

ARMED FORCES ACT 2001

EXPLANATORY NOTES

THE ACT - COMMENTARY ON SECTIONS

Part 3 – Trial and Punishment of Offences

Section 29: Custody

98. This section introduces *Schedule 4*, which concerns detailed aspects of the custody arrangements for those charged with offences under the SDAs.
99. [Paragraphs 1, 3, 8 and 10](#) are all related. Previously, the SDAs provided that, once a trial had started, it was the judge advocate hearing the case who was responsible for reviewing the need for the accused to be held in custody, and for imposing conditions for release or ordering arrest, rather than a judicial officer (who is generally responsible for these matters before trial). However, trials may occasionally be adjourned for considerable periods. In these circumstances, the trial judge advocate may be assigned to another trial or be otherwise unavailable, and it would be more practical for the exercise of these powers to revert to a judicial officer. Paragraph 1 amends the Army and Air Force Acts and allows the trial judge advocate to order, on an adjournment, that these powers are exercisable by a judicial officer, instead of by the judge advocate. Paragraph 3 is consequential on this. Paragraphs 8 and 10 have the same effect in relation to the Naval Discipline Act.
100. Once an accused has been charged, he may be released from custody subject to conditions to ensure his attendance at a hearing. There was no power in the SDAs to vary or discharge these conditions, although such a power is available in the civilian system. Paragraph 2 of the Schedule amends the Army and Air Force Acts to allow any conditions that have been imposed to be varied. Either party may apply for a variation. Paragraph 9 has the same effect in respect of the Naval Discipline Act. Paragraphs 5 and 11 of the Schedule amend the rule-making sections in the 1955 and 1957 Acts respectively, to allow the Secretary of State to make rules dealing with the procedure for applications to vary conditions.
101. [Paragraphs 4, 6 and 7](#) of the Schedule concern Standing Civilian Courts, which deal with offences by civilians subject to the SDAs. (Because civilians are not generally subject to the SDAs in the United Kingdom, these Courts only operate overseas.) These provisions only apply to civilians connected with the Army and Royal Air Force. The Royal Navy does not have Standing Civilian Courts, because it is very rare for families of naval personnel to live with them on duty abroad. Paragraphs 6 and 7 insert a new Schedule (Schedule 1A) in each of the Army and Air Force Acts. These Schedules give Standing Civilian Court Magistrates powers to order an arrest or to deal with custody applications during a trial. The powers are similar to those available to judicial officers or judge advocates.