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STATUTORY INSTRUMENTS

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**2000 No. 2366 (C.64)**

**DEFENCE**

**The Armed Forces Discipline Act 2000 (Commencement  
and Transitional Provisions) Order 2000**

*Made - - - - 4th September 2000*

The Secretary of State, in exercise of the powers conferred upon him by section 28(2) of the Armed Forces Discipline Act 2000<sup>(1)</sup>, hereby makes the following Order:—

1. This Order may be cited as the Armed Forces Discipline Act 2000 (Commencement and Transitional Provisions) Order 2000.
2. The Armed Forces Discipline Act 2000, to the extent that it is not already in force, shall come into force on 2nd October 2000.
3. The transitional provisions and savings contained in the Schedule to this Order shall have effect.

4th September 2000

*Symons of Vernham Dean*  
Minister of State, Ministry of Defence

SCHEDULE

Article 3

TRANSITIONAL PROVISIONS AND SAVINGS

**Interpretation**

**1. In this Schedule—**

“the Act” means the Armed Forces Discipline Act 2000;

“the Army Act” means the Army Act 1955(2);

“the Air Force Act” means the Air Force Act 1955(3);

“the 1957 Act” means the Naval Discipline Act 1957(4).

**Custody without charge**

**2.—(1)** Where, on the coming into force of section 75A of the Army Act(5), a person who is in military custody has been in custody without being charged for not more than 96 hours after the relevant time, subsection (1) of that section shall have effect (subject to sub-paragraph (2)) as if it required the person’s arrest to be reported to his commanding officer as soon as practicable after the coming into force of that section.

(2) Section 75A(1) of the Army Act shall not apply in any case falling within sub-paragraph (1) above, where the arrest has been reported to the commanding officer before the coming into force of that section.

(3) In a case falling within sub-paragraph (2) above, section 75A(3) of the Army Act shall have effect as if it required the commanding officer to make the determination under that subsection as soon as practicable after the coming into force of that section.

(4) Where, on the coming into force of section 75A of the Army Act, a person who is in military custody has been in custody without being charged for more than 48 hours but not more than 96 hours after the relevant time, in relation to any authorisation given by his commanding officer under subsection (4) of that section with respect to keeping him in custody, subsection (5) of that section shall have effect as if it required the authorisation to be—

(a) for a period of not more than 6 hours, or

(b) for a period ending not more than 96 hours after the relevant time.

(5) Section 75A(6) of the Army Act shall not have effect to prevent the commanding officer from authorising the keeping of a person in military custody in accordance with sub-paragraph (4) above.

(6) Where, on the coming into force of section 75A of the Army Act, a person who is in military custody has been in custody without being charged for more than 96 hours after the relevant time, he shall on the coming into force of that section forthwith be charged or released from military custody.

(7) In this paragraph, “the relevant time” shall be construed in accordance with sections 75A(7) and 75D(2) of the Army Act.

**3.—(1)** Where, on the coming into force of section 75A of the Air Force Act(6), a person who is in air-force custody has been in custody without being charged for not more than 96 hours after the relevant time, subsection (1) of that section shall have effect (subject to sub-paragraph (2)) as if

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(2) 1955 c. 18.

(3) 1955 c. 19.

(4) 1957 c. 53.

(5) Sections 75 to 75E of the Army Act 1955 are substituted by the Armed Forces Discipline Act 2000, section 1(1).

(6) Sections 75 to 75E of the Air Force Act 1955 are substituted by the Armed Forces Discipline Act 2000, section 1(2).

it required the person's arrest to be reported to his commanding officer as soon as practicable after the coming into force of that section.

(2) Section 75A(1) of the Air Force Act shall not apply in any case falling within sub-paragraph (1) above, where the arrest has been reported to the commanding officer before the coming into force of that section.

(3) In a case falling within sub-paragraph (2) above, section 75A(3) of the Air Force Act shall have effect as if it required the commanding officer to make the determination under that subsection as soon as practicable after the coming into force of that section.

(4) Where, on the coming into force of section 75A of the Air Force Act, a person who is in air-force custody has been in custody without being charged for more than 48 hours but not more than 96 hours after the relevant time, in relation to any authorisation given by his commanding officer under subsection (4) of that section with respect to keeping him in custody, subsection (5) of that section shall have effect as if it required the authorisation to be—

- (a) for a period of not more than 6 hours, or
- (b) for a period ending not more than 96 hours after the relevant time.

