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STATUTORY INSTRUMENTS

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**2013 No. 2527**

**DEFENCE**

**The Armed Forces (Interpretation, Translation  
and Alcohol and Drug Tests) Rules 2013**

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| <i>Made</i>   | - - - - | <i>2nd October 2013</i>  |
| <i>Laid before Parliament</i>                         |         | <i>4th October 2013</i>  |
| <i>Coming into force</i>                              |         |                          |
| <i>Rules 1 to 7, 9, 10, 12 to 17<br/>and 19 to 21</i> |         | <i>27th October 2013</i> |
| <i>Remainder</i>                                      |         | <i>1st November 2013</i> |

The Secretary of State makes the following Rules in exercise of the powers conferred by sections 112, 151, 153, 163 and 288 of the Armed Forces Act 2006<sup>(1)</sup>:

**Citation and commencement**

**1.**—(1) These Rules may be cited as the Armed Forces (Interpretation, Translation and Alcohol and Drug Tests) Rules 2013.

(2) Rules 1 to 7, 9, 10, 12 to 17 and 19 to 21 of these Rules shall come into force on 27th October 2013, and the remainder on 1st November 2013.

**Custody proceedings rules**

- 2.** The Armed Forces (Custody Proceedings) Rules 2009<sup>(2)</sup> are amended as follows.
- 3.** For rule 20 (interpreters) substitute—

**“Interpretation, translation and communication through an intermediary**

**20.**—(1) Where a person to whom proceedings relate is due to attend a hearing, the court administration officer, unless satisfied that the person does not need interpretation, shall appoint an interpreter to act at the hearing.

(2) Before an interpreter begins to act at a hearing, an oath shall be administered to the interpreter.

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(1) 2006 c. 52.

(2) S.I. 2009/1098.

(3) Before an interpreter is sworn, the interpreter's name shall be read out, and any party to the proceedings may object to the interpreter on any reasonable ground.

(4) If the judge advocate upholds any such objection, the interpreter shall not be sworn, and the court administration officer shall appoint another interpreter.

(5) On application or on his own initiative, the judge advocate may require a written translation of any document or part of a document to be provided for a person to whom proceedings relate, and who needs interpretation, unless—

- (a) translation of that document, or part, is not needed to explain the issues arising in the proceedings in relation to the person; or
- (b) the person agrees to do without, and the judge advocate is satisfied—
  - (i) that the agreement is clear and voluntary; and
  - (ii) that the person has had legal advice or otherwise understands the consequences.

(6) On application by a person to whom proceedings relate, the judge advocate shall give any direction which he thinks appropriate, including a direction for interpretation by a different interpreter, where—

- (a) no interpreter is appointed, or no interpretation provided;
- (b) no translation is ordered, or provided, in response to a previous application by the person; or
- (c) the person complains about the quality of any interpretation or translation provided.

(7) In relation to a person who has a hearing or speech impediment, references in these Rules to an interpreter include a person appointed—

- (a) to communicate to the person anything said at the hearing, and explain it so far as necessary to enable the person to understand it, or
- (b) to communicate any answers given by the person, and any other matters that the person seeks to convey, and explain them so far as necessary to enable the judge advocate and others present at the hearing to understand them,

and references to interpretation shall be construed accordingly.

(8) In this rule references to acting at a hearing include assisting the person to communicate with the person's legal representative during the hearing; and in relation to such assistance paragraph (7)(b) has effect as if the reference to the judge advocate and others present at the hearing were to the legal representative.”.

**4. In rule 22(2) (matters to be included in record of proceedings)—**

- (a) at the end of sub-paragraph (a), omit “and”;
- (b) at the end of sub-paragraph (b)—
  - (i) substitute a semi-colon for the full stop;
  - (ii) after that semi-colon, insert—
    - “(c) a record of the identity of any interpreter;
    - (d) a record of any decision on an application under rule 20(5);
    - (e) a record of any agreement under rule 20(5)(b) to do without a written translation of a document or part of a document; and
    - (f) a record of any direction given under rule 20(6).”.

## Summary Appeal Court rules

5. The Armed Forces (Summary Appeal Court) Rules 2009(3) are amended as follows.
6. For rule 29 (interpreters) substitute—

### **“Interpretation, translation and communication through an intermediary**

**29.**—(1) Where an appellant is due to attend a hearing, the court administration officer, unless satisfied that the appellant does not need interpretation, shall appoint an interpreter to act at the hearing.

(2) Before an interpreter begins to act at a hearing, an oath shall be administered to the interpreter.

