



Armed Forces Act 2016

2016 CHAPTER 21

Alcohol and drugs

2 Commanding officer's power to require preliminary alcohol and drugs tests

(1) In the heading of Chapter 3A of Part 3 of AFA 2006 (testing for alcohol and drugs on suspicion of offence), for “on suspicion of offence” substitute “ in connection with a suspected offence or accident ”.

(2) In section 93A of AFA 2006 (commanding officer's power to require preliminary tests)

—
(a) before subsection (1) insert—

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

(b) in subsection (1), for “This section applies” substitute “ The first situation is ”,

(c) in subsection (1)(a), for “relevant offence” substitute “ safety-critical duty offence ”,

(d) in subsection (1)(b), for “a relevant” substitute “ such an ”,

(e) omit subsection (2),

(f) in subsection (3), for “This section also applies” substitute “ The second situation is ”,

(g) after subsection (3) insert—

“(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.

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(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.”, and
- (h) in subsection (4)—
- (i) at the beginning insert “ Where this section applies, ”, and
 - (ii) for “subsection (1) or (3) (“the suspected person”)” substitute “ subsection (1), (3), (3A), (3B) or (3C) (“the affected person”) ”.

(3) After that section insert—

“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)—

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“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).”
- (4) In section 93B of AFA 2006 (preliminary breath test)—
- (a) in subsection (1), at the beginning insert “ In a situation described in section 93A(1) or (3), ”,
 - (b) in subsection (1)(a), for “suspected” substitute “ affected ”,
 - (c) after subsection (1) insert—
- “(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.”, and

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- (d) in subsection (3), for “93A(2)” substitute “ 93A(1)(a) ”.
- (5) In section 93C of AFA 2006 (preliminary impairment test), in subsection (1)(a) and (b), for “suspected” substitute “ affected ”.
- (6) In section 93D of AFA 2006 (preliminary drug test), in subsection (1)(a), for “suspected” substitute “ affected ”.
- (7) In section 93I of AFA 2006 (definitions for the purposes of Chapter 3A of Part 3), in the definition of “safety-critical duty”, after “93A(1)” insert “ , 93AA(6)(a) ”.
- (8) In section 373 of AFA 2006 (regulations etc)—
 - (a) in subsection (2) (regulations made by Defence Council), after “36,” insert “ 93AA, ”, and
 - (b) in subsection (3)(d) (affirmative procedure), after “20A,” insert “ 93AA(2), ”.

Commencement Information

- I1** [S. 2](#) in force at 19.7.2018 for specified purposes by [S.I. 2018/876](#), **reg. 2(a)**
- I2** [S. 2](#) in force at 1.1.2019 in so far as not already in force by [S.I. 2018/876](#), **reg. 2(b)**

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