

# **ARMED FORCES ACT 2001**

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## **EXPLANATORY NOTES**

### **THE ACT - COMMENTARY ON SECTIONS**

#### **Part 4 – Miscellaneous and General**

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

109. The SDAs create offences of unfitness for duty because of drugs or alcohol. Previously, there was no power which allowed the taking of a test to see if anyone was under the influence of drugs or alcohol, other than the provision for random drug testing introduced in the Armed Forces Act 1996. This section introduces a power to order testing for drugs and alcohol after a serious incident, to show whether the use of drugs or alcohol was a contributory factor to the incident. The section also creates an offence (in Schedule 5) of failing, without reasonable excuse, to provide a sample (normally of breath or urine) when requested to do so under the powers in the section. This provision applies to anyone subject to the SDAs working for or in connection with the armed forces, whether military or civilian. The section also provides for officers to be designated by Defence Council regulations for the purpose of exercising the powers conferred by the section.
110. The existing provisions which create an offence of refusal to take a test are amended (in Schedule 5) to clarify that they do not extend to testing for either alcohol or drugs in the circumstances now envisaged.
111. This section applies where there has been an incident which, in the opinion of a designated officer, results in or creates a risk of death, serious injury or serious property damage. In a simple case where a member or members of only one unit could have been involved, the designated officer is likely to be their commanding officer and he may request anyone under his command whom he thinks may have caused or contributed to the incident, its consequences or the risk of such consequences, to give a sample for the purpose of testing for alcohol or drugs.
112. The position is more difficult where more than one unit, and perhaps more than one Service, may have been involved. An example would be a collision between two aircraft from different commands, or the crash of an RAF aircraft into a Royal Navy ship. The section provides a framework for deciding who is to decide whether testing is needed and who is to decide which individuals should be asked to take a test. Under the section, where a designated officer decides that any persons to whom the section applies may have contributed to the incident or its consequences, he may make a direction. This may direct the commanding officer of certain persons to request that they give samples or may direct a commanding officer to consider whether anyone within a defined group within his command should be tested. Thus, for example, a direction might be to test the pilot whose aircraft crashes, or to test anyone in the CO's command involved in air traffic control whom the CO considers might have contributed to the incident.
113. The section allows the Defence Council to make regulations specifying who may be a designated officer in relation to a particular incident or category of incidents. These regulations would need to address the question of who, in a complex case, should

*These notes refer to the Armed Forces Act 2001  
(c.19) which received Royal Assent on 11 May 2001*

take the key decisions on testing referred to above. Regulations under the section may also specify how many samples may be requested, the procedure to be used and the qualifications of the persons taking the samples. The section also specifies that the samples taken may not be used in evidence against anyone in any disciplinary proceedings. They may, however, be used to inform Service Boards of Inquiry (which are explained in more detail in paragraph 138).

114. The section also introduces *Schedule 5*.
115. *Paragraph 1* inserts new subsections in section 34A of the Army and Air Force Acts; section 34A creates an offence of failure to provide a sample. The purpose of these new subsections is to clarify the position in relation to the existing powers available under the random drug-testing programme, providing that the drug testing officer cannot be in the chain of command of the person being tested; that the power of random testing cannot be used where the new power arises (i.e. in relation to serious incidents); and that the results of any test are not used as evidence in any subsequent disciplinary action.
116. *Paragraphs 2 and 3* insert new sections in the Army and Air Force Acts creating a new offence of failure to provide a sample where requested under the new power (i.e. after a serious incident). This offence is designed to reinforce the power under section 32 to request that samples be taken.
117. *Paragraph 4* amends the provisions which apply Service law to civilians, so that this new offence also applies to persons employed by or in connection with the armed forces whilst they are subject to the SDAs. It does not apply to Service dependants, although they are subject to the SDAs while abroad. These changes are consequential upon and reflect the provision of section 33 which defines those to whom the new provision applies.
118. *Paragraphs 5 to 7* make corresponding provision in the Naval Discipline Act. Paragraph 5 also removes the reference to “on conviction by court-martial” in section 12A of that Act so that offences of refusal to provide a sample may be dealt with summarily by the commanding officer (as is the case in the Army and Royal Air Force). It also amends the definition of drug testing officer in section 12A, so that references to a non-commissioned officer are replaced with the corresponding Royal Navy ranks.