
STATUTORY INSTRUMENTS

2009 No. 1059

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

PART 17

SERVICE AND EFFECT OF SENTENCES IN RESPECT OF SDA OFFENCES

CHAPTER 1

General

General saving for SDA sentences

135. A punishment awarded before commencement under an enactment repealed by AFA 2006 is not affected by the coming into force of the repeal of the enactment under which it was awarded, or by article 6.

CHAPTER 2

Custodial sentences and detention

Committal orders under NDA 1957: custodial sentences

136.—(1) This article applies where—

- (a) a person has been sentenced under NDA 1957 to an SDA custodial sentence; and
- (b) at commencement, no committal order has been issued under section 81(3) of that Act in respect of the sentence.

(2) Subject to paragraph (3), the sentence shall be sufficient warrant for sending the person to such place as the Commandant of the Military Corrective Training Centre may direct, and detaining him in service custody until he reaches that place; and, accordingly, no committal order shall be required.

(3) Where the sentence has been suspended under section 90 of NDA 1957, and no order has been made under section 91(1) of that Act in respect of it—

- (a) paragraph (2) does not apply unless an order is made under article 94 in respect of the sentence; but
- (b) any such order shall have the effect mentioned in paragraph (2).

Committal orders under NDA 1957: sentences of service detention

137.—(1) Paragraphs (2) to (4) apply where—

- (a) a person has before commencement been sentenced to detention under section 43(1)(e) of NDA 1957; and
- (b) at commencement, no committal order has been issued under section 81(3) of that Act in respect of the sentence.

(2) Subject to paragraphs (3) and (4), the sentence shall be sufficient warrant for sending the person in service custody to the Military Corrective Training Centre; and, accordingly, no committal order shall be required.

(3) Where the sentence has been suspended under section 90 of NDA 1957, and at commencement no order has been made under section 91(1) or 91B(1) of that Act in respect of it—

- (a) paragraph (2) does not apply unless an order is made under section 91B(1) of that Act (by virtue of article 55 or 62), or section 191(3) or 193(3) of AFA 2006 (by virtue of any of articles 95 to 97), in respect of the sentence; but
- (b) any such order shall have the effect mentioned in paragraph (2).

(4) Where the sentence was passed by an officer and, immediately before commencement, was suspended by virtue of section 85A(4) of NDA 1957, paragraph (2) applies only when the sentence takes effect by virtue of section 290 or 291 of AFA 2006 (as modified by article 138 or 140).

(5) Where—

- (a) a person is sentenced to detention under section 43(1)(e) of NDA 1957 by virtue of article 55 (award of SDA punishment for offence found proved before commencement), and
- (b) the sentence is not suspended under section 90 of NDA 1957,

the sentence shall be sufficient warrant for sending the person in service custody to the Military Corrective Training Centre; but this is subject to sections 290 and 291 of AFA 2006 (as modified by article 142).

(6) Where—

- (a) a person is sentenced to detention under section 43(1)(e) of NDA 1957 by virtue of article 55,
- (b) the sentence is suspended under section 90 of NDA 1957, and
- (c) an order under section 191(3) or 193(3) of AFA 2006 is made (by virtue of any of articles 95 to 97) in respect of the sentence,

the order shall be sufficient warrant for sending the person in service custody to the Military Corrective Training Centre; but, in the case of an order under section 193(3) of AFA 2006, this is subject to sections 290 to 292 of that Act (as modified by article 144).

Commencement of SDA sentence of service detention awarded by CO: sentence not running at commencement

138.—(1) This article applies where—

- (a) immediately before commencement, an SDA sentence of service detention awarded by an officer (or the remainder of such a sentence) was suspended by virtue of section 118ZA(3) or (4) of AA 1955 or AFA 1955 or section 85A(4) or (5) of NDA 1957 (commencement of sentence of detention awarded by CO); and
- (b) either—
 - (i) the officer did not make an order under section 118A(2) of AA 1955 or AFA 1955 or section 86(2) of NDA 1957 that the sentence should run from the expiry of another sentence; or
 - (ii) the officer made such an order but the other sentence expired before commencement.

