



# Armed Forces Act 2001

## 2001 CHAPTER 19

### PART 4

#### MISCELLANEOUS AND GENERAL

##### *Provision equivalent to criminal justice enactments*

### **31 Power to make provision in consequence of enactments relating to criminal justice**

- (1) In this section a “criminal justice enactment” means any enactment which—
  - (a) is contained in an Act passed after or in the same Session as this Act, and
  - (b) amends the law of England and Wales relating to any of the matters specified in subsection (2).
- (2) Those matters are—
  - (a) the powers of the police in connection with the investigation of offences or the detection of offenders,
  - (b) powers of arrest and detention in connection with crime or criminal proceedings,
  - (c) the functions of any authority in relation to criminal prosecutions,
  - (d) remand in custody or on bail,
  - (e) the rights and duties of an accused person in relation to proceedings in criminal courts,
  - (f) evidence or procedure in criminal courts,
  - (g) the powers of criminal courts, including powers in relation to sentence, and
  - (h) such other matters relating to criminal justice as the Secretary of State may by order prescribe for the purposes of this paragraph.
- (3) The Secretary of State may, if he thinks fit to do so in consequence of a criminal justice enactment, by order make provision, in relation to service policemen, service courts, persons subject to service law or proceedings for offences under the services Acts, which is equivalent to that made by—

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- (a) the criminal justice enactment,
  - (b) any enactment relating to any of the matters mentioned in subsection (2) which is amended by the criminal justice enactment, or
  - (c) any subordinate legislation made under the criminal justice enactment or under any Act which is amended by the criminal justice enactment,
- subject to such modifications as he thinks fit.
- (4) In the following provisions of this section “the relevant provision” means the criminal justice enactment, the enactment falling within subsection (3)(b) or the subordinate legislation falling within subsection (3)(c).
- (5) An order under subsection (3) may make provision in such way as the Secretary of State thinks fit and may, in particular, apply the relevant provision subject to such modifications as he thinks fit and specifies in the order.
- (6) An order under subsection (3) may—
- (a) in relation to any relevant provision, be made in relation to all cases to which the order-making power extends or only in relation to specified cases,
  - (b) make different provision for different cases, including different provision in relation to different service courts, and
  - (c) amend, repeal or revoke any enactment (including the relevant provision and any enactment contained in this Act).
- (7) For the purposes of this section, Chapter 2 of Part 5 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (detention and custody of young offenders) is to be taken to be contained in an Act falling within subsection (1)(a).
- (8) In this section any reference to a person subject to service law is a reference to—
- (a) a person subject to military law, air-force law or the 1957 Act, or
  - (b) any other person to whom provisions of Part 2 of the Army Act 1955 (c. 18), Part 2 of the Air Force Act 1955 (c. 19) or Parts 1 and 2 of the 1957 Act apply (whether with or without any modifications).
- (9) In this section—
- “criminal court” means any court of criminal jurisdiction other than a service court;
  - “the services Acts” means the 1955 Acts and the 1957 Act;
  - “service court” means a court-martial, a summary appeal court, a Standing Civilian Court or the Courts-Martial Appeal Court;
  - “service policeman” has the same meaning as in Part 2;
  - “subordinate legislation” has the meaning given by section 21(1) of the Interpretation Act 1978 (c. 30);
  - “summary appeal court” means either of the courts established by section 83ZA of the 1955 Acts or the court established by section 52FF of the 1957 Act.

**Commencement Information**

**II** S. 31 in force at 30.9.2003 by S.I. 2003/2268, art. 2

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### *Testing for alcohol or drugs*

## **32 Powers to test for alcohol or drugs after serious incident**

- (1) This section applies where—
  - (a) an incident has occurred which, in the opinion of an officer designated for the purposes of this subsection in accordance with regulations made by the Defence Council (in this section referred to as “the designated officer”)—
    - (i) resulted in, or
    - (ii) created a risk of,death or serious injury to any person or serious damage to any property; and
  - (b) in the opinion of the designated officer, it is possible that one or more persons subject to service law may have caused, or in any way contributed—
    - (i) to the occurrence of the incident, or
    - (ii) to any death or serious injury to any person or serious damage to any property resulting from it, or to the risk of any such death, injury or damage occurring.
- (2) Any designation made for the purposes of subsection (1) may be expressed to have effect only in relation to a particular incident or description of incident.
- (3) Where the designated officer is the commanding officer of any person in relation to whom he is of the opinion referred to in subsection (1)(b), the designated officer may request that person to provide a sample for the purpose of ascertaining whether, or to what extent, that person has, or has had, alcohol or drugs in his body.
- (4) Where the designated officer is of the opinion referred to in subsection (1)(b) in relation to one or more persons as respects whom he is not the commanding officer, the designated officer may direct the commanding officer of any person specified in the direction, or of persons falling within a class so specified—
  - (a) to request that person, or (as the case may be) every person appearing to the commanding officer to fall within the specified class, to provide a sample for the purpose referred to in subsection (3); or
  - (b) to consider whether the commanding officer is of the opinion referred to in subsection (1)(b) in respect of that person or (as the case may be) of any persons falling within the specified class and, if so, to request that person or (as the case may be) every person who appears to him to fall within that class and as to whom he is of that opinion, to provide a sample for the purpose referred to in subsection (3).
- (5) The Defence Council may by regulations make provision about the obtaining of samples under subsection (3) or (4) and the testing of such samples; and any such regulations may in particular make provision—
  - (a) as to the number of samples which a commanding officer may request a person to provide;
  - (b) as to the circumstances in which a commanding officer may request a person to provide more than one type of sample;
  - (c) enabling the commanding officer making the request to specify the manner in which the sample is to be provided;
  - (d) as to the circumstances in which a person who would (apart from regulations made under this paragraph) be liable to be requested to provide a sample under subsection (3) or (4) is not to be so requested;

