

Draft Regulations laid before Parliament under section 373(3) of the Armed Forces Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No.

DEFENCE

The Armed Forces (Alcohol Limits for Prescribed Safety-Critical Duties) Regulations 2013

Made - - - - ****2013*
Coming into force - - *1st November 2013*

The Defence Council, in exercise of the powers conferred by sections 20A(4) and 93F(4) of the Armed Forces Act 2006(1), makes the following regulations:

In accordance with section 373(3)(d)(2) of the Armed Forces Act 2006 a draft of this instrument was laid before, and approved by resolution of, each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Armed Forces (Alcohol Limits for Prescribed Safety-Critical Duties) Regulations 2013 and shall come into force on 1st November 2013.

Interpretation

2. In these Regulations—

“the Act” means the Armed Forces Act 2006;

“afloat” means not on shore;

“air traffic controller” means a person directing or controlling the direction of aircraft in flight, taking off or landing;

“firearm” means a lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged;

“hazardous seamanship evolution” means manoeuvring alongside another vessel or fixed or moving object, leaving harbour, launching or recovery of boats, replenishment at sea, towing operations or salvage operations;

(1) 2006 c. 52. Section 20A was inserted by section 10, and section 93F was inserted by section 11(1), of the Armed Forces Act 2011 (c. 18).
(2) Section 373(3)(d) was amended by section 30 of, and paragraph 14 of Schedule 4 to, the Armed Forces Act 2011.

“Her Majesty’s ships” means all ships belonging to or used for the purposes of any of Her Majesty’s forces, and “Her Majesty’s submarines” shall be construed accordingly;

“maritime lifting operation” means the lifting or lowering of a load between one of Her Majesty’s ships and the shore using lifting equipment.

Alcohol limits for prescribed safety-critical duties

- 3.—(1) In relation to a duty prescribed in regulation 4, the relevant limit is—
- (a) in the case of breath, 35 microgrammes of alcohol in 100 millilitres;
 - (b) in the case of blood, 80 milligrammes of alcohol in 100 millilitres; and
 - (c) in the case of urine, 107 milligrammes of alcohol in 100 millilitres.
- (2) In respect of a duty prescribed in regulation 5, the relevant limit is—
- (a) in the case of breath, 9 microgrammes of alcohol in 100 millilitres;
 - (b) in the case of blood, 20 milligrammes of alcohol in 100 millilitres; and
 - (c) in the case of urine, 27 milligrammes of alcohol in 100 millilitres.

Duties subject to the limit in regulation 3(1)

4. The duties prescribed in this regulation are any duty—
- (a) of an officer of one of Her Majesty’s ships afloat to secure the safe conduct of the ship;
 - (b) of the quartermaster, bosun’s mate, helmsman or planesman of one of Her Majesty’s ships afloat to execute, or secure the execution of, orders as to the navigation of the ship;
 - (c) of a member of the crew of any of the following which belongs to, or is being used for the purpose of, any of Her Majesty’s forces—
 - (i) hovercraft;
 - (ii) landing craft;
 - (iii) rigid-hulled inflatable boats;
 - (iv) raiding craft;
 - (v) any other vessel, if it belongs to one of Her Majesty’s ships afloat;
 - (d) as the ship control officer of the watch of one of Her Majesty’s submarines afloat;
 - (e) as a member of the standing sea emergency party of one of Her Majesty’s ships afloat;
 - (f) as a member of the harbour duty watch of one of Her Majesty’s ships’;
 - (g) as a member of the strategic weapons system harbour duty watch of one of Her Majesty’s submarines;
 - (h) to supervise a hazardous seamanship evolution;
 - (i) to supervise a maritime lifting operation;
 - (j) as a member of a boarding party;
 - (k) as a member of the flight deck crew of one of Her Majesty’s ships;
 - (l) as a diver;
 - (m) to supervise a diver;
 - (n) as a driver or commander of a mechanically propelled vehicle;
 - (o) to supervise, certify or carry out maintenance on an aircraft;
 - (p) to authorise a military flight.

Duties subject to the limit in regulation 3(2)

5. The duties prescribed in this regulation are any duty—
- (a) of a pilot of an aircraft during flight or when conducting a ground run;
 - (b) of any other member of the crew of an aircraft during flight;
 - (c) of a person on board an aircraft during flight to give or supervise training or to administer a test;
 - (d) as an air traffic controller;
 - (e) of an operator of a remotely-piloted aerial system in flight;
 - (f) of any person in relation to the handling and use of a firearm when he has in his possession the firearm and ammunition capable of being discharged from the firearm;
 - (g) of a person doing any of the following in relation to the operation of a depth-charge launcher, firearm, mortar, rocket, or torpedo—
 - (i) handling missiles, fuses, charges or propellants;
 - (ii) firing or giving orders to fire;
 - (iii) calculating or setting a target area;
 - (iv) giving instructions about the location and bearing of the target;
 - (v) deciding or setting the explosive effect;
 - (vi) ensuring that the missile or explosive functions correctly in the target area;
 - (h) to supervise a person carrying out a duty within paragraph (f) or (g);
 - (i) of a person handling, or supervising the handling, of explosives.

Prescribed proportions of alcohol for replacement of specimens of breath

6. For the purposes of section 93F(2), the prescribed proportion of alcohol is—
- (a) in the case of an offence under section 20(1)(a) of the Act in respect of a safety-critical duty, 50 microgrammes of alcohol in 100 millilitres of breath;
 - (b) in the case of an offence under section 20A(1) of the Act—
 - (i) in respect of a duty prescribed in regulation 4, 50 microgrammes of alcohol in 100 millilitres of breath;
 - (ii) in respect of a duty prescribed in regulation 5, 15 microgrammes of alcohol in 100 millilitres of breath;
 - (c) in the case of an offence under section 42 of the Act as respects which the corresponding offence under the law of England and Wales is an offence under section 78 or 79 of the Railways and Transport Safety Act 2003(3), 50 microgrammes of alcohol in 100 millilitres of breath;
 - (d) subject to regulation 6(e), in the case of an offence under section 42 of the Act as respects which the corresponding offence under the law of England and Wales is an offence under section 92 or 93 of the Railways and Transport Safety Act 2003, 15 microgrammes of alcohol in 100 millilitres of breath; and
 - (e) where the offence mentioned in regulation 6(d) is in relation to the aviation function specified in section 94(1)(h) of the Railways and Transport Safety Act 2003, 50 microgrammes of alcohol in 100 millilitres of breath.

(3) 2003 c. 20.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory
Instrument: The Armed Forces (Alcohol Limits for Prescribed Safety-Critical Duties) Regulations 2013 No. 2787

Date

Name
Members of the Defence Council
Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Armed Forces Act 2006 (c. 52) (“the 2006 Act”) creates a power to test for drugs and alcohol in relation to the performance of safety-critical duties, and section 20A of the 2006 Act makes it an offence to have more than a prescribed level of alcohol in the body when a person is performing or might reasonably expect to be called on to perform a prescribed safety-critical duty.

Regulation 3 prescribes higher and lower limits for alcohol in breath, blood and urine.

Regulation 4 prescribes the duties which are subject to the higher alcohol limit, and regulation 5 prescribes the duties which are subject to the lower alcohol limit.

Under section 93F of the 2006 Act a person who has provided a specimen of breath for testing may require it to be replaced with a blood or urine specimen, if the specimen of breath contains no more than a prescribed proportion of alcohol. Regulation 6 prescribes the proportion of alcohol. The proportion prescribed depends on the offence for which the person suspected is being tested.