Draft Order laid before Parliament under section 373(3) of the Armed Forces Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No. XXX

DEFENCE

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

Made	***
Coming into force	
For the purposes of regulation 1(a)	***
For all other purposes	*31st October 2009*

The Secretary of State in exercise of the powers conferred by sections 114(2), 116(2)(b), 118(4)(b) and 128 of the Armed Forces Act 2006(**a**), makes the following Regulations:

In accordance with section 373(3)(c) of the Armed Forces Act 2006 a draft of this instrument was laid before, and approved by resolution of, each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009, and shall come into force—

(a) for the purposes of enabling—

(i) a service policeman to report to a commanding officer that he is not aware, or that he is aware, of any circumstances of a description prescribed by regulation 5, or

(ii) a commanding officer to delegate functions under regulation 16,

on the day after the day on which they are made;

(b) for all other purposes, on 31st October 2009.

PART 1

GENERAL

Interpretation

2.—(1) In these Regulations—

"the Act" means the Armed Forces Act 2006;

(**a**) 2006 c. 52.

"accused" means a person who has been charged with a service offence;

"case papers" means in relation to a case or charge—

(a) the following papers relating to that case or charge prepared by a service police force—

(i) all reports prepared by the service police force;

(ii) all witness statements;

(iii) all other records of evidence, including a summary or transcript of all tape-recorded interviews;

(iv) a list of all exhibits and a statement of where any which are not documentary exhibits are held;

(v) all documentary exhibits;

(vi) all formal disciplinary records of the suspect maintained and held by any of Her Majesty's forces;

(vii) if no formal disciplinary record of the suspect is maintained and held by any of Her Majesty's forces, a list of his convictions (if any) for a service offence and of his convictions (if any) by a civilian court;

(viii) all documents to be provided, in accordance with a code of practice made under section 78(2)(b) of the Criminal Procedure and Investigations Act 1996(**a**), to a person involved in the prosecution of service offences; and

(b) all equivalent papers prepared by a UK police force or an overseas police force and provided by that force to a service police force;

"Court Martial Rules" means rules made under section 163 of the Act;

"DSP" means Director of Service Prosecutions;

"hearing" means, with respect to an accused —

(a) a hearing before a judge advocate under section 105(1) in relation to the accused;

(b) a hearing before a judge advocate conducting a review under section 108(1), 110(4) or 171(2) in relation to the accused; or

(c) any other hearing under the Act before a judge advocate in relation to a charge against the accused;

"prescribed officer" has the meaning given to it in regulation 4;

"Schedule 2 offence" has the same meaning as in Chapter 1 of Part 5 of the Act;

"serious injury" means a fracture, a deep cut, a deep laceration or an injury causing damage to an internal organ or the impairment of a bodily function;

"suspect" (in the definition of "case papers" in this regulation)—

(d) where regulation 7 or 9 applies, means the person whom the service policeman considers there is sufficient evidence to charge with a service offence;

(e) where regulation 10 applies, means the person concerned (within the meaning of section 121(4)).

(2) Unless otherwise specified, a reference in these Regulations to a numbered section is a reference to that section of the Act.

(**a**) 1996 c. 25.

PART 2

INVESTIGATIONS AND REFERRAL OF CASES AND CHARGES

CO to ensure service police aware of certain circumstances

3. For the purposes of section 114, the following are circumstances of a prescribed description—

(a) an allegation has been made which would indicate to a reasonable person, or there are other circumstances which would indicate to a reasonable person, that a person subject to service law has or may have been the victim of—

(i) a course of conduct by a person subject to service law, involving on at least two occasions an assault in which that individual participated as a principal offender or as a secondary party; or

(ii) an offence under section 42 as respects which the corresponding offence under the law of England and Wales is the offence under section 4 of the Protection from Harassment Act 1997(**a**), committed by a person subject to service law;

(b) an allegation has been made which would indicate to a reasonable person, or there are other circumstances which would indicate to a reasonable person, that a person subject to service law has or may have been the victim of an assault causing serious injury, inflicted by a person of superior rank or rate while the assailant was otherwise carrying out his duties;

(c) there are what appear to the prescribed officer to be reasonable grounds to believe that the death of any person, or serious injury to a relevant person, has occurred in a relevant place, unless the prescribed officer is satisfied that there is no allegation which would indicate to a reasonable person, or circumstances which would indicate to a reasonable person, that the death or injury was, or may have been, the result of a service offence committed by a person of whom he is the commanding officer;

(d) the death of a person has occurred and—

(i) it appears to the prescribed officer that the person had at any time been held in a relevant place in service custody within the meaning of the Act; and

(ii) there are reasonable grounds to believe that the misconduct, during the period that person was in such custody, of a person subject to service law or a civilian subject to service discipline may have caused (directly or indirectly), or may have contributed to, the death.