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- (e) as to the equipment to be used, and the procedures to be followed, in obtaining samples and conducting tests;
  - (f) as to the qualifications and training of any persons engaged in obtaining samples and conducting tests.
- (6) The results of tests performed on samples provided by a person pursuant to a request made under subsection (3) or (4) shall not be admissible in evidence against—
- (a) that person, or
  - (b) any other person,
- in proceedings before a court-martial, commanding officer or appropriate superior authority.
- (7) The Defence Council may by regulations provide for the delegation—
- (a) by a designated officer of his functions under subsections (1), (3) and (4); and
  - (b) by a commanding officer of his functions under subsection (4).
- (8) Nothing in this section—
- (a) limits the powers conferred by—
    - (i) sections 6 and 7 of the Road Traffic Act 1988 (c. 52) (breath tests and provision of specimens for analysis), as applied by section 184 of that Act, or
    - (ii) any provision of Part 5 of the Police and Criminal Evidence Act 1984 (c. 60) as applied by order under section 113(1) of that Act; or
  - (b) affects the admissibility in any proceedings of evidence obtained under those powers.
- (9) Schedule 5 (which contains amendments of the 1955 Acts and the 1957 Act relating to testing for alcohol and drugs) shall have effect.

#### **Commencement Information**

**I2** S. 32(9) in force at 28.2.2002 for specified purposes by [S.I. 2002/345](#), [art. 2](#)

VALID FROM 04/03/2006

### **33 Interpretation of s. 32**

- (1) The provisions of this section have effect for the interpretation of section 32.
- (2) “Drug” means—
- (a) a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971 (c. 38), or
  - (b) any other drug, or description of drug, specified in an order made by the Secretary of State for the purposes of this paragraph.
- (3) “Sample” means—
- (a) where the sample is requested for the purpose of ascertaining whether, or to what extent, a person has, or has had, alcohol in his body, a sample of urine or breath,

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- (b) where the sample is requested for the purpose of ascertaining whether, or to what extent, a person has, or has had, drugs in his body, a sample of urine, and
  - (c) in either case, any other sample specified by the Secretary of State in an order made for the purposes of this paragraph.
- (4) The power conferred by subsection (2)(b) includes power to specify a description of drug by reference to the effects or likely effects of taking drugs within that description.
- (5) The power conferred by subsection (3)(c) does not include power to specify a sample of blood, semen or other tissue fluid or anything which would have to be provided from a person's body orifice (other than the mouth).
- (6) In the case of a sample falling within subsection (3)(c), any reference to a person being requested to provide a sample includes a reference to a person being requested to consent to the taking from him of a sample.
- (7) In section 32, any reference to a person subject to service law is a reference to—
- (a) a person subject to military law, air-force law or the 1957 Act, or
  - (b) subject to subsection (8), a person to whom any provisions of Part 2 of the Army Act 1955 (c. 18), Part 2 of the Air Force Act 1955 (c. 19) or Parts 1 and 2 of the 1957 Act apply by virtue of—
    - (i) section 209(1) or (2) of either of the 1955 Acts (application of Act to civilians), or
    - (ii) section 118(1) or (2) of the 1957 Act (application of Act to civilians).
- (8) A person is not to be regarded for the purposes of section 32 as a person subject to service law if provisions of either of the 1955 Acts or the 1957 Act apply to him only by virtue of his falling within any description specified in paragraphs 5 to 9 of Schedule 5 to the 1955 Acts or (as the case may be) paragraphs 5 to 9 of Schedule 3 to the 1957 Act.
- (9) For the purposes of section 32, the commanding officer of a person subject to service law is—
- (a) in relation to a person subject to military law, the officer who would be that person's commanding officer for the purposes of section 82 of the Army Act 1955 if he were charged with an offence;
  - (b) in relation to a person subject to air-force law, the officer who would be that person's commanding officer for the purposes of section 82 of the Air Force Act 1955 if he were charged with an offence;
  - (c) in relation to a person subject to the 1957 Act or a person to whom provisions of that Act apply by virtue of section 118(1) or (2) of that Act, the officer in command of the ship or naval establishment to which he belongs or any other person who, by virtue of regulations made under section 52E of that Act, would be able to exercise the powers conferred by that Act in relation to that person if he were charged with an offence;
  - (d) in relation to a person to whom provisions of Part 2 of either of the 1955 Acts apply by virtue of subsection (1) or (2) of section 209 of the Act in question, the person who is by virtue of regulations of the Defence Council made for the purposes of section 209(3)(f) of that Act the commanding officer for the purposes of Part 2 of that Act in relation to him.

