



# Armed Forces Act 2006

## 2006 CHAPTER 52

First Group of Parts Discipline

### PART 4

#### CUSTODY

### 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).