or, alternatively, post to:

DSA Secretariat
Level 0 Wing 1 #5004 Juniper Building
MOD Abbey Wood (North)
Bristol
BS34 8QW
United Kingdom

A consultation seeking views on potential legislation to amend the Armed Forces (Service Inquiries) Regulations 2008 to provide protection to evidence obtained during Defence Safety Authority Service Inquiries.

Thank you for your interest in this matter.

If you have not already done so, it is recommended that you read the consultation document before answering this survey. The consultation document can be found at [Policy papers and consultations - GOV.UK \(www.gov.uk\)](http://www.gov.uk).

The MOD will only collect and use the information provided for the purposes of the public consultation on MOD seeking change to legislation in order to protect evidence obtained during DSA convened Service Inquiries.

The MOD is committed to ensuring that all your personal data including that of a sensitive nature is used with your consent, respect for your privacy, and only for the purposes of the public consultation. Data will be retained for a two-year period before being deleted unless evidence of an ongoing business requirement is provided, such as to allow trends and attitudes to be evaluated over extended time periods.

By ticking the box below, you are confirming that you understand the above and that you agree your personal data can be used as stated. If you have any queries about this survey, its purpose, the data being collected, the length of retention, any security concerns or any technical issues please contact the survey sponsor at: DSA-HQ-Comms1a@mod.gov.uk

To continue please accept our survey data policy.

QUESTIONS - General

GQ1: Choose one of the following answers

Are you:

- A current or former Civil Servant
- A current or former member of HM Armed Forces
- A current or former Defence contractor
- A family member of any of the above
- An individual connected with a cadet organisation
- A member of the public
- Representing an organisation - please provide the organisation's name:

GQ2: Choose one of the following answers

Are you responding as either:

- An individual
- On behalf of an organisation – please provide the organisation's name:

QUESTIONS

Q1: Do you agree with the principle that evidence obtained during Defence Safety Authority Service Inquiries (safety investigations) should be protected the same way in law as the evidence obtained by Air, Rail and Maritime Investigation Branch investigations?

Yes

No

Don't know

Please provide brief explanation for your answer:

Proposed Protections

Q2: Do you agree with the proposal: Non-disclosure of evidence or information obtained during the course of a Service Inquiry by a member of the Service Inquiry Panel, or an appointed investigator, deemed sensitive and/or prejudicial to the intentions or outcome of the Service Inquiry, without a court order (note the opportunity to comment on specific protections follows at Q3)?

Yes

No

Don't know

Please provide brief explanation for your answer:

Q3: Specifically, do you agree with the following:

1. No disclosure of the name, address or other details of people providing information or evidence for use in (whether used or not) a Service Inquiry without a court order?¹⁹

Yes

No

Don't know

Please provide brief explanation for your answer

2. No disclosure of declarations, statements, notes or recordings of witness interviews?²⁰

Yes

No

Don't know

Please provide brief explanation for your answer:

¹⁹ The protection of a witness's identity is common throughout the Rail, Maritime and Air Accident Investigation Branches (the AIBs). For the RAIB this falls under Reg 10(2)(b), for MAIB, Reg 13(1) and for AAIB, Art 14(1)(b).

²⁰ The protection of witness evidence is common throughout the AIBs. For the RAIB this falls under Reg 10(2)(a), for MAIB, Reg 13(2)(a) and for AAIB, Art 14(1)(a).

3. No disclosure of medical or confidential information regarding persons involved in the accident/ incident to which the Service Inquiry relates that has been obtained for the purposes of the investigation?²¹

Yes

No

Don't know

Please provide brief explanation for your answer:

4. No disclosure of correspondence received during the course of, or relating to, the investigation. Correspondence is produced by the Service Inquiry which is sent to the Convening Authority which, amongst other things, is used to identify those people who are going to be afforded protection under regulation 18²² of the Armed Forces (Service Inquiries) Regulations and also those suspected to have been involved in activity which may constitute a criminal offence.²³ If that correspondence were disclosable it would lead to those involved in the inquiry being identified.)?²⁴

Yes

No

Don't know

Please provide brief explanation for your answer

²¹ Sensitive personal and medical records are protected from disclosure by the AIBs. For the RAIB this falls under Reg 10(2)(c) and (3)(a), for MAIB, Reg 13(2)(b) and for AAIB, Art 14(1)(c).

