

# **ARMED FORCES DISCIPLINE ACT 2000**

---

## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### *Sections 1 - 10: Custody*

#### **Arrangements in force prior to commencement of Act**

12. The SDAs provide for the arrest of persons subject to them who are found committing an offence, are alleged to have done so or are reasonably suspected of having done so. The following paragraphs describe the arrangements for continued custody both prior to an individual being charged and in the subsequent period before the trial. These all have as their purpose the need to ensure that no one is held in custody unnecessarily.
13. The continued custody of persons subject to the Naval Discipline Act 1957 following their arrest arises from the authority of the Crown, but there are internal regulations governing such custody. These safeguard the detainee in requiring an initial and immediate examination by the CO of the need for close custody and, thereafter, a daily review by the CO of the continued need for close custody. Close custody involves deprivation of liberty and continuous supervision. The CO applies criteria similar to those in the Bail Act 1976, namely that an individual may be detained if there are substantial grounds for believing that the accused would:
  - fail to surrender for custody,
  - commit an offence whilst on bail,
  - interfere with witnesses or otherwise obstruct the course of justice, or
  - be a danger to himself.
14. After every eight days in close custody without the detainee having been brought to trial, the CO is required to refer the need for continued close confinement for decision by higher authority, this being someone further up the chain of command.
15. The regulations permitting the retention in arrest of persons subject to the Army Act 1955 provide safeguards in that the matter is reviewed both by the CO, on a regular basis, and by the CO's higher authority. The person detained is able to appeal against his arrest and is entitled to be kept informed about all aspects of his arrest. In this context, arrest may mean that the individual is held in close arrest or is subject to restrictions on movement. The criteria applied by the CO are similar to those in the Bail Act 1976.
16. The powers under the Air Force Act 1955 are similar to those in the Army Act 1955. Internal regulations make it clear that an accused should only be kept in close arrest whilst awaiting trial in exceptional circumstances. Where a person is detained in arrest, he is required to be brought before his CO within 48 hours. The CO has to carry out a review of the need to retain the accused in arrest every 16 days, and the accused is able to make representations prior to each such review.

The new arrangements

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

17. Following the judgement of the European Court of Human Rights in the case of *Hood v UK*, the arrangements for pre-trial custody under the Service discipline Acts have been reviewed. In this case, one of the applicant's complaints was that his commanding officer could not be considered impartial in relation to authorising his pre-trial detention and that this was in violation of Article 5 of the Convention. The Court concluded that the applicant's misgivings were objectively justified.
18. Decisions on whether an individual should be held in Service custody during an investigation will, under the Act, be taken by a judicial officer.
19. The main effect of sections 1–10, in addition to introducing greater commonality between the practices of the three Services, is to make provision in all three Service discipline Acts for a judicial officer to determine whether a suspect or accused should be held in custody. He will apply criteria similar to those used in ordinary domestic law, namely under the Police and Criminal Evidence Act 1984 pre-charge and the Bail Act 1976 post-charge. For the purposes of these provisions, a judicial officer will normally be a judge advocate or a naval judge advocate, but may be other suitably qualified persons specified in *section 7* of the Act. The flexibility to appoint other qualified persons for this purpose will facilitate readier territorial coverage of applications, wherever they need to be heard. The Services also intend to use live television links where possible, to ensure that applications are dealt with as expeditiously as possible.
20. A judge advocate is a civilian lawyer appointed by the Judge Advocate General, who is responsible to the Lord Chancellor, to be a member of an Army or Royal Air Force court-martial. The Royal Navy have uniformed judge advocates (who are naval barristers of at least five years standing) appointed by the Chief Naval Judge Advocate to be members of naval courts-martial.
21. If a CO wishes to keep a suspect in custody during the investigation, he must be brought before a judicial officer in order for the judicial officer to authorise his continuing custody. When this must be done will depend on the circumstances of the investigation and may be very soon after his arrest. In no circumstances can the period during which a person is in custody without charge exceed 96 hours. Once the 96 hour point is reached the suspect will either have to be charged or released.
22. Once a suspect has been charged, if he is to be kept in custody, he must be brought before a judicial officer as soon as practicable. The judicial officer may at this stage, and subsequently, authorise detention for periods of no more than eight days (28 days with the consent of the accused).