



Armed Forces Act 2006

2006 CHAPTER 52

PART 3

POWERS OF ARREST, SEARCH AND ENTRY

[^{F1}CHAPTER 3A

TESTING FOR ALCOHOL AND DRUGS [^{F1}IN CONNECTION WITH A SUSPECTED OFFENCE OR ACCIDENT]

[^{F1}Preliminary testing for alcohol and drugs

Textual Amendments

F1 Pt. 3 Ch. 3A inserted (8.3.2012 for specified purposes, 1.11.2013 in so far as not already in force) by [Armed Forces Act 2011 \(c. 18\)](#), ss. **11(1)**, 32(3); S.I. 2012/669, art. 3(c); S.I. 2013/2501, art. 3(b)

93A Commanding officer's power to require preliminary tests

[This section applies in the situations described in subsections (1) to (3C).]
^{F2}(A1)

- (1) [^{F3}The first situation is] where the commanding officer of a person subject to service law has reasonable cause to believe that that person—
 - (a) is committing a [^{F4}safety-critical duty offence]; or
 - (b) has committed [^{F5}such an] offence and still has alcohol or a drug in the body or is still under the influence of a drug.

^{F6}(2)

- (3) [^{F7}The second situation is] where the commanding officer of a person who is a civilian subject to service discipline has reasonable cause to believe that that person—

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- (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.
- [The third situation is where the commanding officer of a person subject to service law^{F8}(3A) 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) [^{F9}Where this section applies,] the commanding officer may require the person mentioned in [^{F10}subsection (1), (3), (3A), (3B) or (3C) (“the affected person”)] to co-operate with any one or more of—
- (a) a preliminary breath test (see section 93B);

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- (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.

Textual Amendments

- F2** S. 93A(A1) inserted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\), ss. 2\(2\)\(a\), 19\(1\); S.I. 2018/876, reg. 2\(a\)\(b\)](#)
- F3** Words in s. 93A(1) substituted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\), ss. 2\(2\)\(b\), 19\(1\); S.I. 2018/876, reg. 2\(a\)\(b\)](#)
- F4** Words in s. 93A(1)(a) substituted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\), ss. 2\(2\)\(c\), 19\(1\); S.I. 2018/876, reg. 2\(a\)\(b\)](#)
- F5** Words in s. 93A(1)(b) substituted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\), ss. 2\(2\)\(d\), 19\(1\); S.I. 2018/876, reg. 2\(a\)\(b\)](#)
- F6** S. 93A(2) omitted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by virtue of [Armed Forces Act 2016 \(c. 21\), ss. 2\(2\)\(e\), 19\(1\); S.I. 2018/876, reg. 2\(a\)\(b\)](#)
- F7** Words in s. 93A(3) substituted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\), ss. 2\(2\)\(f\), 19\(1\); S.I. 2018/876, reg. 2\(a\)\(b\)](#)
- F8** S. 93A(3A)-(3C) inserted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\), ss. 2\(2\)\(g\), 19\(1\); S.I. 2018/876, reg. 2\(a\)\(b\)](#)
- F9** Words in s. 93A(4) inserted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\), ss. 2\(2\)\(h\)\(i\), 19\(1\); S.I. 2018/876, reg. 2\(a\)\(b\)](#)
- F10** Words in s. 93A(4) substituted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\), ss. 2\(2\)\(h\)\(ii\), 19\(1\); S.I. 2018/876, reg. 2\(a\)\(b\)](#)

Section 93A: interpretation

F11 **93AA**

- (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;

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“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).]

Textual Amendments

- F11** S. 93AA inserted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\), ss. 2\(3\), 19\(1\); S.I. 2018/876, reg. 2\(a\)\(b\)](#)

93B Preliminary breath test

- (1) [^{F12} 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 [^{F13}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 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.

[In a situation described in section 93A(3A), (3B) or (3C), a preliminary breath test is ^{F14}(1A) a procedure administered by a service policeman under which—

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- (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 [F15]93A(1)(a)] or (3)(a) which the commanding officer has reasonable cause to believe has been committed.

Textual Amendments

- F12** Words in s. 93B(1) inserted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), [ss. 2\(4\)\(a\)](#), 19(1); [S.I. 2018/876](#), [reg. 2\(a\)\(b\)](#)
- F13** Word in s. 93B(1)(a) substituted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), [ss. 2\(4\)\(b\)](#), 19(1); [S.I. 2018/876](#), [reg. 2\(a\)\(b\)](#)
- F14** S. 93B(1A) inserted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), [ss. 2\(4\)\(c\)](#), 19(1); [S.I. 2018/876](#), [reg. 2\(a\)\(b\)](#)
- F15** Word in s. 93B(3) substituted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), [ss. 2\(4\)\(d\)](#), 19(1); [S.I. 2018/876](#), [reg. 2\(a\)\(b\)](#)

93C Preliminary impairment test

- (1) A preliminary impairment test is a procedure under which a service policeman—
- (a) observes the [F16]affected] person performing tasks specified by the service policeman; and
 - (b) makes such other observations of the [F17]affected] 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.

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- (4) In subsection (3) “the Provost Marshals” [F18] means the Provost Marshals of each of the service police forces [F18] means—
- (a) the Provost Marshals of each of the service police forces, and
 - (b) the Provost Marshal for serious crime.]
- (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 [F19] or the Provost Marshal for serious crime].
- (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.

Textual Amendments

- F16** Word in s. 93C(1)(a) substituted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\), ss. 2\(5\), 19\(1\); S.I. 2018/876, reg. 2\(a\)\(b\)](#)
- F17** Word in s. 93C(1)(b) substituted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\), ss. 2\(5\), 19\(1\); S.I. 2018/876, reg. 2\(a\)\(b\)](#)
- F18** [S. 93C\(4\)\(a\)\(b\)](#) substituted for words (1.5.2022 for specified purposes) by [Armed Forces Act 2021 \(c. 35\), s. 24\(1\), Sch. 5 para. 25\(2\); S.I. 2022/471, reg. 2\(e\)](#)
- F19** Words in s. 93C(6) inserted (1.5.2022 for specified purposes) by [Armed Forces Act 2021 \(c. 35\), s. 24\(1\), Sch. 5 para. 25\(3\); S.I. 2022/471, reg. 2\(e\)](#)

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 [F20] affected] 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.]

Textual Amendments

- F20** Word in s. 93D(1)(a) substituted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\), ss. 2\(6\), 19\(1\); S.I. 2018/876, reg. 2\(a\)\(b\)](#)

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