(3) Before an interpreter is sworn, the interpreter’s name shall be read out, and any party to the proceedings may object to the interpreter on any reasonable ground.

(4) If the judge advocate upholds any such objection, the interpreter shall not be sworn, and the court administration officer shall appoint another interpreter.

(5) On application or on his own initiative, the judge advocate may require a written translation of any document or part of a document to be provided for an appellant who needs interpretation, unless—

- (a) translation of that document, or part, is not needed to explain the issues arising in the proceedings in relation to the appellant (including, in the case of an appeal against finding, the case against the appellant); or
- (b) the appellant agrees to do without, and the judge advocate is satisfied—
  - (i) that the agreement is clear and voluntary; and
  - (ii) that the appellant has had legal advice or otherwise understands the consequences.

(6) On application by the appellant, the judge advocate shall give any direction which he thinks appropriate, including a direction for interpretation by a different interpreter, where—

- (a) no interpreter is appointed, or no interpretation provided;
- (b) no translation is ordered, or provided, in response to a previous application by the appellant; or
- (c) the appellant complains about the quality of any interpretation or translation provided.

(7) In relation to an appellant who has a hearing or speech impediment, references in these Rules to an interpreter include a person appointed—

- (a) to communicate to the appellant anything said at the hearing, and explain it so far as necessary to enable the appellant to understand it, or
- (b) to communicate any answers given by the appellant, and any other matters that the appellant seeks to convey, and explain them so far as necessary to enable the court and others present at the hearing to understand them,

and references to interpretation shall be construed accordingly.

(8) In this rule references to acting at a hearing include assisting the appellant to communicate with the appellant’s legal representative during the hearing; and in relation to such assistance paragraph (7)(b) has effect as if the reference to the court and others present at the hearing were to the legal representative.”.

7. At the end of rule 30(2) (matters to be included in record of proceedings)—
- (a) substitute a semi-colon for the full stop;
  - (b) after that semi-colon, insert—
    - “(f) a record of the identity of any interpreter;
    - (g) a record of any decision on an application under rule 29(5);
    - (h) a record of any agreement under rule 29(5)(b) to do without a written translation of a document or part of a document; and
    - (i) a record of any direction given under rule 29(6).”.
8. After rule 74 insert—

## “CHAPTER 6

### Use of specimens in relation to offences under sections 20(1)(a) and 20A of the Armed Forces Act 2006

#### **Application and interpretation**

**74A.**—(1) This Chapter applies to proceedings for the hearing of an appeal against a finding that a relevant charge has been proved.

- (2) In paragraph (1) “relevant charge” means a charge of an offence under—
  - (a) section 20(1)(a) of the Act (unfitness for duty through alcohol or drugs); or
  - (b) section 20A(4) of the Act (exceeding alcohol limit for prescribed safety-critical duties).

(3) In this Chapter “drug”, “medical establishment”, “service police establishment” and “service policeman” have the meanings given by section 93I(5) of the Act.

#### **Use of specimens**

**74B.**—(1) Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided by or taken from the appellant shall, in all cases (including cases where the specimen was not provided or taken in connection with the alleged offence), be taken into account and, subject to paragraph (2), it shall be assumed that the proportion of alcohol in the appellant’s breath, blood or urine at the time of the alleged offence was not less than in the specimen.

- (2) That assumption shall not be made if the appellant proves—
  - (a) that he consumed alcohol before he provided the specimen or had it taken from him, and after the time of the alleged offence; and
  - (b) that had he not done so the proportion of alcohol in his breath, blood or urine—
    - (i) in the case of an offence under section 20(1)(a) of the Act, would not have been such as to impair his ability to carry out the duty in question;
    - (ii) in the case of an offence under section 20A of the Act, would not have exceeded the relevant limit (within the meaning of that section).
- (3) A specimen of blood shall be disregarded unless—
  - (a) it was taken from the appellant under section 93E of the Act; or

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(4) Section 20A of the Armed Forces Act 2006 is inserted by section 10 of the Armed Forces Act 2011 (c. 18).

(5) Sections 93A to 93I of the Armed Forces Act 2006 are inserted by section 11 of the Armed Forces Act 2011.

- (b) it was taken from the appellant under section 93G of the Act and the appellant subsequently gave his permission for a laboratory test of the specimen.
- (4) Where, at the time a specimen of blood or urine was provided by the appellant, he asked to be provided with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the Director unless—
  - (a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen provided by the appellant was divided at the time it was provided; and
  - (b) the other part was supplied to the appellant.
- (5) Where a specimen of blood was taken from the appellant under section 93G of the Act, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the Director unless—
  - (a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen taken from the appellant was divided at the time it was taken; and
  - (b) any request to be supplied with the other part which was made by the appellant at the time when he gave his permission for a laboratory test of the specimen was complied with.

