

Schedule of provisions in Part 5 of the Armed Forces Act 2006
as amended by clauses 3, 4 and 5 of the Armed Forces Bill 2015

November 2015

Introduction

To assist MPs and peers in preparing for debates, the Ministry of Defence has prepared this informal schedule of some of the provisions in the Armed Forces Act 2006, as amended by clauses 3, 4 and 5 of the Armed Forces Bill 2015. It has not been approved by Parliamentary Counsel.

Below, the Ministry of Defence has reproduced relevant extracts of the Armed Forces Act 2006 to illustrate how provisions in the 2006 Act will work once amended by the Bill.

Text inserted by the Bill is **highlighted**.

Where text is omitted or substituted by the Bill, it is struck through and presented in red.

An ellipsis (...) indicates that text has previously been repealed (e.g. section 125(4)).

PART 5
INVESTIGATION, CHARGING AND MODE OF TRIAL

CHAPTER 1
INVESTIGATION

Duties of commanding officers

113 CO to ensure service police aware of possibility serious offence committed

- (1) If an officer becomes aware of an allegation or circumstances within subsection (2), he must as soon as is reasonably practicable ensure that a service police force is aware of the matter.
- (2) An allegation is, or circumstances are, within this subsection if it or they would indicate to a reasonable person that a Schedule 2 offence has or may have been committed by a relevant person.
- (3) In subsection (2) “relevant person” means a person whose commanding officer is the officer mentioned in subsection (1).
- (4) In this Chapter “Schedule 2 offence” means a service offence listed in Schedule 2.
- (5) The Secretary of State may by order amend Schedule 2.

114 CO to ensure service police aware of certain circumstances

- (1) If an officer of a prescribed description becomes aware of circumstances of a prescribed description, he must as soon as is reasonably practicable ensure that a service police force is aware of the matter.
- (2) In this section “prescribed” means prescribed by regulations under section 128.

115 Duty of CO with respect to investigation of service offences

- (1) This section applies where—
 - (a) an officer becomes aware of an allegation or circumstances within subsection (2); and
 - (b) the officer is not required by section 113(1) or 114(1) to ensure that a service police force is aware of the matter.

- (2) An allegation is, or circumstances are, within this subsection if it or they would indicate to a reasonable person that a service offence has or may have been committed by a relevant person.
- (3) In subsection (2) “relevant person” means a person whose commanding officer is the officer mentioned in subsection (1).
- (4) The officer must either—
 - (a) ensure that the matter is investigated in such way and to such extent as is appropriate; or
 - (b) ensure, as soon as is reasonably practicable, that a service police force is aware of the matter.
- (5) Subsection (4) does not apply if the matter has already been investigated in such way and to such extent as is appropriate.

Provost Marshal’s duty in relation to independence of investigations

115A Provost Marshal’s duty in relation to independence of investigations

- (1) This section applies in relation to each service police force.
- (2) The Provost Marshal of the force has a duty, owed to the Defence Council, to seek to ensure that all investigations carried out by the force are free from improper interference.
- (3) “Improper interference” includes, in particular, any attempt by a person who is not a service policeman to direct an investigation which is being carried out by the force.

Duty of service policeman following investigation

116 Referral of case following investigation by service or civilian police

- (1) This section applies where—
 - (a) a service police force has investigated an allegation which indicates, or circumstances which indicate, that a service offence has or may have been committed; or
 - (b) a UK police force or overseas police force has investigated such an allegation or such circumstances and has referred the matter to a service police force.
- (2) If—

- (a) a service policeman considers that there is sufficient evidence to charge a person with a service offence that is not a CO offence ~~a Schedule 2 offence~~, or
- (b) a service policeman considers that there is sufficient evidence to charge a person with a service offence that is a CO offence ~~any other service offence~~, and is aware of circumstances of a description prescribed by regulations under section 128 for the purposes of this paragraph,

he must refer the case to the Director of Service Prosecutions (“the Director”).

(3) If—

- (a) a service policeman considers that there is sufficient evidence to charge a person with a service offence, ~~and~~
- (b) subsection (2) does not apply, ~~and~~
- (c) section 117(5) (referral of connected cases to DSP) does not apply,

he must refer the case to the person’s commanding officer.

(4) Subsection (4A) applies if—

- (a) the allegation or circumstances would indicate to a reasonable person that a person has committed, or might have committed, a service offence which is not one that may be dealt with at a summary hearing (see section 53) ~~a Schedule 2 offence has or might have been committed~~, or
- (b) any circumstances investigated are circumstances of a description prescribed by regulations under section 128 for the purposes of section 114,

and a service policeman proposes not to refer the case to the Director under subsection (2) ~~or section 117(5)~~.

