



# Armed Forces Act 2006

## 2006 CHAPTER 52

First Group of Parts Discipline

### PART 4

CUSTODY

### CHAPTER 1

CUSTODY WITHOUT CHARGE

#### **98 Limitations on custody without charge**

- (1) Except in accordance with sections 99 to 102, a person arrested under section 67 may not be kept in service custody without being charged with a service offence.
- (2) If at any time the commanding officer of a person who is kept in service custody without being charged with a service offence—
  - (a) becomes aware that the grounds for keeping that person in service custody have ceased to apply, and
  - (b) is not aware of any other grounds on which continuing to keep that person in service custody could be justified under this Act,the commanding officer must, subject to subsection (3), order his immediate release from service custody.
- (3) A person who appears to his commanding officer to have been unlawfully at large when he was arrested may not be released under subsection (2).
- (4) Section 301(4) (cases where persons temporarily released from service detention are unlawfully at large) applies for the purposes of this section.

#### **99 Authorisation by commanding officer of custody without charge**

- (1) Where a person is arrested under section 67—

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- (a) the arrest, and
  - (b) any grounds on which he is being kept in service custody without being charged with a service offence,must be reported as soon as practicable to his commanding officer.
- (2) Until such a report is made, the person may be kept in service custody without being charged with a service offence, but only if the person who made the arrest has reasonable grounds for believing that keeping him in service custody without being charged is necessary—
  - (a) to secure or preserve evidence relating to a service offence for which he is under arrest; or
  - (b) to obtain such evidence by questioning him.
- (3) After receiving a report under subsection (1), the commanding officer must as soon as practicable determine—
  - (a) whether the requirements of subsection (4) are satisfied; and
  - (b) if so, whether to exercise his powers under that subsection;and the person to whom the report relates may be kept in service custody for such period as is necessary to enable the commanding officer to make that determination.
- (4) If, in relation to the person to whom the report relates, the commanding officer has reasonable grounds for believing—
  - (a) that keeping him in service custody without being charged with a service offence is necessary to secure or preserve evidence relating to a service offence for which he is under arrest or to obtain such evidence by questioning him, and
  - (b) that the investigation is being conducted diligently and expeditiously,he may authorise the keeping of that person in service custody.
- (5) Subject to subsection (6), an authorisation under subsection (4) ends not more than 12 hours after it is given.
- (6) Except in accordance with section 101 or 102, a person may not be kept in service custody later than 48 hours after the arrest without being charged with a service offence.
- (7) Where a person, while kept in service custody without being charged with a service offence, is arrested under section 67 for another service offence—
  - (a) subsections (1) to (5) apply in relation to the arrest for that other offence;
  - (b) the reference in subsections (2)(a) and (4)(a) to a service offence for which he is under arrest includes the service offence for which he was originally arrested;
  - (c) the reference in subsection (6) to the arrest is to be read as a reference to the arrest for the service offence for which he was originally arrested; and
  - (d) the last authorisation under subsection (4) (if any) given in relation to him ceases to have effect (and accordingly section 100 ceases to apply in relation to that authorisation).

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## **100 Review of custody by commanding officer**

- (1) The commanding officer of a person kept in service custody in accordance with section 99 must, subject to subsections (3) and (4), review the keeping of that person in service custody not later than the end of the period for which it is authorised.
- (2) Subsections (4) and (5) of section 99 apply on each review under this section as they apply where a report is received under section 99(1).
- (3) A review may be postponed if, having regard to all the circumstances prevailing at the expiry of the last authorisation under section 99(4), it is not practicable to carry out the review at that time.
- (4) A review may also be postponed if at the expiry of the last authorisation under section 99(4)—
  - (a) the person in service custody is being questioned and the commanding officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which the person is being questioned; or
  - (b) the commanding officer is not readily available.
- (5) Subsection (4) does not limit the power to postpone under subsection (3).
- (6) If a review is postponed under subsection (3) or (4)—
  - (a) it must be carried out as soon as practicable after the expiry of the last authorisation under section 99(4); and
  - (b) the keeping in service custody of the person to whom the review relates is by virtue of this paragraph authorised until that time.

