



Ministry  
of Defence

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MSU/4/8/2/3/sb

7th April 2016

*Dear David,*

Following recent debates on the Armed Forces Bill, I thought it would be helpful to drop you a note about your concern that, where possible, legislation that applies to the discipline and behaviour of our Armed Forces should be contained in one Act.

As you know, the legislation that governs the Armed Forces is renewed by Act of Parliament every five years. The Armed Forces Act 2006 introduced a single system of Service law that applies to all Service personnel wherever in the world they are operating. Subsequently, the Armed Forces Act 2011 renewed and amended the 2006 Act and, like the 2011 Act, most of the provisions of this Armed Forces Bill - which of course also renews the 2006 Act - amend the 2006 Act so that it continues to provide nearly all the provisions for the existence of a system for the Armed Forces of command, discipline and justice.

I note your concern that the Armed Forces Bill amounts to a marshalled list of amendments to the 2006 Act and that you would have preferred the Government to make these changes not by amending the 2006 Act, but instead replacing it with a new Act. As I understand it, by extension, you would prefer each subsequent five-yearly Armed Forces Bill to repeal and replace the preceding Armed Forces Act.

I understand your concern but the established practice is that, where a change is to be made which requires primary legislation and can be achieved by minor amendment to an existing Act, it is likely to be more appropriate to amend the existing Act rather than repeal and replace it.

The Armed Forces Act 2006 is a very substantial piece of legislation and repealing and replacing such a body of law in its entirety every five years would have two significant disadvantages. First, there would be a substantial extra burden placed on the Ministry of Defence and Parliamentary Counsel in the production and management of a large Bill which simply restates the provisions of the preceding

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Enclosure(s)

Act. Second, it would not be clear from the text of each new Act what differences there were between that Act and the previous Act: by contrast, every change that the current Bill makes to the 2006 Act is clearly set out in the Bill itself.

The Explanatory Notes that accompany the Bill explain the changes that the Bill makes to the 2006 Act. Those Notes also explain the changes that the Bill makes to other Acts (i.e. clause 14 amends the Criminal Justice and Public Order Act 1994, clause 15 amends the Social Security Act 1989 etc) and the free-standing provision that the Bill makes (i.e. clause 16 makes such provision with respect to Ministry of Defence fire-fighters).

However, I do recognise that an 'as amended' text can make it much easier to see the effect of some of the textual amendments made by the Bill to the 2006 Act. It is for this reason that, to assist peers in preparing for debates on this Bill, the Bill team prepared informal (quasi-Keeling) schedules of provisions in the 2006 Act, as amended by the Bill, to show the following:

- provisions in Chapter 3A of Part 3 of the 2006 Act (testing for alcohol and drugs in connection with a suspected offence or accident) as amended by clause 2 of the Bill; and
- provisions in Part 5 of the 2006 Act (investigation, charging and mode of trial) as amended by clauses 3, 4 and 5 of the Bill.

The Bill team also prepared an informal text of section 25 of the Social Security Act 1989 (establishment and functions of war pensions committees) as amended by Clause 15 of the Bill.

Copies of these are enclosed and are also available from the Library.

I hope you find this helpful and it clarifies our approach.

*Yours sincerely,  
Freddie*

**THE RT HON EARL HOWE PC**

**Section 25 of the Social Security Act 1989**  
**as amended by clause 15 of the Armed Forces Bill 2015**  
**(war pensions committees and armed and reserve forces compensation schemes)**

**January 2016**

**Introduction**

To assist MPs and peers in preparing for debates, the Ministry of Defence has prepared this informal text of section 25 of the Social Security Act 1989 as amended by clause 15 of the Armed Forces Bill 2015 (war pensions committees and armed and reserve forces compensation schemes). It has not been approved by Parliamentary Counsel.

Text inserted by clause 15 of the Armed Forces Bill is highlighted.

Where text is omitted or substituted by clause 15, it is struck through and presented in red.

An ellipsis (...) indicates that text has previously been repealed (e.g. section 25(5)).

