



# Air Force Act 1955 (repealed)

1955 CHAPTER 19 3 and 4 Eliz 2

## PART II

DISCIPLINE AND TRIAL AND PUNISHMENT OF AIR-FORCE OFFENCES

### *F1* Custody

#### Textual Amendments

- F1** Ss. 75-75E and cross-heading substituted (2.10.2000) for s. 75 by 2000 c. 4, s. 1(2); S.I. 2000/2366, art. 2 (with transitional provisions in art. 3, Sch. para. 14)

#### Textual Amendments applied to the whole legislation

- F1** Act: the provisions of the 1955 Acts providing for findings of courts-martial to be subject to confirmation and to revision at the direction of the confirming officer cease to have effect (1.4.1997 subject to art. 3 of the commencing S.I.) by virtue of 1996 c. 46, s. 15; S.I. 1997/304, arts. 2, 3, Sch. 2

#### **F275** Limitations on custody without charge.

- (1) A person arrested under section 74 of this Act shall not be kept in air-force custody without being charged except in accordance with sections 75A to 75C of this Act.
- (2) If at any time the commanding officer of a person who is kept in air-force custody without being charged—
  - (a) becomes aware that the grounds for keeping that person in air-force custody have ceased to apply; and
  - (b) is not aware of any other grounds on which continuing to keep that person in air-force custody could be justified under the provisions of this Act,it shall be the duty of the commanding officer, subject to subsection (3) below, to order his immediate release from air-force custody.

*Status: Point in time view as at 25/07/2007.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Cross Heading: Custody. (See end of Document for details)*

- (3) A person who appears to his commanding officer to have been unlawfully at large when he was arrested is not to be released under subsection (2) above.
- (4) For the purposes of this section and sections 75A to 75K of this Act a person is to be treated as charged with an offence when he is informed in accordance with regulations of the Defence Council that a charge is to be reported to his commanding officer under section 76(1) of this Act.

#### **Textual Amendments**

**F2** Ss. 75-75E and cross-heading substituted (2.10.2000) for s. 75 by 2000 c. 4, s. 1(2); S.I. 2000/2366, art. 2 (with transitional provisions in art. 3, Sch. para. 14)

#### **F<sup>3</sup>75A Authorisation of custody without charge.**

- (1) Where a person is arrested under section 74 of this Act—
  - (a) the arrest, and
  - (b) any grounds on which he is being kept in air-force custody without being charged,
 shall be reported as soon as practicable to his commanding officer.
- (2) Until such a report is made, the person may be kept in air-force custody without being charged, but only if the person who made the arrest has reasonable grounds for believing that keeping him in air-force custody without charge is necessary—
  - (a) to secure or preserve evidence relating to an offence for which he is under arrest, or
  - (b) to obtain such evidence by questioning him.
- (3) After receiving a report under subsection (1) above the commanding officer shall as soon as practicable determine—
  - (a) whether the requirements of subsection (4) below are satisfied, and
  - (b) if so, whether to exercise his powers under that subsection;
 and the person to whom the report relates may be kept in air-force custody for such period as is necessary to enable the commanding officer to make that determination.
- (4) If in relation to the person to whom the report relates the commanding officer has reasonable grounds for believing—
  - (a) that keeping him in air-force custody without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him, and
  - (b) that the investigation is being conducted diligently and expeditiously,
 he may authorise the keeping of that person in air-force custody.
- (5) An authorisation under subsection (4) above—
  - (a) if given less than 12 hours after the relevant time, shall end not more than 12 hours after the relevant time;
  - (b) if given not less than 12 but less than 36 hours after the relevant time, shall end not more than 36 hours after the relevant time;
  - (c) if given not less than 36 but less than 48 hours after the relevant time, shall end not more than 48 hours after the relevant time.

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- (6) A person shall not be kept in air-force custody later than 48 hours after the relevant time without being charged except in accordance with section 75C of this Act.
- (7) In this Act “the relevant time” in relation to a person arrested under section 74 of this Act means the time of the arrest.