²² In this regulation "potentially affected person" means a person who in the opinion of the president may be affected in relation to their character or professional reputation by the findings of the panel.

²³ MOD policy Joint Service Publication 832 (JSP 832) requires that, if at any stage of the inquiry, it appears that the matter under inquiry may have involved the commission of an offence, the president should alert the Convening Authority who will decide whether it is necessary to inform the Police (Service and / or Civilian) and the suspected person's Commanding Officer.

²⁴ The protection of correspondence within the inquiry is provided for by the MAIB under Reg 13(2)(e).

5. No disclosure of notes taken by Service Inquiry panel members or appointed investigators?²⁵

Yes

No

Don't know

Please provide brief explanation for your answer:

6. No disclosure of any independent technical analysis commissioned by the Service Inquiry panel or appointed investigator or any comments and opinions based on such analysis (unless otherwise directed the Convening Authority (CA)). (There may be occasion where Defence are the only experts in a particular field, in which case it would be for the CA to determine whether they were content to release the factual information to other investigative bodies (to be used for any purpose). This would not include the report prepared, for the Service Inquiry, in which the factual analysis is discussed. It is anticipated that in most circumstances the factual testing results will be shared.)?

Yes

No

Don't know

Please provide brief explanation for your answer:

²⁵ The protection of notes taken by appointed investigators is common throughout the AIBs. For the RAIB this falls under Reg 10(3)(b) and (c), for MAIB, Reg 13(2)(g) and for AAIB, Art 14(1)(d).

7. Non-disclosure of any referral made to any police force or Commanding Officer, by the Convening Authority, of a person involved in the Service Inquiry who it is suspected may have been involved in the commission of a Service or criminal offence. (This is to specifically cover the issue referred to in the correspondence provision above)?

Yes

No

Don't know

Please provide brief explanation for your answer:

8. A requirement that the final Service Inquiry Report (Part 1 of the report only) will be published, where security classification permits, however, there will be no publication of the Part 2 materials which contain all the evidence that has been obtained by the Service Inquiry panel and would be prevented from being disclosed under the provisions mentioned above?

Yes

No

Don't know

Please provide brief explanation for your answer:

9. The ability for anybody involved in providing witness evidence to the Service Inquiry to have a copy of their statement provided to them and to permit them to cooperate with any other investigation (whether safety or otherwise) into the circumstances to which the Service Inquiry relates. (We do not wish to prevent individuals from taking part in other investigations conducted by, for example, police, statutory regulators or the Coroner. They should be permitted to do so and be provided with a copy of the evidence that they gave to the Service Inquiry.)?

Yes

No

Don't know

Please provide brief explanation for your answer:

10. Nothing shall prevent the Convening Authority from providing any evidence obtained during the course of an investigation to another safety investigation subject to the Convening Authority being satisfied that such similar protections are applicable to that investigation as are provided for within these provisions. (There may be occasions where the Armed Forces of other nations are involved in the accident investigation, or where a Service Inquiry is conducted for their benefit following an incident. Where the appropriate safeguards are in place, the intention would be to share evidence and findings where possible – this would be limited to safety investigations and not in circumstances where a prosecution of an individual could take place as a result.)²⁶?

Yes

No

Don't know

Continued next page...

²⁶ This position is common with the other AIBs who are also permitted under their respective regulations to share evidence for the purposes of safety investigations. For the RAIB Reg 10(7)(d) relates, MAIB, Reg 13(2) and AAIB, Art 14(1).)

Please provide brief explanation for your answer:

11. A Court (High Court, Court of Session or equivalent) may direct that the Convening Authority provide any information otherwise withheld under these provisions if the Court is satisfied that the disclosure is in the public interest and, having regard to the view of the Convening Authority, is satisfied that the interests of justice outweigh any prejudice, or likely prejudice, to the current safety investigation, any future safety investigation or relations between the UK and any other state or international organisation.²⁷?

