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STATUTORY INSTRUMENTS

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**2009 No. 1059**

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

PART 11

TRIAL BY COURT MARTIAL

CHAPTER 2

Unfitness to stand trial and insanity

**Continuation of hospital orders etc made before commencement**

**80.**—(1) Where immediately before commencement a hospital order or restriction order made by a court-martial by virtue of section 116A of AA 1955 or AFA 1955 or section 63A of NDA 1957 is in force, the order has effect after commencement as if made by the Court Martial by virtue of section 169 of AFA 2006.

(2) Where immediately before commencement there is in force any other order under the Mental Health Act 1983<sup>(1)</sup> made by a court-martial by virtue of section 116B of AA 1955 or AFA 1955 or section 63B of NDA 1957, the order has effect after commencement as if made by the Court Martial by virtue of Schedule 4 to AFA 2006.

(3) Where immediately before commencement a supervision order made by a court-martial under section 116A of AA 1955 or AFA 1955 or section 63A of NDA 1957 is in force, the order has effect after commencement as a service supervision order under section 169 of AFA 2006.

(4) Paragraphs (5) to (7) apply where immediately before commencement a hospital order or restriction order made by the Appeal Court is in force.

(5) If the order was made by virtue of section 16(2) of CMAA 1968, it has effect after commencement as if made by virtue of section 169 of AFA 2006 as applied by section 16(2) of CMAA 1968 (as substituted by AFA 2006).

(6) If the order was made by virtue of section 23(2) of CMAA 1968, it has effect after commencement as if made by virtue of section 169 of AFA 2006 as applied by sections 16(2) and 22(3A) of CMAA 1968 (as substituted by AFA 2006).

(7) If the order was made by virtue of section 25B of CMAA 1968, it has effect after commencement as if made by virtue of section 169 of AFA 2006 and section 25B of CMAA 1968 (as amended by AFA 2006).

(8) Paragraphs (9) to (11) apply where immediately before commencement there is in force any other order under the Mental Health Act 1983 made by the Appeal Court.

(9) If the order was made by virtue of section 116B of AA 1955 or AFA 1955 or section 63B of NDA 1957, as applied by section 16(4) of CMAA 1968, it has effect after commencement as if made

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(1) 1983 c. 20.

by virtue of Schedule 4 to AFA 2006 as applied by section 16(2) of CMAA 1968 (as substituted by AFA 2006).

(10) If the order was made by virtue of section 116B of AA 1955 or AFA 1955 or section 63B of NDA 1957, as applied by section 23(4) of CMAA 1968, it has effect after commencement as if made by virtue of Schedule 4 to AFA 2006 as applied by sections 16(2) and 22(3A) of CMAA 1968 (as substituted by AFA 2006).

(11) If the order was made by virtue of section 25B of CMAA 1968, it has effect after commencement as if made by virtue of Schedule 4 to AFA 2006 and section 25B of CMAA 1968 (as amended by AFA 2006).

(12) Paragraphs (13) to (15) apply where immediately before commencement a supervision order made by the Appeal Court was in force.

(13) If the order was made by virtue of section 16(2) of CMAA 1968, it has effect after commencement as a service supervision order made by virtue of section 169 of AFA 2006 as applied by section 16(2) of CMAA 1968 (as substituted by AFA 2006).

(14) If the order was made by virtue of section 23(2) of CMAA 1968, it has effect after commencement as a service supervision order made by virtue of section 169 of AFA 2006 as applied by sections 16(2) and 22(3A) of CMAA 1968 (as substituted by AFA 2006).

(15) If the order was made by virtue of section 25B of CMAA 1968, it has effect after commencement as a service supervision order made by virtue of section 169 of AFA 2006 and section 25B of CMAA 1968 (as amended by AFA 2006).

(16) In paragraphs (2) and (8) to (11) “order” includes a remand.

(17) In this article references to an order made by the Appeal Court include an order made by the House of Lords or the Supreme Court on an appeal brought from a decision of the Appeal Court.

### **Remission for trial**

**81.**—(1) Without prejudice to the generality of article 80, where a hospital order and restriction order made by virtue of section 116A(1)(a) of AA 1955 or AFA 1955 or section 63A(1)(a) of NDA 1957 are continued in effect by that article, the orders are to be treated for the purposes of section 171 of AFA 2006 (remission for trial) as a hospital order and restriction order made by the Court Martial which the Court Martial had power to make by virtue of section 169(1)(a).

(2) Where—

(a) a person has been remitted for court-martial trial under section 116B(5) of AA 1955 or AFA 1955 or section 63B(5) of NDA 1957, and

(b) the trial has not begun by commencement,

the person is to be treated as having been remitted under section 171(1) of AFA 2006 for trial by the Court Martial.

(3) The first reference in paragraph (1) to a hospital order and restriction order made as mentioned there includes—

(a) a hospital order and restriction order made by virtue of section 16(1)(b) or 23(2)(a) of CMAA 1968;

(b) a hospital order and restriction order made by virtue of section 25B(1) of that Act in a case in which a finding within section 116A(1)(a) of AA 1955 or AFA 1955 or section 63A(1)(a) of NDA 1957 was made by a court-martial.

**Finding that defendant who is unfit to stand trial did the act or made the omission charged**

**82.**—(1) Section 167 of AFA 2006 (duty to find whether defendant who is unfit to stand trial did the act or made the omission charged) applies (as well as in the case mentioned in subsection (1)) where—

- (a) under section 115A of AA 1955 or AFA 1955 or section 62A of NDA 1957 a person has been found to be unfit to stand trial; and
- (b) by commencement no determination had been made under section 115B of AA 1955 or AFA 1955 or section 62B of NDA 1957 (determination whether defendant did the act charged).

(2) Where section 167 of AFA 2006 applies by reason of this article, the reference in subsection (2) to “the court” is to the Court Martial.

**Powers to make hospital orders etc**

**83.**—(1) Section 169 of AFA 2006 (Court Martial powers where person unfit to stand trial or not guilty by reason of insanity) applies (as well as in the case mentioned in subsection (1)) in the following cases—

- (a) where by virtue of article 82 the Court Martial finds that a defendant did the act (or made the omission) charged;
- (b) where on a trial by court-martial the defendant was found—
  - (i) to be unfit to stand trial and to have done the act (or made the omission) charged, or
  - (ii) to be not guilty by reason of insanity,and by commencement the court had not made an order by virtue of section 116A(2) of AA 1955 or AFA 1955 or section 63A(2) of NDA 1957.

(2) Where section 169 of AFA 2006 applies by reason of this article—

- (a) the reference in subsection (2) to “the court” is to the Court Martial;
- (b) subsection (6) is to be treated as omitted;
- (c) the functions referred to in subsection (6) are to be exercised by—
  - (i) the judge advocate who was judge advocate for the court-martial; or
  - (ii) if that judge advocate made an interim hospital order by virtue of section 116B of AA 1955 or AFA 1955 or section 63B of NDA 1957, that or any other judge advocate.