
STATUTORY INSTRUMENTS

2009 No. 1059

The Armed Forces Act 2006
(Transitional Provisions etc) Order 2009

PART 4

JURISDICTION

Jurisdiction of the Court Martial

12. The Court Martial has jurisdiction to try any SDA offence except an offence within section 70(4) of AA 1955 or AFA 1955 or section 48(2) of NDA 1957 (serious SDA civil offences committed in UK).

Jurisdiction of the Service Civilian Court

13.—(1) The Service Civilian Court has jurisdiction to try any SDA offence committed outside the British Islands by a civilian except—

- (a) an offence within paragraph (3); or
- (b) an offence in relation to which section 51(6) of AFA 2006 applies (defendant is member of regulars or reserves or liable to recall).

(2) For the purposes of paragraph (1) an offence was committed by a civilian if it was committed by a person who, at the time when it was committed, was a civilian subject to the SDAs.

(3) The offences within this paragraph are—

- (a) an indictable-only SDA civil offence;
- (b) an offence under section 57 of AA 1955 or AFA 1955 or section 38 of NDA 1957 (offences in relation to courts);
- (c) an offence under section 61 of AA 1955 or AFA 1955 or section 34A of NDA 1957 (false statements on enlistment etc);
- (d) an offence under RFA 1996.

(4) For the purposes of paragraph (3)(a) an SDA civil offence is “indictable-only” if the corresponding civil offence is, under the law of England and Wales, an offence which if committed by an adult is triable only on indictment; but this is subject to paragraph (5).

(5) Where the defendant is aged under 18 at the time a decision under section 279 of AFA 2006 is made, an SDA civil offence is “indictable-only” for the purposes of paragraph (3)(a) if (and only if)—

- (a) the corresponding civil offence is murder, manslaughter or an offence under section 5 of the Domestic Violence, Crime and Victims Act 2004(1) (causing or allowing death of child etc); or

(b) section 51A of the Firearms Act 1968(2) would apply if the accused were convicted by a civilian court in England and Wales of the corresponding civil offence.

(6) Where section 279 of AFA 2006 is disapplied by article 132(2), the reference in paragraph (5) to the time a decision under that section is made is to be read as to the time immediately before commencement.

Charges capable of being heard summarily

14. In section 52 of AFA 2006 (charges capable of being heard summarily), the reference in subsection (4)(a) to being subject to service law is to be read, in relation to any time before commencement, as to having been subject to military law, air-force law or NDA 1957.

Offences that may be dealt with at a summary hearing

15. The following SDA offences may be dealt with at a summary hearing (and accordingly fall within section 52(2) of AFA 2006)—

- (a) an SDA civil offence as respects which the corresponding civil offence is an offence within section 53(3)(a) or (b) of AFA 2006;
- (b) an offence under section 29, 29A or 30(c) of AA 1955 or AFA 1955;
- (c) an offence under any of sections 33 to 39 (except section 37) of AA 1955 or AFA 1955;
- (d) an offence under section 42(1)(a), 43, 43A, 44, 44A(1)(c), (d) or (e), 44B(2), 45 or 46 of AA 1955 or AFA 1955;
- (e) an offence under any of sections 50 to 56 (except section 54(1)) of AA 1955 or AFA 1955;
- (f) an offence under section 60, 61, 62, 65, 66 or 69 of AA 1955 or AFA 1955;
- (g) an offence under section 68 of AA 1955 or AFA 1955 of attempting to commit an offence within any of paragraphs (b) to (f) above;
- (h) an offence under section 75J of AA 1955 or AFA 1955;
- (i) an offence under section 5(c), 6 or 7 of NDA 1957;
- (j) an offence under any of sections 11 to 14A of that Act;
- (k) an offence under section 17, 18, 21, 22 or 25 of that Act;
- (l) an offence under section 27 of that Act of—
 - (i) falsely pretending to be suffering from sickness or disability; or
 - (ii) failing to do anything whereby any sickness or disability is prolonged or aggravated;
- (m) an offence under section 28, 29, 29A(1)(c), (d) or (e), 29B(2), 30, 31 or 33A(2) of that Act;
- (n) an offence under any of sections 33B to 35 of that Act;
- (o) an offence under section 36A, 37 or 39 of that Act;
- (p) an offence under section 40 of that Act of attempting to commit an offence within any of paragraphs (i) to (o) above;
- (q) an offence under section 47K of that Act;
- (r) an offence under section 96 or 97 of RFA 1996 of absence without leave.

(2) 1968 c. 27. Section 51A was inserted by the Criminal Justice Act 2003 (c. 44), section 287.

Charges in respect of SDA offences that may be heard summarily only with permission or by senior officer

16. For the purposes of section 54(1) of AFA 2006 (charges which may be heard summarily only with permission or by senior officer), the offences within section 54(2) of that Act include an SDA civil offence as respects which the corresponding civil offence is an offence within section 54(2) (a) or (b).