



Armed Forces Act 2006

2006 CHAPTER 52

PART 4

CUSTODY

CHAPTER 2

CUSTODY ETC AFTER CHARGE

Custody after charge

105 Custody after charge

- (1) Where a person (referred to in this section and sections 106 to 109 as “the accused”) is kept in service custody after being charged with a service offence, he must be brought before a judge advocate as soon as practicable.
- (2) At a hearing under subsection (1), the judge advocate may by order authorise the keeping of the accused in service custody, but only if one or more of conditions A to C in section 106 are met.
- (3) The period for which a judge advocate may, by an order under subsection (2), authorise the keeping of the accused in service custody is such period, ending not later than eight days after the day on which the order is made, as he considers appropriate having regard to the evidence before him.
- (4) For the purpose of deciding whether condition A in section 106 is met, the judge advocate must have regard to such of the following considerations as appear to him to be relevant—
 - (a) the nature and seriousness of the offence with which the accused is charged (and the probable method of dealing with him for it),
 - (b) the character, antecedents, associations and social ties of the accused,

Changes to legislation: *Armed Forces Act 2006, Cross Heading: Custody after charge is up to date with all changes known to be in force on or before 15 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (c) the accused's behaviour on previous occasions while charged with a service offence and released from service custody or while on bail in criminal proceedings, and
 - (d) the strength of the evidence that the accused committed the offence, as well as to any other considerations which appear to be relevant.
- (5) If—
- (a) the accused is charged with an offence under section 42 as respects which the corresponding offence under the law of England and Wales is—
 - (i) murder,
 - (ii) manslaughter,
 - (iii) an offence under section 1 of the Sexual Offences Act 2003 (c. 42) (rape), or
 - (iv) an attempt to commit an offence within sub-paragraph (i) or (iii),
 - (b) representations are made as to any of the matters mentioned in condition A in section 106, and
 - (c) the judge advocate decides not to authorise the keeping of the accused in service custody,
- the judge advocate must state the reasons for his decision and must cause those reasons to be included in the record of the proceedings.
- (6) An order under subsection (2) does not authorise the keeping of the accused in service custody—
- (a) if the accused is subsequently released from service custody, at any time after his release; or
 - (b) at any time after he is sentenced in respect of the offence with which he is charged.
- (7) Subsection (1) does not apply where the accused is charged with a service offence at a time when he is kept in service custody by reason of a sentence passed in respect of a service offence or of an order under subsection (2), unless that reason ceases to apply.

Modifications etc. (not altering text)

- C1** Pt. 4 modified by 1968 c. 20, s. 20(1G)(1H) (as substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 8 para. 21(a)**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4)
- C2** Pt. 4 modified (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), arts. 1, **25(3)(4)** (with art. 3)
- C3** S. 105(2)-(4) applied (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), arts. 1, **22(1)(a)** (with art. 3)

Commencement Information

- I1** S. 105 in force at 28.3.2009 for specified purposes by S.I. 2009/812, **art. 3(a)(b)** (with transitional provisions in S.I. 2009/1059)
- I2** S. 105 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, **art. 4**

Changes to legislation: Armed Forces Act 2006, Cross Heading: Custody after charge is up to date with all changes known to be in force on or before 15 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

106 Conditions A to D

- (1) Condition A is that the judge advocate is satisfied that there are substantial grounds for believing that the accused, if released from service custody, would—
 - (a) fail to attend any hearing in the proceedings against him;
 - (b) commit an offence while released; or
 - (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.
- (2) Condition B is that the judge advocate is satisfied that the accused should be kept in service custody for his own protection or, if he is aged under 17, for his own welfare or in his own interests.
- (3) Condition C is that the judge advocate is satisfied that, because of lack of time since the accused was charged, it has not been practicable to obtain sufficient information for the purpose of deciding whether condition A or B is met.
- (4) Condition D is that the accused's case has been adjourned for inquiries or a report and it appears to the judge advocate that it would be impracticable to complete the inquiries or make the report without keeping the accused in service custody.

