



# Armed Forces Act 2016

## 2016 CHAPTER 21

An Act to continue the Armed Forces Act 2006; to make provision about service discipline; to make provision about war pensions committees established under section 25 of the Social Security Act 1989; to make provision about Ministry of Defence fire-fighters; and for connected purposes. [12th May 2016]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *Duration of Armed Forces Act 2006*

#### **<sup>F1</sup> Duration of Armed Forces Act 2006**

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#### **Textual Amendments**

**F1** S. 1 omitted (15.12.2021) by virtue of [Armed Forces Act 2021 \(c. 35\)](#), ss. 1(2), 24(2)(a)

### *Alcohol and drugs*

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

- (1) In the heading of Chapter 3A of Part 3 of AFA 2006 (testing for alcohol and drugs on suspicion of offence), for “on suspicion of offence” substitute “ in connection with a suspected offence or accident ”.
- (2) In section 93A of AFA 2006 (commanding officer's power to require preliminary tests)
  - (a) before subsection (1) insert—

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- “(A1) This section applies in the situations described in subsections (1) to (3C).”
- (b) in subsection (1), for “This section applies” substitute “ The first situation is ”,
  - (c) in subsection (1)(a), for “relevant offence” substitute “ safety-critical duty offence ”,
  - (d) in subsection (1)(b), for “a relevant” substitute “ such an ”,
  - (e) omit subsection (2),
  - (f) in subsection (3), for “This section also applies” substitute “ The second situation is ”,
  - (g) after subsection (3) insert—
    - “(3A) The third situation is where the commanding officer of a person subject to service law or of a person who is a civilian subject to service discipline has reasonable cause to believe that—
      - (a) there has been an accident involving an aircraft or a ship; and
      - (b) at the time of the accident, the person was carrying out an aviation function in relation to the aircraft or a marine function in relation to the ship.
    - (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

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- (c) it is possible that the carrying out of the safety-critical function by the person may have caused or contributed to—
    - (i) the occurrence of the accident;
    - (ii) the death, injury, damage or harm; or
    - (iii) the risk of death, injury, damage or harm.”, and
  - (h) in subsection (4)—
    - (i) at the beginning insert “ Where this section applies, ”, and
    - (ii) for “subsection (1) or (3) (“the suspected person”)” substitute “ subsection (1), (3), (3A), (3B) or (3C) (“the affected person”) ”.
- (3) After that section insert—

**“93AA Section 93A: interpretation**

- (1) In section 93A(1), “safety-critical duty offence” means—
  - (a) an offence under section 20A; or
  - (b) an offence under section 20(1)(a) in respect of a safety-critical duty (as defined in section 93I).
- (2) In section 93A(3A) and (3B)—
  - “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

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activity which, if it were carried out by a person subject to service law in the course of his or her duty, would be a safety-critical duty.

- (7) References in section 93A and this section to a person carrying out a function include a failure by the person to carry out a function at a time when the person is responsible for carrying it out (and related expressions are to be read accordingly).”
- (4) In section 93B of AFA 2006 (preliminary breath test)—
- (a) in subsection (1), at the beginning insert “ In a situation described in section 93A(1) or (3), ”,
  - (b) in subsection (1)(a), for “suspected” substitute “ affected ”,
  - (c) after subsection (1) insert—
 

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

    - (a) the affected person provides a specimen of breath; and
    - (b) the specimen is used for the purpose of obtaining, by means of an approved device, an indication of the proportion of alcohol in the person's breath or blood.”, and

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

#### Commencement Information

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

### *Investigation and charging*

#### **3 Duty of service policeman following investigation**

- (1) In section 116(2) of AFA 2006 (cases that must be referred to the Director of Service Prosecutions following investigation by service or civilian police)—
- (a) in paragraph (a), for “a Schedule 2 offence” substitute “ a service offence that is not a CO offence ”, and
  - (b) in paragraph (b), for “any other service offence” substitute “ a service offence that is a CO offence ”.

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- (2) In section 116(3) of AFA 2006 (cases that must be referred to the commanding officer following investigation by service or civilian police)—
  - (a) omit “and” at the end of paragraph (a), and
  - (b) after paragraph (b) insert “, and
  - (c) section 117(5) (referral of connected cases to DSP) does not apply.”.
- (3) In section 116(4) of AFA 2006 (obligation to consult the Director of Service Prosecutions about certain cases)—
  - (a) in paragraph (a), for “a Schedule 2 offence has or might have been committed” substitute “ 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) ”, and
  - (b) in the words after paragraph (b), at the end insert “ or section 117(5) ”.
- (4) In section 116(5) of AFA 2006 (interpretation of section 116)—
  - (a) for “For the purposes of subsections (2) and (3)” substitute “For the purposes of this section—
    - (a)”,
    - and
  - (b) at the end insert “, 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).”
- (5) In section 117 of AFA 2006 (section 116: position where investigation is of multiple offences or offenders), for subsection (3) substitute—
  - “(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).”