



## House of Representatives

# Supplementary Order Paper

Tuesday, 15 May 2001

### Habeas Corpus Bill

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#### *Proposed amendments*

Simon Power, in Committee, to move the following amendments:

#### *Clause 8*

To omit subclause (2) (lines 6 to 9 on page 8), and substitute the following subclause:

- (2) In the case of a detained person who is charged with an offence to which the Bail Act 2000 applies, the Court must not make an order under this section if the Court is of the opinion that bail would not be granted to that person under that Act.

#### *Clause 11(2)*

To omit paragraphs (a) and (b) (lines 10 to 13 on page 11), and substitute the following paragraphs:

- (a) a conviction of an offence by a court of competent jurisdiction, a duly constituted court-martial, or an officer exercising summary powers under Part V of the Armed Forces Discipline Act 1971; or
- (b) a ruling as to bail by a court of competent jurisdiction.

#### *Clause 12*

To add (after line 36 on page 11) the following subclause:

- (3) **Subsection (2)** has no application if the ground on which the earlier release was ordered was a jurisdictional or procedural defect that has since been corrected or no longer applies.

### Explanatory note

This Supplementary Order Paper proposes amendments to the Habeas Corpus Bill.

The proposed amendment to *clause 8* substitutes a *new subclause (2)*. The subclause is redrafted to take into account that the Bail Act 2000 does not apply to offences under the Armed Forces Discipline Act 1971.

The proposed amendments to *clause 11(2)* are as follows:

- A reference to a conviction by an officer exercising summary powers under Part V of the Armed Forces Discipline Act 1971 is added to *clause 11(2)(a)*. The effect of the amendment is that a Judge in determining an application for habeas corpus must not call into question a conviction of that kind.
- The reference to rulings as to bail by a duly constituted court-martial is omitted from *clause 11(2)(b)*. The Bail Act 2000 does not apply to an offence under the Armed Forces Discipline Act 1971. Also, it is not intended that a Judge in determining an application for habeas corpus be prohibited from calling into question a decision as to pre-trial custody under the Armed Forces Discipline Act 1971.

The proposed amendment to *clause 12* adds a *new subclause (3)*. The new subclause is intended to make it clear that subclause (2) (prohibiting re-arrest or detention after a successful application for habeas corpus) does not apply if the ground on which the earlier release was ordered was a jurisdictional or procedural defect and that defect has since been corrected or no longer applies. That is, if the underlying substantive ground for detention still exists, but the jurisdictional or procedural problem no longer does, a further arrest and detention is not prohibited by *clause 12*.

The proposed amendments reflect existing law.

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