

**EXPLANATORY MEMORANDUM TO
THE ARMED FORCES (INTERPRETATION, TRANSLATION AND ALCOHOL
AND DRUG TESTS) RULES 2013**

2013 No. 2527

1. This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These rules amend the Armed Forces (Custody Proceedings) Rules 2009, 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. The amendments are intended to give effect to the requirements of the EU Directive 2010/64/EU of the European Parliament and of the Council of 20th October 2010 on the right to interpretation and translation in criminal proceedings, insofar as those requirements apply to Service disciplinary proceedings for the Armed Forces and those civilians who are subject to Service discipline for certain purposes. The amendments also insert new rules for the use of specimens in proceedings for offences related to alcohol and drugs under sections 20(1)(a), 20A and 42 of the Armed Forces Act 2006.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These rules will commence on two separate dates. The rules which relate to the EU Directive 2010/64/EU of the European Parliament and of the Council of 20th October 2010 are set to come into force on 27th October 2013 to accommodate the date by which EU Member States are required to transpose that Directive into national law. The rules for the use of specimens in proceedings for offences related to alcohol and drugs are set to come into force on 1 November 2013 reflecting the date on which sections 9, 10 and 11 of the Armed Forces Act 2011 will commence for implementation of the new alcohol and drugs testing regime relating to the performance of safety-critical duties for the Armed Forces.

4. Legislative Context

4.1 *Right to interpretation and translation.* Rule 20 of the Armed Forces (Custody Proceedings) Rules 2009, rule 29 of the Armed Forces (Summary Appeal Court) Rules 2009, rule 22 of the Armed Forces (Court Martial) Rules 2009, and rule 21 of the Armed Forces (Service Civilian Court) Rules 2009 provide for the appointment of interpreters for the purposes of proceedings to which those rules apply. However, there were no corresponding provisions for the appointment of interpreters in the Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules 2009. These rules amend the rules mentioned in paragraph 2.1 to implement requirements of the Directive to which paragraph 2.1, above, refers.

4.2 *Use of specimens.* The Armed Forces Act 2006 (as amended by the Armed Forces Act 2011) creates a power to test for drugs and alcohol in relation to the performance of safety-critical duties. The power exists where a person subject to

service law is suspected of exceeding an alcohol limit for a prescribed safety-critical duty (section 20A) or where such a person is suspected of being unfit to perform a safety-critical duty due to alcohol or any drug (section 20(1)(a)). The power to test also applies where a person subject to service law or a civilian subject to service discipline is suspected of committing 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, 79, 92, or 93 of the Railways and Transport Safety Act 2003 (maritime and aviation offences). Sections 93E to 93H of the 2006 Act provide for the provision of specimens for analysis in relation to these offences. These rules amend the respective Service court and summary hearing rules to provide for the admissibility and use as evidence of specimens obtained in accordance with sections 93E to 93H.

5. Territorial Extent and Application

5.1 These rules extend to the United Kingdom, the Isle of Man and British overseas territories and apply in relation to persons subject to Service law wherever they are in the world. They also apply to “civilians subject to Service discipline”, which means persons who are not subject to Service law but who (as they satisfy the requirements of any paragraph of Part 1 of Schedule 15 to the Armed Forces Act 2006) are subject to the service disciplinary system for certain purposes.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 *Right to interpretation and translation.* The recitals to the EU Directive, to which paragraph 2.1 above refers, include this summary of its purpose: “The right to interpretation and translation for those who do not speak or understand the language of the proceedings is enshrined in Article 6 of the ECHR, as interpreted in the case law of the European Court of Human Rights. This Directive facilitates the application of that right in practice. To that end, the aim of this Directive is to ensure the right of suspected or accused persons to interpretation and translation in criminal proceedings with a view to ensuring their right to a fair trial.” These rules provide a system of obligations, mechanisms and powers intended to enable and ensure that this aim is met. In doing so the new rules are closely modelled on provisions to be provided for civilian courts, but with modifications to fit the service disciplinary system and courts.

7.2 *Use of specimens.* The Armed Forces Act 2006, as amended by the Armed Forces Act 2011, creates a drugs and alcohol testing regime relating to the performance of safety-critical duties. Under new section 93E, where an offence referred to in new section 93A is being investigated, a service policeman may require samples of breath, or of blood or urine, for analysis. This instrument provides for the use of such specimens of breath, blood or urine (whether obtained under that section or any other power) in proceedings for offences relating to drugs and alcohol. The provisions on samples mirror certain provisions of the Road Traffic Offenders Act 1988.

8. Consultation outcome

8.1 The amendments made by these rules relating to EU Directive 2010/64/EU were proposed by the government. No public consultation has been undertaken in connection with these rules. The Office of the Judge Advocate General, the Military Court Service, and the Service Prosecuting Authority have been informed of these amendments.

9. Guidance

9.1 The Manual of Service Law provides guidance and supplementary information to Armed Forces personnel and others involved in the administration of the single system of Service law established under the 2006 Act and is available on the internet at <https://www.gov.uk/government/publications/joint-services-publication-jsp-830-manual-of-service-law-msl>. These will be amended to give further guidance related to these rules. In addition guidance will be given to the court administration officer about the provision of interpretation and translation. Guidance is issued to judge advocates through the Judge Advocate General's practice memoranda. The Service Prosecuting Authority and the Military Court Service will issue their own guidance as necessary.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring and review

12.1 The main legislation governing the armed forces (currently the Armed Forces Act 2006) requires renewal annually by Order in Council (with the consent of both Houses of Parliament) and renewal by Act of Parliament every five years. Its provisions were subjected to a review as part of work to prepare for the 2011 Act and will be reviewed again as part of work to prepare for the next Armed Forces Bill, which we plan to introduce towards the end of 2015.

12.2 The rules of court for the Court Martial and other courts in the Service justice system are subject to at least annual review by the Service Courts Rules Review Committee, which is a non-statutory body chaired by the Judge Advocate General, that reports to the Secretary of State.

13. Contact

13.1 In the even of any inquiries about this instrument, please contact Group Captain Daren Fitzhenry RAF of Central Legal Services of the Ministry of Defence. Telephone: 020 7218 8339 or e-mail: Daren.Fitzhenry304@mod.uk.