#### **Documentary evidence as to specimens**

**74C.**—(1) Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine may, subject to paragraphs (3) and (4) and to rule 74B(4) and (5), be given by the production of a document or documents purporting to be whichever of the following is appropriate, that is to say—

- (a) a statement automatically produced by the device by which the proportion of alcohol in a specimen of breath was measured and a certificate signed by a service policeman (which may but need not be contained in the same document as the statement) that the statement relates to a specimen provided by the appellant at the date and time shown in the statement; and
  - (b) a certificate signed by an authorised analyst as to the proportion of alcohol or any drug found in a specimen of blood or urine identified in the certificate.
- (2) Subject to paragraphs (3) and (4), evidence that a specimen of blood was taken from the appellant with his consent by a registered medical practitioner or a registered nurse may be given by the production of a document purporting to certify that fact and to be signed by a registered medical practitioner or registered nurse.
- (3) Subject to paragraph (4)—
- (a) a document purporting to be such a statement or such a certificate (or both such a statement and such a certificate) as is mentioned in paragraph (1)(a) is admissible in evidence on behalf of the Director in pursuance of this rule only if a copy of it either has been handed to the appellant when the document was produced or has been served on him not later than seven days before the hearing; and
  - (b) any other document is so admissible only if a copy of it has been served on the appellant not later than seven days before the hearing.
- (4) A document purporting to be a certificate (or so much of a document as purports to be a certificate) is not so admissible if the appellant, not later than three days before the hearing or within such further time as the court may in special circumstances allow, has served notice on the Director requiring the attendance at the hearing of the person by whom the document purports to be signed.

(5) In this rule “authorised analyst” means—

- (a) any person possessing the qualifications prescribed by regulations made under section 27 of the Food Safety Act 1990<sup>(6)</sup> as qualifying persons for appointment as public analysts under that Act; and
- (b) any other person authorised by the Secretary of State to make analyses for the purposes of section 16 of the Road Traffic Offenders Act 1988<sup>(7)</sup> or this rule.”.

### Summary hearings etc rules

9. The Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules 2009<sup>(8)</sup> are amended as follows.

10. After rule 11 insert—

**“Interpretation, translation and communication through an intermediary**

**11A.**—(1) This rule applies unless the commanding officer is satisfied that the accused does not need interpretation.

(2) The commanding officer shall appoint an interpreter to act at the hearing.

(3) On application or on his own initiative, the commanding officer may require a written translation of any document or part of a document to be provided for the accused, unless—

- (a) translation of that document, or part, is not needed to explain the case against the accused; or
- (b) the accused agrees to do without, and the commanding officer is satisfied—
  - (i) that the agreement is clear and voluntary; and
  - (ii) that the accused has had legal advice or otherwise understands the consequences.

(4) If so requested by the accused, the commanding officer shall take such steps as he thinks appropriate, including the appointment of a different interpreter, where—

- (a) no interpretation is provided;
- (b) no translation is required, or provided, in response to a previous request by the accused; or
- (c) the accused complains about the quality of any interpretation or translation provided.

(5) Where the accused has a hearing or speech impediment, references in this rule to an interpreter include a person appointed—

- (a) to communicate to the accused anything said at the hearing, and explain it so far as necessary to enable the accused to understand it, or
- (b) to communicate any answers given by the accused, and any other matters that the accused seeks to convey, and explain them so far as necessary to enable the commanding officer to understand them,

and references to interpretation shall be construed accordingly.”.

11. After rule 15 insert—

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<sup>(6)</sup> 1990 c. 16; section 27(2) was amended by the Food Standards Act 1999 (c. 28), section 40(1) and Schedule 5, paragraphs 7 and 8.

<sup>(7)</sup> 1988 c. 53.

<sup>(8)</sup> S.I. 2009/1216.

**“Offences under sections 20(1)(a) and 20A of the Act: use of specimens**

**15A.—**(1) This rule and rule 15B apply to the hearing of a charge of an offence under—

- (a) section 20(1)(a) of the Act (unfitness for duty through alcohol or drugs); or
- (b) section 20A of the Act (exceeding alcohol limit for prescribed safety-critical duties).

(2) In this rule and rule 15B “drug”, “medical establishment”, “service police establishment” and “service policeman” have the meanings given by section 93I of the Act.

(3) Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided by or taken from the accused shall, in all cases (including cases where the specimen was not provided or taken in connection with the alleged offence), be taken into account and, subject to paragraph (4), it shall be assumed that the proportion of alcohol in the accused’s breath, blood or urine at the time of the alleged offence was not less than in the specimen.

