

# ARMED FORCES DISCIPLINE ACT 2000

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Section 2: Custody after charge*

24. This section inserts a new section into each of the SDAs.

*Subsection (1)* inserts a new section into the Army Act 1955 dealing with custody after charge.

- The new *section 75F* requires that any individual subject to military law being kept in military custody shall be seen by a judicial officer promptly if he is charged with an offence under Part II of the Army Act 1955. The judicial officer may then authorise the continued custody of the accused if he is satisfied that the conditions listed in *subsection (2)* are met. When considering whether to authorise the continued custody of the accused, the judicial officer is to take account of the matters listed in *section 75F(3)*, such as the nature and seriousness of the offence and any other matters that may be relevant. These subsections reflect the provisions of Part I of Schedule 1 to the Bail Act 1976.
- If the judicial officer decides not to authorise custody in relation to an accused charged with any of the serious offences listed in *subsection (5)*, he must give reasons and these must be included in the record of proceedings.
- The maximum period for which an accused may be ordered to be retained in custody is limited to 8 days. *Section 75G* allows this order to be renewed by the judicial officer after each 8 day period for up to a further 8 days, or up to 28 days if the accused consents to that extended period.
- If the judicial officer does not authorise the retention in custody of an accused, he must be released immediately. An individual does not need to be brought before a judicial officer if charged when he is already in military custody by reason of a sentence for a previous offence, or if his custody has already been authorised under *subsection (2)* for other reasons.

*Subsection (2)* inserts a new *section 75F* into the Air Force Act 1955 dealing with custody after charge. This section is identical in effect to that described above, but applies to persons arrested under the provisions of the Air Force Act 1955.

*Subsection (3)* inserts a new *section 47G* into the Naval Discipline Act 1957 dealing with custody after charge. This section is identical in effect to that described in subsection (1) above, but applies to persons arrested under the provisions of the Naval Discipline Act 1957.