Prescribed officer

4.—(1) In relation to regulation 3(a), the prescribed officer is the commanding officer of a person subject to service law against whom there is an allegation which would indicate to a reasonable person, or in relation to whom there are circumstances which would indicate to a reasonable person, that he has, or may have—

(a) carried out a course of conduct within regulation 3(a)(i); or

(b) committed an offence within regulation 3(a)(ii).

(2) In relation to regulation 3(b), the prescribed officer is the commanding officer of a person against whom there is an allegation which would indicate to a reasonable person, or in relation to whom there are circumstances which would indicate to a reasonable person, that he was, or may have been, the assailant.

(3) In relation to regulation 3(c), the prescribed officer is any officer who is a commanding officer of any person.

(**a**) 1997 c.. 40.

(4) In relation to regulation 3(d), the prescribed officer is the commanding officer of a person in relation to whom it appears to that officer that there are reasonable grounds within regulation 3(d)(ii).

Referral of case following investigation by service or civilian police

5. For the purposes of section 116(2)(b), the following are prescribed circumstances—

(a) the evidence referred to in section 116(2)(b) is evidence that a person subject to service law has been the victim of—

(i) a course of conduct by a person subject to service law, involving on at least two occasions an assault in which that individual participated as a principal offender or as a secondary party; or

(ii) an offence under section 42 as respects which the corresponding offence under the law of England and Wales is the offence under section 4 of the Protection from Harassment Act 1997, committed by a person subject to service law;

(b) the evidence referred to in section 116(2)(b) is evidence that an assault causing serious injury was inflicted on a person subject to service law by a person of superior rank or rate while the assailant was carrying out his duties;

(c) the evidence referred to in section 116(2)(b) is evidence—

(i) that a person ("A") participated (as a principal offender or as a secondary party) in the inflicting of serious injury on a relevant person in a relevant place;

(ii) that A was under a duty to safeguard a relevant person ("B") while B was in a relevant place and that A failed to prevent an assault inflicting serious injury on B in that place; or

(iii) that A was under a duty to safeguard a person ("B") while B was in a relevant place and that A failed to prevent B's death being caused while B was in that place;

(d) the evidence referred to in section 116(2)(b) is evidence that the death of a person was caused (directly or indirectly), or contributed to, by the misconduct of a person subject to service law or a civilian subject to service discipline, and that the misconduct occurred while the deceased was being held in a relevant place while in service custody within the meaning of the Act.

Relevant person and relevant place

6.—(1) In regulations 3(c) and 5(c) "relevant person" means—

(a) a person who is not a member of the regular or reserve forces; or

(b) a person who is a member of the regular or reserve forces and—

(i) is under 18 years old;

(ii) has enlisted in the regular or reserve forces and has not completed Phase 1 and Phase 2 Training;

(iii) is an officer or officer cadet and has not completed Phase 1 Training; or

(iv) is in service custody within the meaning of the Act.

(2) In regulations 3(c) and 5(c) "relevant place" means—

(a) any premises or other place which at the time of the death or serious injury was permanently or temporarily occupied or controlled for the purposes of Her Majesty's forces; and

(b) any vehicle, ship or aircraft which at the time of the death or serious injury was in use for the purposes of Her Majesty's forces.

(3) In regulations 3(d) and 5(d) "relevant place" means—

(a) any premises or other place which at the time of the suspected misconduct was permanently or temporarily occupied for the purposes of Her Majesty's forces; and

(b) any vehicle, ship or aircraft which at the time of the suspected misconduct was in use for the purposes of Her Majesty's forces.

Referral of case following investigation by service or civilian police

7.—(1) Where under section 116(2) a service policeman refers a case to the DSP, the service policeman must—

(a) when he refers the case, either provide the DSP with a written statement or make to the DSP an oral statement, specifying the service offence which he considers there is sufficient evidence to charge and why he considers that there is sufficient evidence; and

(b) when he refers the case or as soon as reasonably practicable afterwards, provide the DSP with a copy of the case papers.