#### Textual Amendments

**F3** Ss. 75-75E and cross-heading substituted (2.10.2000) for s. 75 by 2000 c. 4, s. 1(2); S.I. 2000/2366, art. 2 (with transitional provisions in art. 3, Sch. para. 14)

#### Modifications etc. (not altering text)

**C1** S. 75A(1)(3)(5)(6) modified (*temp.*)(4.9.2000) by S.I. 2000/2366, art. 3, Sch. para. 3

### **F475B Review of custody by commanding officer.**

- (1) The commanding officer of a person kept in air-force custody in accordance with section 75A of this Act shall, subject to subsection (3) below, review the keeping of that person in air-force custody not later than the end of the period for which it is authorised.
- (2) Subsections (4) and (5) of section 75A of this Act shall apply on each review under this section as they apply where a report is received under subsection (1) of that section.
- (3) A review may be postponed—
  - (a) if, having regard to all the circumstances prevailing at the expiry of the last authorisation under section 75A(4) of this Act, it is not practicable to carry out the review at that time;
  - (b) without prejudice to the generality of paragraph (a) above—
    - (i) if at that time the person in air-force custody is being questioned and the commanding officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which he is being questioned; or
    - (ii) if at that time the commanding officer is not readily available.
- (4) If a review is postponed under subsection (3) above—
  - (a) it shall be carried out as soon as practicable after the expiry of the last authorisation under section 75A(4) of this Act, and
  - (b) the keeping in air-force custody of the person to whom the review relates shall by virtue of this paragraph be authorised until that time.

#### Textual Amendments

**F4** Ss. 75-75E and cross-heading substituted (2.10.2000) for s. 75 by 2000 c. 4, s. 1(2); S.I. 2000/2366 art. 2 (with transitional provisions in art. 3, Sch. para. 14)

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**<sup>F5</sup>75C Extension of custody without charge.**

- (1) If, on an application by the commanding officer of a person arrested under section 74 of this Act, a judicial officer is satisfied that there are reasonable grounds for believing that the continued keeping of that person in air-force custody is justified, the judicial officer may by order authorise the keeping of that person in air-force custody.
- (2) A judicial officer may not hear an application under this section unless the person to whom it relates—
  - (a) has been informed in writing of the grounds for the application, and
  - (b) has been brought before him for the hearing.
- (3) The person to whom the application relates shall be entitled to be legally represented at the hearing and, if he is not so represented but wishes to be so represented—
  - (a) the judicial officer shall adjourn the hearing to enable him to obtain representation, and
  - (b) he may be kept in air-force custody during the adjournment.
- (4) For the purposes of this section, the continued keeping of a person in air-force custody is justified only if—
  - (a) keeping him in custody without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him, and
  - (b) the investigation is being conducted diligently and expeditiously.
- (5) Subject to subsection (7) below, an application under this section may be made—
  - (a) at any time before the end of 48 hours after the relevant time; or
  - (b) if it is not practicable for the application to be heard at the expiry of that period, as soon as practicable thereafter but not more than 96 hours after the relevant time.
- (6) Where subsection (5)(b) above applies, an authorisation on a review under section 75B of this Act may be for a period ending more than 48 hours after the relevant time, but may not be—
  - (a) for a period of more than six hours, or
  - (b) for a period ending more than 96 hours after the relevant time.
- (7) If—
  - (a) an application under this section is made more than 48 hours after the relevant time, and
  - (b) it appears to the judicial officer that it would have been reasonable for the commanding officer to make the application before the end of that period,the judicial officer shall refuse the application.
- (8) Where on an application under this section relating to any person the judicial officer is not satisfied that there are reasonable grounds for believing that continuing to keep that person in air-force custody is justified, he shall—
  - (a) refuse the application, or
  - (b) adjourn the hearing of it until a time not later than 48 hours after the relevant time.
- (9) The person to whom the application relates may be kept in air-force custody during the adjournment.

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- (10) The period for which a judicial officer, on an application under this section, may authorise the keeping of a person in air-force custody shall be such period, ending not more than 96 hours after the relevant time, as he thinks fit having regard to the evidence before him.
- (11) Where a judicial officer refuses an application under this section at any time less than 48 hours after the relevant time, he may direct that the person to whom it relates forthwith be charged or released from air-force custody.
- (12) Where a judicial officer refuses an application under this section at any later time, he shall direct that the person to whom it relates forthwith be charged or released from air-force custody.