(4A) If this subsection applies, the service policeman must consult the Director as soon as is reasonably practicable (and before any referral of the case under subsection (3)).

(5) ~~For the purposes of subsections (2) and (3)~~ For the purposes of this section—

- (a) there is sufficient evidence to charge a person with an offence if, were the evidence suggesting that the person committed the offence to be adduced in proceedings for the offence, the person could properly be convicted, ~~and~~

(b) a service offence committed by a person is a “CO offence” if a charge against the person in respect of the offence is capable of being heard summarily by the person’s commanding officer (see section 52).

117 Section 116: position where investigation is of multiple offences or offenders

(1) This section applies where the investigation mentioned in section 116(1) relates to two or more incidents (or alleged incidents) or the conduct (or alleged conduct) of two or more persons.

(2) Each person’s conduct in relation to each incident is to be regarded as giving rise to a separate case.

(3) Subsections (4) and (5) apply if—

(a) at least one of the cases has been, or must be, referred to the Director of Service Prosecutions (“the Director”) under section 116(2),

(b) a service policeman considers that there is sufficient evidence to charge a person with a service offence in another of the cases,

(c) that case is not required to be referred to the Director under section 116(2), and

(d) the service policeman considers that there is, or may be, a connection between a case falling within paragraph (a) and the case falling within paragraph (c), whether direct or indirect, that makes it appropriate for both cases to be referred to the Director.

(4) The service policeman must consult the Director about the existence and nature of the connection between those cases.

(5) Following that consultation, if the service policeman considers that there is a connection described in subsection (3)(d), the service policeman must refer the case falling within subsection (3)(c) to the Director.

(6) The reference in this section to there being sufficient evidence to charge a person with a service offence is to be read in accordance with section 116(5)(a).

~~(3) If a case is referred under section 116(2) to the Director of Service Prosecutions—~~

~~(a) any other case of a description prescribed by regulations under section 128 for the purposes of this paragraph is to be treated as referred under section 116(2) to the Director of Service Prosecutions; and~~

~~(b) nothing in section 116(3) to (4A) applies in relation to any case treated as so referred.~~

118 Duty of service policeman to notify CO of referral to DSP

(1) This section applies where a service policeman considers that there is sufficient evidence to charge a person (“A”) with a service offence and refers the case under section 116(2) or 117(5) to the Director of Service Prosecutions.

(2) The service policeman must as soon as reasonably practicable after referring the case—

(a) notify A’s commanding officer of the referral; and

(b) provide prescribed documents to A’s commanding officer.

(3) A notification under subsection (2)(a) must specify the service offence that the service policeman considers there is sufficient evidence to charge A with.

(3A) Where that offence is a CO offence, the notification must—

(a) specify whether the case is referred under section 116(2) or 117(5), and

(b) if the case is referred under section 116(2), specify the circumstances that bring the case within section 116(2)(b).

~~(3) A notification under subsection (2)(a) must specify—~~

~~(a) the service offence the service policeman considers there is sufficient evidence to charge A with; and~~

~~(b) where that offence is not a Schedule 2 offence, the circumstances he is aware of that are of a description prescribed as mentioned in section 116(2)(b).~~

(4) In this section—

(a) any reference to there being sufficient evidence to charge a person with a service offence is to be read in accordance with section 116(5)(a) ~~section 116(5)~~;

(aa) any reference to a CO offence is to be read in accordance with section 116(5)(b);

(b) “prescribed documents” means documents prescribed for the purposes of subsection (2)(b) by regulations under section 128.

~~(5) Section 117(3)(a) (certain cases to be treated as referred under section 116(2)) does not apply for the purposes of this section.~~

CHAPTER 2 CHARGING AND MODE OF TRIAL

Powers of charging etc

119 Circumstances in which CO has power to charge etc

- (1) This section sets out the circumstances in which a commanding officer has initial powers (defined by section 120) in respect of a case.
- (2) If a commanding officer of a person becomes aware of an allegation which indicates, or circumstances which indicate, that the person has or may have committed a service offence, he has initial powers in respect of the case.
- (3) Subsection (2) does not apply if the allegation or circumstances—
 - (a) give or have given rise to the duty under section 113(1) or 114(1);
 - (b) are being or have been investigated by a service police force; or
 - (c) are being or have been investigated by a UK police force or overseas police force, and it appears to the commanding officer that that force may refer the matter to the service police.
- (4) A commanding officer has initial powers in respect of a case which a service policeman has referred to him under section 116(3) (referral of case following investigation by service or civilian police).
- (5) A commanding officer has initial powers in respect of a case which the Director of Service Prosecutions has referred to him under section 121(4) (referral of case by DSP).
- (6) If an allegation or circumstances mentioned in subsection (2) relate to two or more incidents (or alleged incidents) or the conduct (or alleged conduct) of two or more persons, each person’s conduct in relation to each incident is to be regarded as giving rise to a separate case.