## Social Security Act 1989

### *War pensions committees*

#### **25 Establishment and functions of war pensions committees**

- (1) The Secretary of State may by regulations establish committees, known as war pensions committees, for such areas as may be specified in the regulations; and the regulations may, in particular, include provisions with respect to—
  - (a) the membership of the committees;
  - (b) the manner in which the members are to be appointed and the period for which, and the terms on which, they are to hold office; and
  - (c) the manner in which they may be removed.
- (1A) The regulations may give the committees functions relating to one or more of the following—
  - (a) war pensions;
  - (b) war pensioners;
  - (c) AFCS benefits;
  - (d) AFCS benefit recipients.
- (2) ~~The committees shall have such functions relating to war pensions and war pensioners as may be conferred upon them by the regulations; and the regulations may, in particular, provide that it shall be their function~~ it is a function of a committee—
  - (a) ~~to consider any matter connected with war pensions or affecting war pensioners in their area and, where they think~~ connected with war pensions or AFCS benefits or affecting people in its area who are war pensioners or AFCS benefit recipients and, where it thinks it appropriate, to make recommendations to the Secretary of State about that matter;
  - (b) ~~to consider complaints made to them by persons receiving or claiming war pensions and, if they think~~ to it by people receiving or claiming war pensions or AFCS benefits and, if it thinks fit, to make representations about those complaints to the Secretary of State;
  - (c) to consider any matters referred to them ~~it~~ by the Secretary of State and to report to him on those matters with such recommendations as they ~~it~~ may think fit; and
  - (d) to assist the War Pensioners' Welfare Service in looking after the welfare of ~~war pensioners in their area~~ people in its area who are war pensioners or AFCS benefit recipients.

(3) The regulations may include provisions with respect to the manner in which the committees are to discharge the functions conferred on them; and they shall exercise their functions subject to, and in accordance with, any such provisions.

(3A) The regulations may provide for the committees to have names specified in the regulations (as well as being known as war pensions committees).

(4) In this section—

“AFCS benefit” means a benefit payable under an armed and reserve forces compensation scheme established by order under section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004;

“AFCS benefit recipient” means a person in receipt of an AFCS benefit, in the person’s capacity as such;

“war pension” means—

- (a) any pension or other benefit, payable otherwise than under an enactment, for or in respect of a person who has died or been disabled in consequence of service as a member of the armed forces of the Crown.
- (b) any pension or benefit awarded under—
  - (i) the Personal Injuries (Emergency Provisions) Act 1939,
  - (ii) the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939, or
  - (iii) the Polish Resettlement Act 1947,
- (c) any pension or other payment which constitutes such an obligation as is mentioned in section 4(1) of the Statute Law Revision Act 1958 (seamen and fishermen killed or injured in the 1914-1918 war).
- (d) any other pension or benefit which is specified in an order made by the Secretary of State for the purposes of this section,

but does not include any pension or benefit administered by the Defence Council, or the Commissioners for the Royal Hospital for Soldiers at Chelsea, or a pension or benefit administered by the Minister of the Crown with responsibility for defence (except one administered by him in the exercise of functions transferred to him from the Secretary of State for Social Security); and

“war pensioner” means a person in receipt of a war pension, in his capacity as such a pensioner.

(5), (6) . . .

**Schedule of provisions in Part 5 of the Armed Forces Act 2006**  
**as amended by clauses 3, 4 and 5 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 clauses 3, 4 and 5 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.

An ellipsis (...) indicates that text has previously been repealed (e.g. section 125(4)).

PART 5  
INVESTIGATION, CHARGING AND MODE OF TRIAL

CHAPTER 1  
INVESTIGATION

*Duties of commanding officers*

**113 CO to ensure service police aware of possibility serious offence committed**

- (1) If an officer becomes aware of an allegation or circumstances within subsection (2), he must as soon as is reasonably practicable ensure that a service police force is aware of the matter.
- (2) An allegation is, or circumstances are, within this subsection if it or they would indicate to a reasonable person that a Schedule 2 offence has or may have been committed by a relevant person.
- (3) In subsection (2) "relevant person" means a person whose commanding officer is the officer mentioned in subsection (1).
- (4) In this Chapter "Schedule 2 offence" means a service offence listed in Schedule 2.
- (5) The Secretary of State may by order amend Schedule 2.