(2) When under section 116(3) a service policeman refers a case to the commanding officer, the service policeman must—

(a) when he refers the case, either provide the commanding officer with a written statement or make to the commanding officer an oral statement, specifying the service offence which he considers there is sufficient evidence to charge and why he considers that there is sufficient evidence; and

(b) when he refers the case or as soon as practicable afterwards, provide the commanding officer with a copy of the case papers.

Referral of case to DSP by service police: CO documents and information

8.—(1) Where under section 116(2) a service policeman refers a case to the DSP, the prescribed documents for the purposes of section 118(2)(b) are a copy of all reports relating to the case prepared by a service police force or provided to a service police force by a UK police force or an overseas police force.

(2) If under section 118(2)(a) a service policeman notifies a commanding officer of a referral to the DSP and the commanding officer considers that there is information relevant to the case which should be drawn to the attention of the DSP, he must do so as soon as reasonably practicable after receiving the documents prescribed by paragraph (1).

Referral of case to DSP by CO

9.—(1) This regulation applies where under section 120(3) a commanding officer refers a case to the DSP after a service policeman has under section 116(3) referred the case to the commanding officer.

(2) If under regulation 7(2)(a) the service policeman provided the commanding officer with a written statement in relation to the case, the commanding officer must provide a copy of the statement to the DSP when he refers the case to the DSP.

(3) If under regulation 7(2)(a) the service policeman made an oral statement to the commanding officer in relation to the case, the service policeman must, as soon as practicable after being informed by the commanding officer of the referral, provide the DSP with a written statement, or make an oral statement to the DSP, specifying the service offence which the service policeman considers there is sufficient evidence to charge and why he considers that there is sufficient evidence.

(4) When the commanding officer refers the case to the DSP or as soon as reasonably practicable afterwards, he must provide the DSP with a copy of the case papers.

Referral of case or charge to CO

10.—(1) Where under section 121(4) the DSP refers a case to a commanding officer, he must ensure that as soon as reasonably practicable the commanding officer receives a copy of the case papers, unless the referral by the DSP follows a referral to the DSP by the commanding officer

under section 120(3) and the commanding officer's power to refer arose by virtue of section 119(2).

(2) Where under section 125(2)(e) the DSP refers a charge to a commanding officer, he must ensure that the commanding officer receives as soon as reasonably practicable a copy of the case papers and of the charge sheet.

PART 3

PROVISIONS RELATING TO CHARGING

Procedure for bringing a charge

11.—(1) The procedure for bringing a charge against a person ("A") under section 120(2) or 122(1) shall be as follows—

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

(b) the commanding officer of A must sign the charge sheet; and

(c) a copy of the signed charge sheet must be served by hand on A either by the commanding officer or by a person authorised by him.

(2) When a charge is brought under section 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.

Direction under section 121(2): provision of charge sheet

12. When a direction under section 121(2) to bring a charge against a person is given by the DSP to a commanding officer—

(a) the DSP must send the charge sheet to the commanding officer; and

(b) the commanding officer must return the charge sheet to the DSP as soon as reasonably practicable after bringing the charge.

Amendment, substitution and addition of charges by a CO

13. Regulation 11 shall apply to the amending, substituting or adding of a charge under section 123(2) as it applies to the bringing of a charge under section 120(2) or 122(1).

Amendment, substitution and addition of charges by the DSP

14.—(1) This regulation applies to the amendment, substitution or addition of a charge by the DSP—

(a) under section 125(2) before the arraignment of an accused by the Court Martial; or

(b) under section 126(2) before the arraignment of an accused by the Service Civilian Court.

(2) The procedure for the DSP to amend, substitute or add a charge shall be as follows—

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

(b) the DSP must sign the charge sheet; and

(c) the DSP must ensure that a copy of the signed charge sheet is served by hand on the accused.

(3) As soon as practicable after service of the charge sheet on the accused, the DSP must provide a copy of the charge sheet to the court administration officer.

(4) Where the earliest time at which it will be practicable to provide a copy of the charge sheet to the court administration officer is less than 24 hours before the time appointed for a hearing in

relation to the accused, the DSP must also provide as soon as practicable a copy of the charge sheet to the judge advocate appointed to conduct the hearing.

(5) This regulation does not apply to the amendment of charges by order of a judge advocate in preliminary proceedings within the meaning of the Court Martial Rules.

PART 4

FURTHER PROVISIONS

Provision of information and notification of prescribed matters

15.—(1) If under section 123(2)(d) a commanding officer discontinues proceedings on a charge, he must as soon as reasonably practicable give written notification of the discontinuation to the accused.

