



# Armed Forces Act 2006

## 2006 CHAPTER 52

### PART 5

#### INVESTIGATION, CHARGING AND MODE OF TRIAL

#### CHAPTER 1

#### INVESTIGATION

#### *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 Schedule 2 offence, or
  - (b) a service policeman considers that there is sufficient evidence to charge a person with 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

*Status: Point in time view as at 01/04/2013.*

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(b) subsection (2) does not apply,  
 he must refer the case to the person's commanding officer.

[<sup>F1</sup>(4) Subsection (4A) applies if—

- (a) the allegation or circumstances would indicate to a reasonable person that 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).

(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) 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.

#### Textual Amendments

**F1** 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)

#### 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\(2\)](#)

#### 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

- (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) 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 [<sup>F2</sup>116(3) to (4A)] applies in relation to any case treated as so referred.

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#### Textual Amendments

- F2** Words in s. 117(3)(b) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 5\(2\)](#); [S.I. 2012/669](#), art. 4(d)

#### 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](#)

### 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) 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—
- (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);
  - (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.

#### 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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