(4) That assumption shall not be made if the accused proves—

- (a) that he consumed alcohol before he provided the specimen or had it taken from him, and after the time of the alleged offence; and
- (b) that had he not done so the proportion of alcohol in his breath, blood or urine—
  - (i) in the case of an offence under section 20(1)(a) of the Act, would not have been such as to impair his ability to carry out the duty in question;
  - (ii) in the case of an offence under section 20A of the Act, would not have exceeded the relevant limit (within the meaning of that section).

(5) A specimen of blood shall be disregarded unless—

- (a) it was taken from the accused under section 93E of the Act; or
- (b) it was taken from the accused under section 93G of the Act and the accused subsequently gave his permission for a laboratory test of the specimen.

(6) Where, at the time a specimen of blood or urine was provided by the accused, he asked to be provided with such a specimen, the commanding officer may not adduce evidence of the proportion of alcohol or any drug found in the specimen unless—

- (a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen provided by the accused was divided at the time it was provided; and
- (b) the other part was supplied to the accused.

(7) Where a specimen of blood was taken from the accused under section 93G of the Act, the commanding officer may not adduce evidence of the proportion of alcohol or any drug found in the specimen unless—

- (a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen taken from the accused was divided at the time it was taken; and
- (b) any request to be supplied with the other part which was made by the accused at the time when he gave his permission for a laboratory test of the specimen was complied with.

**Offences under sections 20(1)(a) and 20A of the Act: documentary evidence as to specimens**

**15B.—**(1) Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine may, subject to paragraphs (3) and (4) and to rule 15A(6) and (7), be given

by the production of a document or documents purporting to be whichever of the following is appropriate, that is to say—

- (a) a statement automatically produced by the device by which the proportion of alcohol in a specimen of breath was measured and a certificate signed by a service policeman (which may but need not be contained in the same document as the statement) that the statement relates to a specimen provided by the accused at the date and time shown in the statement; and
- (b) a certificate signed by an authorised analyst as to the proportion of alcohol or any drug found in a specimen of blood or urine identified in the certificate.

(2) Subject to paragraphs (3) and (4), evidence that a specimen of blood was taken from the accused with his consent by a registered medical practitioner or a registered nurse may be given by the production of a document purporting to certify that fact and to be signed by a registered medical practitioner or registered nurse.

(3) Subject to paragraph (4)—

- (a) the commanding officer may, in pursuance of this rule, adduce in evidence a document purporting to be such a statement or such a certificate (or both such a statement and such a certificate) as is mentioned in paragraph (1)(a) only if the accused was handed a copy of it when the document was produced, or has been provided with a copy not later than seven days before the hearing; and
- (b) the commanding officer may so adduce any other document only if the accused has been provided with a copy of it not later than seven days before the hearing.

(4) The commanding officer may not so adduce a document purporting to be a certificate (or so much of a document as purports to be a certificate) if the accused, not later than three days before the hearing or within such further time as the commanding officer may in special circumstances allow, has notified the commanding officer that he requires the attendance at the hearing of the person by whom the document purports to be signed.

(5) In this rule “authorised analyst” means—

- (a) any person possessing the qualifications prescribed by regulations made under section 27 of the Food Safety Act 1990 as qualifying persons for appointment as public analysts under that Act; and
- (b) any other person authorised by the Secretary of State to make analyses for the purposes of section 16 of the Road Traffic Offenders Act 1988 or this rule.”.

**12.** In rule 27(1) (matters to be included in written record of summary hearing), after subparagraph (k) insert—

- “(ka) the identity of any interpreter;
- (kb) any decision on an application under rule 11A(3);
- (kc) any agreement under rule 11A(3)(b) to do without a written translation of a document or part of a document;
- (kd) any steps taken under rule 11A(4);”.

**13.** After rule 33 insert—

**“Interpretation, translation and communication through an intermediary**

**33A.**—(1) This rule applies unless the commanding officer is satisfied that the offender does not need interpretation.

- (2) The commanding officer shall appoint an interpreter to act at the hearing.



(3) On application or on his own initiative, the commanding officer may require a written translation of any document or part of a document to be provided for the offender, unless—

- (a) translation of that document, or part, is not needed to explain the purpose of the hearing; or
- (b) the offender agrees to do without, and the commanding officer is satisfied—
  - (i) that the agreement is clear and voluntary; and
  - (ii) that the offender has had legal advice or otherwise understands the consequences.

