STATUTORY INSTRUMENTS

2018 No. 1174

DEFENCE

The Armed Forces (Specified Aviation and Marine Functions) Regulations 2018

Made - - - -	*12th November 2018*
Coming into force - -	*1st January 2019*

The Defence Council makes the following Regulations in exercise of the powers conferred by section 93AA(2) of the Armed Forces Act 2006(**a**).

The Defence Council is satisfied that the roles and activities (and descriptions of roles and activities) specified in these Regulations satisfy the condition in section 93AA(3) of the Armed Forces Act 2006 (**b**).

In accordance with section 373(3)(**c**) of the Armed Forces Act 2006 a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Armed Forces (Specified Aviation and Marine Functions) Regulations 2018 and come into force on 1st January 2019.

Interpretation

2.—(1) In these Regulations—

"cargo" includes (but is not limited to) stores, mail, animals and vehicles;

"firearm" means a lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged; and

"Her Majesty's ships" means all ships belonging to, or used for the purposes of, any of Her Majesty's forces.

(2) In these Regulations a reference to a duty of a person in relation to the handling, use or operation of a depth-charge launcher, firearm, mortar, rocket or torpedo is to any duty—

(a) of a person ("P") in relation to the handling and use of a firearm when P has in P's possession the firearm and ammunition capable of being discharged from the firearm;

(**a**) 2006 c. 52; section 93AA(2) was inserted by section 2(3) of the Armed Forces Act 2016 (c. 21). The Armed Forces Act 2006 was due to expire on account of section 382 of that Act (as amended by section 1 of the Armed Forces Act 2016 (c. 21)) but has been continued most recently by S.I. 2018/519. The Defence Council is treated as if it were a Minister of the Crown for the purposes of the Statutory Instruments Act 1946 (c. 36) by virtue of section 373(2) of the Armed Forces Act 2006.

(**b**) Section 93AA(3) was inserted by section 2(3) of the Armed Forces Act 2016.

(**c**) Section 373(3) was amended by section 2(8) of the Armed Forces Act 2016; there are other amendments but none is relevant.

(b) of a person doing any of the following in relation to the operation of a depth-charge launcher, firearm, mortar, rocket or torpedo—

(i) handling missiles, fuses, charges or propellants;

(ii) firing or giving orders to fire;

(iii) calculating or setting a target area;

(iv) giving instructions about the location and bearing of the target;

(v) deciding or setting the explosive effect;

(vi) ensuring that the missile or explosive functions correctly in the target area; or

(c) to supervise a person carrying out a duty within sub-paragraph (a) or (b).

Specified aviation functions: duties relating to aviation

3.—(1) A duty of a person subject to service law is specified as an aviation function for the purposes of section 93A(3A) and (3B)(**a**) of the Armed Forces Act 2006 if it is any duty—

(a) as a member of the flight deck crew of one of Her Majesty's ships;

(b) to supervise, certify or carry out maintenance on an aircraft;

(c) to authorise a military flight;

(d) of a pilot of an aircraft during flight or when conducting a ground run;

(e) of any other member of the crew of an aircraft during flight;

(f) of a person on board an aircraft during flight—

(i) to give or supervise training or to administer a test; or

(ii) to observe a period of practice or to monitor or record the gaining of experience;

(g) as an air traffic controller;

(h) of an operator of a remotely-piloted aerial system in flight;

(i) of a person in relation to the handling or use on an aircraft, or the operation on or from it, of a depth-charge launcher, firearm, mortar, rocket or torpedo;

(j) of a person handling, or supervising the handling of, explosives being loaded onto, carried on or in, or unloaded from an aircraft;

(k) to ensure any part of the following activities is carried out safely—

(i) fuelling, or removing fuel from, an aircraft;

(ii) loading cargo onto or suspending cargo from an aircraft (including securing that cargo) or unloading cargo carried by or suspended from an aircraft;

(iii) picking up a person or cargo from an aircraft or raising a person or cargo to an aircraft;

(iv) dropping (whether or not by parachute), lowering or projecting a person or cargo from an aircraft; or

(v) an activity carried out in close proximity to an aircraft operating under its own power.

(2) In this regulation "air traffic controller" means a person directing or controlling the direction of aircraft in flight, taking off, or landing.

Specified aviation functions: civilians subject to service discipline

4. A role or activity is specified as an aviation function for the purposes of section 93A(3A) and (3B) of the Armed Forces Act 2006 if—

(**a**) Section 93A(3A) and (3B) were inserted by section 2(2)(g) of the Armed Forces Act 2016.

