



Armed Forces Act 2006

2006 CHAPTER 52

First Group of PartsDiscipline

PART 5

INVESTIGATION, CHARGING AND MODE OF TRIAL

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).

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (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 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 direct bringing of charge etc

- (1) The powers in 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); or
 - (b) section 120(3) (referral of case by CO).
- (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 make a direction under subsection (2) in respect of it.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (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 make a direction under subsection (2).

122 Charges brought 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 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 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—

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (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;
 - (b) after referral of the charge to the Court Martial under section 279(4) or 280(3) (referral by SCC); or
 - (c) where the charge is in respect of an offence which would be a relevant offence for the purposes of section 165 (election for trial by Court Martial) if the accused were convicted or acquitted of it.
- (4) Subsection (3)(c) does not apply in relation to powers under subsection (2)(e) (which are restricted by section 130).
- (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.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

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.