Yes

No

Don't know

Please provide brief explanation for your answer:

²⁷ The disclosure test is as stated for the MAIB (at Reg 13(5)). The AAIB and RAIB have similar provisions (at Art 14(3) and Reg 10(5) respectively) with the High Court (or equivalent) being the court with jurisdiction.

12. Failing to comply with the requirements for non-disclosure would be an offence (capable of being committed by any person whether military or civilian) punishable in line with the current punishments available under regulation 16 of the Armed Forces (Service Inquiries) Regulations 2008.^{28?}

Yes

No

Don't know

Please provide brief explanation for your answer:

13. Protection might also be sought for cockpit voice recorders, flight data recorders, voyage data recorders, image recordings or other such analogue or digital data recorders or transcripts from any such device. It is intended the power contained in the amended section 343 of the Armed Forces Act 2006 will be sufficiently wide to allow for the inclusion of data and voice recordings.^{29?}

Yes

No

Don't know

Please provide brief explanation for your answer:

²⁸ Offences are committed by those failing to adhere to the requirements of non-disclosure applicable to all the AIBs

²⁹ Both the MAIB and AAIB protect the content of these devices where they are applicable to them. The MAIB protects the content of voyage data recorders from being released under Reg 13(2)(f). The AAIB, under Art 14(1)(9) protects evidence from cockpit voice recorders, image recordings, voice recordings in air traffic control units or any transcripts therefrom from being disclosed. Under Art 14(2) evidence from flight data recorders cannot be used for purposes other than a safety investigation.)

Q4. Are there any other options we have not considered, which you believe would meet our policy objectives?

Yes

No

Don't know

If yes, please provide brief explanation for your answer:

Q5. Please provide any other comments or evidence that you wish us to consider, relating to the proposals and issues contained in this consultation?

SUPPLEMENTARY INFORMATION – EXTRACTS OF RELEVANT LEGISLATION

10. From the [Armed Forces Act 2006](#).

10.1 Section 343 of the Armed Forces Act 2006 provides the Secretary of State with the power to make regulations for Service Inquiries:

[Armed Forces Act 2006 – Part 16 \(Inquiries\) s.343 Service Inquiries:](#)

(1) The Secretary of State may make regulations for causing inquiries, to be known as service inquiries, to be held (whether or not in the United Kingdom) in prescribed circumstances in relation to matters connected with any of Her Majesty's forces.

(2) The regulations may in particular make provision with respect to—

(a) the persons, to be known as a service inquiry panel, who are to conduct a service inquiry;

(b) the functions of a service inquiry panel;

(c) the matters that may, or must, be referred to a service inquiry panel;

(d) the persons who may convene, and refer matters to, a service inquiry panel;

(e) the procedure of service inquiry panels;

(f) evidence, including the admissibility of evidence;

(g) the representation of witnesses and other persons.

(3) Without prejudice to the generality of subsections (1) and (2), the regulations may make provision—

(a) conferring on a person designated for the purpose by the Secretary of State power to determine, in prescribed circumstances, that a matter of a kind that must be referred to a service inquiry panel need not be so referred (and as to the recording of such a determination);

(b) as to oaths and affirmations for witnesses and other persons;

(c) conferring on prescribed persons a right, subject to such exceptions as may be prescribed, to be present at proceedings of a service inquiry panel;

(d) for procuring the attendance of witnesses and other persons and the production of documents and other things (including the giving of notices by judge advocates);

(e) about the payment of expenses to persons attending proceedings of service inquiry panels;

(f) for the making and retention of records of the proceedings of service inquiry panels;

(g) for the supply of copies of such records, including provision about the fees payable for the supply of such copies;

(h) for evidence given before service inquiry panels not to be admissible at a summary hearing or in proceedings before a court of a prescribed description, except in the case of proceedings for an offence of a prescribed description.

(4) The regulations may also make provision which is equivalent to that made by any provision of section 35 of the Inquiries Act 2005 (c. 12) (offences in connection with inquiries), subject to such modifications as the Secretary of State considers appropriate.

