

2009 No. 1097

DEFENCE

The Armed Forces (Custody Without Charge) Regulations 2009

<i>Made</i> - - - -	<i>28th April 2009</i>
<i>Laid before Parliament</i>	<i>30th April 2009</i>
<i>Coming into force</i> - -	<i>31st October 2009</i>

The Secretary of State, in exercise of the powers conferred by section 104(1) of the Armed Forces Act 2006(a), makes the following Regulations:

PART 1
PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Armed Forces (Custody Without Charge) Regulations 2009 and shall come into force on 31st October 2009.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Armed Forces Act 2006;

“arresting officer” means—

- (a) a person who arrests a person under section 67;
- (b) a service policeman who arrests a person under section 69(1); or
- (c) the person who is responsible for receiving a person transferred into service custody under section 313(4), 315(4)(a) 316(3)(a)(i) or (b) or 317(4);

“assisting officer” has the meaning given in regulation 7;

“authorising officer” means the commanding officer or a person exercising functions delegated under regulation 3;

“civilian policeman” means a member of a UK or British overseas territory police force;

“custody” means service custody and is to be construed in accordance with sections 98 to 102;

“the relevant time” means—

- (d) in relation to a person arrested under section 67 or section 69(1) or arrested by a civilian policeman and subsequently transferred into custody under sections 313(4), 316(3) or 317(4), the time of the arrest; or

(a) 2006 c. 52.

(e) in relation to a person delivered into custody following surrender under section 315, the time of the surrender;

“service court” means the Court Martial, the Service Civilian Court or the Court Martial Appeal Court; and

“unit” means—

(f) a naval ship or establishment;

(g) any body of members of Her Majesty’s forces formed under the command of a person appointed to be the commanding officer of the body; or

(h) an air force station.

(2) Any reference in these Regulations to a numbered section is to that section of the Act unless otherwise stated.

PART 2

DELEGATION

Delegation of the commanding officer’s functions

3.—(1) A commanding officer may delegate to—

(a) an officer who is under his command and who is not below the rank of naval lieutenant, military or marine captain or flight lieutenant,

(b) a service policeman of no lower rank than naval lieutenant, military or marine captain or flight lieutenant, or

(c) if a person at paragraph (1)(a) or (b) is not reasonably available, a service policeman,

any or all of his functions under sections 98 to 102.

(2) A delegation under paragraph (1) shall not be made to a person who is the arresting officer.

(3) Subject to paragraph (1), a commanding officer may, at any time, vary or revoke a delegation made under this regulation.

(4) Wherever practicable, any delegation, variation or revocation under this regulation shall be made in writing.

Commanding officer’s restrictions on delegation

4. A commanding officer who exercises his power of delegation under regulation 3 may impose such restrictions on the exercise of the functions so delegated as seem to him proper having regard to the rank or rate and experience of the person to whom the functions have been delegated.

Responsibilities on delegation

5. A person who exercises powers delegated to him in accordance with regulation 3 shall—

(a) as soon as practicable, provide a written report to the commanding officer detailing how those powers have been exercised; and

(b) ensure that his name and rank or rate are noted on all the material made with regard to custody without charge.

PART 3

INFORMATION

Information to be provided to a person in custody

6.—(1) Where it is intended to retain a person in custody, the authorising officer shall, as soon as practicable, provide to that person the information, in writing, specified in paragraph (2).

(2) The information to be provided is—

- (a) the name, rank or rate of the authorising officer;
- (b) if he was arrested—
 - (i) the reason for that arrest; and
 - (ii) the date and location of the arrest;
- (c) the relevant time;
- (d) that he is to be retained in custody;
- (e) the grounds (under section 99(4)(a)) for his retention in custody;
- (f) the period of custody authorised;
- (g) that he may make representations, orally or in writing, to the authorising officer—
 - (i) requesting his release and giving his reasons why he should be released from custody; or
 - (ii) making any other representations regarding his confinement in custody; and
- (h) that, subject to regulation 7, he may nominate an assisting officer in preparing and making any representation under paragraph (g).

(3) At the same time as providing the information specified in paragraph (2) the authorising officer shall provide to the person in custody a copy of any document required by the Defence Council to be given to a person in custody.

(4) The person in custody is to be invited to sign to acknowledge receipt of the information and documents specified in paragraphs (2) and (3) and any refusal to sign is to be recorded.

PART 4

REPRESENTATIONS

Assisting officer

7.—(1) A person may only be nominated as an assisting officer if he—

- (a) is subject to service law;
- (b) is of at least the rank or rate of petty officer, military or marine sergeant, or air force sergeant; and
- (c) he consents to be nominated.

(2) A person may only continue to act as an assisting officer while subject to service law.

(3) Subject to paragraphs (1) and (2), if a person ceases to act as an assisting officer the person in custody may nominate another assisting officer.

(4) The commanding officer shall—

- (a) ensure that at least two people under his command are available to be nominated by the person in custody; and
- (b) inform the person in custody of the names of those people.

Opportunity to make representations

8.—(1) The person in custody shall be afforded the means and opportunity to make representations under regulation 6(2)(g).

(2) Where a representation is made orally, the authorising officer must cause a written record of the representation to be made.

(3) Where practicable, that written record should be read and signed by the person in custody.

Action on receipt of a representation

9.—(1) Where an authorising officer, who is not the commanding officer, receives a representation made under regulation 6(2)(g), he shall consider the representation and—

- (a) if he considers it appropriate to do so, uphold the representation and cause to be made any redress requested in the representation; or
- (b) if he does not consider it appropriate to uphold the representation or it is not within his functions to grant the redress, he shall, as soon as practicable, forward the representation to the commanding officer.

