

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT ARMED FORCES (SPECIFIED AVIATION  
AND MARINE FUNCTIONS) REGULATIONS 2018

*Wednesday 31 October 2018*

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**The Committee consisted of the following Members:**

*Chair:* DAVID HANSON

Berger, Luciana ( <i>Liverpool, Wavertree</i> ) (Lab/Co-op)	Platt, Jo ( <i>Leigh</i> ) (Lab/Co-op)
† Chapman, Douglas ( <i>Dunfermline and West Fife</i> ) (SNP)	† Shelbrooke, Alec ( <i>Elmet and Rothwell</i> ) (Con)
† Ellwood, Mr Tobias ( <i>Parliamentary Under-Secretary of State for Defence</i> )	† Skidmore, Chris ( <i>Kingswood</i> ) (Con)
† Elmore, Chris ( <i>Ogmore</i> ) (Lab)	Snell, Gareth ( <i>Stoke-on-Trent Central</i> ) (Lab/Co-op)
Evans, Chris ( <i>Islwyn</i> ) (Lab/Co-op)	† Spelman, Dame Caroline ( <i>Second Church Estates Commissioner</i> )
† Jones, Gerald ( <i>Merthyr Tydfil and Rhymney</i> ) (Lab)	† Swayne, Sir Desmond ( <i>New Forest West</i> ) (Con)
Kendall, Liz ( <i>Leicester West</i> ) (Lab)	† Wragg, Mr William ( <i>Hazel Grove</i> ) (Con)
† Lefroy, Jeremy ( <i>Stafford</i> ) (Con)	
† Lopresti, Jack ( <i>Filton and Bradley Stoke</i> ) (Con)	Dominic Stockbridge, <i>Committee Clerk</i>
† Morton, Wendy ( <i>Aldridge-Brownhills</i> ) (Con)	† <b>attended the Committee</b>

## Second Delegated Legislation Committee

Wednesday 31 October 2018

[DAVID HANSON *in the Chair*]

### Draft Armed Forces (Specified Aviation and Marine Functions) Regulations 2018

8.55 am

**The Parliamentary Under-Secretary of State for Defence (Mr Tobias Ellwood):** I beg to move,

That the Committee has considered the draft Armed Forces (Specified Aviation and Marine Functions) Regulations 2018.

Thank you very much indeed, Mr Hanson. It is a pleasure to join a stellar crowd of hon. Members enthusiastic—at least on the Government side—to discuss defence matters. On the day in 1915 when the Tommy helmet was introduced to the frontline in world war one, it is poignant that we discuss safety matters. In a rather dubious segue, I will now proceed to promote the statutory instrument.

At present, a commanding officer can require a person to take an alcohol or drug test if the commanding officer has “reasonable cause to believe” that the person is committing a service offence by performing a safety-critical duty while over a set alcohol limit or impaired by drugs or alcohol. Similar powers apply where a commanding officer believes that a civilian subject to service discipline has committed similar offences under legislation relating to safety in shipping and civil aviation. That power and the linked offences help deter and detect the misuse of alcohol or drugs by those performing safety-critical duties and so help prevent accidents.

However, those existing powers are aimed at gathering evidence for a possible prosecution, hence the need for a commanding officer to have “reasonable cause to believe” an offence has been committed. When an accident happens, it may be important to determine whether anyone involved had been misusing alcohol or drugs, even if the commanding officer does not have any immediate cause to believe an offence has been committed.

Section 2 of the Armed Forces Act 2016 amends the Armed Forces Act 2006 to allow a commanding officer also to require a member of the armed forces or a civilian subject to service discipline to co-operate with a preliminary test for drugs or alcohol after an accident. Importantly, in those circumstances a person may be tested without the need for suspicion that any offence has been committed. That gives commanding officers the power to test those who performed aviation or marine functions relating to an aircraft or ship involved in an accident. Those circumstances also apply to anyone who performed a safety-critical function connected to any serious accident. “Serious” in this context means an accident that resulted in or created a risk of death, serious injury to any person, serious damage to any property or serious environmental harm.

That will improve our investigations of such incidents. It is important that accidents in the military environment are investigated thoroughly with a view to contributory factors being identified and appropriate punitive or remedial action being taken. Tests will be carried out by

the service police, and the result of a preliminary test can be used in support of criminal and non-criminal investigations. Tests will mainly support service inquiries but may be used in any type of investigation arising from an aviation or marine accident or any other serious accident.