(2) If at commencement—

- (a) the offender has made no election under section 118ZA(2) of AA 1955 or AFA 1955 or section 85A(2) of NDA 1957,
- (b) the appeal period has not expired, and

(c) no appeal has been brought,

section 290(3) of AFA 2006 applies as if the sentence were a sentence of service detention as respects which the offender made no election under section 290(2).

(3) If at commencement—

(a) the offender has made an election under section 118ZA(2) of AA 1955 or AFA 1955 or section 85A(2) of NDA 1957 but has withdrawn it,

(b) the appeal period has not expired, and

(c) no appeal has been brought,

section 290(5) of AFA 2006 applies as if the sentence were a sentence of service detention as respects which the offender made an election under section 290(2) but withdrew the election under section 290(4).

(4) In paragraphs (2) and (3) “the appeal period” means the period mentioned in section 141(2) of AFA 2006 (as modified by article 63(2)) for the bringing of an appeal.

(5) If at commencement an appeal has been brought and has not been abandoned or determined, section 290(3) or (as the case may be) (5) of AFA 2006 applies (with the omission of paragraph (a)) as if—

(a) the sentence were a sentence of service detention;

(b) any election under section 118ZA(2) of AA 1955 or AFA 1955 or section 85A(2) of NDA 1957, or failure to make such an election, were an election under section 290(2) of AFA 2006 or (as the case may be) a failure to make such an election;

(c) any withdrawal of an election under section 118ZA(2) of AA 1955 or AFA 1955 or section 85A(2) of NDA 1957 were a withdrawal under section 290(4) of AFA 2006 of an election under section 290(2); and

(d) the appeal had been brought under section 141 of AFA 2006.

(6) If at commencement—

(a) the sentence has taken or resumed effect, and

(b) an appeal which was subsequently brought has not been abandoned or determined,

section 290(6) of AFA 2006 applies (with the omission of paragraph (a)) as if the sentence had taken or resumed effect under section 290(2), (3)(a) or (5)(a) of that Act and the appeal had been brought under section 141.

Commencement of SDA sentence of service detention awarded by CO: sentence running at commencement

139.—(1) This article applies where—

(a) an SDA sentence of service detention was awarded by an officer before commencement; and

(b) immediately before commencement, the sentence was not suspended by virtue of section 118ZA(3) or (4) of AA 1955 or AFA 1955 or section 85A(4) or (5) of NDA 1957 (but had not expired).

(2) If the offender made an election under section 118ZA(2) of AA 1955 or AFA 1955 or section 85A(2) of NDA 1957—

(a) section 290(4) of AFA 2006 applies as if the sentence were a sentence of service detention as respects which the offender made an election under section 290(2);

(b) section 290(5) of that Act applies if the election is withdrawn within the appeal period; and

(c) section 290(6) of that Act applies if—

- (i) the election is not withdrawn but an appeal is subsequently brought; or
- (ii) the election is withdrawn during the appeal period, the remainder of the award resumes effect under section 290(5)(a) of that Act and an appeal is subsequently brought.

(3) In paragraph (2) “the appeal period” means the period mentioned in section 141(2) of AFA 2006 (as modified by article 63(2)) for the bringing of an appeal.

(4) If—

- (a) the appeal period (within the meaning of section 118ZA of AA 1955 or AFA 1955 or section 85A of NDA 1957) has expired before commencement without an appeal being brought, and
- (b) an appeal is subsequently brought,

section 290(6) of AFA 2006 applies as if the sentence were a sentence of service detention which took or resumed effect under section 290(3)(a) or (5)(a).

Commencement of consecutive SDA sentence of service detention awarded by CO before commencement

140.—(1) This article applies where—

- (a) before commencement, an officer awarded an SDA sentence of service detention (“the subsequent sentence”);
- (b) the officer made an order under section 118A(2) of AA 1955 or AFA 1955 or section 86(2) of NDA 1957 that the subsequent sentence should begin to run from the expiry of a sentence of detention which the offender was already serving (“the initial sentence”); and
- (c) immediately before commencement, the initial sentence had not expired.

