STATUTORY INSTRUMENTS

2019 No. 967

DEFENCE

The Armed Forces (Miscellaneous Amendments) Regulations 2019

Made - - - -	*22nd May 2019*
Laid before Parliament	*30th May 2019*
Coming into force - -	*1st July 2019*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 49(1) and (4), 128, 273(3) and 373(5) of the Armed Forces Act 2006(**a**).

Citation and commencement

1.—(1) These Regulations may be cited as the Armed Forces (Miscellaneous Amendments) Regulations 2019.

(2) These Regulations come into force on 1st July 2019.

Amendment of the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009

2. The Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009(**b**) are amended as follows.

3. For regulation 11 (procedure for bringing a charge) substitute—

"**Procedure for bringing a charge**

11.—(1) The procedure for bringing a charge against a person ("A") under section 120(2), 121(1A)(**c**) or 122(1) is as follows—

(a) a charge sheet must be prepared in accordance with the Schedule;

(b) the person bringing the charge must sign the charge sheet; and

(c) a copy of the signed charge sheet must be served on A.

(2) If A is subject to service law or a civilian subject to service discipline, a copy of the signed charge sheet must be served by hand on A by the commanding officer of A.

(3) But if A has ceased to be subject to service law or a civilian subject to service discipline, a copy of the signed charge sheet must be served—

(a) by hand on A by the commanding officer of A; or

(**a**) 2006 c.52. The Armed Forces Act 2006 was due to expire on account of section 382 of that Act (as amended by section 1 of the Armed Forces Act 2016 (c.21)) but has remained in force because orders have been made under section 382(2) providing for the continuation of the Act, the most recent of these being S.I. 2019/561.

(**b**) S.I. 2009/2055.

(**c**) Section 121(1A) will be inserted by section 5(1)(b) of the Armed Forces Act 2016 when it comes into force.

(b) by being left at, or sent by post to, A's usual or last known address by—

(i) the commanding officer; or

(ii) the DSP if the charge is brought under section 121(1A).

(4) When a charge is brought under section 121(1A) or 122(1), the DSP must provide a copy of the charge sheet to the court administration officer as soon as practicable after service of the charge sheet on the accused.

(5) A commanding officer or the DSP may authorise a person to serve a copy of a signed charge sheet on his or her behalf.".

4. In regulation 13 (amendment, substitution and addition of charges by a CO) for "section 120(2) or 122(1)" substitute "section 120(2), 121(1A) or 122(1)".

5. In regulation 14 (amendment, substitution and addition of charges by the DSP)—

(a) in paragraph (2)(c) omit "by hand"; and

(b) after regulation 14(2) insert—

"(2A) If the accused is subject to service law or a civilian subject to service discipline, the DSP must ensure that a copy of the signed charge sheet is served by hand on the accused.

(2B) But if the accused has ceased to be subject to service law or a civilian subject to service discipline, the DSP must ensure that a copy of the signed charge sheet is served on the accused—

(a) by hand; or

(b) by leaving it at, or sending it by post to, the accused's last known address.".

6. In paragraph 1(b) of the Schedule for "section 122(1)" substitute "section 121(1A) or 122(1)".

Transitional arrangements in respect of the amendment of the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009

7.—(1) The amendments of the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009 made by regulations 2 to 6 do not have effect in relation to—

(a) a case referred by a service policeman before 1st July 2019 to—

(i) the Director of Service Prosecutions under section 116(2) of the Armed Forces Act 2006 (referral of case following investigation by service or civilian police); or

(ii) a person's commanding officer under section 116(3) of the Act; or

(b) a case where the investigation that gives rise to it has also given rise to a case mentioned in sub-paragraph (a).

(2) For the purposes of this regulation, an investigation gives rise to two or more cases if the investigation relates to incidents or conduct that are to be regarded as giving rise to each of those cases under section 117(2) of the Armed Forces Act 2006.

(3) In this regulation—

(a) "investigation" means an investigation mentioned in section 116(1) of the Armed Forces Act 2006; and

(b) references to section 116 of the Act are to that section as it had effect before 1st July 2019.