**114 CO to ensure service police aware of certain circumstances**

- (1) If an officer of a prescribed description becomes aware of circumstances of a prescribed description, he must as soon as is reasonably practicable ensure that a service police force is aware of the matter.
- (2) In this section "prescribed" means prescribed by regulations under section 128.

**115 Duty of CO with respect to investigation of service offences**

- (1) This section applies where—
  - (a) an officer becomes aware of an allegation or circumstances within subsection (2); and
  - (b) the officer is not required by section 113(1) or 114(1) to ensure that a service police force is aware of the matter.

- (2) An allegation is, or circumstances are, within this subsection if it or they would indicate to a reasonable person that a service offence has or may have been committed by a relevant person.
- (3) In subsection (2) “relevant person” means a person whose commanding officer is the officer mentioned in subsection (1).
- (4) The officer must either—
  - (a) ensure that the matter is investigated in such way and to such extent as is appropriate; or
  - (b) ensure, as soon as is reasonably practicable, that a service police force is aware of the matter.
- (5) Subsection (4) does not apply if the matter has already been investigated in such way and to such extent as is appropriate.

*Provost Marshal’s duty in relation to independence of investigations*

**115A Provost Marshal’s duty in relation to independence of investigations**

- (1) This section applies in relation to each service police force.
- (2) The Provost Marshal of the force has a duty, owed to the Defence Council, to seek to ensure that all investigations carried out by the force are free from improper interference.
- (3) “Improper interference” includes, in particular, any attempt by a person who is not a service policeman to direct an investigation which is being carried out by the force.

*Duty of service policeman following investigation*

**116 Referral of case following investigation by service or civilian police**

- (1) This section applies where—
  - (a) a service police force has investigated an allegation which indicates, or circumstances which indicate, that a service offence has or may have been committed; or
  - (b) a UK police force or overseas police force has investigated such an allegation or such circumstances and has referred the matter to a service police force.
- (2) If



- (a) a service policeman considers that there is sufficient evidence to charge a person with a service offence that is not a CO offence ~~or Schedule 2 offence~~, or
- (b) a service policeman considers that there is sufficient evidence to charge a person with a service offence that is a CO offence ~~any other service offence~~, and is aware of circumstances of a description prescribed by regulations under section 128 for the purposes of this paragraph.

he must refer the case to the Director of Service Prosecutions (“the Director”).

(3) If—

- (a) a service policeman considers that there is sufficient evidence to charge a person with a service offence, ~~and~~
- (b) subsection (2) does not apply, and
- (c) section 117(5) (referral of connected cases to DSP) does not apply,

he must refer the case to the person’s commanding officer.

(4) Subsection (4A) applies if—

- (a) the allegation or circumstances would indicate to a reasonable person that a person has committed, or might have committed, a service offence which is not one that may be dealt with at a summary hearing (see section 53) ~~or Schedule 2 offence has or might have been committed, or~~
- (b) any circumstances investigated are circumstances of a description prescribed by regulations under section 128 for the purposes of section 114,

and a service policeman proposes not to refer the case to the Director under subsection (2) or section 117(5).

(4A) If this subsection applies, the service policeman must consult the Director as soon as is reasonably practicable (and before any referral of the case under subsection (3)).

(5) ~~For the purposes of subsections (2) and (3)~~ For the purposes of this section—

- (a) there is sufficient evidence to charge a person with an offence if, were the evidence suggesting that the person committed the offence to be adduced in proceedings for the offence, the person could properly be convicted, and

- (b) a service offence committed by a person is a "CO offence" if a charge against the person in respect of the offence is capable of being heard summarily by the person's commanding officer (see section 52).

**117 Section 116: position where investigation is of multiple offences or offenders**

- (1) This section applies where the investigation mentioned in section 116(1) relates to two or more incidents (or alleged incidents) or the conduct (or alleged conduct) of two or more persons.
- (2) Each person's conduct in relation to each incident is to be regarded as giving rise to a separate case.
- (3) Subsections (4) and (5) apply if—
  - (a) at least one of the cases has been, or must be, referred to the Director of Service Prosecutions ("the Director") under section 116(2),
  - (b) a service policeman considers that there is sufficient evidence to charge a person with a service offence in another of the cases,
  - (c) that case is not required to be referred to the Director under section 116(2), and
  - (d) the service policeman considers that there is, or may be, a connection between a case falling within paragraph (a) and the case falling within paragraph (c), whether direct or indirect, that makes it appropriate for both cases to be referred to the Director.
- (4) The service policeman must consult the Director about the existence and nature of the connection between those cases.
- (5) Following that consultation, if the service policeman considers that there is a connection described in subsection (3)(d), the service policeman must refer the case falling within subsection (3)(c) to the Director.
- (6) The reference in this section to there being sufficient evidence to charge a person with a service offence is to be read in accordance with section 116(5)(a).
- (7) If a case is referred under section 116(2) to the Director of Service Prosecutions