## **101 Extension by judge advocate of custody without charge**

- (1) If, on an application by the commanding officer of a person arrested under section 67, a judge advocate is satisfied that there are reasonable grounds for believing that the continued keeping of that person in service custody is justified, the judge advocate may by order authorise the keeping of that person in service custody.
- (2) A judge advocate may not hear an application under this section unless the person to whom it relates—
  - (a) has been informed in writing of the grounds for the application; and
  - (b) has been brought before him for the hearing.
- (3) The person to whom the application relates is entitled to be legally represented at the hearing and, if he is not so represented but wishes to be so represented—
  - (a) the judge advocate must adjourn the hearing to enable him to obtain representation; and
  - (b) he may be kept in service custody during the adjournment.
- (4) The period for which a judge advocate, on an application under this section, may authorise the keeping of a person in service custody is such period, ending not more than 96 hours after the arrest, as he considers appropriate having regard to the evidence before him.
- (5) Where a person, while kept in service custody without being charged with a service offence, is arrested under section 67 for another service offence, the reference in

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subsection (4) to the arrest is to be read as a reference to the arrest for the service offence for which he was originally arrested.

- (6) For the purposes of this section and section 102, the continued keeping of a person in service custody is justified only if—
- (a) keeping him in custody without being charged with a service offence is necessary to secure or preserve evidence relating to a service offence for which he is under arrest or to obtain such evidence by questioning him; and
  - (b) the investigation is being conducted diligently and expeditiously.

## **102 Further provision about applications under section 101**

- (1) Subject to subsection (2), an application under section 101 may be made—
  - (a) at any time before the end of 48 hours after the arrest; or
  - (b) if it is not practicable for the application to be heard before the end of that period, as soon as practicable thereafter but not more than 96 hours after the arrest.
- (2) Where subsection (1)(b) applies, an authorisation on a review under section 100 may be for a period ending more than 48 hours after the arrest, but may not be—
  - (a) for a period of more than six hours; or
  - (b) for a period ending more than 96 hours after the arrest.
- (3) If—
  - (a) an application under section 101 is made more than 48 hours after the arrest, and
  - (b) it appears to the judge advocate that it would have been reasonable for the commanding officer to make the application before the end of that period,
 the judge advocate must refuse the application.
- (4) Where on an application under section 101 relating to any person the judge advocate is not satisfied that there are reasonable grounds for believing that the continued keeping of that person in service custody is justified, he must—
  - (a) refuse the application; or
  - (b) adjourn the hearing of it until a time not later than 48 hours after the arrest.
- (5) The person to whom the application relates may be kept in service custody during the adjournment.
- (6) Where a judge advocate refuses an application under section 101 at any time less than 48 hours after the arrest, he may direct that the person to whom it relates must, without delay, be charged with a service offence or released from service custody.
- (7) Where a judge advocate refuses an application under section 101 at any later time, he must direct that the person to whom it relates must, without delay, be charged with a service offence or released from service custody.
- (8) Where a person, while kept in service custody without being charged with a service offence, is arrested under section 67 for another service offence, any reference in this section to the arrest is to be read as a reference to the arrest for the service offence for which he was originally arrested.

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### **103 Custody without charge: other cases**

Sections 98 to 102 apply—

- (a) where a person is transferred to or taken into service custody under section 313(4), 315(4), 316(3) or 317(4), and
- (b) in any other case where a person arrested by a member of a UK police force or overseas police force is transferred to service custody,

as they apply where a person is arrested under section 67, subject to such modifications as the Secretary of State may by order prescribe.

### **104 Custody without charge: supplementary**

- (1) The Secretary of State may by regulations make provision—
  - (a) for the delegation by the commanding officer of a person in service custody of any of the commanding officer’s functions under sections 98 to 102;
  - (b) with respect to circumstances in which a person kept in service custody without being charged with a service offence is to be informed of, or given an opportunity to make representations about, any matter;
  - (c) for the keeping of written records relating to compliance with any requirement of sections 69(3)(a) and 98 to 102 or of regulations under paragraph (b).
- (2) Any reference in sections 99 to 102 to a period of time is to be treated as approximate only.

