

ARMED FORCES DISCIPLINE ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 3: Review of custody after charge

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

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

- The new section 75G requires that any order authorising the detention of an accused be reviewed by a judicial officer before it expires. It also requires the CO to either release the accused or request a review, as soon as practicable, if the reason for detaining the accused no longer exists. This section is similar to *section 75F* in that the judicial officer is required to apply the same criteria and considerations to a review of custody as he would if this was the first occasion on which detention was being considered, and an accused must be released forthwith if continuing detention is not authorised.
- At the first review, the accused may advance any arguments of fact or law against his continuing custody, even those advanced at the first hearing. At any subsequent reviews he may only advance new arguments. If continued detention is authorised, it may be renewed by the judicial officer for a period not exceeding a further 8 days or up to 28 days if the accused consents to that extended period.

Subsection (2) inserts a new *section 75G* into the Air Force Act 1955 dealing with review of 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 47H* into the Naval Discipline Act 1957 dealing with review of 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.