



Armed Forces Act 2006

2006 CHAPTER 52

PART 5 U.K.

INVESTIGATION, CHARGING AND MODE OF TRIAL

CHAPTER 1 U.K.

INVESTIGATION

Duty of service policeman following investigation

116 Referral of case following investigation by service or civilian police U.K.

- (1) This section applies where—
- 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
 - 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 service policeman considers that there is sufficient evidence to charge a person with [^{F1}a service offence that is not a CO offence], or
 - a service policeman considers that there is sufficient evidence to charge a person with [^{F2}a service offence that is a CO 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 service policeman considers that there is sufficient evidence to charge a person with a service offence, ^{F3}...

Status: Point in time view as at 01/07/2019.

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- (b) subsection (2) does not apply [^{F4}, 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.

[^{F5}(4) Subsection (4A) applies if—

- (a) the allegation or circumstances would indicate to a reasonable person that [^{F6}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)], 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) [^{F7}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) [^{F8}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 [^{F9}, 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).]

Textual Amendments

- F1** Words in s. 116(2)(a) substituted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 3(1)(a)**, 19(1); S.I. 2019/961, reg. 2(1)(a)(b) (with reg. 3)
- F2** Words in s. 116(2)(b) substituted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 3(1)(b)**, 19(1); S.I. 2019/961, reg. 2(1)(a)(b) (with reg. 3)
- F3** Word in s. 116(3)(a) omitted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by virtue of [Armed Forces Act 2016 \(c. 21\)](#), **ss. 3(2)(a)**, 19(1); S.I. 2019/961, reg. 2(1)(a)(b) (with reg. 3)
- F4** S. 116(3)(c) and word inserted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 3(2)(b)**, 19(1); S.I. 2019/961, reg. 2(1)(a)(b) (with reg. 3)
- F5** S. 116(4)(4A) substituted for s. 116(4) (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), **Sch. 3 para. 5(1)**; S.I. 2012/669, art. 4(d)
- F6** Words in s. 116(4)(a) substituted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 3(3)(a)**, 19(1); S.I. 2019/961, reg. 2(1)(a)(b) (with reg. 3)
- F7** Words in s. 116(4) inserted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 3(3)(b)**, 19(1); S.I. 2019/961, reg. 2(1)(a)(b) (with reg. 3)
- F8** Words in s. 116(5) substituted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 3(4)(a)**, 19(1); S.I. 2019/961, reg. 2(1)(a)(b) (with reg. 3)
- F9** S. 116(5)(b) and word inserted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 3(4)(b)**, 19(1); S.I. 2019/961, reg. 2(1)(a)(b) (with reg. 3)

Modifications etc. (not altering text)

- C1** S. 116 modified (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Provisions and Modifications\) Order 2013 \(S.I. 2013/602\)](#), art. 1(2), **Sch. 3 para. 9(2)**
- C2** S. 116 excluded (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), arts. 1, **7(5)** (with art. 3)

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Commencement Information

- I1** S. 116 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I2** S. 116 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

117 Section 116: position where investigation is of multiple offences or offenders **U.K.**

- (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.
- [^{F10}(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).]

Textual Amendments

- F10** S. 117(3)-(6) substituted for s. 117(3) (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), [ss. 3\(5\)](#), 19(1); [S.I. 2019/961](#), [reg. 2\(1\)\(a\)\(b\)](#) (with [reg. 3](#))

Commencement Information

- I3** S. 117 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I4** S. 117 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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118 Duty of service policeman to notify CO of referral to DSP U.K.

- (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) [^{F11}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.
- [^{F12}(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).]

(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 [^{F13}section 116(5)(a)];
 - [^{F14}(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.

[^{F15}(5)

Textual Amendments

- F11** Words in s. 118(1) inserted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\), ss. 3\(6\)\(a\), 19\(1\)](#); [S.I. 2019/961, reg. 2\(1\)\(a\)\(b\)](#) (with [reg. 3](#))
- F12** S. 118(3)(3A) substituted for s. 118(3) (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\), ss. 3\(6\)\(b\), 19\(1\)](#); [S.I. 2019/961, reg. 2\(1\)\(a\)\(b\)](#) (with [reg. 3](#))
- F13** Words in s. 118(4)(a) substituted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\), ss. 3\(6\)\(c\), 19\(1\)](#); [S.I. 2019/961, reg. 2\(1\)\(a\)\(b\)](#) (with [reg. 3](#))
- F14** S. 118(4)(aa) inserted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\), ss. 3\(6\)\(d\), 19\(1\)](#); [S.I. 2019/961, reg. 2\(1\)\(a\)\(b\)](#) (with [reg. 3](#))
- F15** S. 118(5) omitted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by virtue of [Armed Forces Act 2016 \(c. 21\), ss. 3\(6\)\(e\), 19\(1\)](#); [S.I. 2019/961, reg. 2\(1\)\(a\)\(b\)](#) (with [reg. 3](#))

Commencement Information

- I5** S. 118 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I6** S. 118 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

Status:

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