Amendment of the Armed Forces (Review of Court Martial Sentence) Order 2009

8. After paragraph 1(b) of the Schedule to the Armed Forces (Review of Court Martial Sentence) Order 2009(**a**) insert—

"(ba) an offence under one of the following sections of the Sexual Offences Act 1956—

(i) section 6 (intercourse with girl between 13 and 16);

(ii) section 14 or 15 (indecent assault on a woman or a man);

(bb) an offence under section 1 of the Indecency with Children Act 1960 (indecent conduct towards young child);".

Amendment of the Armed Forces (Prescribed Air Navigation Order Offences) Order 2009

9. The Armed Forces (Prescribed Air Navigation Order Offences) Order 2009(**b**) is amended as follows.

10. In article 2 (interpretation) in the definition of "the Order" for "the Air Navigation Order 2005" substitute "the Air Navigation Order 2016(**c**)".

11. In article 3 (prescribed Air Navigation Order offences)—

(a) in paragraph (a) for "article 73" substitute "article 240 (endangering safety of an aircraft)";

(b) in paragraph (b) for "article 74" substitute "article 241 (endangering safety of any person or property)";

(c) in paragraph (c) for "article 75(1)" substitute "article 242(1) (drunkenness in aircraft)";

(d) in paragraph (d) for "article 75(2)" substitute "article 242(2)";

(e) in paragraph (e)—

(i) for "commander" substitute "pilot in command";

(ii) for "article 77" substitute "article 244 (authority of pilot in command of an aircraft)";

(f) in paragraph (f) for "article 78(a)" substitute "article 245(a) (acting in a disruptive manner)";

(g) in paragraph (g) for "article 78(b)" substitute "article 245(b)";

(h) in paragraph (h)—

(i) for "his" substitute "the crew member's";

(ii) for "article 78(c)" substitute "article 245(c)".

Tobias Ellwood
Parliamentary Under Secretary of State
Ministry of Defence

22nd May 2019

(**a**) S.I. 2009/1168.
(**b**) S.I. 2009/1094.
(**c**) S.I. 2016/765.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend statutory instruments made under the Armed Forces Act 2006 (c. 52) ("the 2006 Act") regarding the initiation of proceedings for service offences, the referral of cases for review by the Court Martial Appeal Court and the service offences that apply in relation to military aircraft.

The Regulations firstly amend the procedure set out in the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009 (S.I. 2009/2055) for serving a charge sheet (which is how a person is charged with a service offence under Part 5 of the 2006 Act). The amendments enable a commanding officer to serve a charge sheet by post or by leaving it at a person's address if that person has ceased to be subject to service law or a civilian subject to service discipline. If a person in that position is charged by the Director of Service Prosecutions, the Director may also serve the charge by post etc. The Regulations also make minor changes to S.I. 2009/2055 to take account of sections 3 to 5 of the Armed Forces Act 2016 (c. 21) which amend Part 5.

Secondly the Regulations amend the Armed Forces (Review of Court Martial Sentence) Order 2009 (S.I. 2009/1168) which concerns the review of unduly lenient sentences for service offences relating to criminal conduct. Criminal conduct by persons subject to law or civilians subject to service discipline is a service offence under section 42 of the 2006 Act and before that Act came into force analogous offences applied under section 70 of the Army Act 1955, section 70 of Air Force Act 1955 and section 42 of the Naval Discipline Act 1957. In all these offences criminal conduct means, or meant, conduct anywhere in the world that is, or would be, a criminal offence in England and Wales. Sentences for these service offences are eligible for review when the corresponding criminal offence is either indictable only or listed in the Schedule to S.I. 2009/1168 (for offences under Army Act 1955 etc. see also the Armed Forces (Transitional Provisions etc.) Order 2009 (S.I. 2009/1059)). The Regulations add four sexual offences repealed in 2004 to those listed in the Schedule, which can be still be charged for conduct pre-dating the repeal.

Lastly these Regulations make technical amendments to the Armed Forces (Prescribed Air Navigation Order Offences) Order 2009 (S.I. 2009/1094). This Order specifies criminal offences relating to civil aircraft for the purposes of section 49 of the 2006 Act to make the same behaviour a service offence if it relates to a military aircraft. The amendments update references to offences under the Air Navigation Order 2005 (S.I. 2005/1970) so they refer to analogous offences in the current Air Navigation Order 2016 (S.I. 2016/765).

A full impact statement has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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£4.90

UK201905231007 05/2019 19585

http://www.legislation.gov.uk/id/uksi/2019/967

ISBN 978-0-11-118735-7

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