(2) If under section 125(2)(d) or section 126(2)(d) the DSP discontinues proceedings on a charge, he must as soon as reasonably practicable give written notice of the discontinuation to—

(a) the accused or his legal representative;

(b) the accused's commanding officer; and

(c) the court administration officer.

(3) If under section 125(2)(e) the DSP refers a charge to an accused's commanding officer, the commanding officer must as soon as reasonably practicable give written notification of the reference to the accused or his legal representative.

(4) If under section 121(3) or 125(2)(f) the DSP allocates a charge for trial by the Service Civilian Court, or under section 126(2)(e) allocates a charge for trial by the Court Martial, he must as soon as reasonably practicable give written notice of the allocation to—

(a) the accused or his legal representative; and

(b) the court administration officer.

(5) If the DSP makes a direction under section 127(1) or (2)—

(a) he must as soon as reasonably practicable notify the commanding officer of the person specified in the direction, and

(b) the commanding officer must as soon as reasonably practicable notify that person in writing,

of the making of the direction.

(6) A notification under this regulation may be given to an accused who is not, or is not for the time being, subject to service law by—

(a) delivering it to him by hand;

(b) leaving it at his usual or last known address;

(c) sending it by post to that address; or

(d) transmitting it to him by fax or other electronic means, but only if he has agreed to receive it by that method.

(7) A notification under this regulation may be given to a legal representative by—

(a) delivering it to him by hand;

(b) delivering it, or sending it by post or by document exchange (DX), to his place of business; or

(c) transmitting it to him by fax or other electronic means, but only if he has agreed to receive it by that method.

(8) In this regulation references to the legal representative of a person have the same meaning as in the Court Martial Rules.

Delegation of functions by CO

16.—(1) A commanding officer may delegate to a subordinate commander any of his functions under Part 5 of the Act or under these Regulations, subject to such conditions as he considers appropriate.

(2) In paragraph (1) "subordinate commander" means, in relation to a commanding officer, an officer under his command who is not below the rank of naval lieutenant, military or marine captain or flight lieutenant.

Transitional

17.—(1) In these Regulations—

(a) references to a service offence include an SDA offence;

(b) references to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is a specified offence include an offence under section 70 of AA 1955 or AFA 1955 or section 42 of NDA 1957 as respects which the corresponding civil offence is the specified offence;

(c) references to a person who has enlisted in the regular forces include a person who entered the Royal Navy before commencement.

(2) In these Regulations, in relation to any time before commencement—

(a) references to a person subject to service law are to a person who was at that time subject to military law, air-force law or NDA 1957;

(b) references to a civilian subject to service discipline are to a person to whom any provision of AA 1955, AFA 1955 or NDA 1957 at that time applied by virtue of section 209(1) or (2) of AA 1955 or AFA 1955 or section 118(1) or (2) of NDA 1957;

(c) references to service custody within the meaning of the Act are to military, air-force or naval custody.

(3) In this regulation—

"AA 1955" means the Army Act 1955(**a**);

"AFA 1955" means the Air Force Act 1955(**b**);

"NDA 1957" means the Naval Discipline Act 1957(**c**);

"commencement" means 31st October 2009;

"the corresponding civil offence", in relation to an offence under section 70 of AA 1955 or AFA 1955 or section 42 of NDA 1957, means—

(a) the act or omission constituting that offence; or

(b) if that act or omission is not punishable by the law of England and Wales, the equivalent act done or omission made in England or Wales;

(aa) "SDA offence" means any of the following—

(c) any offence under Part 2 of AA 1955 or AFA 1955;

(d) any offence under Part 1 of NDA 1957;

(e) an offence under section 47K of that Act;

(f) an offence under paragraph 4(6) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957 committed before commencement;

(g) an offence under section 18 or 20 of the Armed Forces Act 1991(**d**) committed before commencement;

(**a**) 1955 c. 18.
(**b**) 1955 c. 19.
(**c**) 1957 c. 53.
(**d**) 1991 c. 62.

(h) an offence under any of sections 95 to 97 of the Reserve Forces Act 1996(**a**) committed before commencement;

(i) an offence under paragraph 5(1) of Schedule 1 to that Act committed before commencement by a person within paragraph (4).

(4) A person is within this paragraph if—

(a) after committing the offence and before commencement, he became a member of a reserve force and—

(i) he remained such a member until immediately before commencement; or

(ii) immediately before commencement, he was subject to military law, air-force law or NDA 1957; or

(b) on or after commencement, he becomes a member of the reserve forces.

