
STATUTORY INSTRUMENTS

2009 No. 1059

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

PART 12

SENTENCING POWERS IN RELATION TO SDA OFFENCES

CHAPTER 1

Consecutive sentences

Consecutive custodial sentences and consecutive service detention

85.—(1) In section 188 of AFA 2006(1) (consecutive custodial sentences), references to a service offence include an SDA offence.

(2) The sentences referred to in subsection (4)(b) of that section are to be taken to include a determinate sentence of detention under section 71A(4) of AA 1955 or AFA 1955 or section 43A(4) of NDA 1957.

(3) In section 189 of that Act (consecutive sentences of service detention), the references in subsections (1) and (3) to any other sentence of service detention include an SDA sentence of service detention.

CHAPTER 2

Young offenders

Offenders under 18 convicted of certain serious SDA offences: power to detain for specified period

86. In section 209 of AFA 2006(2) (detention for person under 18 convicted of serious offence)—

- (a) references to an offence under section 42 of that Act include an SDA civil offence;
- (b) references to the corresponding offence under the law of England and Wales include the corresponding civil offence.

Offenders under 18: detention and training orders

87.—(1) In section 212 of AFA 2006 (term of detention and training order)—

- (a) subsection (1) has effect in relation to an SDA offence as if for the words “, 10, 12, 18 or 24 months” there were substituted “or 10 months”;
- (b) in subsection (2)—

(1) Section 188 of AFA 2006 is amended by the Criminal Justice and Immigration Act 2008 (c. 4), section 145 and Schedule 25, paragraphs 10 and 11.
(2) Section 209 of AFA 2006 is amended by the Criminal Justice and Immigration Act 2008, section 145 and Schedule 25, paragraphs 10 and 12.

- (i) the reference to an offence under section 42 of that Act includes an SDA civil offence;
- (ii) the reference to the corresponding offence under the law of England and Wales includes the corresponding civil offence.

(2) Section 101(3) to (7) of the Powers of Criminal Courts (Sentencing) Act 2000(3) (which relate to consecutive terms of detention and training orders and are applied by section 213 of AFA 2006) have effect in relation to the sentencing of an offender by the Court Martial with the following modifications.

(3) In subsection (3), the reference to any other detention and training order includes an SDA custodial order.

(4) For the purposes of the references in each of subsections (4) and (5) to “detention and training orders”, an SDA custodial order is to be treated as a detention and training order.

(5) In relation to the sentencing by the Court Martial of an offender for an SDA offence, subsections (4), (5) and (7) have effect as if the references to 24 months were to 12 months.

(6) In section 213(3) of AFA 2006 (taking into account time spent in service custody), the reference to service custody is to be read, in relation to any time before commencement, as a reference to military custody, air-force custody or naval custody.

(7) In this article an “SDA custodial order” means—

- (a) an order under section 71AA of, or paragraph 10 of Schedule 5A to, AA 1955 or AFA 1955; or
- (b) an order under section 43AA of, or paragraph 10 of Schedule 4A to, NDA 1957.

CHAPTER 3

Mandatory etc sentences

Mandatory life imprisonment etc

88. In sections 217 and 218 of AFA 2006 (mandatory life imprisonment or detention at HM pleasure)—

- (a) references to an offence under section 42 of that Act include an SDA civil offence;
- (b) references to the corresponding offence under the law of England and Wales include the corresponding civil offence.

Sentences required by SDAs

89.—(1) This article applies where—

- (a) a person is convicted by the Court Martial of an SDA civil offence; and
- (b) if the person had been convicted of the offence by a court-martial immediately before commencement, that court would have been required by section 70(3A) of AA 1955 or AFA 1955 or section 42(1A) of NDA 1957 to impose the sentence required by section 109(2) of the Powers of Criminal Courts (Sentencing) Act 2000 unless of the opinion that there were exceptional circumstances which justified its not doing so.

(2) Where this article applies, the Court Martial must impose a sentence of life imprisonment unless it is of the opinion that there are exceptional circumstances which justify its not doing so.

(3) It is to be assumed for the purposes of this article that section 109 of the Powers of Criminal Courts (Sentencing) Act 2000 remained in force for the purposes of section 70(3A) of AA 1955 and AFA 1955 and section 42(1A) of NDA 1957 until immediately before commencement.

(4) Sections 237, 252, 260 and 261 of AFA 2006 do not apply to an offence for which a sentence of life imprisonment falls to be imposed under this article.

CHAPTER 4

Court orders other than sentences

Service restraining orders

90. In section 230(3) of AFA 2006 (remission by Appeal Court of case to Court Martial), the reference to an appeal against conviction includes such an appeal brought from a court-martial.

Recognizances

91.—(1) In section 235(4) of AFA 2006 (variation or revocation of recognizance), the reference to an order under section 233 of that Act includes an order under paragraph 14 of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957.

(2) In section 236(1) of AFA 2006 (forfeiture of recognizance)—

- (a) the reference in paragraph (a) to a recognizance under section 233 of that Act includes a recognizance under paragraph 14(1) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957;
- (b) the reference in paragraph (b) to a service offence includes an SDA offence.

CHAPTER 5

Miscellaneous

Power of Supreme Court to make service compensation order

92. Where the Supreme Court restores a conviction of an offence of which the offender was convicted by a court-martial, it may make any service compensation order which the Court Martial could have made if it had convicted the offender.