120 Power of CO to charge etc

- (1) Subsections (2) and (3) apply where under section 119 a commanding officer has initial powers in respect of a case.
- (2) The officer may bring, in respect of the case, one or more charges that are capable of being heard summarily (see section 52).
- (3) The officer may refer the case to the Director of Service Prosecutions.
- (4) A charge brought under subsection (2) is to be regarded for the purposes of this Part as allocated for summary hearing.
- (5) Where an officer has referred a case under subsection (3), the officer must also refer to the Director of Service Prosecutions any other case—~~Where an officer refers a case under subsection (3), any other case—~~
 - (a) which is of a description prescribed by regulations under section 128 for the purposes of this subsection, and
 - (b) as respects which the officer has initial powers,

~~is to be treated as referred under subsection (3) to the Director of Service Prosecutions.~~

121 Power of DSP to charge or direct bringing of charge etc

- (1) The powers in subsections (1A) to (5) ~~subsections (2) to (5)~~ are exercisable by the Director of Service Prosecutions (“the Director”) in respect of a case which has been referred to him under—
 - (a) section 116(2) (referral of case following investigation by service or civilian police);
 - (aa) section 117(5) (referral of connected cases); or
 - (b) section 120(3) or (5) (referral of case by CO).

(1A) The Director may bring a charge or charges against the person concerned in respect of the case.

(1B) If—

- (a) the Director brings a charge under subsection (1A), and
- (b) the Service Civilian Court has jurisdiction to try the charge,

the Director may allocate the charge for trial by that court.

- (2) The Director may direct the commanding officer of the person concerned to bring, in respect of the case, such charge or charges against him as may be specified in the direction.
- (3) If—
- (a) the Director makes a direction under subsection (2), and
 - (b) the Service Civilian Court has jurisdiction to try the charge specified in the direction,
- the Director may allocate the charge for trial by that court.
- (4) The Director may refer the case to the commanding officer of the person concerned, but only if he has decided that it would not be appropriate **to bring a charge under subsection (1A) or** to make a direction under subsection (2) in respect of it.
- (5) The Director may make a direction under section 127(1) or (2) (directions barring further proceedings) in respect of any offence as regards which he could **bring a charge under subsection (1A) or** make a direction under subsection (2).

122 Charges brought **by or at direction of DSP**

- (1) Where a direction under section 121(2) is given to an officer, he must bring the charge or charges specified in the direction.
- (2) A charge **brought by the Director of Service Prosecutions (“the Director”) under section 121(1A) or by an officer as a result of a direction under section 121(2) brought as a result of such a direction**—
- (a) is to be regarded for the purposes of this Part as allocated for Service Civilian Court trial if **the Director allocated it (under section 121(1B) or (3))** ~~the Director of Service Prosecutions allocated it (under section 121(3))~~ for trial by that court;
 - (b) otherwise, is to be regarded for the purposes of this Part as allocated for Court Martial trial.

Powers of commanding officer or DSP after charge etc

123 Powers of CO after charge

- (1) This section applies where a charge against a person (“the accused”) is for the time being regarded for the purposes of this Part as allocated for summary hearing.

- (2) The accused's commanding officer may—
 - (a) amend the charge;
 - (b) substitute for the charge another charge against the accused;
 - (c) bring an additional charge against the accused;
 - (d) discontinue proceedings on the charge;
 - (e) refer the charge to the Director of Service Prosecutions.
- (3) The powers under subsection (2) may be exercised before or after the start of any summary hearing of the charge.
- (4) Any amended, substituted or additional charge under subsection (2)(a) to (c) must be capable of being heard summarily (see section 52).
- (5) Any additional charge brought under subsection (2)(c) must be in respect of the case as respects which the charge mentioned in subsection (1) was brought.
- (6) Any amended, substituted or additional charge under subsection (2)(a) to (c) is to be regarded for the purposes of this Part as allocated for summary hearing.
- (7) Where a charge is referred under subsection (2)(e) to the Director of Service Prosecutions, the charge and any other charge brought in respect of the same case are to be regarded for the purposes of this Part as allocated for Court Martial trial.