(4) If so requested by the offender, the commanding officer shall take such steps as he thinks appropriate, including the appointment of a different interpreter, where—

- (a) no interpretation is provided;
- (b) no translation is required, or provided, in response to a previous request by the offender; or
- (c) the offender complains about the quality of any interpretation or translation provided.

(5) Where the offender has a hearing or speech impediment, references in this rule to an interpreter include a person appointed—

- (a) to communicate to the offender anything said at the hearing, and explain it so far as necessary to enable the offender to understand it, or
- (b) to communicate any answers given by the offender, and any other matters that the offender seeks to convey, and explain them so far as necessary to enable the commanding officer to understand them,

and references to interpretation shall be construed accordingly.”.

**14.** In rule 36(1) (matters to be included in written record of hearing as regards making of activation order)—

- (a) at the end of sub-paragraph (d), omit “and”;
- (b) at the end of sub-paragraph (e)—
  - (i) substitute a semi-colon for the full stop;
  - (ii) after that semi-colon, insert—
    - “(f) the identity of any interpreter;
    - (g) any decision on an application under rule 33A(3);
    - (h) any agreement under rule 33A(3)(b) to do without a written translation of a document or part of a document; and
    - (i) any steps taken under rule 33A(4).”.

### **Court Martial rules**

**15.** The Armed Forces (Court Martial) Rules 2009<sup>(9)</sup> are amended as follows.

**16.** For rule 22 (interpreters) substitute—

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(9) [S.I. 2009/2041](#), to which there are amendments not relevant to these Rules.

**“Interpretation, translation and communication through an intermediary**

**22.**—(1) Where a person to whom any proceedings relate is due to attend a hearing, the court administration officer, unless satisfied that the person does not need interpretation, shall appoint an interpreter to act at the hearing.

(2) Before an interpreter begins to act at a hearing, an oath shall be administered to the interpreter.

(3) Before an interpreter is sworn, the interpreter’s name shall be read out, and any party to the proceedings may object to the interpreter on any reasonable ground.

(4) If the judge advocate upholds any such objection, the interpreter shall not be sworn, and the court administration officer shall appoint another interpreter.

(5) On application or on his own initiative, the judge advocate may require a written translation of any document or part of a document to be provided for a person to whom any proceedings relate, and who needs interpretation, unless—

- (a) translation of that document, or part, is not needed to explain the issues arising in the proceedings in relation to the person (including, in the case of trial proceedings, the case against the defendant); or
- (b) the person agrees to do without, and the judge advocate is satisfied—
  - (i) that the agreement is clear and voluntary; and
  - (ii) that the person has had legal advice or otherwise understands the consequences.

(6) On application by a person to whom any proceedings relate, the judge advocate shall give any direction which he thinks appropriate, including a direction for interpretation by a different interpreter, where—

- (a) no interpreter is appointed, or no interpretation provided;
- (b) no translation is ordered, or provided, in response to a previous application by the person; or
- (c) the person complains about the quality of any interpretation or translation provided.

(7) In relation to a person who has a hearing or speech impediment, references in these Rules to an interpreter include a person appointed—

- (a) to communicate to the person anything said at the hearing, and explain it so far as necessary to enable the person to understand it, or
- (b) to communicate any answers given by the person, and any other matters that the person seeks to convey, and explain them so far as necessary to enable the court and others present at the hearing to understand them,

and references to interpretation shall be construed accordingly.

(8) In its application by virtue of paragraph (7), nothing in this rule is limited by anything in Chapter 6 of Part 12 (special measures directions).

(9) In this rule references to acting at a hearing include assisting the person to communicate with the person’s legal representative during the hearing; and in relation to such assistance paragraph (7)(b) has effect as if the reference to the court and others present at the hearing were to the legal representative.”.

**17.** At the end of rule 23(2) (matters to be included in record of proceedings)—

- (a) substitute a semi-colon for the full stop;
- (b) after that semi-colon, insert—

- “(f) a record of the identity of any interpreter;
- (g) a record of any decision on an application under rule 22(5);
- (h) a record of any agreement under rule 22(5)(b) to do without a written translation of a document or part of a document; and
- (i) a record of any direction given under rule 22(6).”.

18. After rule 100 insert—

## “CHAPTER 7

Use of specimens in proceedings for offences relating to alcohol and drugs

### **Application and interpretation**

**100A.**—(1) This Chapter applies to proceedings for—

- (a) an offence under section 20(1)(a) of the 2006 Act (unfitness for duty through alcohol or drugs);
- (b) an offence under section 20A of that Act (exceeding alcohol limit for prescribed safety-critical duties); or
- (c) an offence under section 42 of that Act (criminal conduct) 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<sup>(10)</sup> (shipping and aviation staff: offences relating to alcohol and drugs).