Commencement Information

- I3** S. 106 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I4** S. 106 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

107 Release from custody after charge

- (1) Subsections (2) and (3) apply where, at a hearing under section 105(1), the judge advocate does not authorise keeping the accused in service custody.
- (2) Subject to subsection (3), the accused must be released from service custody without delay.
- (3) The accused may be required to comply, before release or later, with such requirements as appear to the judge advocate to be necessary—
 - (a) to secure his attendance at any hearing in the proceedings against him;
 - (b) to secure that he does not commit an offence while released from custody;
 - (c) to secure that he does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person; or
 - (d) for his own protection or, if he is aged under 17, for his own welfare or in his own interests.
- (4) 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 (3) (including such a requirement as previously varied under this subsection) may be varied or discharged by a judge advocate.

Changes to legislation: *Armed Forces Act 2006, Cross Heading: Custody after charge is up to date with all changes known to be in force on or before 15 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (5) A person on whom a requirement has been imposed by virtue of subsection (3)(a) commits an offence if, without reasonable excuse, he fails to attend any hearing to which the requirement relates.
- (6) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

Modifications etc. (not altering text)

- C4** S. 107 modified (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), arts. 1, **22(2)** (with art. 3)
- C5** S. 107(5) applied (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), art. 1, **rule 69(8)**
- C6** S. 107(5) applied (31.10.2009) by [The Armed Forces \(Service Civilian Court\) Rules 2009 \(S.I. 2009/1209\)](#), art. 1, **rule 103**
- C7** S. 107(5) applied (31.10.2009) by [The Armed Forces \(Summary Appeal Court\) Rules 2009 \(S.I. 2009/1211\)](#), art. 1, **rule 56(8)(9)**
- C8** S. 107(5)(6) applied (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), art. 1, **rule 136(8)**
- C9** S. 107(5) applied (31.10.2009) by [The Armed Forces \(Service Civilian Court\) Rules 2009 \(S.I. 2009/1209\)](#), art. 1, **rule 55(8)(9)**
- C10** S. 107(6) applied (31.10.2009) by [The Armed Forces \(Service Civilian Court\) Rules 2009 \(S.I. 2009/1209\)](#), art. 1, **rule 103**

Commencement Information

- I5** S. 107 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I6** S. 107 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

108 Review of custody after charge

- (1) Where the keeping of the accused in service custody is authorised by an order under section 105(2), it must be reviewed by a judge advocate not later than the end of the period for which it is authorised.
- (2) If at any time it appears to the accused's commanding officer that the grounds on which such an order was made have ceased to exist, he must—
 - (a) release the accused from service custody; or
 - (b) request a review.
- (3) Where a request is made under subsection (2)(b), a review must be carried out as soon as practicable.
- (4) Sections 105(2) to (6), 106 and 107 apply in relation to a review as they apply in relation to a hearing under section 105(1); but the application of section 105(3) is subject to subsection (7).
- (5) At the first review the accused may support an application for release from service custody with any argument as to fact or law (whether or not he has advanced that argument previously).

Changes to legislation: Armed Forces Act 2006, Cross Heading: Custody after charge is up to date with all changes known to be in force on or before 15 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (6) At subsequent reviews the judge advocate need not hear arguments as to fact or law which have been heard previously.
- (7) On a review at a hearing at which the accused is legally represented, the judge advocate may, if the accused consents, authorise the keeping of the accused in service custody for a period of not more than 28 days.
- (8) In this section “review” means a review under subsection (1).