(5) Where the regulations create an offence they may provide—

(a) that the offence is a service offence and is punishable by any punishment mentioned in rows 7 to 12 of the Table in section 164; or

(b) that the offence is an offence triable summarily by a civilian court in the United Kingdom, the Isle of Man or a British overseas territory [other than Gibraltar]¹ and is punishable by a fine not exceeding level 3 on the standard scale.

(6) In this section “prescribed” means prescribed by regulations under this section.

11. From the [Armed Forces \(Service Inquiries\) Regulations 2008](#).

11.1 The regulations made by the Secretary of State, under the power conferred on him by section 343 of the Armed Forces Act 2006, only provide the following protection for evidence obtained during a Service Inquiry:

[Armed Forces \(Service Inquiries\) Regulations 2008/1651, reg.12, restrictions on the admissibility of evidence:](#)

(1) Subject to paragraph (2), evidence given by a person to a Service Inquiry panel shall not be admissible against a person at a summary hearing or in proceedings before a civilian court or a service court. (emphasis added).

(2) Evidence given before a service inquiry panel may be admissible in proceedings referred to in paragraph (1) for—

(a) an offence against section 42 of the Act where the corresponding offence under the law of England and Wales is an offence mentioned in subparagraph (b);

(b) an offence under section 2 or 5 of the Perjury Act 1911.

12. Statutory protection for the evidence obtained by Air, Rail and Maritime Accident Investigation Branches can be found in the following legislation:

12.1 Aviation. The legislation applicable to the Air Accident Investigation Branch is section 75 of the [Civil Aviation Act 1982](#) which permits the Secretary of State to make regulations that govern the investigation of air accidents.

Civil Aviation Act 1982, section 75 – Investigation of accidents:

(1) Without prejudice to section 60 above, the Secretary of State may by regulations under this section make such provision as appears to him to be requisite or expedient—

(a) for the investigation of any accident arising out of or in the course of air navigation and either occurring in or over the United Kingdom or occurring elsewhere to aircraft registered in the United Kingdom; and

(b) for carrying out any Annex to the Chicago Convention (being an Annex adopted in accordance with the Convention and relating to the investigation of accidents involving aircraft) as it has effect from time to time with any amendment made in accordance with the Convention (hereafter in this section referred to as “the Annex”).

(2) Without prejudice to the generality of subsection (1)(b) above, the provision there authorised includes provision with respect to any of the following matters, that is to say—

(a) the definition of “accident” for the purposes of this section so as to correspond to the meaning adopted for the time being in the Annex;

(b) the participation of any persons authorised for the purpose in accordance with the regulations in any investigation held in accordance with the requirements of the Annex by the competent authorities of any other state; and

(c) the investigation of any incident other than one to which subsection (1)(a) above applies for the purpose of securing any information, articles or other material which it is the duty of the United Kingdom in accordance with any requirements of the Annex to furnish to any other state.

(3) Without prejudice to the generality of subsection (1) above, regulations under this section may contain provisions—

(a) requiring notice to be given of any such accident as is mentioned in subsection (1)(a) above in such manner and by such persons as may be specified in the regulations;

(b) applying any of the provisions of section 3 of the Notice of Accidents Act 1894(with or without modifications) for the purposes of any investigations held in accordance with the regulations or any inquiries undertaken in accordance with the regulations with a view to determining whether any such investigation should be held;

(c) prohibiting, pending investigation, access to or interference with aircraft to which an accident has occurred, and authorising any person so far as may be necessary for the purposes of an investigation, or for the purpose of determining whether an investigation should be held, to have access to, examine, remove, test, take measures for the preservation of, or otherwise deal with, any such aircraft and any other aircraft;

(d) authorising or requiring the cancellation, suspension, endorsement or surrender of any licence or certificate granted under an Air Navigation Order or an order under section 62 above where it appears on an investigation that the licence or certificate ought to be cancelled, suspended, endorsed or surrendered and requiring the production of any such licence or certificate for the purpose of being so dealt with.

(4) Without prejudice to subsection (2)(a) above, in this section "accident" shall be construed as including any fortuitous or unexpected event by which the safety of an aircraft or any person is threatened.

(5) If any person contravenes or fails to comply with any regulations under this section he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months.

