

ARMED FORCES DISCIPLINE ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1: Custody without charge

23. This section inserts new sections into each of the SDAs.

Subsection (1) inserts six new sections into the Army Act 1955 dealing with custody without charge after arrest.

The new *section 75* deals with limitations on custody without charge. It provides that:

- Persons under arrest must not be held in custody without charge except as permitted by the legislation. If the original grounds for holding the person in custody no longer apply and there are no other grounds in the legislation which do apply, the commanding officer must order his immediate release.
- This does not apply to someone who appears to have been unlawfully at large when he was arrested.
- The section provides that a person is deemed to have been charged for the purposes of these provisions once he is informed that a charge is to be reported to his commanding officer.

The new *section 75A* deals with authorisation of custody without charge.

- The CO of the person arrested must be notified of his arrest and the grounds for the arrest as soon as practicable. Until this point, the person who made the arrest may authorise the continued custody of the person under arrest if he has reasonable grounds for believing that it is necessary to do so to preserve evidence or obtain evidence.
- Once the CO is notified, he must determine whether or not to retain the individual based on the set criteria. These are that it is necessary to do so to preserve evidence or obtain evidence by questioning him and that the investigation is being conducted diligently. The individual can be kept in custody while the CO deliberates.
- The section imposes various time limits on the periods for which the CO may authorise custody. Authority for custody will end 12 hours after the time of the arrest unless it is renewed by the CO for a further period of up to 24 hours, making a total of 36 hours from arrest. The authority may be renewed once the 36 hours has expired for a maximum of a further 12 hours. The individual must be released at this 48 hour point unless the provisions of *section 75C* apply.

The new *section 75B* deals with review of custody.

- It requires the CO to review the need for continuing custody before the expiry of the custody period already authorised and he must be satisfied that the same criteria for custody are satisfied. These additional periods of custody shall only be authorised within the time limits specified in the section.

*These notes refer to the Armed Forces Discipline Act
2000 (c.4) which received Royal Assent on 25 May 2000*

- The review may be postponed if, in all the circumstances, it is not practicable to carry it out by the end of the authorised period of custody, particularly if the person in custody is being interviewed at the time and it could be prejudicial to the investigation to interrupt at that time. However, it must be carried out as soon as practicable thereafter. In the meantime, the authority to keep someone in custody is still valid.

The new *section 75C* deals with extension of custody without charge.

- The CO of the person arrested may apply to a judicial officer for his continued detention and the judicial officer may grant this if he believes there are reasonable grounds to justify doing so. These grounds are specified later in the section but mirror those applied by the CO.
- There are a number of safeguards built in to ensure that the person under arrest is able to object to his continued detention. He must, therefore, be informed of the application and appear in person before the judicial officer (this includes the use of live television links). He is also entitled to legal representation and to an adjournment to seek such representation, although he may be kept in custody during that adjournment.
- An application to the judicial officer may be made at any time before the 48 hour limit from the time of arrest. An application may also be heard outside the 48 hour period if it is not practicable to hear it within the time limit and the CO's power to authorise custody, in 6 hour periods, continues until the application has been heard. However, he may not be retained in custody for more than 96 hours from the time of his arrest in any circumstances. If the judicial officer believes that a late application could reasonably have been made prior to the expiry of the 48 hour time limit, he must dismiss it.
- If the judicial officer does not believe that there are reasonable grounds for continuing custody, he must either hear the application later (but within the 48 hour time limit) or refuse an extension of time. The purpose of this provision is to allow an individual to be held in custody up to the 48 hour point if the judicial officer believes that the authorities may be able to secure further evidence to strengthen their case.
- If an application is made before 48 hours has passed, and the judicial officer declines to authorise further custody, he may direct that that individual be either charged or released from custody immediately. However, if the application was made after 48 hours and the judicial officer refuses an extension, he must order that the individual be released or charged. Any application for further custody which is granted can only allow an individual to be detained for a maximum of 96 hours from the time of the arrest.

The new *section 75D* applies the provisions of sections 75 to 75C to persons delivered into military custody, subject to any modifications made by statutory instrument. This refers to persons who are arrested by the civilian police under certain provisions in the Army Act 1955 or the Reserve Forces Act 1996 and handed over to the military authorities. For the purposes of the time limits for custody, the "relevant time" is defined here as either the time of arrest or the time of surrender.

The new *section 75E* provides that the Defence Council may make regulations:

- Allowing the functions of the CO, in relation to custody, to be delegated,
- Dealing with the circumstances in which a person in custody without charge is informed of any matter or given a chance to make representations about any matter, and
- Providing for the keeping of written records relating to the custody.

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The section also provides that time periods mentioned above are only approximate. The effect of this provision is similar to that of section 45(2) of the Police and Criminal Evidence Act 1984.

Subsection (2) inserts six new sections into the Air Force Act 1955 dealing with custody without charge after arrest. These sections are identical in effect to those described above, but they apply to persons arrested under the provisions of the Air Force Act 1955.

Subsection (3) inserts six new sections into the Naval Discipline Act 1957 dealing with custody without charge after arrest. These sections are identical in effect to those described in subsection (1) above but they apply to persons arrested under the provisions of the Naval Discipline Act 1957.