Name
Parliamentary Under Secretary of State
Ministry of Defence

Date

SCHEDULE

Regulations 11 and 14

CHARGES

18. A charge sheet—

(a) in the case of a charge to be brought against a person under section 120(2) and of an amended, substituted or additional charge to be brought under section 123(2), must be prepared by his commanding officer; and

(b) in the case of a charge to be brought against a person under section 122(1) and of an amended, substituted or additional charge to be brought under section 125(2) or 126(2), must be prepared by the DSP.

19. A charge sheet must state—

(a) the full name of the person who is to be charged;

(b) if he is subject to service law–

(i) his service number, rank or rate; and

(ii) the name of the ship, establishment or unit, of which he is a member; and

(c) subject to paragraphs 3 and 4, the charge brought against him.

20. Where a charge is amended or substituted under section 123(2), 125(2) or 126(2), the charge sheet must state the amended or substituted charge.

21. Where an additional charge is to be brought under section 123(2), 125(2) or 126(2), the charge sheet must state the charge to which an addition is to be made and the additional charge.

22. In respect of each charge the charge sheet must contain—

(a) a statement of the offence charged that —

(**a**) 1996 c. 14.

(i) describes the offence in ordinary language;

(ii) identifies any legislation that creates it; and

(iii) identifies the corresponding offence under the law of England and Wales if the offence is contrary to section 42; and

(b) such particulars of the conduct constituting the commission of the offence as are necessary to make clear what is alleged against the accused.

23. More than one incident of the commission of the offence may be included in a charge if those incidents taken together amount to a course of conduct having regard to the time, place or purpose of commission.

24. A charge sheet may contain more than one charge if all the offences charged—

(a) are founded on the same facts; or

(b) form or are a part of a series of offences of the same or a similar character.

25. The charges must be numbered consecutively.

26. Where the offence charged is one which can be committed in circumstances involving either a higher or lower degree of punishment, the charge must state the facts which it is intended to prove as rendering the accused liable to the higher degree of punishment if convicted.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations relate to the provisions of Part 5 of the Armed Forces Act 2006 ("the Act"), and in particular to the investigation of suspected service offences, to the referral of cases and charges to the Director of Service Prosecutions ("DSP") and commanding officers, to the procedure for bringing charges and to related powers to amend, substitute or add charges.

Regulation 3 prescribes circumstances, additional to those specified in the Act, which a commanding officer must ensure that a service police force is aware of.

Regulation 5 prescribes circumstances, additional to those specified in the Act, in which cases must be referred by the service police to the DSP instead of to the commanding officer of the person who is suspected of having committed a service offence. Regulation 1 brings the Regulations into force immediately for the purpose of enabling a service policeman to report to a commanding officer, before 31st October 2009, that he is not aware of any circumstances of a description prescribed by regulation 5. Where such a report has been made and certain other conditions are satisfied, the service policeman will be deemed under an order made under section 380 of the Act to have referred the case to the commanding officer under section 116(3) of the Act.

Regulations 7, 8, 9 and 10 make requirements for the provision of documents in connection with the referral of cases. Regulation 8 also deals with the provision by a commanding officer to the DSP of information about a case which has been referred to the DSP.

Regulation 11 provides for the process of bringing a charge and, by reference to the Schedule, provides for the proper preparation of the charge sheet.

Regulation 12 provides for who must be given the charge sheet where a commanding officer brings a charge in accordance with a direction under section 121(2) of the Act from the DSP.

Regulation 13 provides for the application of regulation 11, and accordingly of the provisions of the Schedule, to the amending, substituting or adding of charges by a commanding officer.

Regulation 14 provides in relation to the amendment, substitution or adding of charges by the DSP before the accused is arraigned.

Regulation 15 provides for written notification to be given of the discontinuation of proceedings, the reference of a charge by the DSP to a commanding officer, the allocation or re-allocation of a charge to a service court and directions by the DSP barring proceedings.

Regulation 16 provides for the delegation by commanding officers to subordinate commanders of their functions under Part 5 of the Act and under these Regulations. Regulation 1 brings the Regulations into force immediately for the purpose of enabling commanding officers to make such delegations before 31st October 2009.

Regulation 17 makes transitional provision.

© Crown copyright 2009

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

Draft Order laid before Parliament under section 373(3) of the Armed Forces Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No. XXX

DEFENCE

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

£5.50

E4199 5/2009 194199T 19585