(a) it is carried out by a person who is a civilian subject to service discipline in the course of that person's employment; and

(b) it would be a duty specified as an aviation function for the purposes of section 93A(3A) and (3B) by regulation 3(1) if it were carried out by a person subject to service law in the course of that person's duty.

Specified marine functions: duties relating to ships

5.—(1) A duty of a person subject to service law is specified as a marine function for the purposes of section 93A(3A) and (3B) of the Armed Forces Act 2006 if it is any duty—

(a) of an officer of one of Her Majesty's ships afloat to secure the safe conduct of the ship;

(b) of the quartermaster, bosun's mate, helmsman or planesman of one of Her Majesty's ships afloat to execute, or secure the execution of, orders as to the navigation of the ship;

(c) of a member of the crew of any of the following which belongs to, or is being used for the purpose of, any of Her Majesty's forces—

(i) a hovercraft;

(ii) a landing craft;

(iii) a rigid-hulled inflatable boat;

(iv) a raiding craft;

(v) any other vessel, if it belongs to one of Her Majesty's ships afloat;

(d) as the ship control officer of the watch of one of Her Majesty's submarines afloat;

(e) as a member of the standing sea emergency party of one of Her Majesty's ships afloat;

(f) as a member of the harbour duty watch of one of Her Majesty's ships;

(g) as a member of the strategic weapons system harbour duty watch of one of Her Majesty's submarines;

(h) to supervise a hazardous seamanship evolution;

(i) to supervise a maritime lifting operation;

(j) as a member of a boarding party;

(k) as a diver;

(l) to supervise a diver;

(m) of a person in relation to the handling or use on a ship, or the operation on or from it, of a depth-charge launcher, firearm, mortar, rocket or torpedo;

(n) of a person handling, or supervising the handling of, explosives being loaded onto, carried on or in, or unloaded from a ship;

(o) of an operator of an unmanned maritime system (surface or subsurface) under way;

(p) to ensure any part of the following activities is carried out safely—

(i) fuelling, or removing fuel from, a ship;

(ii) loading cargo into a ship (including securing that cargo) or unloading cargo from a ship; or

(iii) the maintenance of a ship.

(2) In this regulation—

"afloat" means not on shore;

"hazardous seamanship evolution" means manoeuvring alongside another vessel or fixed or moving object, leaving harbour, launching or recovery of boats, replenishment at sea, towing operations or salvage operations;

"Her Majesty's submarines" means all of Her Majesty's ships which are submarines;

"maritime lifting operation" means the lifting or lowering of a load between one of Her Majesty's ships and the shore using lifting equipment; and

"unmanned maritime system (surface or subsurface)" means any remotely controlled ship that can be operated on or below the surface of the sea or navigable waters.

Specified marine functions: civilians subject to service discipline

6.—(1) A role or activity is specified as a marine function for the purposes of section 93A(3A) and (3B) if—

(a) it is carried out by a person who is a civilian subject to service discipline in the course of that person's employment; and

(b) it would be a duty specified as a marine function for the purposes of section 93A(3A) and (3B) by regulation 5(1) if it were carried out by a person subject to service law in the course of that person's duty.

(2) A role or activity is also specified as a marine function for the purposes of section 93A(3A) and (3B) if it is carried out for the purposes of any of Her Majesty's forces by a person who is a civilian subject to service discipline acting as—

(a) a professional master of a ship;

(b) a professional pilot of a ship; or

(c) a professional seaman in a ship.

(3) In this regulation—

(a) a person is a professional seaman only if that person is on duty as a professional seaman; and

(b) a master, pilot or seaman is professional if (and only if) that person acts as master, pilot or seaman in the course of a business or employment.

Gordon Messenger
Tobias Ellwood
Members of the Defence Council
Ministry of Defence

12th November 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify aviation and marine functions for the purposes of section 93A(3A) and (3B) of the Armed Forces Act 2006 (c. 52).

Section 93(3A) and (3B) give commanding officers the power to require persons under their command to cooperate with preliminary breath, impairment and drugs tests following an accident involving an aircraft or ship. The requirement can be imposed under section 93(3A) on any person who was carrying out an aviation function in relation to the aircraft or a marine function in relation to the ship at the time of the accident. The requirement can also be imposed under section 93(3B) on those who carried out such functions before an accident if the accident resulted in death, injury, damage to property or environmental harm or created a risk that any of these things might occur. However, the requirement may only be imposed on a person under section 93(3B) if the carrying out of an aviation or marine function by that person may have caused or contributed to the occurrence of the accident, any death, injury, damage to property or environmental harm resulting from the accident, or any risk of death or of such injury, damage or harm created by it.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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