(6) Nothing in this section shall limit the powers of any authority under 245 to 247 and sections 252 to 254 of the [Merchant Shipping Act 1995](#).

8.3 Those regulations referred to in section 75(1) above are the [Civil Aviation \(Investigation of Air Accidents and Incidents\) Regulations 2018/321](#). Regulation 25 sets out the protections to be complied with which are located in [Regulations EU 996/2010](#) Article 14.

[Civil Aviation \(Investigation of Air Accidents and Incidents\) Regulations 2018/321](#)

[Regulation 25 - Failure to protect sensitive safety information:](#)

(1) Subject to paragraphs (3) and (4), any relevant person who knowingly contravenes any of the prohibitions in paragraphs 1 or 2 of Article 14 of Regulation 996/2010 also contravenes these Regulations.

(2) In paragraph (1) "relevant person" means—

(a) an Inspector;

(b) any other officer of the Secretary of State; or

(c) any person to whom any relevant record has been made available by such an Inspector or other officer.

(3) Paragraph (1) does not apply to information which is included in a final safety investigation report.

(4) Paragraph (1) does not apply where a relevant person makes a relevant record available to another person ("person A") in the following circumstances—

(a) in a case where person A is a party to or otherwise entitled to appear at judicial proceedings and the relevant court has ordered that that record must be made available to person A for the purposes of those proceedings; or

(b) in any other case, where the relevant court has ordered that that record must be made available to person A for other specified purposes.

(5) The relevant court must not make an order under paragraph (4) unless it is satisfied that the benefits of the disclosure of the record concerned outweigh the adverse domestic and international impact which the disclosure might have on the safety investigation to which the record relates or any future safety investigation.

(6) In this regulation—

"judicial proceedings" includes any proceedings before any court, tribunal or person having by law power to hear, receive and examine evidence on oath; "relevant court" means—

(a) in the case of judicial proceedings or an application for disclosure made in England, Wales or Northern Ireland, the High Court; and

(b) in the case of judicial proceedings or an application for disclosure made in Scotland, the Court of Session; and

"relevant record" means any of the records specified in paragraphs 1 and 2 of Article 14 of Regulation 996/2010

[Regulation \(EU\) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC³⁰](#)

[Article 14 - Protection of sensitive safety information:](#)

1. The following records shall not be made available or used for purposes other than safety investigation:

(a) all statements taken from persons by the safety investigation authority in the course of the safety investigation;

(b) records revealing the identity of persons who have given evidence in the context of the safety investigation;

(c) information collected by the safety investigation authority which is of a particularly sensitive and personal nature, including information concerning the health of individuals;

³⁰ As retained and amended by [Part 3, Chapter 3 of the Aviation Safety \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) which came into force on "exit day".

(d) material subsequently produced during the course of the investigation such as notes, drafts, opinions written by the investigators, opinions expressed in the analysis of information, including flight recorder information;

(e) information and evidence provided by investigators from other Member States or third countries in accordance with the international standards and recommended practices, where so requested by their safety investigation authority;

(f) drafts of preliminary or final reports or interim statements;

(g) cockpit voice and image recordings and their transcripts, as well as voice recordings inside air traffic control units, ensuring also that information not relevant to the safety investigation, particularly information with a bearing on personal privacy, shall be appropriately protected, without prejudice to paragraph 3.

2. The following records shall not be made available or used for purposes other than safety investigation, or other purposes aiming at the improvement of aviation safety:

(a) all communications between persons having been involved in the operation of the aircraft;

(b) written or electronic recordings and transcriptions of recordings from air traffic control units, including reports and results made for internal purposes;

(c) covering letters for the transmission of safety recommendations from the safety investigation authority to the addressee, where so requested by the safety investigation authority issuing the recommendation;

(d) occurrence reports filed under Directive 2003/42/EC.

Flight data recorder recordings shall not be made available or used for purposes other than those of the safety investigation, airworthiness or maintenance purposes, except when such records are de-identified or disclosed under secure procedures.

