
STATUTORY INSTRUMENTS

2013 No. 2527

**The Armed Forces (Interpretation, Translation
and Alcohol and Drug Tests) Rules 2013**

Court Martial rules

18. After rule 100 insert—

“CHAPTER 7

Use of specimens in proceedings for offences relating to alcohol and drugs

Application and interpretation

100A.—(1) This Chapter applies to proceedings for—

- (a) an offence under section 20(1)(a) of the 2006 Act (unfitness for duty through alcohol or drugs);
- (b) an offence under section 20A of that Act (exceeding alcohol limit for prescribed safety-critical duties); or
- (c) an offence under section 42 of that Act (criminal conduct) 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⁽¹⁾ (shipping and aviation staff: offences relating to alcohol and drugs).

(2) In this Chapter “drug”, “medical establishment”, “service police establishment” and “service policeman” have the meanings given by section 93I of the 2006 Act.

Use of specimens

100B.—(1) Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided by or taken from the defendant shall, in all cases (including cases where the specimen was not provided or taken in connection with the alleged offence), be taken into account and, subject to paragraph (2), it shall be assumed that the proportion of alcohol in the defendant’s breath, blood or urine at the time of the alleged offence was not less than in the specimen.

(2) That assumption shall not be made if the defendant proves—

- (a) that he consumed alcohol before he provided the specimen or had it taken from him, and after the time of the alleged offence; and
- (b) that had he not done so the proportion of alcohol in his breath, blood or urine—
 - (i) in the case of an offence under section 20(1)(a) of the 2006 Act, or an offence under section 42 of that Act as respects which the corresponding offence under the law of England and Wales is an offence under section 78(2) of the Railways and Transport Safety Act 2003, would not

- have been such as to impair his ability to carry out the duty or duties in question;
- (ii) in the case of an offence under section 20A of the 2006 Act, would not have exceeded the relevant limit (within the meaning of that section);
 - (iii) in the case of 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 subsection (2) of section 79 of the Railways and Transport Safety Act 2003, would not have been such as to impair his ability to take the action mentioned in subsection (1)(b) of that section;
 - (iv) in the case of 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 92 of the Railways and Transport Safety Act 2003, would not have been such as to impair his ability to perform the function mentioned in subsection (1)(a) or (b) (as the case may be) of that section;
 - (v) in the case of 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(3), 79(3) or 93 of the Railways and Transport Safety Act 2003, would not have exceeded the prescribed limit.
- (3) A specimen of blood shall be disregarded unless—
- (a) it was taken from the defendant under section 93E of the 2006 Act; or
 - (b) it was taken from the defendant under section 93G of that Act and the defendant subsequently gave his permission for a laboratory test of the specimen.
- (4) Where, at the time a specimen of blood or urine was provided by the defendant, he asked to be provided with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the Director unless—
- (a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen provided by the defendant was divided at the time it was provided; and
 - (b) the other part was supplied to the defendant.
- (5) Where a specimen of blood was taken from the defendant under section 93G of the 2006 Act, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the Director unless—
- (a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen taken from the defendant was divided at the time it was taken; and
 - (b) any request to be supplied with the other part which was made by the defendant at the time when he gave his permission for a laboratory test of the specimen was complied with.

Documentary evidence as to specimens

100C.—(1) Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine may, subject to paragraphs (3) and (4) and to rule 100B(4) and (5), be given by the production of a document or documents purporting to be whichever of the following is appropriate, that is to say—

- (a) a statement automatically produced by the device by which the proportion of alcohol in a specimen of breath was measured and a certificate signed by a service policeman (which may but need not be contained in the same document as the

statement) that the statement relates to a specimen provided by the defendant at the date and time shown in the statement; and

- (b) a certificate signed by an authorised analyst as to the proportion of alcohol or any drug found in a specimen of blood or urine identified in the certificate.

(2) Subject to paragraphs (3) and (4), evidence that a specimen of blood was taken from the defendant with his consent by a registered medical practitioner or a registered nurse may be given by the production of a document purporting to certify that fact and to be signed by a registered medical practitioner or registered nurse.

(3) Subject to paragraph (4)—

- (a) a document purporting to be such a statement or such a certificate (or both such a statement and such a certificate) as is mentioned in paragraph (1)(a) is admissible in evidence on behalf of the Director in pursuance of this rule only if a copy of it either has been handed to the defendant when the document was produced or has been served on him not later than seven days before the hearing; and

- (b) any other document is so admissible only if a copy of it has been served on the defendant not later than seven days before the hearing.

(4) A document purporting to be a certificate (or so much of a document as purports to be a certificate) is not so admissible if the defendant, not later than three days before the hearing or within such further time as the court may in special circumstances allow, has served notice on the Director requiring the attendance at the hearing of the person by whom the document purports to be signed.

(5) In this rule “authorised analyst” means—

- (a) any person possessing the qualifications prescribed by regulations made under section 27 of the Food Safety Act 1990 as qualifying persons for appointment as public analysts under that Act; and

- (b) any other person authorised by the Secretary of State to make analyses for the purposes of section 16 of the Road Traffic Offenders Act 1988 or this rule.”