
STATUTORY INSTRUMENTS

2009 No. 1059

The Armed Forces Act 2006
(Transitional Provisions etc) Order 2009

PART 8

CUSTODY

CHAPTER 3

Custody after charge

Custody after charge

40.—(1) In sections 105(1), (4), (5) and (7) and 106(3) of AFA 2006 (custody after charge), references to a person's being “charged” with an offence include a person's being informed in accordance with regulations of the Defence Council that a charge is to be reported to the person's commanding officer under section 76(1) of AA 1955 or AFA 1955 or section 52B(1) of NDA 1957.

(2) Where, immediately before commencement, an order under section 75F(2) of AA 1955 or AFA 1955 or section 47G(2) of NDA 1957 (order authorising custody after charge) has effect, the order has effect after commencement—

- (a) as if made under section 105(2) of AFA 2006;
- (b) as if the custody in which it authorised the accused to be kept were service custody; and
- (c) in a case where the period of custody authorised by the order was so authorised by virtue of section 75G(7) of AA 1955 or AFA 1955 or section 47H(7) of NDA 1957, as if that period had been authorised by virtue of section 108(7) of AFA 2006.

(3) In section 105(5) of AFA 2006 (reasons to be given for not keeping certain persons in custody), in paragraph (a)—

- (a) the reference to an offence under section 42 of that Act includes an SDA civil offence;
- (b) the reference to the corresponding offence under the law of England and Wales includes the corresponding civil offence; and
- (c) the reference to an offence under section 1 of the Sexual Offences Act 2003 ^{M1} includes an offence under section 1 of the Sexual Offences Act 1956 ^{M2}.

(4) In section 105(7) of AFA 2006 (disapplication of section 105(1)), the reference to an order under section 105(2) includes an order under section 75F(2) of AA 1955 or AFA 1955 or section 47G(2) of NDA 1957.

(5) Where, immediately before commencement, a requirement under section 75J(2)(b) of AA 1955 or AFA 1955 or section 47K(2)(b) of NDA 1957 has effect (requirement to secure accused's attendance at hearing), the requirement has effect after commencement as if imposed under section 107(3)(a) of AFA 2006.

(6) Where, immediately before commencement, an application under section 75J(2A) of AA 1955 or AFA 1955 or section 47K(2A) of NDA 1957 (variation of requirement) has been made but

not granted, refused or withdrawn, the application has effect after commencement as an application under section 107(4) of AFA 2006.

(7) Where, immediately before commencement, a request under section 75G(2)(b) of AA 1955 or AFA 1955 or section 47H(2)(b) of NDA 1957 (request for review) has been made but not complied with, the request has effect after commencement as a request under section 108(2)(b) of AFA 2006.

(8) Where before commencement a review in respect of a person's being kept in custody was carried out under section 75G(1) of AA 1955 or AFA 1955 or section 47H(1) of NDA 1957, any subsequent review under section 108(1) of AFA 2006 is to be treated for the purposes of section 108(5) and (6) of AFA 2006 as a subsequent review and not a first review.

(9) In section 109(1) of AFA 2006 (custody during court proceedings), the reference to a review under section 108(1) which takes place between arraignment before the Court Martial or the Service Civilian Court and the conclusion of proceedings before the court includes a review which takes place—

- (a) between the arraignment of the accused under section 91A of AA 1955 or AFA 1955 or section 58A of NDA 1957 and the conclusion of proceedings before the Court Martial; or
- (b) between the arraignment of the accused before a Standing Civilian Court and the conclusion of proceedings before the Service Civilian Court.

Marginal Citations

M1 [2003 c. 42](#).

M2 [1956 c. 69](#). Section 1 (rape) was repealed by the [Sexual Offences Act 2003 \(c. 42\)](#), [section 139](#) and Schedule 6, paragraph 11.

Changes to legislation:

There are currently no known outstanding effects for the The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, Section 40.