(2) Section 291(3) to (9) of AFA 2006 apply as if—

- (a) both the initial sentence and the subsequent sentence were sentences of service detention awarded under section 132 of that Act;
- (b) the order were a direction under section 189(3) of that Act that the subsequent sentence should take effect from the end of the initial sentence;
- (c) any election made under section 118ZA(2) of AA 1955 or AFA 1955 or section 85A(2) of NDA 1957, or failure to make such an election, were an election or (as the case may be) failure to make an election under section 291(2) of AFA 2006; and
- (d) any withdrawal of an election under section 118ZA(3) of AA 1955 or AFA 1955 or section 85A(4) of NDA 1957, or failure to make such a withdrawal, were a withdrawal under section 291(3) of AFA 2006 or (as the case may be) a failure to make such a withdrawal.

Commencement of sentence of detention activated by CO under NDA 1957 before commencement

141.—(1) Article 138 applies in relation to an SDA sentence of service detention as respects which an officer made an order under section 91B(1) of NDA 1957 before commencement as it applies in relation to an SDA sentence of service detention awarded by an officer, but with the following modifications—

- (a) the references in article 138(1)(b) to an order under section 86(2) of that Act are to be read as to a direction under section 91B(6) of that Act;

- (b) in section 290(3), (5) and (6) of AFA 2006 as applied by article 138, references to the award are to be read as to the SDA sentence of service detention to which the order relates;
 - (c) in relation to section 290(3) and (5) of AFA 2006 as applied by article 138, the reference in section 290(7) of that Act to an appeal is to an appeal against the order;
 - (d) in relation to section 290(3)(b), (5)(b) and (6)(b) of AFA 2006 as applied by article 138, in section 290(8) of that Act—
 - (i) the reference to the award is to be read as to the order; and
 - (ii) the reference to another punishment is to be read as to an order under section 193(3) of AFA 2006.
- (2) Article 139 applies in relation to a sentence of detention as respects which an officer made an order under section 91B(1) of NDA 1957 before commencement as it applies in relation to an SDA sentence of service detention awarded by an officer, but with the following modifications—
- (a) in section 290(5) and (6) of AFA 2006 as applied by article 139, references to the award are to be read as to the SDA sentence of service detention to which the order relates;
 - (b) in relation to section 290(4) and (5) of AFA 2006 as applied by article 139, the reference in section 290(7) of that Act to an appeal is to an appeal against the order;
 - (c) in relation to section 290(5)(b) and (6)(b) of AFA 2006 as applied by article 139, in section 290(8) of that Act—
 - (i) the reference to the award is to be read as to the order; and
 - (ii) the reference to another punishment is to be read as to an order under section 193(3) of AFA 2006.
- (3) Article 140 applies in relation to an SDA sentence of service detention as respects which an officer made an order under section 91B(1) of NDA 1957 before commencement and gave a direction under section 91B(6) of that Act as it applies in relation to an SDA sentence of service detention as respects which an officer made an order under section 86(2) of that Act, but with the following modifications—
- (a) the reference in article 140(1)(b) to an order under section 86(2) of that Act is to be read as to a direction under section 91B(6) of that Act;
 - (b) in section 291(4) to (7) of AFA 2006 as applied by article 140, references to the award are to be read as to the SDA sentence of service detention to which the order relates;
 - (c) in relation to section 291(5) and (6) of AFA 2006 as applied by article 140, the reference in section 291(8) of that Act to an appeal is to an appeal against the order;
 - (d) in relation to section 291(5)(b), (6)(b) and (7)(b) of AFA 2006 as applied by article 140, in section 291(9) of that Act—
 - (i) the reference to the award is to be read as to the order; and
 - (ii) the reference to another punishment is to be read as to an order under section 193(3) of AFA 2006.
- (4) In this article, “the order” means the order under section 91B(1) of NDA 1957.