Modifications etc. (not altering text)

- C11** S. 108(1) applied (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), arts. 1, **22(1)(c)** (with art. 3)
- C12** S. 108(4) applied (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), arts. 1, **22(1)(b)** (with art. 3)
- C13** S. 108(5)-(8) applied (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), arts. 1, **22(1)(c)** (with art. 3)
-

Commencement Information

- I7** S. 108 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), art. **3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I8** S. 108 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), art. **4**

109 Custody during proceedings of Court Martial or Service Civilian Court

- (1) In relation to a review under section 108(1) which takes place between—
 - (a) the arraignment of the accused before the Court Martial or the Service Civilian Court, and
 - (b) the conclusion of proceedings before the court,section 105(2) to (6) (as applied by section 108(4)) apply with the following modifications.
- (2) The reference in section 105(2) to conditions A to C is to be read as a reference to conditions A to D.
- (3) Where the accused is awaiting sentence—
 - (a) references in section 105(4)(a) and (5) to an offence with which the accused is charged are to be read as references to the offence for which he is awaiting sentence; and
 - (b) section 105(4)(d) does not apply.

Commencement Information

- I9** S. 109 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), art. **3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I10** S. 109 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), art. **4**

Changes to legislation:

Armed Forces Act 2006, Cross Heading: Custody after charge is up to date with all changes known to be in force on or before 15 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to :

- specified provision(s) transitional provisions for effects of commencing SI 2009/812 by [S.I. 2009/1059 Order](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 12A applied (with modifications) by S.I. 2009/1059, art. 106A (as inserted) by [S.I. 2024/619 reg. 44\(2\)](#)
- Pt. 12A inserted by [2016 c. 21 s. 7](#)
- Pt. 16B inserted by [2023 c. 48 s. 1](#)
- s. 50(2)(ca) inserted by [2011 c. 18 Sch. 4 para. 3\(3\)](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 4 para. 3(3) repealed (8.3.2015) without ever being in force by [2014 c. 12, Sch. 11 para. 82\(2\)](#); S.I. 2015/373, art. 2(g)(ii))
- s. 209(8) inserted by [2021 c. 11 Sch. 13 para. 41\(3\)](#)
- s. 213(3A) words inserted by [2021 c. 11 Sch. 13 para. 41\(6\)](#)
- s. 218A(6A) inserted by Sch. 26 para. 12(1)(db) (as inserted) by [S.I. 2020/1520 reg. 6\(2\)\(b\)](#)
- s. 218A(6A) words omitted by virtue of [2020 c. 17, Sch. 26 para. 12\(1\)\(dc\)](#) (as inserted) by [S.I. 2020/1520 reg. 6\(2\)\(b\)](#)
- s. 219A(1)(d)(i) omitted by virtue of [2020 c. 17, Sch. 26 para. 14\(a\)\(i\)](#) (as substituted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(b\)](#)
- s. 219A(1)(d)(iii) omitted by virtue of [2020 c. 17, Sch. 26 para. 14\(a\)\(i\)](#) (as substituted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(b\)](#)
- s. 219A(1)(da) inserted by [2021 c. 11 Sch. 13 para. 41\(7\)](#)
- s. 219A(1)(da)(i) omitted by virtue of [2020 c. 17, Sch. 26 para. 14\(a\)\(ii\)](#) (as substituted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(b\)](#)
- s. 219A(2A) inserted by [2020 c. 17, Sch. 26 para. 14\(bb\)](#) (as inserted) by [S.I. 2020/1520 reg. 6\(3\)](#)
- s. 219ZA inserted by [2021 c. 11 Sch. 8 para. 2](#)
- s. 219ZA(1)(e) words omitted by virtue of [2020 c. 17, Sch. 26 para. 13A\(a\)](#) (as inserted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(a\)](#)
- s. 219ZA(4)-(6) omitted by virtue of [2020 c. 17, Sch. 26 para. 13A\(b\)](#) (as inserted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(a\)](#)
- s. 219ZA(7) words omitted by virtue of [2020 c. 17, Sch. 26 para. 13A\(c\)](#) (as inserted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(a\)](#)
- s. 223(1A) inserted by [2021 c. 11 Sch. 13 para. 41\(8\)\(a\)](#)
- s. 224A(1)(d)(iii) and word inserted by [2021 c. 11 Sch. 13 para. 41\(9\)\(a\)\(ii\)](#)
- s. 224A(1)(d)(iii) words substituted by [2020 c. 17, Sch. 26 para. 15\(a\)\(iii\)](#) (as inserted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(c\)](#)
- s. 224A(1A) inserted by [2021 c. 11 Sch. 8 para. 8\(4\)](#)
- s. 224A(3A) inserted by [2021 c. 11 Sch. 13 para. 41\(9\)\(b\)](#)
- s. 224B inserted by [2021 c. 11 Sch. 8 para. 9](#)
- s. 225(1A) inserted by [2020 c. 17, Sch. 26 para. 15A](#) (as inserted) by [S.I. 2020/1520 reg. 6\(4\)](#)
- s. 226(1A) inserted by [2020 c. 17, Sch. 26 para. 15B](#) (as inserted) by [S.I. 2020/1520 reg. 6\(4\)](#)
- s. 227(3)(a)(b) substituted for words by [2021 c. 11 Sch. 13 para. 41\(10\)](#)