3. Notwithstanding paragraphs 1 and 2, the administration of justice or the authority competent to decide on the disclosure of records according to national law may decide that the benefits of the disclosure of the records referred to in paragraphs 1 and 2 for any other purposes permitted by law outweigh the adverse domestic and international impact that such action may have on that or any future safety investigation. Member States may decide to limit the cases in which such a decision of disclosure may be taken, while respecting the legal acts of the Union.

The communication of records referred to in paragraphs 1 and 2 to another Member State for purposes other than safety investigation and, in addition as regards paragraph 2, for purposes other than those aiming at the improvement of aviation safety may be granted insofar as the national law of the communicating Member State permits. Processing or disclosure of records received through such communication by the authorities of the receiving Member State shall be permitted solely after prior consultation of the communicating Member State and subject to the national law of the receiving Member State.

4. Only the data strictly necessary for the purposes referred to in paragraph 3 may be disclosed.

13. Rail. The legislation applicable to the protections afforded by the Rail Accident Investigation Branch is [section 9 of the Railways and Transport Safety Act 2003](#). That section permits the Secretary of State to make regulations which he considers appropriate in respect of the investigations.

Railways (Accident Investigation and Reporting) Regulations 2005/1992

Regulation 10 - Disclosure of evidence:

(1) Except as provided in paragraphs (2) and (3) the Branch—

(a) may publish or make available for inspection any evidence or information it may acquire during the course of an investigation where such disclosure would not obstruct it in its general aims contained in [section 4](#) of the 2003 Act; and

(b) shall provide to a constable or the safety authority investigating an accident or incident, or any other person exercising a power conferred on him by an enactment, or to a constable, a procurator fiscal or the Lord Advocate exercising a power conferred on him at common law in Scotland to investigate an accident or incident, access to and copies of any evidence obtained by the Branch in the course of an investigation of that accident or incident, but only where the recipient would be entitled by an enactment, or in Scotland at common law, to collect that evidence for the purpose of his own investigation.

(2) Except by order of a relevant court and subject to paragraph (7) the Branch shall not disclose to anyone—

(a) a statement or declaration provided to the Branch or any recording or other note or record relating to such statement or declaration unless the person who has provided such statement, declaration, recording note or record consents to its disclosure;

(b) the name, address or other information relating to a person—

(i) who has provided to the Branch a statement or declaration or other note or record relating to such statement or declaration; or

(ii) who has indicated to an inspector or person appointed under regulation [6\(1\)](#) that he intends to provide a statement or declaration or other note or record to the Branch,

unless that person consents to such disclosure; or

(c) a medical record relating to a person involved in the accident or incident.

(3) Except by order of a relevant court and subject to paragraph (7), the Branch shall not be required to disclose to anyone—

(a) personal information relating to a person involved in the accident or incident or with the investigation of that accident or incident (other than personal information protected by paragraph (2));

(b) the opinion of an inspector or a person appointed under regulation [6\(1\)](#) which is unsubstantiated by evidence;

(c) *the notes made by an inspector or person appointed under regulation [6\(1\)](#), whether written or held electronically;*

(d) *any trade secret or other information, the release of which, in the opinion of the Chief Inspector would, or would be likely to, prejudice the commercial interests of the person holding it; or*

(e) *working documents of the Branch.*

(4) *Except by order of a relevant court a person who assists the Branch under regulation [6\(1\)](#), [6\(3\)\(b\)](#) or [15\(2\)\(b\)](#) shall not disclose to anyone any of the evidence or information described in paragraphs (2) or (3) which the Branch is precluded from disclosing save by order of a relevant court. This paragraph shall similarly apply to evidence or information provided to such a person if it is such that, if provided to the Branch, would be subject to paragraphs (2) or (3).*

(5) *No order may be made under paragraphs (2), (3) or (4) unless the court is satisfied that disclosure is in the public interest, having regard in particular to any adverse impact such disclosure may have on the investigation by the Branch to which the evidence or information relates, upon any future investigation and upon public safety.*

(6) *Paragraphs (2)(a) and (b) shall not be construed as placing a duty on the Branch to seek consent to disclose from a person referred to in those subparagraphs or compelling the Branch to disclose where the Branch has not sought consent at the time of the making of the statement.*

