
STATUTORY INSTRUMENTS

2009 No. 1059

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

PART 10

SUMMARY DEALING

CHAPTER 2

Modifications of AFA 2006 for charge current at commencement

Applications for purposes of AFA 2006 made before commencement

59.—(1) Paragraph (2) applies where either of the following applications is made before commencement—

- (a) an application for permission for the purposes of section 54 of AFA 2006 (permission to hear charge summarily);
- (b) an application for extended powers for the purposes of section 133(1) or (2), 134, 135(1) or 136(1)(b) of that Act (extended powers of punishment).

(2) The application, and any grant of the application or notification of its grant (whenever made), are to be treated as validly made if made in accordance with any provision of AFA 2006 or of rules under that Act that would apply if the application had been made after commencement.

(3) Paragraph (4) applies where—

- (a) before commencement, an application for permission to award extended detention was made in accordance with regulation 30 of the Custody and Summary Dealing (Army) Regulations 2006⁽¹⁾ or regulation 17 of the Pre-Charge Custody and Summary Dealing (Royal Air Force) Regulations 2000⁽²⁾; and
- (b) (before or after commencement) the application is treated by higher authority as an application under section 133(3) of AFA 2006 for extended powers for the purposes of section 133(1).

(4) Any grant of those extended powers, or notification of their grant, in response to the application is to be treated as validly made if made in accordance with any provision of AFA 2006 or of rules under that Act that applies in relation to the grant of applications for such powers made after commencement.

(5) Nothing in paragraphs (3) and (4) invalidates the treatment of the application as an application for permission to award extended detention under the regulations mentioned in paragraph (3)

(1) These Regulations are made by the Defence Council under sections 75E, 82, 83 and 209 of AA 1955 and published in the Manual of Military Law.

(2) These Regulations are made by the Defence Council under sections 75E, 82, 83 and 209 of AFA 1955 and published in the Manual of Air Force Law. They are amended by the Pre-charge Custody and Summary Dealing (Royal Air Force) (Amendment) Regulations 2002.

(a) (whether that treatment was as well as or instead of treating the application as mentioned in paragraph (3)(b)).

Permissions for purposes of AA 1955 or AFA 1955 to award extended detention

60.—(1) This article applies where—

- (a) permission to award extended detention was granted before commencement under regulation 30 of the Custody and Summary Dealing (Army) Regulations 2006 or regulation 17 of the Pre-Charge Custody and Summary Dealing (Royal Air Force) Regulations 2000;
- (b) article 55 does not apply; and
- (c) punishment is awarded after commencement under AFA 2006.

(2) Where this article applies, the commanding officer is to be taken to have extended powers for the purposes of section 133(1) of AFA 2006.

Certain consequences of election for court-martial trial

61.—(1) This article applies to a charge allocated for Court Martial trial where—

- (a) the charge is so allocated by virtue of article 44 and the case to which it relates was referred to the prosecuting authority following an election for court-martial trial; or
- (b) the charge is so allocated by virtue of article 47(1)(c) and (2) (election for court-martial trial).

(2) Section 130 of AFA 2006 (consequences of election for Court Martial trial) applies where this article applies to a charge, and in that section—

- (a) the reference in subsection (2)(a) to “that charge” includes a reference to a charge to which this article applies; and
- (b) subsection (2)(b) and (3) are to be read accordingly (but subject to paragraph (3) below).

(3) Where a charge to which this article applies was brought under NDA 1957, and the charge is referred to a commanding officer under section 125(2)(e) of AFA 2006—

- (a) the commanding officer may apply for extended powers for the purposes of section 133(1) or (2), 134, 135(1) or 136(1)(b) of AFA 2006; and
- (b) if the commanding officer makes such an application and is notified that it has been granted, section 130(3) of AFA 2006 (which would prevent the accused from electing Court Martial trial of the charge) is to be taken to be disapplied.