124 CO to hear charge allocated for summary hearing

- (1) This section applies in respect of a charge which is regarded for the purposes of this Part as allocated for summary hearing.
- (2) The accused's commanding officer must hear the charge summarily unless—
 - (a) he exercises his powers under section 123(2)(b), (d) or (e) in respect of the charge (substitution of charge, discontinuance of proceedings, or referral to DSP); or
 - (b) the accused elects Court Martial trial of the charge (see section 129).
- (3) Subsection (2) is subject to sections 52 (charges capable of being heard summarily) and 54 (charges which may be heard summarily only with permission or by senior officer).

125 Powers of DSP in respect of charge allocated for Court Martial trial

- (1) This section applies where a charge against a person (“the accused”) is for the time being regarded for the purposes of this Part as allocated for Court Martial trial.
- (2) The Director of Service Prosecutions may—
 - (a) amend the charge;
 - (b) substitute for the charge another charge against the accused;
 - (c) bring an additional charge against the accused;
 - (d) discontinue proceedings on the charge;
 - (e) refer the charge to the accused’s commanding officer, but only if the charge is capable of being heard summarily (see section 52);
 - (f) allocate the charge for trial by the Service Civilian Court, but only if the charge is one that that court has jurisdiction to try;
 - (g) make a direction under section 127(1) or (2) (directions barring further proceedings) in respect of the offence charged or any offence that could be charged under paragraph (c) above.
- (3) Court Martial rules may restrict the exercise of powers under subsection (2)—
 - (a) after arraignment by the Court Martial; or
 - (b) after referral of the charge to the Court Martial under section 279(4) or 280(3) (referral by SCC) . . .
 - (c) . . .
- (4) . . .
- (5) Any additional charge brought under subsection (2)(c) must be in respect of the case as respects which the charge mentioned in subsection (1) was brought.
- (6) Any amended, substituted or additional charge under subsection (2)(a) to (c) is to be regarded for the purposes of this Part as allocated for Court Martial trial.
- (7) Any charge referred under subsection (2)(e) to a commanding officer is to be regarded for the purposes of this Part as allocated for summary hearing.

- (8) Any charge allocated under subsection (2)(f) is to be regarded for the purposes of this Part as allocated for Service Civilian Court trial.

126 Powers of DSP in respect of charge allocated for SCC trial

- (1) This section applies where a charge against a person (“the accused”) is for the time being regarded for the purposes of this Part as allocated for Service Civilian Court trial.
- (2) The Director of Service Prosecutions may—
- (a) amend the charge;
 - (b) substitute for the charge another charge against the accused;
 - (c) bring an additional charge against the accused;
 - (d) discontinue proceedings on the charge;
 - (e) allocate the charge for trial by the Court Martial;
 - (f) make a direction under section 127(1) or (2) (directions barring further proceedings) in respect of the offence charged or any offence that could be charged under paragraph (c) above.
- (3) SCC rules may restrict the exercise, after a decision by the Service Civilian Court under section 279 as to whether it should try the charge, of powers under subsection (2).
- (4) Any amended, substituted or additional charge under subsection (2)(a) to (c) must be one that the Service Civilian Court has jurisdiction to try.
- (5) Any additional charge brought under subsection (2)(c) must be in respect of the case as respects which the charge mentioned in subsection (1) was brought.
- (6) Any amended, substituted or additional charge under subsection (2)(a) to (c) is to be regarded for the purposes of this Part as allocated for Service Civilian Court trial.
- (7) Any charge allocated under subsection (2)(e) is to be regarded for the purposes of this Part as allocated for Court Martial trial.

CHAPTER 3
SUPPLEMENTARY

127 Directions by DSP barring further proceedings

- (1) A direction under this subsection is a direction that for the purposes of section 63 the person specified in the direction is to be treated as acquitted of the service offence so specified.
- (2) A direction under this subsection is a direction that for the purposes of sections 63 and 64 the person specified in the direction is to be treated as acquitted of the service offence so specified.

128 Regulations for purposes of Part 5

- (1) The Secretary of State may by regulations make such provision as he considers necessary or expedient for the purposes of any provision of this Part.
- (2) Regulations under this section may in particular make provision—
 - (a) for the delegation by a commanding officer of any of his functions;
 - (b) as to the bringing, amendment and substitution of charges;
 - (c) as to the referral of cases and charges, including provision requiring a commanding officer in prescribed circumstances to refer a case or charge to the Director of Service Prosecutions;
 - (d) as to the examination of witnesses for the purpose of obtaining information of assistance to the Director of Service Prosecutions in connection with his functions under Chapter 2;
 - (e) requiring prescribed persons to be notified of prescribed matters.
- (3) In subsection (2) “prescribed” means prescribed by regulations under this section.