



Armed Forces Act 2006

2006 CHAPTER 52

PART 5 **U.K.**

INVESTIGATION, CHARGING AND MODE OF TRIAL

CHAPTER 2 **U.K.**

CHARGING AND MODE OF TRIAL

Powers of commanding officer or DSP after charge etc

123 Powers of CO after charge **U.K.**

- (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.

Status: Point in time view as at 19/05/2020.

Changes to legislation: Armed Forces Act 2006, Cross Heading: Powers of commanding officer or DSP after charge etc is up to date with all changes known to be in force on or before 13 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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.

Commencement Information

- I1** S. 123 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. 123 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

124 CO to hear charge allocated for summary hearing **U.K.**

- (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—
- (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).

Commencement Information

- I3** S. 124 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. 124 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

125 Powers of DSP in respect of charge allocated for Court Martial trial **U.K.**

- (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;

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- (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; [^{F1} or]
 - (b) after referral of the charge to the Court Martial under section 279(4) or 280(3) (referral by SCC); ^{F2} ...
 - ^{F2}(c)
- ^{F3}(4)
- (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.

Textual Amendments

- F1** Word in s. 125(3) inserted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 6\(2\)\(a\)](#); [S.I. 2012/669](#), art. 4(d)
- F2** S. 125(3)(c) and preceding word repealed (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 6\(2\)\(b\)](#), [Sch. 5](#); [S.I. 2012/669](#), art. 4(d)(f)(i)
- F3** S. 125(4) repealed (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 6\(3\)](#), [Sch. 5](#); [S.I. 2012/669](#), art. 4(d)(f)(i)

Commencement Information

- I5** S. 125 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. 125 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

126 Powers of DSP in respect of charge allocated for SCC trial **U.K.**

- (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.

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- (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.

Commencement Information

- I7** S. 126 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](#))
- I8** S. 126 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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Changes to legislation:

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