- s. 238(6)(a) word omitted by 2021 c. 11 Sch. 13 para. 41(11)(a)
- s. 238(6)(b) word substituted by 2021 c. 11 Sch. 13 para. 41(11)(c)
- s. 238(6)(aa) inserted by 2021 c. 11 Sch. 13 para. 41(11)(b)
- s. 239(3A)(3B) inserted by 2021 c. 11 Sch. 8 para. 3
- s. 239(3A) words omitted by virtue of 2020 c. 17, Sch 26 para. 18(a)(i) (as inserted) by 2021 c. 11 Sch. 13 para. 43(7)(d)
- s. 239(3A) words omitted by virtue of 2020 c. 17, Sch 26 para. 18(a)(ii) (as inserted) by 2021 c. 11 Sch. 13 para. 43(7)(d)
- s. 239(3B) words omitted by virtue of 2020 c. 17, Sch 26 para. 18(b) (as inserted) by 2021 c. 11 Sch. 13 para. 43(7)(d)
- s. 260(1)(ca) inserted by 2021 c. 11 Sch. 13 para. 41(14)(a)(ii)
- s. 260(1)(ca) words omitted by virtue of 2020 c. 17, Sch. 26 para. 19(a)(iia) (as inserted) by 2021 c. 11 Sch. 13 para. 43(7)(e)(i)
- s. 260(4B)(a) words omitted by virtue of 2020 c. 17, Sch. 26 para. 19(b)(ii) (as substituted) by 2021 c. 11 Sch. 13 para. 43(7)(e)(ii)
- s. 260(4B)(za) inserted by 2021 c. 11 Sch. 13 para. 41(14)(b)
- s. 260(4B)(za) words omitted by virtue of 2020 c. 17, Sch. 26 para. 19(b)(i) (as substituted) by 2021 c. 11 Sch. 13 para. 43(7)(e)(ii)
- s. 261(1)(ba) inserted by 2021 c. 11 Sch. 13 para. 41(15)
- s. 261(1)(ba) words omitted by virtue of 2020 c. 17, Sch. 26 para. 20(c) (as inserted) by 2021 c. 11 Sch. 13 para. 43(7)(f)
- s. 261A(3)(a) words in s. 261A(3) renumbered as s. 261A(3)(a) by 2021 c. 11 Sch. 8 para. 4(a)
- s. 261A(3)(b)(c) inserted by 2021 c. 11 Sch. 8 para. 4(b)
- s. 261A(3)(b) words omitted by virtue of 2020 c. 17, Sch. 26 para. 20A(a) (as inserted) by 2021 c. 11 Sch. 13 para. 43(7)(g)
- s. 261A(3)(c)(i) words omitted by virtue of 2020 c. 17, Sch. 26 para. 20A(b) (as inserted) by 2021 c. 11 Sch. 13 para. 43(7)(g)
- s. 262A(2A) inserted by 2021 c. 11 Sch. 13 para. 41(16)(a)
- s. 262A(2A)(b) omitted by virtue of 2020 c. 17, Sch. 26 para. 21(a) (as substituted) by 2021 c. 11 Sch. 13 para. 43(7)(h)
- s. 262A(3A) inserted by 2021 c. 11 Sch. 13 para. 41(16)(b)
- s. 262A(3A) omitted by virtue of 2020 c. 17, Sch. 26 para. 21(b) (as substituted) by 2021 c. 11 Sch. 13 para. 43(7)(h)
- s. 262A(4) words inserted by 2021 c. 11 Sch. 13 para. 41(16)(c)(i)
- s. 262A(4) words inserted by 2021 c. 11 Sch. 13 para. 41(16)(c)(ii)