#### Textual Amendments

- F5** Ss. 75-75E and cross-heading substituted (2.10.2000) for s. 75 by 2000 c. 4, s. 1(2); S.I. 2000/2366, art. 2 (with transitional provisions in art. 3, Sch. para. 14)

#### **F6** 75D Custody without charge: other cases.

- (1) Sections 75 to 75C of this Act apply—
  - (a) where a person is delivered into air-force custody under section 187(2) or (3), 188(2) or 190A(3) of this Act or under Schedule 2 to the <sup>M1</sup>Reserve Forces Act 1996, and
  - (b) in any other case where a person arrested by a constable is delivered into air-force custody,as they apply where a person is arrested under section 74 of this Act, subject to such modifications as the Secretary of State may by regulations made by statutory instrument prescribe.
- (2) In those cases references to the relevant time are—
  - (a) in relation to a person delivered into air-force custody following arrest under section 186 or 190A of this Act or paragraph 2 of Schedule 2 to the 1996 Act or otherwise following arrest by a constable, references to the time of the arrest;
  - (b) in relation to a person delivered into air-force custody following surrender under section 188 of this Act or paragraph 6 of that Schedule, references to the time of the surrender.
- (3) Regulations under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F6** Ss. 75-75E and cross-heading substituted (2.10.2000) for s. 75 by 2000 c. 4, s. 1(2); S.I. 2000/2366, art. 2 (with transitional provisions in art. 3, Sch. para. 14)

#### Marginal Citations

- M1** 1996 c. 14.

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**<sup>F7</sup>75E Custody without charge: supplementary.**

- (1) The Defence Council may by regulations make provision with respect to—
  - (a) the delegation by the commanding officer of a person in air-force custody of any of the commanding officer’s functions under sections 75 to 75C of this Act;
  - (b) circumstances in which a person kept in air-force custody without being charged is to be informed of, or given an opportunity to make representations about, any matter;
  - (c) the keeping of written records relating to compliance with any requirement of sections 75 to 75C of this Act or of regulations under paragraph (b) above.
- (2) Any reference in sections 75A to 75C of this Act to a period of time is to be treated as approximate only.]

**Textual Amendments**

**F7** Ss. 75-75E and cross-heading substituted (2.10.2000) for s. 75 by 2000 c. 4, s. 1(2); S.I. 2000/2366, art. 2 (with transitional provisions in art. 3, Sch. para. 14)

**[<sup>F8</sup>75F Custody after charge.**

- (1) Where a person subject to air-force law (“the accused”) is kept in air-force custody after being charged with an offence against any provision of this Part of this Act, he shall be brought before a judicial officer as soon as practicable.
- (2) Where the accused is brought before a judicial officer in accordance with subsection (1) above, the judicial officer may by order authorise the keeping of the accused in air-force custody, but only if—
  - (a) the judicial officer is satisfied that there are substantial grounds for believing that the accused, if released from air-force custody, would—
    - (i) fail to attend any hearing in the proceedings against him,
    - (ii) commit an offence while released, or
    - (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;
  - (b) the judicial officer is satisfied that the accused should be kept in air-force custody for his own protection or, if he is under 17 years of age, for his own welfare;
  - (c) the judicial officer is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this subsection for want of time since the accused was charged with the offence; or
  - (d) the accused, having been released from air-force custody after being charged with the offence, has deserted or absented himself without leave.
- (3) In taking the decision required by subsection (2)(a) above, the judicial officer shall have regard to such of the following considerations as appear to him to be relevant—
  - (a) the nature and seriousness of the alleged offence (and the probable method of dealing with the accused for it),
  - (b) the character, antecedents, associations and social ties of the accused,
  - (c) the accused’s behaviour on previous occasions while charged with an offence and released from air-force custody or while on bail in criminal proceedings,

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- (d) the strength of the evidence that the accused committed the offence, as well as to any others which appear to be relevant.
- (4) If—
- (a) the accused is charged with an offence to which this subsection applies;
  - (b) representations are made as to any of the matters mentioned in subsection (2) (a) above; and
  - (c) the judicial officer decides not to authorise the keeping of the accused in air-force custody,
- the judicial officer shall state the reasons for his decision and shall cause those reasons to be included in the record of the proceedings.
- (5) Subsection (4) above applies to any offence under section 70 of this Act where the corresponding civil offence is—
- (a) murder;
  - (b) manslaughter;
  - (c) rape;
  - (d) attempted murder; or
  - (e) attempted rape.
- (6) The period for which a judicial officer may, by an order under subsection (2) above, authorise the keeping of the accused in air-force custody shall be such period, ending (subject to section 75G(7) of this Act) not later than 8 days after the day on which the order is made, as he thinks fit having regard to the evidence before him.
- (7) An order under subsection (2) above does not authorise the keeping of the accused in air-force custody—
- (a) if the accused is subsequently released from air-force custody, at any time after his release; or
  - (b) at any time after the award of punishment on summary dealing with the charge or any amended or substituted charge.
- (8) Subsection (1) above does not apply where the accused is charged at a time when he is kept in air-force custody by reason of an award or sentence under this Act or of an order under subsection (2) above, unless that reason ceases to apply.]

