

SCHEDULES

SCHEDULE 4

Section 29

AMENDMENTS RELATING TO CUSTODY

Army Act 1955 (c. 18) and Air Force Act 1955 (c. 19)

- 1 In section 75H of each of the 1955 Acts (custody during court-martial proceedings) at the end of subsection (2) there is inserted “, unless on an adjournment of the court-martial the judge advocate orders that during the adjournment matters relating to custody are to be dealt with by a judicial officer”.
- 2 In section 75J of each of the 1955 Acts (release from custody after charge or during proceedings), after subsection (2) there is inserted—
 - “(2A) 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 (2)(b) above (including such a requirement as previously varied under this subsection) may be varied or discharged by a judicial officer or, where section 75H(2) of this Act has effect, by the judge advocate in relation to the court-martial.”
- 3 (1) Section 75K of each of the 1955 Acts (arrest during proceedings) is amended as follows.
 - (2) After subsection (3) there is inserted—
 - “(3A) Where on an adjournment of the court-martial the judge advocate has ordered that during the adjournment matters relating to custody are to be dealt with by a judicial officer, the reference in subsection (3) above to the judge advocate shall have effect as a reference to a judicial officer.”
 - (3) In subsection (8)(b), for the words “(unless already before him)” there is substituted “or any judicial officer (unless already before the judge advocate or a judicial officer)”.
- 4 After section 75L of each of the 1955 Acts there is inserted—

“75LL Custody in case of trial by Standing Civilian Court

In relation to any time after the commencement of the trial of the accused by a Standing Civilian Court, the provisions of Schedule 1A to this Act shall have effect in substitution for the provisions of sections 75H to 75K of this Act.”
- 5 (1) Section 75M of each of the 1955 Acts (custody rules) is amended as follows.
 - (2) At the end of subsection (1) there is inserted—

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“(d) on an application under section 75J(2A) of, or paragraph 2(3) of Schedule 1A to, this Act.”

(3) In paragraph (h) of subsection (2) (which relates to the use of live television links, etc.)—

(a) after “or (8)(b) of” there is inserted “, or paragraph 3(4)(b) of Schedule 1A to,”, and

(b) for “or judge advocate” there is substituted “, judge advocate or magistrate”.

6 After Schedule 1 to the Army Act 1955 (c. 18) there is inserted—

“SCHEDULE 1A

CUSTODY IN CONNECTION WITH TRIAL BY STANDING CIVILIAN COURTS

Custody during Standing Civilian Court proceedings

1 (1) Where the accused is kept in military custody under an order under section 75F(2) of this Act at any time after the commencement of his trial by a Standing Civilian Court, section 75G of this Act (and section 75F as applied by that section) shall apply with the following modifications.

(2) References to a judicial officer shall have effect as references to a magistrate appointed under section 6(4) of the Armed Forces Act 1976.

(3) In section 75F(2), after paragraph (d) there shall be inserted—

“; or

(e) the accused’s case has been adjourned for inquiries or a report and it appears to a magistrate appointed under section 6(4) of the Armed Forces Act 1976 that it would be impracticable to complete the inquiries or make the report without keeping the accused in military custody.”

(4) Section 75F(3)(d) does not apply in the case of an accused who is awaiting sentence.

(5) An order under section 75F(2) does not authorise the keeping of the accused in military custody after he is sentenced by a Standing Civilian Court.

Release from custody during proceedings

2 (1) This paragraph applies where, on a review under section 75G(1) of this Act, the magistrate does not authorise keeping the accused in military custody.

(2) Where this paragraph applies, the accused—

(a) subject to paragraph (b) below, shall be released from military custody forthwith, but

(b) may be required to comply, before release or later, with such requirements as appear to the magistrate to be necessary for

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the purpose of securing his attendance at any hearing in the proceedings against him.

- (3) 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 section 75J(2)(b) of this Act or under sub-paragraph (2)(b) above (including such a requirement as previously varied under section 75J(2A) of this Act or under this sub-paragraph) may be varied or discharged by a magistrate appointed under section 6(4) of the Armed Forces Act 1976.
- (4) A person on whom a requirement has been imposed under section 75J(2)(b) of this Act or under sub-paragraph (2)(b) above is guilty of an offence if he fails without reasonable cause to attend any Standing Civilian Court hearing to which the requirement relates.
- (5) A person guilty of an offence under this paragraph shall be liable on conviction by a Standing Civilian Court to any punishment authorised by section 8 of the Armed Forces Act 1976.

Arrest during Standing Civilian Court proceedings

- 3
- (1) At any time before the conclusion of the trial of the accused by a Standing Civilian Court, a magistrate appointed under section 6(4) of the Armed Forces Act 1976, if satisfied that taking the accused into military custody is justified, may direct the arrest of the accused; and any person with power to arrest the accused for an offence against a provision of this Act shall have the same power, exercisable in the same way, to arrest him pursuant to a direction under this sub-paragraph.
- (2) For the purposes of this paragraph, taking the accused into military custody is justified if there are substantial grounds for believing that, if not taken into military custody, he would—
- (a) fail to attend any hearing in the proceedings against him,
 - (b) commit an offence,
 - (c) injure himself, or
 - (d) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.
- (3) Taking the accused into military custody is also justified for the purposes of this section if the accused has failed to attend any hearing in the proceedings against him.
- (4) A person arrested under sub-paragraph (1) above—
- (a) shall be treated as being in military custody under an order under section 75F(2) of this Act, and
 - (b) shall be brought as soon as practicable before a magistrate appointed under section 6(4) of the Armed Forces Act 1976 (unless already before such a magistrate), and shall be dealt with by the magistrate as on a review under section 75G(1) of this Act.”

