

*These notes refer to the Armed Forces Act 2011 (c.18)
which received Royal Assent on 3 November 2011*

ARMED FORCES ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 9: Unfitness through alcohol or drugs

37. The Railways and Transport Safety Act 2003 (“RTSA 03”) provides, in its Parts 4 and 5, for an alcohol and drug testing regime in the shipping and aviation environments. The armed forces are exempt from the provisions of RTSA 03.
38. Section 306 of AFA 2006 provides for the testing of service personnel and “civilians subject to service discipline” (as to whom, see the note on section 22) for drugs or alcohol, but only after a dangerous incident has occurred. Sections 9, 10 and 11 address the fact that the armed forces have no testing powers before an incident where it is suspected that service personnel (or civilians subject to service discipline) may be under the influence of drugs or alcohol. The provisions made by these sections replace that in section 306, which is repealed (with related provisions within section 307) by section 11(2).
39. Section 20(1)(a) of AFA 2006 provides for an offence of unfitness for duty through alcohol or drugs. Section 9 adds a new subsection (1A) to section 20. The new subsection provides that the test of unfitness for duty is whether a person’s ability to perform the duty is impaired. This makes the wording of section 20 consistent with that in section 4 of the Road Traffic Act 1988, which creates the offence of driving while unfit to do so because of drink or drugs.