
STATUTORY INSTRUMENTS

2009 No. 1059

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

PART 10

SUMMARY DEALING

CHAPTER 5

Review of summary findings and punishments

Power to review summary findings and punishments

70.—(1) In section 152(1) of AFA 2006 (power to review summary finding or punishment), the reference to the case where a charge has been heard summarily and a finding that the charge has been proved has been recorded includes—

- (a) the case where a charge was heard summarily, and a finding that the charge has been proved was recorded, under AA 1955 or AFA 1955; and
- (b) the case where a charge was tried summarily, and a finding of guilt was recorded, under NDA 1957.

(2) Where an order under section 91B(1) of NDA 1957 (activation by officer of suspended sentence of detention) has been made in respect of a sentence of detention passed by a court-martial, the order is to be treated for the purposes of section 152 of AFA 2006 as a punishment which may be reviewed under that section.

(3) Paragraph (2) is without prejudice to section 195(1) of AFA 2006 as modified by article 98(1) (by virtue of which an order under section 91B(1) of NDA 1957 activating a suspended sentence of detention passed at a summary trial may be reviewed under section 152).

(4) References in this article to an order under section 91B(1) of NDA 1957 include such an order made after commencement by virtue of article 55 or 62.

Power to complete review begun before commencement

71.—(1) In section 152(2) of AFA 2006 (persons who are to carry out review), any reference to a review under section 152 includes the completion of a pre-commencement review.

(2) In this article a “pre-commencement review” means a review that had begun to be carried out before commencement under section 115 of AA 1955 or AFA 1955 or section 71B of NDA 1957 but was not completed by commencement.

(3) In section 152(3) to (7) of AFA 2006 any reference to the carrying out of a review under section 152 includes the completion of a pre-commencement review by virtue of this article.

Powers on a review carried out or completed under AFA 2006

72.—(1) This article applies where a review is carried out, or completed, under section 152 of AFA 2006 in respect of—

- (a) a finding under AA 1955, AFA 1955 or NDA 1957;
- (b) a punishment awarded in respect of such a finding; or
- (c) an order under section 91B(1) of NDA 1957 (including such an order made after commencement by virtue of article 55 or 62).

(2) Section 152(3) of AFA 2006 has effect as if for paragraph (b) there were substituted—

- “(b) the person to whom the review relates has not brought an appeal to a summary appeal court under section 83ZE of AA 1955 or AFA 1955 or section 52FK of NDA 1957 or an appeal to the Summary Appeal Court under section 141, and the period provided by section 141(2) has ended.”

(3) Section 152(5) of AFA 2006 has effect as if for paragraph (b) there were substituted—

- “(b) the person to whom the review relates has brought an appeal to a summary appeal court under section 83ZE of AA 1955 or AFA 1955 or section 52FK of NDA 1957 or an appeal to the Summary Appeal Court under section 141.”

(4) Where this article applies and an appeal was brought to a summary appeal court, section 152(6) of AFA 2006 has effect as if for paragraph (a) there were substituted—

- “(a) the appeal is in the course of being heard, or is to be heard, by the Summary Appeal Court, and”.

(5) Where this article applies and an appeal was brought to a summary appeal court, section 152(7) of AFA 2006 has effect—

- (a) as if in paragraph (a) the reference to the Summary Appeal Court included a reference to a summary appeal court; and
- (b) in a case where the hearing of the appeal was completed by a summary appeal court, as if both references to “the court” in paragraph (b), and the second reference to “the court” in the words after that paragraph, were to the summary appeal court.

Powers where review completed before commencement

73.—(1) Paragraph (2) applies where—

- (a) before commencement, a review of a finding or punishment was carried out under section 115 of AA 1955 or AFA 1955 or section 71B of NDA 1957;
- (b) the finding or punishment was not quashed on the review; and
- (c) by commencement, no reference has been made under subsection (5A) or (5B) of section 115 of AA 1955 or AFA 1955 or of section 71B of NDA 1957.

(2) Subsections (3) to (7) of section 152 of AFA 2006 shall apply (with the modifications made by article 72) as if the review had been carried out under that section.

(3) Where, immediately before commencement, leave for a reference has been granted under subsection (5A) or (5B) of section 115 of AA 1955 or AFA 1955 or of section 71B of NDA 1957 but the reference has not been made, the leave has effect after commencement as leave granted by the Summary Appeal Court under section 152(4) or (7) of AFA 2006.