“SCHEDULE 1A

CUSTODY IN CONNECTION WITH TRIAL BY STANDING CIVILIAN COURTS

Custody during Standing Civilian Court proceedings

- 1 (1) Where the accused is kept in air-force custody under an order under section 75F(2) of this Act at any time after the commencement of his trial by a Standing Civilian Court, section 75G of this Act (and section 75F as applied by that section) shall apply with the following modifications.
 - (2) References to a judicial officer shall have effect as references to a magistrate appointed under section 6(4) of the Armed Forces Act 1976.
 - (3) In section 75F(2), after paragraph (d) there shall be inserted—

“; or

 - (e) the accused’s case has been adjourned for inquiries or a report and it appears to a magistrate appointed under section 6(4) of the Armed Forces Act 1976 that it would be impracticable to complete the inquiries or make the report without keeping the accused in air-force custody.”
 - (4) Section 75F(3)(d) does not apply in the case of an accused who is awaiting sentence.
 - (5) An order under section 75F(2) does not authorise the keeping of the accused in air-force custody after he is sentenced by a Standing Civilian Court.

Release from custody during proceedings

- 2 (1) This paragraph applies where, on a review under section 75G(1) of this Act, the magistrate does not authorise keeping the accused in air-force custody.
 - (2) Where this paragraph applies, the accused—
 - (a) subject to paragraph (b) below, shall be released from air-force custody forthwith, but
 - (b) may be required to comply, before release or later, with such requirements as appear to the magistrate to be necessary for the purpose of securing his attendance at any hearing in the proceedings against him.
 - (3) 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 section 75J(2)(b) of this Act or under sub-paragraph (2)(b) above (including such a requirement as previously varied under section 75J(2A) of this Act or under this sub-paragraph)

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may be varied or discharged by a magistrate appointed under section 6(4) of the Armed Forces Act 1976.

- (4) A person on whom a requirement has been imposed under section 75J(2)(b) of this Act or under sub-paragraph (2)(b) above is guilty of an offence if he fails without reasonable cause to attend any Standing Civilian Court hearing to which the requirement relates.
- (5) A person guilty of an offence under this paragraph shall be liable on conviction by a Standing Civilian Court to any punishment authorised by section 8 of the Armed Forces Act 1976.

Arrest during Standing Civilian Court proceedings

- 3 (1) At any time before the conclusion of the trial of the accused by a Standing Civilian Court, a magistrate appointed under section 6(4) of the Armed Forces Act 1976, if satisfied that taking the accused into air-force custody is justified, may direct the arrest of the accused; and any person with power to arrest the accused for an offence against a provision of this Act shall have the same power, exercisable in the same way, to arrest him pursuant to a direction under this sub-paragraph.
- (2) For the purposes of this paragraph, taking the accused into air-force custody is justified if there are substantial grounds for believing that, if not taken into air-force custody, he would—
 - (a) fail to attend any hearing in the proceedings against him,
 - (b) commit an offence,
 - (c) injure himself, or
 - (d) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.
- (3) Taking the accused into air-force custody is also justified for the purposes of this section if the accused has failed to attend any hearing in the proceedings against him.
- (4) A person arrested under sub-paragraph (1) above—
 - (a) shall be treated as being in air-force custody under an order under section 75F(2) of this Act, and
 - (b) shall be brought as soon as practicable before a magistrate appointed under section 6(4) of the Armed Forces Act 1976 (unless already before such a magistrate), and shall be dealt with by the magistrate as on a review under section 75G(1) of this Act.”

Naval Discipline Act 1957 (c. 53)

- 8 In section 47J of the 1957 Act (custody during court-martial proceedings) at the end of subsection (2) there is inserted “, unless on an adjournment of the court-martial the judge advocate orders that during the adjournment matters relating to custody are to be dealt with by a judicial officer”.
- 9 In section 47K of the 1957 Act (release from custody after charge or during proceedings), after subsection (2) there is inserted—

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“(2A) 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 (2)(b) above (including such a requirement as previously varied under this subsection) may be varied or discharged by a judicial officer or, where section 47J(2) of this Act has effect, by the judge advocate in relation to the court-martial.”

10 (1) Section 47L of the 1957 Act (arrest during proceedings) is amended as follows.

(2) After subsection (3) there is inserted—

“(3A) Where on an adjournment of the court-martial the judge advocate has ordered that during the adjournment matters relating to custody are to be dealt with by a judicial officer, the reference in subsection (3) above to the judge advocate shall have effect as a reference to a judicial officer.”

(3) In subsection (8)(b), for the words “(unless already before him)” there is substituted “or any judicial officer (unless already before the judge advocate or a judicial officer)”.

11 In section 47N of that Act (custody rules), at the end of subsection (1) there is inserted—

“(d) on an application under section 47K(2A) of this Act.”