EXPLANATORY MEMORANDUM TO

THE ARMED FORCES (ALCOHOL LIMITS FOR PRESCRIBED SAFETY CRITICAL DUTIES) REGULATIONS 2013

2013 No. [XXXX]

1. This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Armed Forces Act 2006 ("the 2006 Act") creates a drugs and alcohol testing regime relating to the performance of safety-critical duties. These regulations set out those duties that are considered to be safety-critical duties and the relevant alcohol limits. The different limits reflect the fact that certain safety-critical duties do not necessarily require the same speed of reaction as others in an emergency situation.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Section 20A of the 2006 Act makes it an offence to have more than a prescribed level of alcohol in the body when a person is performing or might reasonably be expected to perform a prescribed safety-critical duty. This instrument (the Armed Forces (Alcohol Limits for Prescribed Safety-Critical Duties) Regulations 2013) sets out the specified duties that are regarded as safety-critical in nature together with their relevant alcohol limits for breath, blood or urine. The instrument makes provision for a higher and a lower prescribed alcohol limit.

4.2 Section 93F of the 2006 Act makes provision for a person who has provided a specimen of breath for analysis in accordance with the 2006 Act to request to provide an alternative specimen for analysis (blood or urine) where the specimen of breath contains no more than a prescribed proportion of alcohol. The instrument sets this prescribed level of alcohol.

4.3 This instrument mirrors those alcohol limits applied under the Railways and Transport Safety Act 2003 but introduces a wider span of safety-critical duties to take account of the full range of armed forces activities.

5. Territorial Extent and Application

5.1 This instrument applies to all persons subject to service law wherever they are in the world. It also applies to civilians subject to service discipline, which means a person who is not subject to service law and is within any paragraph of Part 1 of Schedule 15 of the Armed Forces Act 2006. The instrument may be extended by Order in Council to the Channel Islands, the Isle of Man and any British overseas territory.

6. European Convention on Human Rights

6.1 The Minister of State for Defence has made the following statement regarding Human Rights:

> In my view the provisions of the Armed Forces (Alcohol Limits for Prescribed Safety-Critical Duties) Regulations 2013 are compatible with the Convention rights.

7. Policy background

7.1 The Railways and Transport Safety Act 2003 (RTSA 03) provides for an alcohol and drug testing regime in the transport environments. The Armed Forces are exempt from the provisions of this Act because its focus is judged to be too limited in the context where so many personnel are engaged in a wide range of safety-critical activities in the course of their employment and on operations.

7.2 The policy provides a bespoke and enforceable alcohol and drug testing regime that applies RTSA 03 principles in an adapted form to take account of the full range of Armed Forces safety-critical duties by ensuring that the Armed Forces are subject to the same rigorous safety standards as their civilian counterparts. A duty is regarded as safety-critical in nature only if performing the duty with ability impaired by alcohol or drugs would result in a risk of death, serious injury, serious damage to property, or serious environmental harm.

7.3 The regulations specify the prescribed safety-critical duties and their relevant limits for breath, blood and urine. The regulations prescribe two separate alcohol thresholds; higher limit and lower limit. The higher limit introduces an alcohol threshold consistent with the 'drink drive' limit, whereas the lower limit takes account of those specified duties where heightened concentration or speed of reaction is critical. The prescribed limits replicate those contained in the RTSA 03.

8. Consultation outcome

8.1 No public consultation has been undertaken in connection with these regulations, but there has been rigorous consultation with the Services, the Service police forces and the Service Prosecuting Authority to ensure that the policy goals have been achieved and that the provisions of this instrument will work in practice.

9. Guidance

9.1 Guidance on the alcohol and drug testing regime is contained in the Manual of Service Law as well as in the Joint Service Publication on alcohol and substance misuse and testing. The single Services have also arranged training and awareness for commanding officers and for those who administer the Service justice system. The Manual of Service Law is available to the public at the following address: https://www.gov.uk/government/publications/joint-services-publication-jsp-830-manual-of-service-law-msl

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 The main legislation governing the armed forces (currently the Armed Forces Act 2006) requires renewal annually by Order in Council (with the consent of both Houses of Parliament) and renewal by Act of Parliament every five years. Its provisions were subjected to a review as part of work to prepare for the 2011 Act and will be reviewed again as part of work to prepare for the next Armed Forces Bill, which we plan to introduce towards the end of 2015.

13. Contact

13.1 Group Captain Philip Spinney RAF at the Ministry of Defence telephone 020 7218 8339 or email philip.spinney633@mod.uk can answer any queries regarding the instrument.