- 118 Duty of service policeman to notify CO of referral to DSP**
- (1) This section applies where a service policeman considers that there is sufficient evidence to charge a person ("A") with a service offence and refers the case under section 116(2) or 117(5) to the Director of Service Prosecutions.
  - (2) The service policeman must as soon as reasonably practicable after referring the case—
    - (a) notify A's commanding officer of the referral; and
    - (b) provide prescribed documents to A's commanding officer.
  - (3) A notification under subsection (2)(a) must specify the service offence that the service policeman considers there is sufficient evidence to charge A with.
  - (3A) Where that offence is a CO offence, the notification must—
    - (a) specify whether the case is referred under section 116(2) or 117(5), and
    - (b) if the case is referred under section 116(2), specify the circumstances that bring the case within section 116(2)(b).
  - (4) In this section—
    - (a) any reference to there being sufficient evidence to charge a person with a service offence is to be read in accordance with section 116(5)(a) section 116(5);
    - (b) where that offence is not a Schedule 2 offence, the circumstances he is aware of that are of a description prescribed as mentioned in section 116(2)(b),

- (a) any other case of a description prescribed by regulations under section 428 for the purpose of this paragraph is to be treated as referred under section 116(2) to the Director of Service Prosecutions; and
- (b) nothing in section 116(2) or 117(5) applies in relation to any case treated as so referred.

- (aa) any reference to a CO offence is to be read in accordance with section 116(5)(b);
- (b) "prescribed documents" means documents prescribed for the purposes of subsection (2)(b) by regulations under section 128.

~~(5) Section 117(3)(a) (certain cases to be treated as referred under section 116(2)) does not apply for the purposes of this section.~~

## CHAPTER 2 CHARGING AND MODE OF TRIAL

### *Powers of charging etc*

#### **119 Circumstances in which CO has power to charge etc**

- (1) This section sets out the circumstances in which a commanding officer has initial powers (defined by section 120) in respect of a case.
- (2) If a commanding officer of a person becomes aware of an allegation which indicates, or circumstances which indicate, that the person has or may have committed a service offence, he has initial powers in respect of the case.
- (3) Subsection (2) does not apply if the allegation or circumstances—
  - (a) give or have given rise to the duty under section 113(1) or 114(1);
  - (b) are being or have been investigated by a service police force; or
  - (c) are being or have been investigated by a UK police force or overseas police force, and it appears to the commanding officer that that force may refer the matter to the service police.
- (4) A commanding officer has initial powers in respect of a case which a service policeman has referred to him under section 116(3) (referral of case following investigation by service or civilian police).
- (5) A commanding officer has initial powers in respect of a case which the Director of Service Prosecutions has referred to him under section 121(4) (referral of case by DSP).
- (6) If an allegation or circumstances mentioned in subsection (2) relate to two or more incidents (or alleged incidents) or the conduct (or alleged conduct) of two or more persons, each person's conduct in relation to each incident is to be regarded as giving rise to a separate case.

**120 Power of CO to charge etc**

- (1) Subsections (2) and (3) apply where under section 119 a commanding officer has initial powers in respect of a case.
- (2) The officer may bring, in respect of the case, one or more charges that are capable of being heard summarily (see section 52).
- (3) The officer may refer the case to the Director of Service Prosecutions.
- (4) A charge brought under subsection (2) is to be regarded for the purposes of this Part as allocated for summary hearing.
- (5) Where an officer has referred a case under subsection (3), the officer must also refer to the Director of Service Prosecutions ~~any other case—~~ Where an officer refers a case under subsection (3) ~~any other case—~~
  - (a) which is of a description prescribed by regulations under section 128 for the purposes of this subsection, and
  - (b) as respects which the officer has initial powers.