The relevant aviation and marine functions must be specified by regulations made under the amendments in the 2006 Act. The safety-critical functions are set out in the existing offences and powers I mentioned. The draft regulations specify those aviation and marine functions, which are largely based on existing safety-critical duties relating to aviation and shipping.

The duties specified in the draft regulations reflect the wide range of duties undertaken in a military environment that are linked to aircraft or ships. Such duties include: maintenance; acting as crew on an aircraft or ship; loading and unloading fuel, cargo and weapons; and conducting hazardous operations such as parachuting or diving. The duties include similar functions carried out by civilians subject to service discipline, such as those who work on aircraft or ships overseas.

In the event of an accident, a commanding officer may require a person to co-operate with preliminary testing if he or she was carrying out, or had carried out, a specified function at the time of or even, in some situations, before the accident. As I have said, the testing will be carried out by the service police.

It will be an offence for any individual, without reasonable excuse, to fail to provide a sample when required to do so. Reasonable excuse could, for example, include a medical condition that prevented a person from providing a sample of breath.

We hope, of course, that serious accidents will not happen and that there will be no need to apply the regulations. However, it is the nature of military activity, necessarily, to be dangerous—it is a dangerous world that we operate in, and our people are frequently exposed to risk. It is important that, in the event of a serious accident, we uncover whether alcohol or drugs may have contributed to its cause, so that appropriate corrective action can be taken.

9.1 am

**Gerald Jones (Merthyr Tydfil and Rhymney) (Lab):** It is a pleasure to serve under your chairmanship, Mr Hanson. I hope you will forgive the rather croaky voice in which I make my comments.

I am not sure whether the Government were expecting a Division this morning, but the Opposition are pleased to support the regulations in full. The misuse of alcohol or illegal substances by service members is entirely at odds with the demands of life in the armed services—and even more so in cases when personnel operate equipment, including in the aviation or maritime spheres, when there can be a substantial risk to life or property. For that reason it is absolutely correct to have strong procedures in place to ascertain whether alcohol or illegal substances may have played a part in an incident.

I am confident, as I am sure all members of the Committee are, that the vast majority of personnel abide by the rules set out in service law, but in the minority of cases where an accident occurs, it is of course correct that there should be a thorough investigation. The Armed Forces Act 2016 made a number of important

changes to strengthen the regime for investigating incidents. That is one of the many reasons why we are pleased to give our support.

The regulations build on the progress made in the Act in that they set out clearly what constitutes a maritime or aviation function. They also ensure that the functions specified are broad enough to cover activities such as refuelling that may contribute to an incident. For those reasons, we are pleased to support the regulations.

9.2 am

**Douglas Chapman** (Dunfermline and West Fife) (SNP):

It is a pleasure to speak in the Committee today, Mr Hanson, and to give the third party's viewpoint, which is that we are supportive of the measure. Obviously the armed forces live and work in hugely dangerous circumstances for a huge amount of time, whether they are in training or on operations. The powers in question, which underline the duty of care of the Ministry of Defence to its staff, and of crew members to each other, concern the investigative process that would take place in the event of an accident. We are very supportive of the measure.

As to the application of the statutory instrument to Scotland and Northern Ireland, will the Minister perhaps explain whether they are covered at the moment? I imagine that that is the case, but I raise it as a point for clarification.

9.4 am

**Mr Ellwood:** I am grateful for the general support from Opposition parties. As to any suggestion that there might be any division among us on this matter, of course there is not, and I should have been surprised if there were.

The spokesman for the Labour party, the hon. Member for Merthyr Tydfil and Rhymney, reflected on the fact that the absolute majority of those who wear uniform do so with distinction, without problems, and with a commitment to serving Queen and country. We need to be cautious at work and ensure that appropriate measures are in place for when the line is crossed. That is exactly why we are here.

Clearly, there are aspects concerning Scotland and Northern Ireland, with which I am just coming to terms. I am pleased to say that the Act already extends to Northern Ireland and Scotland and will continue to do so. As the hon. Member for Dunfermline and West Fife knows, this is not a devolved matter.

In the absence of further questions, which I hope is the case, I thank all Committee members. I believe that the regulations will support military investigations, particularly service inquiries into serious incidents involving aircraft or ships, or any other serious circumstances. They will certainly add to the suite of measures already in place in the service justice system to deter people from presenting themselves unfit for duty due to the consumption of drugs or excessive alcohol, and for detecting those who do so.

I stress that we can be very proud of the majority of people who choose to step forward and serve our country with distinction. I am very grateful for the Committee's support.

*Question put and agreed to.*

9.6 am

*Committee rose.*