(2) In this Chapter “drug”, “medical establishment”, “service police establishment” and “service policeman” have the meanings given by section 93I of the 2006 Act.

### **Use of specimens**

**100B.**—(1) Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided by or taken from the defendant shall, in all cases (including cases where the specimen was not provided or taken in connection with the alleged offence), be taken into account and, subject to paragraph (2), it shall be assumed that the proportion of alcohol in the defendant’s breath, blood or urine at the time of the alleged offence was not less than in the specimen.

(2) That assumption shall not be made if the defendant proves—

- (a) that he consumed alcohol before he provided the specimen or had it taken from him, and after the time of the alleged offence; and
- (b) that had he not done so the proportion of alcohol in his breath, blood or urine—
  - (i) in the case of an offence under section 20(1)(a) of the 2006 Act, or an offence under section 42 of that Act as respects which the corresponding offence under the law of England and Wales is an offence under section 78(2) of the Railways and Transport Safety Act 2003, would not have been such as to impair his ability to carry out the duty or duties in question;
  - (ii) in the case of an offence under section 20A of the 2006 Act, would not have exceeded the relevant limit (within the meaning of that section);
  - (iii) in the case of an offence under section 42 of the 2006 Act as respects which the corresponding offence under the law of England and Wales is an offence

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(10) 2003 c. 20.

under subsection (2) of section 79 of the Railways and Transport Safety Act 2003, would not have been such as to impair his ability to take the action mentioned in subsection (1)(b) of that section;

(iv) in the case of an offence under section 42 of the 2006 Act as respects which the corresponding offence under the law of England and Wales is an offence under section 92 of the Railways and Transport Safety Act 2003, would not have been such as to impair his ability to perform the function mentioned in subsection (1)(a) or (b) (as the case may be) of that section;

(v) in the case of an offence under section 42 of the 2006 Act as respects which the corresponding offence under the law of England and Wales is an offence under section 78(3), 79(3) or 93 of the Railways and Transport Safety Act 2003, would not have exceeded the prescribed limit.

(3) A specimen of blood shall be disregarded unless—

- (a) it was taken from the defendant under section 93E of the 2006 Act; or
- (b) it was taken from the defendant under section 93G of that Act and the defendant subsequently gave his permission for a laboratory test of the specimen.

(4) Where, at the time a specimen of blood or urine was provided by the defendant, he asked to be provided with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the Director unless—

- (a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen provided by the defendant was divided at the time it was provided; and
- (b) the other part was supplied to the defendant.

(5) Where a specimen of blood was taken from the defendant under section 93G of the 2006 Act, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the Director unless—

- (a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen taken from the defendant was divided at the time it was taken; and
- (b) any request to be supplied with the other part which was made by the defendant at the time when he gave his permission for a laboratory test of the specimen was complied with.

### **Documentary evidence as to specimens**

**100C.**—(1) Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine may, subject to paragraphs (3) and (4) and to rule 100B(4) and (5), be given by the production of a document or documents purporting to be whichever of the following is appropriate, that is to say—

- (a) a statement automatically produced by the device by which the proportion of alcohol in a specimen of breath was measured and a certificate signed by a service policeman (which may but need not be contained in the same document as the statement) that the statement relates to a specimen provided by the defendant at the date and time shown in the statement; and
- (b) a certificate signed by an authorised analyst as to the proportion of alcohol or any drug found in a specimen of blood or urine identified in the certificate.

(2) Subject to paragraphs (3) and (4), evidence that a specimen of blood was taken from the defendant with his consent by a registered medical practitioner or a registered nurse may

be given by the production of a document purporting to certify that fact and to be signed by a registered medical practitioner or registered nurse.

(3) Subject to paragraph (4)—

- (a) a document purporting to be such a statement or such a certificate (or both such a statement and such a certificate) as is mentioned in paragraph (1)(a) is admissible in evidence on behalf of the Director in pursuance of this rule only if a copy of it either has been handed to the defendant when the document was produced or has been served on him not later than seven days before the hearing; and
- (b) any other document is so admissible only if a copy of it has been served on the defendant not later than seven days before the hearing.

(4) A document purporting to be a certificate (or so much of a document as purports to be a certificate) is not so admissible if the defendant, not later than three days before the hearing or within such further time as the court may in special circumstances allow, has served notice on the Director requiring the attendance at the hearing of the person by whom the document purports to be signed.