~~is to be treated as referred under subsection (3) to the Director of Service Prosecutions.~~

**121 Power of DSP to charge or direct bringing of charge etc**

- (1) The powers in subsections (1A) to (5) ~~subsections (2) to (5)~~ are exercisable by the Director of Service Prosecutions (“the Director”) in respect of a case which has been referred to him under—
  - (a) section 116(2) (referral of case following investigation by service or civilian police);
  - (aa) section 117(5) (referral of connected cases); or
  - (b) section 120(3) or (5) (referral of case by CO).
- (1A) The Director may bring a charge or charges against the person concerned in respect of the case.
- (1B) If—
  - (a) the Director brings a charge under subsection (1A), and
  - (b) the Service Civilian Court has jurisdiction to try the charge,

the Director may allocate the charge for trial by that court.

- (2) The Director may direct the commanding officer of the person concerned to bring, in respect of the case, such charge or charges against him as may be specified in the direction.
- (3) If—
  - (a) the Director makes a direction under subsection (2), and
  - (b) the Service Civilian Court has jurisdiction to try the charge specified in the direction,
 the Director may allocate the charge for trial by that court.
- (4) The Director may refer the case to the commanding officer of the person concerned, but only if he has decided that it would not be appropriate to bring a charge under subsection (1A) or to make a direction under subsection (2) in respect of it.
- (5) The Director may make a direction under section 127(1) or (2) (directions barring further proceedings) in respect of any offence as regards which he could bring a charge under subsection (1A) or make a direction under subsection (2).

**122 Charges brought by or at direction of DSP**

- (1) Where a direction under section 121(2) is given to an officer, he must bring the charge or charges specified in the direction.
- (2) A charge brought by the Director of Service Prosecutions (“the Director”) under section 121(1A) or by an officer as a result of a direction under section 121(2) ~~brought as a result of such a direction—~~
  - (a) is to be regarded for the purposes of this Part as allocated for Service Civilian Court trial if the Director allocated it (under section 121(1B) or (3)) ~~the Director of Service Prosecutions allocated it (under section 121(3))~~ for trial by that court;
  - (b) otherwise, is to be regarded for the purposes of this Part as allocated for Court Martial trial.

*Powers of commanding officer or DSP after charge etc*

**123 Powers of CO after charge**

- (1) This section applies where a charge against a person (“the accused”) is for the time being regarded for the purposes of this Part as allocated for summary hearing.

- (2) The accused's commanding officer may
  - (a) amend the charge;
  - (b) substitute for the charge another charge against the accused;
  - (c) bring an additional charge against the accused;
  - (d) discontinue proceedings on the charge;
  - (e) refer the charge to the Director of Service Prosecutions.
- (3) The powers under subsection (2) may be exercised before or after the start of any summary hearing of the charge.
- (4) Any amended, substituted or additional charge under subsection (2)(a) to (c) must be capable of being heard summarily (see section 52).
- (5) Any additional charge brought under subsection (2)(c) must be in respect of the case as respects which the charge mentioned in subsection (1) was brought.
- (6) Any amended, substituted or additional charge under subsection (2)(a) to (c) is to be regarded for the purposes of this Part as allocated for summary hearing.
- (7) Where a charge is referred under subsection (2)(e) to the Director of Service Prosecutions, the charge and any other charge brought in respect of the same case are to be regarded for the purposes of this Part as allocated for Court Martial trial.

**124 CO to hear charge allocated for summary hearing**

- (1) This section applies in respect of a charge which is regarded for the purposes of this Part as allocated for summary hearing.
- (2) The accused's commanding officer must hear the charge summarily unless—
  - (a) he exercises his powers under section 123(2)(b), (d) or (e) in respect of the charge (substitution of charge, discontinuance of proceedings, or referral to DSP); or
  - (b) the accused elects Court Martial trial of the charge (see section 129).
- (3) Subsection (2) is subject to sections 52 (charges capable of being heard summarily) and 54 (charges which may be heard summarily only with permission or by senior officer).