## **CHAPTER 2**

### **CUSTODY ETC AFTER CHARGE**

#### *Custody after charge*

### **105 Custody after charge**

- (1) Where a person (referred to in this section and sections 106 to 109 as “the accused”) is kept in service custody after being charged with a service offence, he must be brought before a judge advocate as soon as practicable.
- (2) At a hearing under subsection (1), the judge advocate may by order authorise the keeping of the accused in service custody, but only if one or more of conditions A to C in section 106 are met.
- (3) The period for which a judge advocate may, by an order under subsection (2), authorise the keeping of the accused in service custody is such period, ending not later than eight days after the day on which the order is made, as he considers appropriate having regard to the evidence before him.
- (4) For the purpose of deciding whether condition A in section 106 is met, the judge advocate must have regard to such of the following considerations as appear to him to be relevant—
  - (a) the nature and seriousness of the offence with which the accused is charged (and the probable method of dealing with him for it),
  - (b) the character, antecedents, associations and social ties of the accused,

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- (c) the accused's behaviour on previous occasions while charged with a service offence and released from service custody or while on bail in criminal proceedings, and
  - (d) the strength of the evidence that the accused committed the offence, as well as to any other considerations which appear to be relevant.
- (5) If—
- (a) the accused is charged with an offence under section 42 as respects which the corresponding offence under the law of England and Wales is—
    - (i) murder,
    - (ii) manslaughter,
    - (iii) an offence under section 1 of the Sexual Offences Act 2003 (c. 42) (rape), or
    - (iv) an attempt to commit an offence within sub-paragraph (i) or (iii),
  - (b) representations are made as to any of the matters mentioned in condition A in section 106, and
  - (c) the judge advocate decides not to authorise the keeping of the accused in service custody,
- the judge advocate must state the reasons for his decision and must cause those reasons to be included in the record of the proceedings.
- (6) An order under subsection (2) does not authorise the keeping of the accused in service custody—
- (a) if the accused is subsequently released from service custody, at any time after his release; or
  - (b) at any time after he is sentenced in respect of the offence with which he is charged.
- (7) Subsection (1) does not apply where the accused is charged with a service offence at a time when he is kept in service custody by reason of a sentence passed in respect of a service offence or of an order under subsection (2), unless that reason ceases to apply.

## **106 Conditions A to D**

- (1) Condition A is that the judge advocate is satisfied that there are substantial grounds for believing that the accused, if released from service custody, would—
  - (a) fail to attend any hearing in the proceedings against him;
  - (b) commit an offence while released; or
  - (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.
- (2) Condition B is that the judge advocate is satisfied that the accused should be kept in service custody for his own protection or, if he is aged under 17, for his own welfare or in his own interests.
- (3) Condition C is that the judge advocate is satisfied that, because of lack of time since the accused was charged, it has not been practicable to obtain sufficient information for the purpose of deciding whether condition A or B is met.
- (4) Condition D is that the accused's case has been adjourned for inquiries or a report and it appears to the judge advocate that it would be impracticable to complete the inquiries or make the report without keeping the accused in service custody.

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## **107 Release from custody after charge**

- (1) Subsections (2) and (3) apply where, at a hearing under section 105(1), the judge advocate does not authorise keeping the accused in service custody.
- (2) Subject to subsection (3), the accused must be released from service custody without delay.
- (3) The accused may be required to comply, before release or later, with such requirements as appear to the judge advocate to be necessary—
  - (a) to secure his attendance at any hearing in the proceedings against him;
  - (b) to secure that he does not commit an offence while released from custody;
  - (c) to secure that he does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person; or
  - (d) for his own protection or, if he is aged under 17, for his own welfare or in his own interests.
- (4) On an application made—
  - (a) by or on behalf of the accused, or
  - (b) by the commanding officer of the accused,any requirement imposed under subsection (3) (including such a requirement as previously varied under this subsection) may be varied or discharged by a judge advocate.
- (5) A person on whom a requirement has been imposed by virtue of subsection (3)(a) commits an offence if, without reasonable excuse, he fails to attend any hearing to which the requirement relates.
- (6) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

## **108 Review of custody after charge**

- (1) Where the keeping of the accused in service custody is authorised by an order under section 105(2), it must be reviewed by a judge advocate not later than the end of the period for which it is authorised.
- (2) If at any time it appears to the accused's commanding officer that the grounds on which such an order was made have ceased to exist, he must—
  - (a) release the accused from service custody; or
  - (b) request a review.
- (3) Where a request is made under subsection (2)(b), a review must be carried out as soon as practicable.
- (4) Sections 105(2) to (6), 106 and 107 apply in relation to a review as they apply in relation to a hearing under section 105(1); but the application of section 105(3) is subject to subsection (7).
- (5) At the first review the accused may support an application for release from service custody with any argument as to fact or law (whether or not he has advanced that argument previously).