(7) *Nothing in paragraphs (2) or (3) shall preclude the Branch from—*

(a) *publishing the opinion of a person in a report of the accident or incident in so far as it is relevant to the conclusions in the report;*

(b) *publishing in a report of the accident or incident information based on matters contained in a statement, declaration, recording or other note referred to in paragraph (2)(a) or in a medical record referred to in paragraph (2)(c);*

(c) *providing a person who makes a statement or declaration with a copy of such statement or declaration;*

(d) *sharing the results of the investigation of an accident or incident with an investigating body in another member State;*

(e) *disclosing or discussing information based on a matter contained in a statement, declaration, recording, or other note it has obtained during the course of an investigation with a person providing assistance, evidence or information to the Branch; or*

(f) *disclosing the name or address of a person to a person providing assistance, evidence or information to the Branch but only in so far as is necessary for the purpose of obtaining evidence or information in furtherance of the Branch's investigation.*

(8) A person who assists the Branch under regulation [6\(1\)](#), [6\(3\)\(b\)](#) or [15\(2\)\(b\)](#) shall not disclose to anyone other than a constable, the safety authority or any other person exercising a power conferred on him by an enactment, or a constable, a procurator fiscal or the Lord Advocate exercising a power conferred on him at common law in Scotland, evidence or any other information, to which paragraph (4) does not apply, that he acquires about an investigation through the giving of such assistance without the consent of the Chief Inspector or an inspector acting on behalf of the Chief Inspector.

(9) A person who discloses evidence or information in contravention of paragraph (2), (4) or (8) shall be guilty of an offence.

(10) In this regulation “relevant court” means—

(a) the Crown Court or High Court in England and Wales or Northern Ireland; or

(b) the Court of Session or the High Court of Justiciary in Scotland.

14. Maritime. The legislation applicable to the protections afforded to evidence obtained during the course of a safety investigation conducted by the Marine Accident Investigation Branch is section 267 of the [Merchant Shipping Act 1995](#). That section permits the Secretary of State to make regulations which he considers appropriate in respect of the investigations.

[Merchant Shipping Act 1995 c. 21](#)

[Section. 267 - Investigation of marine accidents:](#)

(1) The Secretary of State shall, for the purpose of the investigation of any such accidents as are mentioned in subsection (2) below, appoint such number of persons as he may determine to be inspectors of marine accidents, and he shall appoint one of those persons to be Chief Inspector of Marine Accidents.

(2) The accidents referred to in subsection (1) above are—

(a) any accident involving a ship or ship's boat where, at the time of the accident—

(i) the ship is a United Kingdom ship, or

(ii) the ship, or (in the case of an accident involving a ship's boat) that boat, is within United Kingdom waters, and

(b) such other accidents involving ships or ships' boats as the Secretary of State may determine.

(3) The Secretary of State may by regulations make such provision as he considers appropriate with respect to the investigation of any such accidents as are mentioned in subsection (2) above. (Emphasis added)

(4) Any such regulations may, in particular, make provision—

(a) with respect to the definition of “accident” for the purposes of this section and the regulations;

(b) imposing requirements as to the reporting of accidents;

(c) prohibiting, pending investigation, access to or interference with any ship or ship's boat involved in an accident;

(d) authorising any person, so far as may be necessary for the purpose of determining whether an investigation should be carried out, to have access to, examine, remove, test, take measures for the preservation of, or otherwise deal with, any such ship or boat or any other ship or ship's boat;

(e) specifying, with respect to the investigation of accidents, the functions of the Chief Inspector of Marine Accidents (which may include the function of determining whether, and if so by whom, particular accidents should be investigated), the functions of other inspectors of marine accidents, and the manner in which any such functions are to be discharged;

(f) for the appointment by the Chief Inspector of Marine Accidents, in such circumstances as may be specified in the regulations, of persons to carry out investigations under this section who are not inspectors of marine accidents;

(g) for the appointment by any Minister of the Crown of persons to review any findings or conclusions of a person carrying out an investigation under this section;

(h) for the procedure to be followed in connection with investigations or reviews under this section;

(i) for conferring on persons discharging functions under the regulations who are not inspectors of marine accidents all or any of the powers conferred on an inspector by section 259;

(j) for the submission to the Secretary of State, and the publication by him, of reports of investigations or reviews under this section;

(k) for the publication by the Chief Inspector of Marine Accidents of reports and other information relating to accidents.

