



# Armed Forces Act 2011

## 2011 CHAPTER 18

### *Alcohol and drugs*

#### **9 Unfitness through alcohol or drugs**

In section 20 of AFA 2006 (unfitness or misconduct through alcohol or drugs), after subsection (1) insert—

“(1A) For the purposes of subsection (1) a person is to be taken to be unfit to be entrusted with his duty, or a duty which he might reasonably expect to be called upon to perform, if his ability to carry out the duty in question is impaired.”

#### **Commencement Information**

**II** S. 9 in force at 1.11.2013 by S.I. 2013/2501, art. 3(a)

#### **10 Exceeding alcohol limit for prescribed safety-critical duties**

After section 20 of AFA 2006 insert—

##### **“20A Exceeding alcohol limit for prescribed safety-critical duties**

- (1) A person subject to service law (“P”) commits an offence if the proportion of alcohol in P’s breath, blood or urine exceeds the relevant limit at a time when P—
- is performing, or purporting to perform, a prescribed duty; or
  - might reasonably expect to be called on to perform such a duty.
- (2) In subsection (1) “prescribed duty” means a duty specified, or of a description specified, by regulations; but a duty or description may be specified only if performing that duty (or a duty of that description) with ability impaired by alcohol would result in a risk of—
- death;

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- (b) serious injury to any person;
  - (c) serious damage to property; or
  - (d) serious environmental harm.
- (3) In this section “the relevant limit”, in relation to a duty specified or of a description specified by regulations, means the limit prescribed by regulations in relation to that duty or duties of that description.
- (4) In this section “regulations” means regulations made by the Defence Council for the purposes of this section.
- (5) 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.”

**Commencement Information**

- I2** S. 10 in force in so far as not already in force at 1.11.2013 by S.I. 2013/2501, art. 3(b)  
**I3** S. 10 in force for specified purposes at 8.3.2012 by S.I. 2012/669, art. 3(b)

**11 Testing for alcohol and drugs on suspicion of offence**

- (1) After section 93 of AFA 2006 insert—

**“CHAPTER 3A**

TESTING FOR ALCOHOL AND DRUGS ON SUSPICION OF OFFENCE

*Preliminary testing for alcohol and drugs*

**93A Commanding officer's power to require preliminary tests**

- (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 relevant offence; or
  - (b) has committed a relevant offence and still has alcohol or a drug in the body or is still under the influence of a drug.
- (2) In this section “relevant offence” means—
- (a) an offence under section 20A; or
  - (b) an offence under section 20(1)(a) in respect of a safety-critical duty (as defined by section 93I).
- (3) 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

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- (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.
- (4) The commanding officer may require the person mentioned in 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.

### **93B Preliminary breath test**

- (1) A preliminary breath test is a procedure administered by a service policeman under which—
  - (a) the 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.
- (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(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 suspected person performing tasks specified by the service policeman; and

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- (b) makes such other observations of the 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 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

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- (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.

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- (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

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- 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.

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- (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;



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“safety-critical duty” means a duty which the commanding officer of the person mentioned in section 93A(1) 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.”

(2) In consequence of the provision made by subsection (1), sections 306 and 307 of AFA 2006 (testing for alcohol and drugs after serious incident) are repealed.

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**Commencement Information**

- I4** S. 11(1) in force in so far as not already in force at 1.11.2013 by S.I. 2013/2501, art. 3(b)
- I5** S. 11(1) in force for specified purposes at 8.3.2012 by S.I. 2012/669, art. 3(c)
- I6** S. 11(2) in force at 1.11.2013 by S.I. 2013/2501, art. 3(b)

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