#### Textual Amendments

- F8** S. 75F inserted (2.10.2000) by 2000 c. 4, s. 2(2); S.I. 2000/2366, art. 2 (with transitional provisions in art. 3, Sch. para. 14)

#### [<sup>F9</sup>75G Review of custody after charge.

- (1) Where the keeping of the accused in air-force custody is authorised by an order under section 75F(2) of this Act, it shall be reviewed by a judicial officer 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 shall—
- (a) release the accused from air-force custody, or
  - (b) request a review.

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- (3) Where a request is made under subsection (2) above, a review shall be carried out as soon as practicable.
- (4) Subsections (2) to (6) of section 75F of this Act apply on a review as they apply where the accused is brought before a judicial officer under subsection (1) of that section.
- (5) At the first review the accused may support an application for release from air-force custody with any argument as to fact or law that he desires (whether or not he has advanced that argument previously).
- (6) At subsequent reviews the judicial officer 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 judicial officer may, if the accused consents, authorise the keeping of the accused in air-force custody for a period of not more than 28 clear days.
- (8) In this section “review” means a review under subsection (1) above.]

#### Textual Amendments

- F9** S. 75G inserted (2.10.2000) by 2000 c. 4, s. 3(2); S.I. 2000/2366, art. 2 (with transitional provisions in art. 3, Sch. para. 14)

#### [<sup>F10</sup>75H Custody during court-martial proceedings.

- (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 court-martial, section 75G of this Act (and section 75F as applied by that section) shall apply with the following modifications.
- (2) In relation to a review before the announcement of the court-martial’s finding on the charge or every charge against the accused, references to a judicial officer shall have effect as references to the judge advocate.
- (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 the judicial officer 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 the court-martial.
- (6) Subsection (1) above shall cease to apply (but without prejudice to any order already made by virtue of that subsection) if the court-martial is dissolved.]

#### Textual Amendments

- F10** S. 75H inserted (2.10.2000) by 2000 c. 4, s. 4(2); S.I. 2000/2366, art. 2 (with transitional provisions in art. 3, Sch. para. 14)



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### [<sup>F11</sup>75J Release from custody after charge or during proceedings.

- (1) This section applies where, at a hearing under section 75F(1) of this Act or on a review under section 75G(1) of this Act, the judicial officer or judge advocate (as the case may be) does not authorise keeping the accused in air-force custody.
- (2) Where this section applies, the accused—
  - (a) subject to paragraph (b) below, shall be released from air-force custody forthwith, but
  - (b) if he is subject to air-force law only by virtue of section 131 or 205(1)(ff), (h) or (i) of this Act, may be required to comply, before release or later, with such requirements as appear to the judicial officer or judge advocate (as the case may be) to be necessary for the purpose of securing his attendance at any hearing in connection with the offence to which the charge relates.
- (3) A person on whom a requirement has been imposed under subsection (2)(b) above is guilty of an offence if he fails without reasonable cause to attend any hearing to which the requirement relates.
- (4) A person guilty of an offence under this section shall be liable on conviction by court-martial to imprisonment for a term not exceeding two years or any less punishment provided by this Act.]

#### Textual Amendments

**F11** S. 75J inserted (2.10.2000) by 2000 c. 4, s. 5(2); S.I. 2000/2366, art. 2 (with transitional provisions in art. 3, Sch. para. 14)

#### Modifications etc. (not altering text)

**C2** S. 75J(2)(b) restricted (2.10.2000) by S.I. 2000/2369, rule 14(3)

### [<sup>F12</sup>75K Arrest during proceedings.

- (1) Except where subsection (3) below applies, the commanding officer of a person subject to air-force law (“the accused”) who—
  - (a) has been charged with, or is awaiting sentence for, an offence against any provision of this Part of this Act, and
  - (b) is not in air-force custody,may, if satisfied that taking the accused into air-force custody is justified, give orders for his arrest.
- (2) Subject to subsection (4) below, subsection (3) below applies between the commencement of the trial of the accused by court-martial and the announcement of the court-martial’s finding on the charge or every charge against the accused.
- (3) Where this subsection applies, the judge advocate, 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 subsection.
- (4) Subsection (3) above shall cease to apply (but without prejudice to any direction already given by virtue of that subsection) if the court-martial is dissolved.

