

# **ARMED FORCES ACT 2001**

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## **EXPLANATORY NOTES**

### **THE ACT - COMMENTARY ON SECTIONS**

#### **Part 3 – Trial and Punishment of Offences**

##### ***Section 25: Powers to compel attendance of witnesses***

87. The failure of Service personnel and others who are subject to the SDAs to attend as a witness at a court martial, a custody hearing before a judicial officer or proceedings of the summary appeals courts in response to a summons, is an offence under the SDAs. However, such a failure on the part of persons who are not subject to the SDAs could only be certified as a contempt, to be dealt with by the civilian courts (under, for example, section 101(1) of the Army Act 1955 - see note on section 24). This procedure did not directly address the immediate problem of proceedings being frustrated by the absence of a witness.
88. **Section 25** deals with expected and actual failures to respond to witness summonses by persons not subject to the SDAs. It inserts new sections in each of the Acts, providing that a judicial officer or judge advocate may issue a warrant for the arrest of a witness (including someone who may be able to produce a document or other thing that is likely to be material evidence), if satisfied that the individual concerned is unlikely to attend or produce the evidence voluntarily or to respond to a summons to do so.
89. **Section 25** also provides that the judge advocate at a court-martial may issue a warrant for the arrest of such a witness who fails, without any apparent just excuse, to attend the proceedings in response to a summons.
90. The section makes equivalent provision in relation to custody proceedings before a judicial officer and to hearings of summary appeals courts, and specifies who may issue arrest warrants in these cases.
91. The purpose of arrest is to ensure the attendance of the witness. Because the person arrested would not be subject to the SDAs, section 25 provides for the arrest to be carried out by a civilian police constable, not by the Service police.