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### *Miscellaneous amendments*

#### **34 Miscellaneous amendments**

Schedule 6 (which contains miscellaneous amendments relating to the armed forces) shall have effect.

##### **Commencement Information**

- I3** S. 34 partly in force; s. 34 in force for certain purposes at 11.5.2001 see s. 39; s. 34 in force for certain purposes at 1.10.2001 by [S.I. 2001/3234](#), [art. 2](#) (subject to [art. 3](#)); s. 34 in force for certain further purposes at 28.2.2002 by [S.I. 2002/345](#), [art. 2](#)
- I4** [S. 34](#) in force at 30.9.2003 for specified purposes by [S.I. 2003/2268](#), [art. 2](#)

### *General*

#### **35 Orders and regulations**

- (1) Any power of the Secretary of State to make an order or regulations under this Act is exercisable by statutory instrument.
- (2) A statutory instrument containing (whether alone or with other provisions)—
  - (a) an order under section 8(2),
  - (b) an order under section 31(2)(h), or
  - (c) an order under section 30 or 31(3) which by virtue of section 30(4)(e) or 31(6) makes any provision adding to, replacing or omitting any part of the text of an Act,
 shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (3) A statutory instrument which contains—
  - (a) an order made by the Secretary of State under—
    - (i) any provision of Part 2,
    - (ii) section 20,
    - (iii) section 30,
    - (iv) section 31(3), or
    - (v) section 33(2)(b) or (3)(c), or
  - (b) regulations made by the Secretary of State under—
    - (i) any provision of Part 2,
    - (ii) section 26, or
    - (iii) section 27,
 and which is not subject to the requirement in subsection (2) that a draft of the instrument be laid before and approved by a resolution of each House of Parliament, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Any power of the Secretary of State to make an order or regulations under this Act includes power to make such incidental, consequential or transitional provision as the Secretary of State thinks fit.

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### 36 Application to Channel Islands and Isle of Man

- (1) Section 216 of the Army Act 1955 (c. 18), section 214 of the Air Force Act 1955 (c. 19) and section 125 of the 1957 Act (application of those Acts to Channel Islands and Isle of Man) shall each apply in relation to the provisions of section 20 of this Act as if those provisions were contained in the Army Act 1955, the Air Force Act 1955 or the 1957 Act, as the case may require.
- (2) Her Majesty may by Order in Council direct that any of the provisions of this Act specified in subsection (3) shall extend, with such exceptions and modifications as appear to Her Majesty to be appropriate, to the Channel Islands and the Isle of Man.
- (3) The provisions referred to in subsection (2) are—
  - (a) Part 2,
  - (b) sections 26 to 28,
  - (c) section 30,
  - (d) section 31, and
  - (e) sections 32 and 33.

### 37 Interpretation

In this Act—

“the 1955 Acts” means the Army Act 1955 (c. 18) and the Air Force Act 1955 (c. 19);

“the 1957 Act” means the Naval Discipline Act 1957 (c. 53).

### 38 Repeals

The enactments specified in Schedule 7 (which includes enactments that are spent in consequence of section 21(5) of the Human Rights Act 1998 (c. 42) or section 60 of the Youth Justice and Criminal Evidence Act 1999 (c.23)) are repealed to the extent specified in that Schedule.

#### Commencement Information

- I5** S. 38 partly in force: s. 38 in force for certain purposes at 11.5.2001 see s. 39; s. 38 in force for certain purposes at 1.10.2001 by [S.I. 2001/3234](#), [art. 2](#) (subject to [art. 3](#)); s. 38 in force for certain further purposes at 28.2.2002 by [S.I. 2002/345](#), [art. 2](#)

### 39 Short title and commencement

- (1) This Act may be cited as the Armed Forces Act 2001.
- (2) Subject to subsections (3) and (4), this Act shall come into force on such day as the Secretary of State may by order appoint.
- (3) The following provisions shall come into force on the day on which this Act is passed—
  - (a) section 1,
  - (b) section 35,
  - (c) section 36,

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- (d) section 37,
  - (e) this section,
  - (f) Parts 4 and 5 of Schedule 6, and section 34 so far as relating to those Parts, and
  - (g) Parts 4 to 6 of Schedule 7, and section 38 so far as relating to those Parts.
- (4) The repeal by this Act of section 1 of the Armed Forces Act 1996 (c. 46) shall come into force on 1st September 2001.
- (5) An order under subsection (2) may appoint different days for different purposes.
- (6) An order under subsection (2) may contain such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient in connection with the provisions brought into force by the order.

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#### Subordinate Legislation Made

- P1** S. 39(2)(6) power exercised: 1.10.2001 appointed for specified provisions by [S.I. 2001/3234](#), [art. 2](#)  
(subject to [art. 3](#))
- P2** S. 39(2)(6) power exercised: 28.2.2002 appointed for specified provisions by [S.I. 2002/345](#), [art. 2](#)  
(subject to [art. 3](#))



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