
EXPLANATORY NOTE

(This note is not part of the Rules)

Section 101 of the Armed Forces Act 2006 (“the Act”) allows a judge advocate to authorise a person to be held in service custody for a period of up to 96 hours from the time of arrest. After charge, section 105 of the Act allows a judge advocate to authorise the holding in service custody of a person for up to eight days and then, on review, subsequent periods of up to eight days. If the person consents and is legally represented, section 108 allows a person to be kept in custody for up to 28 days between hearings. Section 107 of the Act allows the judge advocate to impose conditions (similar to bail conditions) on the person released from custody. Section 110 of the Act allows a commanding officer to order the arrest of a person whom he reasonably suspects would fail to attend a hearing, commit an offence, interfere with witness, or otherwise obstruct justice. A person so arrested must be brought before a judge advocate as soon as practicable. Section 111 of the Act allows a judge advocate to order the arrest of a person during the course of a trial by the Court Martial or the Service Civilian Court. Section 171 of the Act allows a person subject to a hospital order with restriction (as per section 37 of the Mental Health Act 1983) to be transferred to service custody.

These Rules are made under section 112(1) of the Act and make provision for the constitution and process of hearings and reviews under the above sections of the Act.

Part 2 defines how documents may be served on parties to proceedings under these Rules and makes provision for service by fax, electronic mail or other similar means. Part 3 deals with general matters relating to the functions of the court administration officer, the listing of proceedings, attendance via live links and, through Schedule 1, the production of witnesses.

Part 4 details the information a commanding officer must provide (including the reasons why) when making an application for an extension of custody without charge under section 101(1). Similarly, rule 25 details the information to be provided to the judge advocate when applying to keep a person in custody after charge. Rule 26 requires a commanding officer to notify the court administration officer of the fact that a person has been taken into custody under section 110(1) or 111(1). If the grounds for custody have changed a commanding officer may request a review by notifying the court administration officer under rule 27. Where a person has been released from service custody with conditions under section 107, a commanding officer may apply for variation or discharge of those conditions by following rule 29.

Rule 30 requires a judge advocate to specify the date of review in an order made under section 105(2) (custody after charge) and allows him to vary that date. Rule 31 allows a judge advocate to dispense with the need to conduct a review by formal hearing, unless it is the first review, a review under 108(2)(b) or whilst the accused is before the Court Martial or the Service Civilian Court.

Part 6 makes rules for the conduct of hearings and reviews: including the applicability of rules of evidence; adjournments; and immunities of witnesses.

Part 7 and Schedule 3 make transitional provisions.