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- (6) At subsequent reviews the judge advocate need not hear arguments as to fact or law which have been heard previously.
- (7) On a review at a hearing at which the accused is legally represented, the judge advocate may, if the accused consents, authorise the keeping of the accused in service custody for a period of not more than 28 days.
- (8) In this section “review” means a review under subsection (1).

### **109 Custody during proceedings of Court Martial or Service Civilian Court**

- (1) In relation to a review under section 108(1) which takes place between—
  - (a) the arraignment of the accused before the Court Martial or the Service Civilian Court, and
  - (b) the conclusion of proceedings before the court,
 section 105(2) to (6) (as applied by section 108(4)) apply with the following modifications.
- (2) The reference in section 105(2) to conditions A to C is to be read as a reference to conditions A to D.
- (3) Where the accused is awaiting sentence—
  - (a) references in section 105(4)(a) and (5) to an offence with which the accused is charged are to be read as references to the offence for which he is awaiting sentence; and
  - (b) section 105(4)(d) does not apply.

#### *Arrest after charge*

### **110 Arrest after charge or during proceedings by order of commanding officer**

- (1) The commanding officer of a person who—
  - (a) has been charged with, or is awaiting sentence for, a service offence, and
  - (b) is not in service custody,
 may, if satisfied that taking that person into service custody is justified, give orders for his arrest.
- (2) For the purposes of this section, taking a person into service custody is justified if there are reasonable grounds for suspecting that, if not taken into service custody, he would—
  - (a) fail to attend any hearing in the proceedings against him;
  - (b) commit an offence; or
  - (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.
- (3) Taking a person into service custody is also justified for the purposes of this section if—
  - (a) he has failed to attend any hearing in the proceedings against him;
  - (b) there are reasonable grounds for suspecting that he should be taken into service custody for his own protection or, if he is aged under 17, for his own welfare or in his own interests; or



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- (c) there are reasonable grounds for suspecting that—
  - (i) if not taken into service custody, he would fail to comply with a requirement imposed under section 107(3); or
  - (ii) he has failed to comply with such a requirement.
- (4) A person arrested under subsection (1) who is kept in service custody—
  - (a) must as soon as is practicable be brought before a judge advocate for a review of whether he should continue to be kept in service custody; and
  - (b) on that review is to be dealt with as on a review under section 108(1) (see sections 108(4) to (8) and 109).
- (5) Where a power of arrest is conferred on any person by virtue of this section, he may use reasonable force, if necessary, in the exercise of the power.

### **111 Arrest during proceedings at direction of court**

- (1) Where—
  - (a) a person has been arraigned before the Court Martial or the Service Civilian Court, and
  - (b) proceedings before the court have not concluded,a judge advocate, if satisfied that taking him into service custody is justified, may direct the arrest of that person.
- (2) Any person with power to arrest that person for a service offence has the same power, exercisable in the same way, to arrest him pursuant to a direction under subsection (1).
- (3) Subsections (2) and (3) of section 110 apply for the purposes of this section.
- (4) A person arrested under this section who is kept in service custody—
  - (a) must as soon as is practicable be brought before a judge advocate for a review of whether he should continue to be kept in service custody; and
  - (b) on that review is to be dealt with as on a review under section 108(1) (see sections 108(4) to (8) and 109).

## **CHAPTER 3**

### **CUSTODY PROCEEDINGS RULES**

### **112 Custody proceedings rules**

- (1) The Secretary of State may make rules with respect to proceedings—
  - (a) on an application under section 101;
  - (b) under section 105(1);
  - (c) on an application under section 107(4);
  - (d) on a review under section 108(1), 110(4), 111(4) or 171(2).
- (2) Rules under this section may in particular make provision—
  - (a) with respect to arrangements preliminary to the proceedings;
  - (b) with respect to the representation of the person to whom the proceedings relate;
  - (c) with respect to evidence, including the admissibility of evidence;

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- (d) for procuring the attendance of witnesses;
- (e) with respect to the immunities and privileges of witnesses;
- (f) with respect to oaths and affirmations;
- (g) with respect to circumstances in which a review under section 108(1), 110(4), 111(4) or 171(2) may be carried out without a hearing;
- (h) with respect to the use for the purposes of the proceedings of live television or telephone links or similar arrangements, including the use of such links or other arrangements as a means of satisfying any requirement imposed by this Act for a person to be brought before a judge advocate;
- (i) for the appointment of persons to discharge administrative functions under the rules.