
STATUTORY INSTRUMENTS

2009 No. 1059

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

PART 10

SUMMARY DEALING

CHAPTER 4

The Summary Appeal Court

Right of appeal

63.—(1) In section 141(1) of AFA 2006 (right of appeal to Summary Appeal Court), the reference to a person in respect of whom a charge has been heard summarily and a finding that the charge has been proved has been recorded includes a person in respect of whom a charge was heard summarily, and a finding that the charge has been proved was recorded, under AA 1955, AFA 1955 or NDA 1957 before commencement.

(2) Where, immediately before commencement, a period allowed by a summary appeal court under section 83ZE(2) of AA 1955 or AFA 1955 or section 52FK(2) of NDA 1957 (extra time for appeal) is current and an appeal for which the period was allowed has not yet been brought, the period is to be treated as allowed by the Summary Appeal Court under section 141(2)(b) of AFA 2006.

(3) Where, immediately before commencement, a period allowed by a summary appeal court under section 83ZE(3) of AA 1955 or AFA 1955 or section 52FK(3) of NDA 1957 (extra time for appeal) is current and an appeal for which the period was allowed has not yet been brought, the period is to be treated as allowed by the Summary Appeal Court under section 141(3) of AFA 2006.

Appeal brought but not heard before commencement

64.—(1) This article applies where—

- (a) an appeal to a summary appeal court was brought before commencement; and
- (b) by commencement, the court had not begun to hear the appeal and the appeal had not been abandoned.

(2) For the purposes of Chapter 2 of Part 6 of AFA 2006 (appeals to the Summary Appeal Court), the appeal is to be treated as an appeal brought to the Summary Appeal Court under section 141 of AFA 2006.

(3) If before commencement a person was specified by or on behalf of the Judge Advocate General to be the judge advocate for the appeal, the specification has effect after commencement as a specification under section 142(3) of AFA 2006.

(4) If before commencement a person was specified by or on behalf of a court administration officer to be a member of the court for the appeal, the specification has effect after commencement as a specification under section 142(4) of AFA 2006.

(5) In this article “court administration officer” means a court administration officer within the meaning of section 83ZA of AA 1955 or AFA 1955 or section 52FF of NDA 1957.

Officers and warrant officers ineligible for membership of court

65. In section 144(1) of AFA 2006 (officers and warrant officers ineligible for membership of SAC in particular circumstances)—

- (a) in paragraph (a), “commanding officer”, in relation to times before commencement, means commanding officer within the meaning of Part 2 of AFA 2001;
- (b) in paragraph (c), the reference to a higher authority as mentioned there includes an officer who, in relation to the charge to which the appeal relates—
 - (i) acted as the appropriate superior authority under section 76B of AA 1955 or AFA 1955 or section 52EE of NDA 1957;
 - (ii) was the higher authority to whom a referral was made under section 76(5), 76AA(3) or 76B(4) of AA 1955 or AFA 1955 or section 52B(5) or 52D(3) or (5) of NDA 1957; or
 - (iii) was asked, as higher authority, to approve the award of any punishment;
- (c) in paragraph (f), the reference to an inquiry includes—
 - (i) an investigation conducted by a board of inquiry under section 135 of AA 1955 or AFA 1955;
 - (ii) an inquiry held under section 137 of AA 1955 or AFA 1955;
 - (iii) an inquiry held by the Royal Navy under the prerogative.

Punishments substituted for punishments imposed under AA 1955

66.—(1) This article applies to a rehearing as respects punishment held by virtue of section 146(1) (b) or (2) of AFA 2006 (rehearing by SAC) where the punishment to which the rehearing relates was imposed—

- (a) on a summary dealing under AA 1955; or
- (b) under article 55 in relation to a finding recorded under AA 1955.

(2) If only one offence has been proved, section 147(3) of AFA 2006 (power to substitute punishment) has effect as if for paragraph (b) there were substituted—

- “(b) quash that punishment and award in substitution for it any punishment which—
 - (i) would be available under Chapter 1 of this Part if a charge of the offence had just been found proved by the accused’s commanding officer and that officer had extended powers for the purposes of section 133(1) or (2) (as the case may be), 134, 135(1) and 136(1)(b); and
 - (ii) in the opinion of the court is neither more severe than the punishment originally awarded nor more severe than the most severe punishment which could have been awarded, for the offence for which the court is awarding punishment, by the officer who originally awarded punishment.”

