*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

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| *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(**1**), 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.

(**1**) 2006 c. 52.

# PART 1

## GENERAL

### Interpretation

**2.**—(1) In these Regulations—

"the Act" means the Armed Forces Act 2006;

"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(**2**), 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;

(**2**) 1996 c. 25.

(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.

# 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(**3**), 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

(**3**) 1997 c.. 40.

(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.

(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.