- s. 262A(4) words omitted by virtue of 2020 c. 17, Sch. 26 para. 21(c) (as substituted) by 2021 c. 11 Sch. 13 para. 43(7)(h)
- s. 270A270B inserted by 2008 c. 4 Sch. 25 para. 27 (This amendment not applied to legislation.gov.uk. Sch. 25 para. 26(3)(4) repealed (2.4.2012) by 2011 c. 18, Sch. 3 para. 20(3), Sch. 5; S.I. 2012/669, art. 4(d)(f) (with art. 13))
- s. 270B(6)(aa) inserted by 2009 c. 25 Sch. 17 para. 9(2) (This amendment not applied to legislation.gov.uk. Sch. 17 para. 9 repealed (2.4.2012) without ever being in force by 2011 c. 18, Sch. 5; S.I. 2012/669, art. 4(f))
- s. 270B(10) word repealed by 2009 c. 25 Sch. 23 Pt. 5
- s. 270B(10)(a) words inserted by 2009 c. 25 Sch. 17 para. 9(3)(a) (This amendment not applied to legislation.gov.uk. Sch. 17 para. 9 repealed (2.4.2012) without ever being in force by 2011 c. 18, Sch. 5; S.I. 2012/669, art. 4(f))
- s. 270B(10)(b) words substituted by 2009 c. 25 Sch. 17 para. 9(3)(b) (This amendment not applied to legislation.gov.uk. Sch. 17 para. 9 repealed (2.4.2012) without ever being in force by 2011 c. 18, Sch. 5; S.I. 2012/669, art. 4(f))
- s. 270B(10)(c)-(e) inserted by 2009 c. 25 Sch. 17 para. 9(3)(c) (This amendment not applied to legislation.gov.uk. Sch. 17 para. 9 repealed (2.4.2012) without ever being in force by 2011 c. 18, Sch. 5; S.I. 2012/669, art. 4(f))
- s. 304B inserted by 2016 c. 21 s. 8
- s. 304C inserted by 2016 c. 21 s. 9
- s. 304C(5A) inserted by 2021 c. 11 Sch. 8 para. 5

- s. 304C(5A) words omitted by virtue of 2020 c. 17, Sch. 26 para. 24A(a) (as inserted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(i\)](#)
- s. 304C(5A) words substituted by 2020 c. 17, Sch. 26 para. 24A(b) (as inserted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(i\)](#)
- s. 304F-304H inserted by [2016 c. 21 s. 12](#)
- s. 377(8) inserted by 2020 c. 17, Sch. 26 para. 26 (as inserted) by [S.I. 2020/1520 reg. 6\(5\)](#)
- Sch. 7 para. 9(A1) inserted by [2020 c. 9 Sch. 2 para. 123\(8\)\(a\)](#) (This pre-consolidation amendment comes into force immediately before the consolidation date on 1.12.2020 (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416) to facilitate the sentencing consolidation and then is repealed immediately afterwards on 1.12.2020 by the Sentencing Act 2020 (c. 17), Sch. 28; S.I. 2020/1236, reg. 2)