(5) Section 75A(6) of the Air Force Act shall not have effect to prevent the commanding officer from authorising the keeping of a person in air-force custody in accordance with sub-paragraph (4) above.

(6) Where, on the coming into force of section 75A of the Air Force Act, a person who is in air-force custody has been in custody without being charged for more than 96 hours after the relevant time, he shall on the coming into force of that section forthwith be charged or released from air-force custody.

(7) In this paragraph, "the relevant time" shall be construed in accordance with sections 75A(7) and 75D(2) of the Air Force Act.

4.—(1) Where, on the coming into force of section 47B of the 1957 Act<sup>(7)</sup>, a person who is in naval custody has been in custody without being charged for not more than 96 hours after the relevant time, subsection (1) of that section shall have effect (subject to sub-paragraph (2)) as if it required the person's arrest to be reported to his commanding officer as soon as practicable after the coming into force of that section.

(2) Section 47B(1) of the 1957 Act shall not apply in any case falling within sub-paragraph (1) above, where the arrest has been reported to the commanding officer before the coming into force of that section.

(3) In a case falling within sub-paragraph (2) above, section 47B(3) of the 1957 Act shall have effect as if it required the commanding officer to make the determination under that subsection as soon as practicable after the coming into force of that section.

(4) Where, on the coming into force of section 47B of the 1957 Act, a person who is in naval custody has been in custody without being charged for more than 48 hours but not more than 96 hours after the relevant time, in relation to any authorisation given by his commanding officer under subsection (4) of that section with respect to keeping him in custody, subsection (5) of that section shall have effect as if it required the authorisation to be—

- (a) for a period of not more than 6 hours, or
- (b) for a period ending not more than 96 hours after the relevant time.

(5) Section 47B(6) of the 1957 Act shall not have effect to prevent the commanding officer from authorising the keeping of a person in naval custody in accordance with sub-paragraph (4) above.

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(7) Sections 47A to 47F of the Naval Discipline Act 1957 are inserted by the Armed Forces Discipline Act 2000, section 1(3).

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(6) Where, on the coming into force of section 47B of the 1957 Act, a person who is in naval custody has been in custody without being charged for more than 96 hours after the relevant time, he shall on the coming into force of that section forthwith be charged or released from naval custody.

(7) In this paragraph, “the relevant time” shall be construed in accordance with sections 47B(7) and 47E(2) of the 1957 Act.

### **Custody after charge**

5. Where, on the coming into force of sections 75F to 75M of the Army Act(8), a person is being kept in military custody after being charged with, or whilst awaiting sentence for, an offence against any provision of Part II of that Act, he shall be treated on the coming into force of those sections as being in military custody by virtue of having been arrested under section 75K(1) of the Army Act; and subsection (7) of that section and any rules made under section 75M of that Act shall have effect accordingly.

6. Where, on the coming into force of sections 75F to 75M of the Air Force Act(9), a person is being kept in air-force custody after being charged with, or whilst awaiting sentence for, an offence against any provision of Part II of that Act, he shall be treated on the coming into force of those sections as being in air-force custody by virtue of having been arrested under section 75K(1) of the Air Force Act; and subsection (7) of that section and any rules made under section 75M of that Act shall have effect accordingly.

7. Where, on the coming into force of sections 47G to 47N of the 1957 Act(10), a person is being kept in naval custody after being charged with, or whilst awaiting sentence for, an offence against any provision of Part I of that Act, he shall be treated on the coming into force of those sections as being in naval custody by virtue of having been arrested under section 47L(1) of the 1957 Act; and subsection (7) of that section and any rules made under section 47N of that Act shall have effect accordingly.

### **Election for court-martial trial**

8.—(1) Where immediately before 2nd October 2000—

- (a) a charge is being dealt with summarily but no finding has yet been recorded on the charge; and
- (b) the accused has not been afforded the right to elect trial by court-martial in relation to the charge,

section 76AA(1) of the Army Act(11) shall have effect (without prejudice to subsection (6) of that section) as if it required the commanding officer or appropriate superior authority to afford the accused the opportunity of electing court-martial trial in relation to the charge before continuing to deal summarily with it.

(2) Any election for court-martial trial made under section 76B(5) of the Army Act(12) before 2nd October 2000 shall be treated on or after that date as if made under section 76AA(1) of the Army Act.

(3) Where an accused elects trial by court-martial in relation to a charge before 2nd October 2000, section 83B(2) and (3) of the Army Act shall continue to have effect in relation to that election without the amendments made by paragraph 1(1) and (2) of Schedule 2 to the Act.

