



Armed Forces Act 2001

2001 CHAPTER 19

PART 4

MISCELLANEOUS AND GENERAL

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,

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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;
 - (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—
 - [^{F1}(i) any provision of the Road Traffic Act 1988 (c. 52),]
 - (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.

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Textual Amendments

- F1** S. 32(8)(a)(i) substituted (30.3.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), [Sch. 7 para. 13](#); [S.I. 2004/827](#), [art. 3\(ii\)](#)

Commencement Information

- I1** S. 32(9) in force at 28.2.2002 for specified purposes by [S.I. 2002/345](#), [art. 2](#)
I2 S. 32(1)-(8) in force at 4.3.2006 by [S.I. 2006/235](#), [art. 2](#) (with [art. 3](#))
I3 S. 32(9) in force at 4.3.2006 in so far as not already in force by [S.I. 2006/235](#), [art. 2](#) (with [art. 3](#))

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,
 - (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

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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.

Commencement Information

14 S. 33 in force at 4.3.2006 by S.I. 2006/235, art. 2 (with art. 3)

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