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- (5) For the purposes of this section, 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.
- (6) Taking the accused into air-force custody is also justified for the purposes of this section if—
- (a) the accused is subject to air-force law only by virtue of section 131 of this Act, and
  - (b) he has failed to attend any hearing in the proceedings against him.
- (7) A person arrested under subsection (1) above, if kept in air-force custody—
- (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 judicial officer to be dealt with as on a review under section 75G(1) of this Act.
- (8) A person arrested under subsection (3) 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 the judge advocate on whose direction the arrest was made (unless already before him), and shall be dealt with by him as on a review under section 75G(1) of this Act.]

#### **Textual Amendments**

**F12** S. 75K inserted (2.10.2000) by 2000 c. 4, s. 6(2); S.I. 2000/2366, art. 2 (with transitional provisions in art. 3, Sch. para. 14)

#### **Modifications etc. (not altering text)**

**C3** S. 75K(1)(7) modified (4.9.2000) by S.I. 2000/2366, art. 3, Sch. para. 6

### **[<sup>F13</sup>75L Judicial officers.**

- (1) Judicial officers shall be appointed for the purposes of this Act by the Judge Advocate General.
- (2) No person shall be appointed under this section unless—
- (a) he is qualified under section 84B(2) of this Act for appointment as the judge advocate in relation to a court-martial, <sup>F14</sup> . . .
  - (b) he has, and has had for at least five years, in any Commonwealth country or any colony rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.]]<sup>F15</sup> or
  - (c) immediately before his appointment, he holds a relevant judicial appointment in any Commonwealth country or colony and has professional or educational

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qualifications in law which appear to the Judge Advocate General to be appropriate.]

[<sup>F16</sup>(3) In subsection (2)(c), “relevant judicial appointment”, in relation to a Commonwealth country or colony, means an appointment by virtue of which he is capable of exercising, in criminal proceedings in that country or colony, functions similar to the functions exercisable, in criminal proceedings in England and Wales, by a judge of the Supreme Court, a Circuit judge or a District Judge (Magistrates’ Courts).]

#### Textual Amendments

- F13** S. 75L inserted (2.10.2000) by 2000 c. 4, s. 7(1); S.I. 2000/2366, art. 2 (with transitional provisions in art. 3, Sch. para. 14)
- F14** Word in s. 75L(2)(a) repealed (1.10.2001) by 2001 c. 19, ss. 34, 38, Sch. 6 Pt. 6 para. 35(2), Sch. 7 Pt. 7; S.I. 2001/3234, art. 2
- F15** S. 75L(2)(c) and the preceding word “or” inserted (1.10.2001) by 2001 c. 19, s. 34, Sch. 6 Pt. 6 para. 35(2); S.I. 2001/3234, art. 2
- F16** S. 75L(3) inserted (1.10.2001) by 2001 c. 19, s. 34, Sch. 6 Pt. 6 para. 35(3); S.I. 2001/3234, art. 2

#### [<sup>F17</sup>75M Custody rules.

- (1) The Secretary of State may make rules with respect to proceedings—
  - (a) on an application under section 75C of this Act;
  - (b) under section 75F(1) of this Act;
  - (c) on a review under section 75G(1) of this Act.
- (2) Rules under this section may in particular make provision with respect to—
  - (a) arrangements preliminary to the proceedings;
  - (b) the representation of the person to whom the proceedings relate;
  - (c) the admissibility of evidence;
  - (d) procuring the attendance of witnesses;
  - (e) the immunities and privileges of witnesses;
  - (f) the administration of oaths;
  - (g) circumstances in which a review under section 75G(1) of this Act may be carried out without a hearing;
  - (h) the use for the purposes of the proceedings of live television links or similar arrangements, including the use of such a link or other arrangement as a means of satisfying the requirement of section 75C(2)(b), 75F(1) or 75K(7)(b) or (8) (b) of this Act for a person to be brought before a judicial officer or judge advocate;
  - (i) the appointment of persons to discharge administrative functions under the rules.
- (3) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F17** S. 75M inserted (2.10.2000) by 2000 c. 4, s. 8(1); S.I. 2000/2366, art. 2 (with transitional provisions in art. 3, Sch. para. 14)

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**Modifications etc. (not altering text)**

**C4** S. 75M modified (4.9.2000) by [S.I. 2000/2366](#), art. 3, [Sch. para. 6](#)

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Cross Heading: Custody.