(8) Sections 75F to 75M of the Army Act 1955 are inserted by the Armed Forces Discipline Act 2000, sections 2 to 8.

(9) Sections 75F to 75M of the Air Force Act 1955 are inserted by the Armed Forces Discipline Act 2000, sections 2 to 8.

(10) Sections 47G to 47N of the Naval Discipline Act 1957 are inserted by the Armed Forces Discipline Act 2000, sections 2 to 8.

(11) Section 76AA of the Army Act 1955 is inserted by the Armed Forces Discipline Act 2000, section 11.

(12) Section 76B was inserted by the Armed Forces Act 1996 (c. 46), Schedule 1, paragraph 2.

**9.**—(1) Where immediately before 2nd October 2000—

- (a) a charge is being dealt with summarily but no finding has yet been recorded on the charge; and
- (b) the accused has not been afforded the right to elect trial by court-martial in relation to the charge,

section 76AA(1) of the Air Force Act(**13**) shall have effect (without prejudice to subsection (6) of that section) as if it required the commanding officer or appropriate superior authority to afford the accused the opportunity of electing court-martial trial in relation to the charge before continuing to deal summarily with it.

(2) Any election for court-martial trial made under section 76B(5) of the Air Force Act(**14**) before 2nd October 2000 shall be treated on or after that date as if made under section 76AA(1) of the Air Force Act.

(3) Where an accused elects trial by court-martial in relation to a charge before 2nd October 2000, section 83B(2) and (3) of the Air Force Act shall continue to have effect in relation to that election without the amendments made by paragraph 1(1) and (2) of Schedule 2 to the Act.

### **Preferring and amendment of charges**

**10.** The insertion of section 83B(9A) of the Army Act by paragraph 1(4) of Schedule 2 to the Act shall not affect the validity of—

- (a) any charge preferred under subsection (4) of that section; or
- (b) the exercise of any power mentioned in subsection (8)(a) or (b) of that section,

where the charge was preferred or the power exercised before 2nd October 2000.

**11.** The insertion of section 83B(9A) of the Air Force Act by paragraph 1(4) of Schedule 2 to the Act shall not affect the validity of—

- (a) any charge preferred under subsection (4) of that section; or
- (b) the exercise of any power mentioned in subsection (8)(a) or (b) of that section,

where the charge was preferred or the power exercised before 2nd October 2000.

**12.** The insertion of section 52I(8A) of the 1957 Act by paragraph 2(2) of Schedule 2 to the Act shall not affect the validity of—

- (a) any charge preferred under subsection (4) of that section; or
- (b) the exercise of any power mentioned in subsection (7)(a) or (b) of that section,

where the charge was preferred or the power exercised before 2nd October 2000.

### **Summary appeal court**

**13.** Where before 2nd October 2000—

- (a) a charge has been dealt with summarily; and
- (b) the commanding officer or appropriate superior authority has recorded a finding that the charge has been proved and has awarded punishment accordingly,

the Army Act shall continue to apply in relation to that finding or punishment without the amendments made by sections 14 to 25 of, and Schedule 3 to, the Act (which confer a right of appeal to the summary appeal court and make provision which is consequential on that right).

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(13) Section 76AA of the Air Force Act 1955 is inserted by the Armed Forces Discipline Act 2000, section 11.

(14) Section 76B was inserted by the Armed Forces Act 1996 (c. 46), Schedule 1, paragraph 7.

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**14.** Where before 2nd October 2000—

- (a) a charge has been dealt with summarily; and
- (b) the commanding officer or appropriate superior authority has recorded a finding that the charge has been proved and has awarded punishment accordingly,

the Air Force Act shall continue to apply in relation to that finding or punishment without the amendments made by sections 14 to 25 of, and Schedule 3 to, the Act (which confer a right of appeal to the summary appeal court and make provision which is consequential on that right).

**15.** Where before 2nd October 2000—

- (a) a charge has been tried summarily; and
- (b) the commanding officer has recorded a finding of guilt and has awarded punishment accordingly,

the 1957 Act shall continue to apply in relation to that finding or punishment without the amendments made by sections 14 to 25 of, and Schedule 3 to, the Act (which confer a right of appeal to the summary appeal court and make provision which is consequential on that right).

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**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order brings into force on 2nd October 2000 all of the provisions of the Armed Forces Discipline Act 2000 other than sections 26 and 28 which were brought into force on royal assent.