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STATUTORY INSTRUMENTS

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**2009 No. 1059**

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

PART 13

ACTIVATION OF SUSPENDED SENTENCES

CHAPTER 3

Activation of suspended NDA 1957 sentence of service detention by CO or SAC

**Activation by CO**

97.—(1) Where—

- (a) an SDA sentence of service detention passed on a person by an officer under NDA 1957, or the summary appeal court under that Act, is for the time being suspended, and
- (b) an officer records a finding after commencement that a charge against the person is proved in respect of an offence committed since the suspension date,

the officer may make an order under section 193(3) of AFA 2006 in respect of the sentence.

(2) Where—

- (a) an SDA sentence of service detention passed on a person by an officer under NDA 1957, or the summary appeal court under that Act, is for the time being suspended,
- (b) the person has been convicted of an offence in the British Islands committed since the suspension date, and subsequently appears before his commanding officer, and
- (c) article 62 (activation under section 91B of NDA 1957 where application for approval made before commencement) does not apply,

the officer may make an order under section 193(3) of AFA 2006 in respect of the sentence.

(3) Where an officer makes an order under section 193(3) of AFA 2006 by virtue of this article, section 194(1) to (6) of AFA 2006 (maximum term of suspended sentence of service detention activated by CO) do not apply.

(4) Rules made under section 153 of AFA 2006 (rules as to summary hearings and the activation of suspended sentences by commanding officers) may make provision requiring an order under section 193(3) of AFA 2006 to be approved before it may be made by virtue of this article.

(5) This article is subject to section 244 of AFA 2006 (limit on combined terms of sentences) as modified by article 104.

**Powers of SAC**

98.—(1) In section 195(1) of AFA 2006 (order activating suspended sentence to be treated as punishment for purposes of provisions about appeals and reviews) the reference to an order under section 193 includes an order under section 91B(1) of NDA 1957 (activation of suspended sentence).

(2) In section 195(2) of AFA 2006, the reference to the case where an order under section 193 was made by virtue of a finding within section 193(2)(a) includes the case where an order under section 91B(1) of NDA 1957 was made by virtue of a finding within section 91B(1)(a) of NDA 1957.

(3) On an appeal against an order under section 91B(1) of NDA 1957, the Summary Appeal Court may—

- (a) if no direction under section 91B(6) of NDA 1957 was given in respect of the sentence to which the order relates—
  - (i) quash the order;
  - (ii) confirm the order; or
  - (iii) make, in substitution for the order, an order under section 193(3) of AFA 2006;
- (b) if a direction under section 91B(6) of NDA 1957 was given in respect of the sentence to which the order relates—
  - (i) quash the order (and the direction);
  - (ii) confirm the order and the direction;
  - (iii) confirm the order and quash the direction; or
  - (iv) make, in substitution for the order and direction, an order under section 193(3) of AFA 2006.

(4) Section 195(9) of AFA 2006 (period of suspended sentence served to be taken into account) applies in relation to the Summary Appeal Court's powers under paragraph (3) to substitute an order under section 193(3).

(5) The Summary Appeal Court may make an order under section 193(3) of AFA 2006 on an appeal to that court in a case in which—

- (a) section 91B(1)(a) of NDA 1957 applied; and
- (b) the officer who awarded punishment did not make an order under section 91B(1).

(6) On an appeal to the Summary Appeal Court in a case in which section 91B(1)(a) of NDA 1957 applied—

- (a) section 147(3) of AFA 2006 has effect, as regards the Summary Appeal Court's powers of punishment in respect of the officer's finding (or any substituted finding), as if any requirement that the punishment be no more severe than the punishment originally awarded were omitted; but
- (b) the court may not exercise its powers under section 147(3) or paragraph (3) or (5) above in such a way that, taking the case as a whole, the appellant is dealt with more severely on appeal than he was dealt with by the officer.

(7) On an appeal against an order under section 91B(1) of NDA 1957 made by virtue of section 91B(1)(b), the Summary Appeal Court may not exercise its powers under paragraph (3) above in such a way that, taking the case as a whole, the appellant is dealt with more severely on appeal than he was dealt with by the officer.

(8) References in this article and article 99 to an order under section 91B(1) of NDA 1957 include such an order made after commencement by virtue of article 55 or 62.

### **SAC powers where suspended sentence of more than 90 days**

**99.**—(1) This article applies where by virtue of article 98(3) the Summary Appeal Court substitutes an order under section 193(3) of AFA 2006 for an order under section 91B(1) of NDA 1957 in respect of a sentence for a term of more than 90 days.

(2) The order must be an order that the suspended sentence shall take effect with the substitution for the original term of a specified term, which must be 90 days or less.

(3) For the purposes of section 244 of AFA 2006 (limitation of combined term of sentences) the term of the sentence is to be treated as the term specified in the order under section 193(3).

(4) For the purposes of this Part, the part of the sentence that exceeds 90 days is to be treated as a sentence passed by a court-martial under NDA 1957 and suspended under section 90(1) of NDA 1957 on the date when the order under section 91B(1) of NDA 1957 was made.