



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—

“(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.

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)”.

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”.
- (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”.

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(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”.