(5) In this rule “authorised analyst” means—

- (a) any person possessing the qualifications prescribed by regulations made under section 27 of the Food Safety Act 1990 as qualifying persons for appointment as public analysts under that Act; and
- (b) any other person authorised by the Secretary of State to make analyses for the purposes of section 16 of the Road Traffic Offenders Act 1988 or this rule.”.

### **Service Civilian Court rules**

**19.** The Armed Forces (Service Civilian Court) Rules 2009<sup>(11)</sup> are amended as follows.

**20.** For rule 21 (interpreters) substitute—

#### **“Interpretation, translation and communication through an intermediary**

**21.—**(1) Where a person to whom any proceedings relate is due to attend a hearing, the court administration officer, unless satisfied that the person does not need interpretation, shall appoint an interpreter to act at the hearing.

(2) Before an interpreter begins to act at a hearing, an oath shall be administered to the interpreter.

(3) Before an interpreter is sworn, the interpreter’s name shall be read out, and any party to the proceedings may object to the interpreter on any reasonable ground.

(4) If the judge advocate upholds any such objection, the interpreter shall not be sworn, and the court administration officer shall appoint another interpreter.

(5) On application or on his own initiative, the judge advocate may require a written translation of any document or part of a document to be provided for a person to whom any proceedings relate, and who needs interpretation, unless—

- (a) translation of that document, or part, is not needed to explain the issues arising in the proceedings in relation to the person (including, in the case of trial proceedings, the case against the defendant); or
- (b) the person agrees to do without, and the judge advocate is satisfied—
  - (i) that the agreement is clear and voluntary; and

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(11) [S.I. 2009/1209](#).

(ii) that the person has had legal advice or otherwise understands the consequences.

(6) On application by a person to whom any proceedings relate, the judge advocate shall give any direction which he thinks appropriate, including a direction for interpretation by a different interpreter, where—

- (a) no interpreter is appointed, or no interpretation provided;
- (b) no translation is ordered, or provided, in response to a previous application by the person; or
- (c) the person complains about the quality of any interpretation or translation provided.

(7) In relation to a person who has a hearing or speech impediment, references in these Rules to an interpreter include a person appointed—

- (a) to communicate to the person anything said at the hearing, and explain it so far as necessary to enable the person to understand it, or
- (b) to communicate any answers given by the person, and any other matters that the person seeks to convey, and explain them so far as necessary to enable the court and others present at the hearing to understand them,

and references to interpretation shall be construed accordingly.

(8) In its application by virtue of paragraph (7), nothing in this rule is limited by anything in Chapter 6 of Part 12 (special measures directions).

(9) In this rule references to acting at a hearing include assisting the person to communicate with the person's legal representative during the hearing; and in relation to such assistance paragraph (7)(b) has effect as if the reference to the court and others present at the hearing were to the legal representative.”.

**21.** At the end of rule 22(2) (matters to be included in record of proceedings)—

- (a) substitute a semi-colon for the full stop;
- (b) after that semi-colon, insert—
  - “(h) a record of the identity of any interpreter;
  - (i) a record of any decision on an application under rule 21(5);
  - (j) a record of any agreement under rule 21(5)(b) to do without a written translation of a document or part of a document; and
  - (k) a record of any direction given under rule 21(6).”.

**22.** After rule 84 insert—

## “CHAPTER 7

Use of specimens in proceedings for offences relating to alcohol and drugs

### **Application and interpretation**

**84A.**—(1) This Chapter applies to proceedings for an offence under section 42 of the Act (criminal conduct) 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 (shipping and aviation staff: offences relating to alcohol and drugs).

(2) In this Chapter “drug”, “medical establishment”, “service police establishment” and “service policeman” have the meanings given by section 93I of the Act.

### Use of specimens

**84B.**—(1) Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided by or taken from the defendant shall, in all cases (including cases where the specimen was not provided or taken in connection with the alleged offence), be taken into account and, subject to paragraph (2), it shall be assumed that the proportion of alcohol in the defendant's breath, blood or urine at the time of the alleged offence was not less than in the specimen.

(2) That assumption shall not be made if the defendant proves—

- (a) that he consumed alcohol before he provided the specimen or had it taken from him, and after the time of the alleged offence; and
- (b) that had he not done so the proportion of alcohol in his breath, blood or urine—
  - (i) where the corresponding offence under the law of England and Wales is an offence under section 78(2) of the Railways and Transport Safety Act 2003, would not have been such as to impair his ability to carry out his duties;
  - (ii) where that corresponding offence is an offence under subsection (2) of section 79 of that Act, would not have been such as to impair his ability to take the action mentioned in subsection (1)(b) of that section;
  - (iii) where that corresponding offence is an offence under section 92 of that Act, would not have been such as to impair his ability to perform the function mentioned in subsection (1)(a) or (b) (as the case may be) of that section;
  - (iv) where that corresponding offence is an offence under section 78(3), 79(3) or 93 of that Act, would not have exceeded the prescribed limit.