(2) A commanding officer in receipt of a representation shall communicate his decision on the representation as soon as practicable to the person making it.

PART 5 RECORD

Custody record

10.—(1) A record (“the custody record”) must be made when a person is placed in custody without charge.

(2) The custody record must include—

- (a) the name, rank or rate of the person making a report under section 69(3)(a) (report to the commanding officer of arrest under section 69) and the date and time of the report;
- (b) a record of any delegation made under regulation 3(1);
- (c) a record of any revocation or variation of such delegation;
- (d) a record of any restriction imposed under regulation 4;
- (e) a copy of any written report made in accordance with regulation 5(a);
- (f) the information specified in regulation 6(2) and confirmation that the documents specified under regulation 6(3) have been provided;
- (g) a copy of any receipt signed by the person in custody for the information and documents specified in regulation 6 or a record of any refusal to sign such a receipt;
- (h) the name, rank or rate of any assisting officer;
- (i) a copy of any representation made by the person in custody;
- (j) a record of any action taken in accordance with regulation 9;
- (k) a record of any comment the person in custody makes in relation to the details of the arrest and alleged offence and any comment made in respect of the decision to place him in custody; and
- (l) any other record or certificate resulting from decisions made with regard to custody without charge including but not limited to the authorisation of custody without charge, any order for the release of the person, any authorisation and review of continued custody and any application to a judge advocate for extended custody.

(3) The authorising officer shall ensure the accuracy and completeness of the custody record and, where a paper copy of the custody record has been produced, sign and date that record.

(4) A copy of the custody record shall be supplied to the person in custody on his release or appearance before a judge advocate or service court.

(5) The authorising officer shall ensure that the custody record is retained within the unit of the person in custody or by a service police force for at least six years from—

- (a) in the case where a person is charged, the date of that charge; or
- (b) in any other case, the date that he is released from custody.

(6) In this regulation “charge” means a charge brought in relation to the reason for which the person was arrested.

PART 6

TRANSITIONAL PROVISIONS

Transitional

11. The Schedule shall have effect.

28th April 2009

Kevan Jones
Parliamentary Under Secretary of State
Ministry of Defence

SCHEDULE

Regulation 11

TRANSITIONAL PROVISIONS

PART 1

GENERAL

Interpretation

1.—(1) In this Schedule—

“the Army Regulations” means the Custody and Summary Dealing (Army) Regulations 2006(a);

“the Air Force Regulations” means the Pre-Charge Custody and Summary Dealing (Royal Air Force) Regulations 2000(b);

“commencement” means the date on which these Rules come into force;

“the Naval Regulations” means the Naval Custody Regulations 2000(c);

-
- (a) These Regulations are made by the Defence Council under sections 75E, 82, 83 and 209 of the Army Act 1955 (1955 c. 18) and published in the Manual of Military Law.
 - (b) These Regulations are made by the Defence Council under sections 75E, 82, 83 and 209 of the Air Force Act 1955 (1955 c. 19) and published in the Manual of Air Force Law.
 - (c) These Regulations are made by the Defence Council under section 47F of the Naval Discipline Act 1957 (1957 c. 53) and published in the Manual of Naval Law.

Record of custody

2.—(1) Subject to paragraph (2), regulation 10(3) to (5) shall apply in relation to written records made in accordance with regulation 6 of the Navy Regulations, regulation 20(2) of the Army Regulations or regulation 12 of the Air Force Regulations.

(2) In relation to a written record transferred to a court administration officer in accordance with regulation 6 of the Navy Regulations, regulation 10(5) has effect as if for the word “authorising officer” there were substituted “court administration officer”.

PART 2

STEPS TAKEN BEFORE COMMENCEMENT

Delegations

3. Any delegation of a function with respect to pre-charge custody made in accordance with regulation 3 of the Navy Regulations, regulation 15(4) of the Army Regulations or regulation 4(2) of the Air Force Regulations is to be treated as a delegation made in accordance with regulation 3.

Representations

4. Any representation made in accordance with regulation 4 of the Navy Regulations or regulation 20(1)(b) of the Army Regulations or regulation 12(1) of the Air Force Regulations made before commencement and which has not been determined is to be treated as a representation made in accordance with regulation 6(2)(g).

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 104 of the Armed Forces Act 2006 (“the Act”) allows the delegation of a commanding officer’s functions under sections 98 to 102 of the Act in relation to custody without charge.

Regulation 3 allows a commanding officer to delegate his functions to an officer under his command or a service policeman not below the rank of naval lieutenant, military or marine captain or flight lieutenant, or, exceptionally, to a service policeman of any rank or rate, except that the delegation cannot be made to the arresting officer. Regulation 4 allows the commanding officer to impose restrictions on how those delegated powers should be exercised, taking into account the rank or rate and experience of the delegated officer. Regulation 5 places the delegated person under a duty to report to his commanding officer the exercise of delegated powers.

Regulation 6 provides for a person in custody to be given information about the offence for which he is kept in custody, including: the date, location and time of any arrest; the grounds for retaining him in custody under section 99(4) of the Act; and, the period of custody that has been authorised. This regulation also ensures that the person is informed that he may request assistance in making representations about his retention in custody. Part 4 details the qualifications of an assisting officer and how a representation should be dealt with.

Part 5 provides for the making and retention of records relating to custody without charge.

STATUTORY INSTRUMENTS

2009 No. 1097

DEFENCE

The Armed Forces (Custody Without Charge) Regulations 2009

£5.50