(3) If two or more offences have been proved, section 147(3) of AFA 2006 has effect as if for paragraphs (a) and (b) there were substituted—

- “(a) confirm the punishments awarded; or
- (b) quash those punishments and award in substitution for them any punishment which—
 - (i) would be available under Chapter 1 of this Part if charges of the offences had just been found proved by the accused’s commanding officer and that officer had

extended powers for the purposes of section 133(1) or (2) (as the case may be), 134, 135(1) and 136(1)(b); and

- (ii) in the opinion of the court is neither more severe than the punishments originally awarded nor more severe than the most severe punishments which could have been awarded, for the offences for which the court is awarding punishment, by the officer who originally awarded punishment.”

Punishments substituted for punishments imposed under AFA 1955

67.—(1) This article applies to a rehearing as respects punishment held by virtue of section 146(1) (b) or (2) of AFA 2006 (rehearing by SAC) where the punishment to which the rehearing relates was imposed—

- (a) on a summary dealing under AFA 1955; or
- (b) under article 55 in relation to a finding recorded under AFA 1955.

(2) In its application to the rehearing, section 147(3) of AFA 2006 (power to substitute punishment) has effect as if for paragraph (b) there were substituted—

- “(b) quash that punishment and award in substitution for it any punishment which—
 - (i) would be available under Chapter 1 of this Part if a charge of the offence (or charges of the offences) had just been found proved by the accused’s commanding officer and that officer had extended powers for the purposes of section 133(1) or (2) (as the case may be), 134, 135(1) and 136(1)(b); and
 - (ii) in the opinion of the court is neither more severe than the punishment originally awarded nor more severe than the most severe punishment which could have been awarded, for the offence or offences for which the court is awarding punishment, by the officer who originally awarded punishment.”

Punishments substituted for punishments imposed under NDA 1957

68.—(1) This article applies to a rehearing as respects punishment held by virtue of section 146(1) (b) or (2) of AFA 2006 (rehearing by SAC) where the punishment to which the rehearing relates was imposed—

- (a) on a summary trial under NDA 1957; or
- (b) under article 55 in relation to a finding recorded under NDA 1957.

(2) In its application to the rehearing, section 147(3) of AFA 2006 (power to substitute punishment) has effect as if for paragraph (b) there were substituted—

- “(b) quash that punishment and award in substitution for it any punishment which—
 - (i) would be available under Chapter 1 of this Part if a charge of the offence (or charges of the offences) had just been found proved by the accused’s commanding officer and that officer had extended powers for the purposes of section 133(1) or (2) (as the case may be), 134, 135(1) and 136(1)(b); and
 - (ii) in the opinion of the court is neither more severe than the punishment originally awarded nor more severe than the most severe punishment which could have been awarded, for the offence or offences for which the court is awarding punishment, by the officer who originally awarded punishment.”

(3) For the purposes of section 147(3)(b) of AFA 2006 as substituted by paragraph (2) above, the punishments in the Table in section 132 of AFA 2006 are to be taken to include—

- (a) dismissal from Her Majesty’s service;

(b) (as an alternative to disrating or reduction in rank as permitted by row 3 of the Table) disrating, or reduction in rank, to an extent which was available to the officer who awarded punishment.

(4) Nothing in section 138 of AFA 2006 prevents the Summary Appeal Court from awarding, by virtue of this article, dismissal from Her Majesty's service in addition to any punishment or combination of punishments permitted by that section.

(5) For the purposes of section 147(3)(b)(i) of AFA 2006 as substituted by paragraph (2) above, it is to be assumed that the charge or charges are capable of being heard summarily under AFA 2006, even if they are not in fact so capable.

Appeals from decisions of a summary appeal court

69.—(1) The appellant may question any decision of a summary appeal court under AA 1955, AFA 1955 or NDA 1957 on the ground that it was wrong in law or was in excess of jurisdiction, by applying to the Summary Appeal Court to have a case stated for the opinion of the High Court in England and Wales.

(2) Where, immediately before commencement, an application under section 83ZH(2) of AA 1955 or AFA 1955 or section 52FN(2) of NDA 1957 (application to a summary appeal court to have a case stated) has been made but a case has not been stated, the application has effect after commencement as an application to the Summary Appeal Court under paragraph (1).