(3) A specimen of blood shall be disregarded unless—

- (a) it was taken from the defendant under section 93E of the 2006 Act; or
- (b) it was taken from the defendant under section 93G of that Act and the defendant subsequently gave his permission for a laboratory test of the specimen.

(4) Where, at the time a specimen of blood or urine was provided by the defendant, he asked to be provided with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the Director unless—

- (a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen provided by the defendant was divided at the time it was provided; and
- (b) the other part was supplied to the defendant.

(5) Where a specimen of blood was taken from the defendant under section 93G of the 2006 Act, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the Director unless—

- (a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen taken from the defendant was divided at the time it was taken; and
- (b) any request to be supplied with the other part which was made by the defendant at the time when he gave his permission for a laboratory test of the specimen was complied with.

### Documentary evidence as to specimens

**84C.**—(1) Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine may, subject to paragraphs (3) and (4) and to rule 84B(4) and (5), be given

by the production of a document or documents purporting to be whichever of the following is appropriate, that is to say—

- (a) a statement automatically produced by the device by which the proportion of alcohol in a specimen of breath was measured and a certificate signed by a service policeman (which may but need not be contained in the same document as the statement) that the statement relates to a specimen provided by the defendant at the date and time shown in the statement; and
  - (b) a certificate signed by an authorised analyst as to the proportion of alcohol or any drug found in a specimen of blood or urine identified in the certificate.
- (2) Subject to paragraphs (3) and (4), evidence that a specimen of blood was taken from the defendant with his consent by a registered medical practitioner or a registered nurse may be given by the production of a document purporting to certify that fact and to be signed by a registered medical practitioner or registered nurse.
- (3) Subject to paragraph (4)—
- (a) a document purporting to be such a statement or such a certificate (or both such a statement and such a certificate) as is mentioned in paragraph (1)(a) is admissible in evidence on behalf of the Director in pursuance of this rule only if a copy of it either has been handed to the defendant when the document was produced or has been served on him not later than seven days before the hearing; and
  - (b) any other document is so admissible only if a copy of it has been served on the defendant not later than seven days before the hearing.
- (4) A document purporting to be a certificate (or so much of a document as purports to be a certificate) is not so admissible if the defendant, not later than three days before the hearing or within such further time as the court may in special circumstances allow, has served notice on the Director requiring the attendance at the hearing of the person by whom the document purports to be signed.
- (5) In this rule “authorised analyst” means—
- (a) any person possessing the qualifications prescribed by regulations made under section 27 of the Food Safety Act 1990 as qualifying persons for appointment as public analysts under that Act; and
  - (b) any other person authorised by the Secretary of State to make analyses for the purposes of section 16 of the Road Traffic Offenders Act 1988 or this rule.”.

2nd October 2013

Mark Francois  
Minister of State  
Ministry of Defence



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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

Rules 1 to 7, 9, 10, 12 to 17 and 19 to 21 of this instrument amend the Armed Forces (Custody Proceedings) Rules 2009 ([S.I. 2009/1098](#)), the Armed Forces (Summary Appeal Court) Rules 2009 ([S.I. 2009/1211](#)), the Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules 2009 ([S.I. 2009/1216](#)), the Armed Forces (Court Martial) Rules 2009 ([S.I. 2009/2041](#)) and the Armed Forces (Service Civilian Court) Rules 2009 ([S.I. 2009/1209](#)) so as to give effect to Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings. They require the provision, where necessary, of interpretation and translation services for persons accused or convicted of service offences who need such services, including persons with hearing or speech impediments. These amendments come into force on 27th October 2013.

Section 11 of the Armed Forces Act 2011 ([c. 18](#)) inserts a new Chapter 3A in Part 3 of the Armed Forces Act 2006 ([c. 52](#)) which provides for the taking and analysis of specimens of breath, blood or urine from persons suspected of certain service offences relating to alcohol or drugs. Rules 8, 11, 18 and 22 of this instrument amend the Armed Forces (Summary Appeal Court) Rules 2009, the Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules 2009, the Armed Forces (Court Martial) Rules 2009 and the Armed Forces (Service Civilian Court) Rules 2009 so as to provide for the use of specimens (whether or not obtained under Chapter 3A of Part 3 of the 2006 Act) in proceedings for those offences. These amendments come into force on 1st November 2013.