(5) Regulations under this section may provide for any provisions of the regulations to apply to any specified class or description of incidents or situations which involve, or occur on board, ships or ships' boats but are not accidents for the purposes of the regulations, being a class or description framed by reference to any of the following, namely—

(a) the loss or destruction of or serious damage to any ship or structure,

(b) the death of or serious injury to any person, or

(c) environmental damage,

whether actually occurring or not, and (subject to such modifications as may be specified in the regulations) for those provisions to apply in relation to any such incidents or situations as they apply in relation to accidents.

(6) Regulations under this section may provide that a contravention of the regulations shall be an offence punishable on summary conviction by a fine not exceeding the statutory maximum and on conviction on indictment by a fine.

(7) The Chief Inspector of Marine Accidents, or (as the case may be) inspectors of marine accidents generally, shall discharge such functions in addition to those conferred by or under the preceding provisions of this section as the Secretary of State may determine.

(8) Any inspector of marine accidents shall, for the purpose of discharging any functions conferred on him by or under this section, have the powers conferred on an inspector by section 259.

(9) Nothing in this section shall limit the powers of any authority under sections 252, 253 and 254.

(10) In this section—

(a) references to an accident involving a ship or ship's boat include references to an accident occurring on board a ship or ship's boat (and any reference to a ship or ship's boat involved in an accident shall be construed accordingly); and

(b) "ship's boat" includes a life-raft.

Merchant Shipping (Accident Reporting and Investigation) Regulations 2012/1743

Regulation 13 – Disclosure of records:

(1) Subject to the following paragraphs, the names, addresses or other details of anyone who has given evidence to an inspector must not be disclosed.

(2) Subject to paragraphs (4) and (7) the following documents or records whether held electronically, mechanically or otherwise must not be made available for purposes other than a safety investigation, unless a Court orders otherwise—

(a) subject to paragraph (3), all declarations or statements taken from persons by an inspector or supplied to an inspector in the course of an investigation, together with any notes or recordings of witness interviews;

(b) medical or confidential information regarding persons involved in an accident;

(c) any report made under regulation [6\(4\)](#);

(d) copies of the report other than the final report except as mentioned in regulation [14\(4\)\(a\)](#), [\(5\)](#), or [\(12\)](#);

(e) all correspondence received by the Chief Inspector from parties involved in a safety investigation;

(f) evidence from voyage data recorders;

(g) the notes made by an inspector or person appointed under [regulation 11\(2\)](#), whether written or held electronically along with any recordings or photographs;

(h) all communications between persons having been involved in the operation of the ship or ships; and

(i) Inspector's opinions expressed in the analysis of information.

(3) A person who has given a declaration or statement to an inspector in the course of a safety investigation may make available a copy of their statement or declaration to another person as they see fit.

(4) Any independent technical analysis commissioned by the Chief Inspector and opinions expressed in such analysis may be made publicly available if the Chief Inspector considers it appropriate to do so.

(5) Subject to paragraph (6), no order must be made under paragraph (2) unless the Court is satisfied, having regard to the views of the Chief Inspector, that the interests of justice in disclosure outweigh any prejudice, or likely prejudice, to—
(a) the safety investigation into the accident to which the document or record relates;

(b) any future accident safety investigation undertaken in the United Kingdom; or

(c) relations between the United Kingdom and any other State, or international organisation.

(6) The provisions of this regulation shall be without prejudice to any rule of law which authorises or requires the withholding of any document or record or part thereof on the ground that disclosure of it would be injurious to the public interest.

(7) Copies of information obtained from a voyage recorder or from other recording systems, pertinent to the accident, including voice recordings (other than any recordings mentioned in paragraph (2)(a)), video recordings and other electric or magnetic recordings and any transcripts made from such information or recordings, may be provided at the discretion of the Chief Inspector to the police or other official authorities.

(8) Information obtained from a voyage data recorder may be provided at the discretion of the Chief Inspector to the ship's owner.