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STATUTORY INSTRUMENTS

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**2013 No. 1852**

**The Armed Forces (Retrial for Serious Offences) Order 2013**

**PART 4**

**Referral and Charge**

**Referral and charge**

7.—(1) This article applies where a service policeman has under article 4 investigated the commission of a qualifying offence.

(2) When the acquitted person has been arrested under article 6(5), the service policeman who exercised the power of arrest must—

- (a) request a senior service policeman to determine whether there is sufficient evidence to charge the acquitted person with the qualifying offence for which the acquitted person was arrested; and
- (b) make available or known to the senior service policeman any evidence which, it appears to the service policeman who exercised the power of arrest, may be relevant to an application under article 8(1) in respect of the qualifying offence—
  - (i) as soon as practicable after the evidence becomes available or known to him; or
  - (ii) if later, after he forms that view.

(3) The senior service policeman who is requested to make the determination under paragraph (2) must make the determination as soon as practicable after the request is made.

(4) For the purposes of this Order there is sufficient evidence to charge the acquitted person with the qualifying offence for which he was arrested if, and only if, the senior service policeman is of the opinion that the evidence available or known to him is sufficient for the case to be referred to the Director to consider whether consent should be sought for an application under article 8(1) in respect of the acquitted person.

(5) Where the senior service policeman determines that there is sufficient evidence to charge the acquitted person with the qualifying offence for which he was arrested, the senior service policeman must refer the case to the Director in accordance with this article (and section 116 of the 2006 Act does not apply).

(6) Where the senior service policeman proposes not to refer the case under paragraph (5), he must as soon as reasonably possible consult the Director about his proposal.

(7) Where the senior service policeman refers a case under paragraph (5), he must, when he refers the case —

- (a) provide the Director with—
  - (i) a written or oral statement specifying the qualifying offence and why he considers that there is sufficient evidence to charge that offence; and
  - (ii) a copy of the case papers; and

- (b) notify the acquitted person’s commanding officer of the referral, specifying the qualifying offence.
- (8) Where the senior service policeman refers the case under paragraph (5)—
- (a) the Director may direct the acquitted person’s commanding officer to bring such charge as may be specified in the direction; and
- (b) such charge must be for a qualifying offence for which the acquitted person was acquitted in proceedings mentioned in article 3(1).
- (9) A direction given by the Director under paragraph (8)(a) is to be treated as a direction under section 121(2) of the 2006 Act for the purposes of that Act.
- (10) Where the Director gives a direction under paragraph (8)(a)—
- (a) a charge brought as a result of the direction is to be treated as a charge under section 122 of the 2006 Act for the purposes of that Act other than section 125 of that Act<sup>(1)</sup>; and
- (b) the case is to be treated as allocated for Court Martial trial for the purposes of rules made under section 163 of the 2006 Act (Court Martial rules)<sup>(2)</sup>.
- (11) In this article—
- “case papers” means—
- (a) all reports relating to the case written by a service police force;
- (b) the following other papers relating to the case obtained by a service police force—
- (i) all witness statements;
- (ii) all other records of evidence, including a summary or transcript of all tape-recorded interviews;
- (iii) a list of all exhibits and a statement of where any which are not documentary exhibits are held;
- (iv) all documentary exhibits;
- (v) all formal disciplinary records of the acquitted person held by any of Her Majesty’s forces;
- (vi) if no formal disciplinary record of the acquitted person is held by any of Her Majesty’s forces, a list of his convictions (if any) for any service offence and of his convictions (if any) by a civilian court;
- (vii) all documents to be provided to the Director in accordance with the code of practice made under the Criminal Procedure and Investigations Act 1996 (Code of Practice) (Armed Forces) Order 2009<sup>(3)</sup>;and
- (c) all papers equivalent to those within paragraphs (a) and (b) prepared by a UK police force or an overseas police force and provided by that force to a service police force;
- “senior service policeman” means a service policeman of or above the rank of lieutenant-commander, major or squadron leader.

<sup>(1)</sup> Section 125 was amended by paragraph 6 of Schedule 3 to the Armed Forces Act 2011 (c. 18).

<sup>(2)</sup> The current Court Martial rules are contained in the Armed Forces (Court Martial) Rules 2009 (S.I. 2009/2041).

<sup>(3)</sup> S.I.2009/989.