



# Armed Forces Act 2016

## 2016 CHAPTER 21

### *Investigation and charging*

#### **3 Duty of service policeman following investigation**

- (1) In section 116(2) of AFA 2006 (cases that must be referred to the Director of Service Prosecutions following investigation by service or civilian police)—
  - (a) in paragraph (a), for “a Schedule 2 offence” substitute “ a service offence that is not a CO offence ”, and
  - (b) in paragraph (b), for “any other service offence” substitute “ a service offence that is a CO offence ”.
- (2) In section 116(3) of AFA 2006 (cases that must be referred to the commanding officer following investigation by service or civilian police)—
  - (a) omit “and” at the end of paragraph (a), and
  - (b) after paragraph (b) insert “, and
  - (c) section 117(5) (referral of connected cases to DSP) does not apply,”.
- (3) In section 116(4) of AFA 2006 (obligation to consult the Director of Service Prosecutions about certain cases)—
  - (a) in paragraph (a), for “a Schedule 2 offence has or might have been committed” substitute “ 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) ”, and
  - (b) in the words after paragraph (b), at the end insert “ or section 117(5) ”.
- (4) In section 116(5) of AFA 2006 (interpretation of section 116)—
  - (a) for “For the purposes of subsections (2) and (3)” substitute “For the purposes of this section—
    - (a)”,
    - and
  - (b) at the end insert “, and

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- (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).”
- (5) In section 117 of AFA 2006 (section 116: position where investigation is of multiple offences or offenders), for subsection (3) substitute—
- “(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).”
- (6) In section 118 of AFA 2006 (duty of service policeman to notify commanding officer of referral to the Director of Service Prosecutions)—
- (a) in subsection (1), after “116(2)” insert “ or 117(5) ”,
  - (b) for subsection (3) substitute—
 

“(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).”,

(c) in subsection (4)(a), for “section 116(5)” substitute “ section 116(5)(a) ”,

(d) in subsection (4), after paragraph (a) insert—

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

(e) omit subsection (5).
- (7) In section 121(1) of AFA 2006 (power of the Director of Service Prosecutions to direct bringing of charges etc), after paragraph (a) (but before “or”) insert—

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“(aa) section 117(5) (referral of connected cases);”.

- (8) In Schedule 2 to AFA 2006 (Schedule 2 offences for the purposes of Part 5), in the shoulder reference, for “Sections 113, 116” substitute “Section 113”.
- (9) In consequence of the substitution of section 117(3) of AFA 2006, omit paragraph 5(2) of Schedule 3 to the Armed Forces Act 2011.

#### Commencement Information

- I1** S. 3 in force at 22.5.2019 for specified purposes by S.I. 2019/961, reg. 2(1)(a) (with reg. 3)
- I2** S. 3 in force at 1.7.2019 in so far as not already in force by S.I. 2019/961, reg. 2(1)(b) (with reg. 3)

#### 4 Power of commanding officer to charge etc

- (1) In section 120 of AFA 2006 (power of commanding officer to charge etc), in subsection (5) (referral of certain cases to the Director of Service Prosecutions)—
- (a) for the words before paragraph (a) substitute “Where an officer has referred a case under subsection (3), the officer must also refer to the Director of Service Prosecutions any other case—”, and
- (b) omit the words following paragraph (b).
- (2) In section 121(1) of AFA 2006 (power of the Director of Service Prosecutions to direct bringing of charges etc), in paragraph (b), after “120(3)” insert “or (5)”.

#### Commencement Information

- I3** S. 4 in force at 22.5.2019 for specified purposes by S.I. 2019/961, reg. 2(1)(a) (with reg. 3)
- I4** S. 4 in force at 1.7.2019 in so far as not already in force by S.I. 2019/961, reg. 2(1)(b) (with reg. 3)

#### 5 Power of Director of Service Prosecutions to charge etc

- (1) In section 121 of AFA 2006 (power of the Director of Service Prosecutions to direct bringing of charges etc)—
- (a) in subsection (1), for “subsections (2) to (5)” substitute “subsections (1A) to (5)”,
- (b) after subsection (1) insert—
- “(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.”,
- (c) in subsection (4), after “appropriate” insert “to bring a charge under subsection (1A) or”,
- (d) in subsection (5), after “could” insert “bring a charge under subsection (1A) or”, and
- (e) in the heading, after “to” insert “charge or”.

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- (2) In section 122 of AFA 2006 (charges brought at the direction of the Director of Service Prosecutions)—
- (a) in subsection (2), for “brought as a result of such a direction” substitute “ 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) ”,
  - (b) in subsection (2)(a), for “the Director of Service Prosecutions allocated it (under section 121(3))” substitute “ the Director allocated it (under section 121(1B) or (3)) ”, and
  - (c) in the heading, after “brought” insert “ by or ”.
- (3) In the Youth Justice and Criminal Evidence Act 1999—
- (a) in section 45A(15)(b) (reporting restrictions: when proceedings in a service court commence), for “section 122” substitute “ section 121(1A) or 122 ”, and
  - (b) in paragraph 6(6)(a) of Schedule 7 (reporting restrictions: transitional provision), for “section 122” substitute “ section 121(1A) or 122 ”.

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**Commencement Information**

- I5** S. 5 in force at 22.5.2019 for specified purposes by [S.I. 2019/961](#), **reg. 2(1)(a)** (with [reg. 3](#))
- I6** S. 5 in force at 1.7.2019 in so far as not already in force by [S.I. 2019/961](#), **reg. 2(1)(b)** (with [reg. 3](#))

**Changes to legislation:**

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