**125 Powers of DSP in respect of charge allocated for Court Martial trial**

- (1) This section applies where a charge against a person (“the accused”) is for the time being regarded for the purposes of this Part as allocated for Court Martial trial.
- (2) The Director of Service Prosecutions may—
  - (a) amend the charge;
  - (b) substitute for the charge another charge against the accused;
  - (c) bring an additional charge against the accused;
  - (d) discontinue proceedings on the charge;
  - (e) refer the charge to the accused’s commanding officer, but only if the charge is capable of being heard summarily (see section 52);
  - (f) allocate the charge for trial by the Service Civilian Court, but only if the charge is one that that court has jurisdiction to try;
  - (g) make a direction under section 127(1) or (2) (directions barring further proceedings) in respect of the offence charged or any offence that could be charged under paragraph (c) above.
- (3) Court Martial rules may restrict the exercise of powers under subsection (2) --
  - (a) after arraignment by the Court Martial; or
  - (b) after referral of the charge to the Court Martial under section 279(4) or 280(3) (referral by SCC) . . .
  - (c) . . .
- (4) . . .
- (5) Any additional charge brought under subsection (2)(c) must be in respect of the case as respects which the charge mentioned in subsection (1) was brought.
- (6) Any amended, substituted or additional charge under subsection (2)(a) to (c) is to be regarded for the purposes of this Part as allocated for Court Martial trial.
- (7) Any charge referred under subsection (2)(e) to a commanding officer is to be regarded for the purposes of this Part as allocated for summary hearing.



- (8) Any charge allocated under subsection (2)(f) is to be regarded for the purposes of this Part as allocated for Service Civilian Court trial.

**126 Powers of DSP in respect of charge allocated for SCC trial**

- (1) This section applies where a charge against a person (“the accused”) is for the time being regarded for the purposes of this Part as allocated for Service Civilian Court trial.
- (2) The Director of Service Prosecutions may—
- (a) amend the charge;
  - (b) substitute for the charge another charge against the accused;
  - (c) bring an additional charge against the accused;
  - (d) discontinue proceedings on the charge;
  - (e) allocate the charge for trial by the Court Martial;
  - (f) make a direction under section 127(1) or (2) (directions barring further proceedings) in respect of the offence charged or any offence that could be charged under paragraph (c) above.
- (3) SCC rules may restrict the exercise, after a decision by the Service Civilian Court under section 279 as to whether it should try the charge, of powers under subsection (2).
- (4) Any amended, substituted or additional charge under subsection (2)(a) to (c) must be one that the Service Civilian Court has jurisdiction to try.
- (5) Any additional charge brought under subsection (2)(c) must be in respect of the case as respects which the charge mentioned in subsection (1) was brought.
- (6) Any amended, substituted or additional charge under subsection (2)(a) to (c) is to be regarded for the purposes of this Part as allocated for Service Civilian Court trial.
- (7) Any charge allocated under subsection (2)(e) is to be regarded for the purposes of this Part as allocated for Court Martial trial.

CHAPTER 3  
SUPPLEMENTARY

**127 Directions by DSP barring further proceedings**

- (1) A direction under this subsection is a direction that for the purposes of section 63 the person specified in the direction is to be treated as acquitted of the service offence so specified.
- (2) A direction under this subsection is a direction that for the purposes of sections 63 and 64 the person specified in the direction is to be treated as acquitted of the service offence so specified.

**128 Regulations for purposes of Part 5**

- (1) The Secretary of State may by regulations make such provision as he considers necessary or expedient for the purposes of any provision of this Part.
- (2) Regulations under this section may in particular make provision—
  - (a) for the delegation by a commanding officer of any of his functions;
  - (b) as to the bringing, amendment and substitution of charges;
  - (c) as to the referral of cases and charges, including provision requiring a commanding officer in prescribed circumstances to refer a case or charge to the Director of Service Prosecutions;
  - (d) as to the examination of witnesses for the purpose of obtaining information of assistance to the Director of Service Prosecutions in connection with his functions under Chapter 2;
  - (e) requiring prescribed persons to be notified of prescribed matters.
- (3) In subsection (2) “prescribed” means prescribed by regulations under this section.

**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**

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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) ~~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 93A).~~
- (3) ~~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 ~~inspected~~ 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.

**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 93A).~~
- (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 ~~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.