Commencement of SDA sentence of service detention awarded by CO after commencement

142.—(1) Section 290 of AFA 2006 (commencement of term of service detention awarded by CO) applies where an officer—

- (a) awards an SDA sentence of service detention by virtue of article 55 (award of SDA punishment for offence found proved before commencement);

- (b) in the case of a sentence under NDA 1957, does not make an order under section 90(1) of that Act suspending the sentence; and
 - (c) does not order under section 118A(2) of AA 1955 or AFA 1955, or section 86(2) of NDA 1957, that the sentence shall begin to run from the expiry of another sentence.
- (2) Section 291 of AFA 2006 (commencement of consecutive term of service detention awarded by CO) applies where an officer—
- (a) awards an SDA sentence of service detention by virtue of article 55; and
 - (b) orders under section 118A(2) of AA 1955 or AFA 1955, or section 86(2) of NDA 1957, that the sentence shall begin to run from the expiry of another sentence.
- (3) In section 291 of AFA 2006 as applied by paragraph (2)—
- “the initial sentence” means the second sentence mentioned in paragraph (2)(b);
 - “the appeal period” means the period mentioned in section 141(2) of AFA 2006 for the bringing of an appeal against the award mentioned in paragraph (2)(a).

Commencement of sentence of detention activated by CO under NDA 1957 after commencement

- 143.**—(1) Section 292(2) of AFA 2006 (commencement of suspended sentence of service detention activated by CO) applies where an officer—
- (a) makes an order under section 91B(1) of NDA 1957 by virtue of article 55 or 62; and
 - (b) does not direct under section 91B(6) of that Act that the sentence in respect of which the order is made shall begin to run from the end of another sentence.
- (2) Section 292(3) of AFA 2006 (commencement of suspended sentence of service detention activated by CO and made consecutive to another sentence) applies, with the omission of paragraph (b), where an officer—
- (a) makes an order under section 91B(1) of NDA 1957 by virtue of article 55 or 62; and
 - (b) directs under section 91B(6) of that Act that the sentence in respect of which the order is made shall begin to run from the end of another sentence.
- (3) In section 292(2) and (3) of AFA 2006 as applied by this article—
- (a) “the activation order” means the order under section 91B(1) of NDA 1957;
 - (b) references to the award of service detention to which the activation order relates are to the SDA sentence of service detention to which the order under section 91B(1) of NDA 1957 relates.
- (4) In section 291(2) to (9) of AFA 2006 as modified by section 292(3) of that Act by virtue of paragraph (2) above, “the initial sentence” means the second sentence mentioned in paragraph (2)(b).

Commencement of SDA sentence of service detention activated by CO under AFA 2006

- 144.**—(1) This article applies where an officer makes an order under section 193(3) of AFA 2006 by virtue of article 97 (activation of suspended NDA 1957 sentence of service detention by CO).
- (2) If the order does not provide that the suspended sentence shall take effect from the end of another sentence, section 290(2) to (8) of AFA 2006 apply as modified by section 292(2) of that Act (except paragraph (c) of that subsection) as if the sentence were a suspended sentence of service detention.
- (3) In section 290(2) to (7) of AFA 2006 as applied by paragraph (2), any reference to “the award” (other than one to which section 292(2)(a) or (b) applies) is to the award of detention (under NDA 1957) to which the order relates.

(4) If the order provides that the suspended sentence shall take effect from the end of another sentence, section 291(2) to (9) of AFA 2006 apply as modified by section 292(3) of that Act (except paragraph (c) of that subsection), as if the sentence were a suspended sentence of service detention.

(5) In section 291(4) to (7) of AFA 2006 as applied by paragraph (4), any reference to “the award” is to the award of detention (under NDA 1957) to which the order relates.

Effect of custodial sentence or detention on rank or rate

145. The sentences to which section 294 of AFA 2006 (rank or rate of WOs and NCOs while in custody or detention) applies include—

- (a) a custodial sentence passed in respect of an SDA offence;
- (b) an SDA custodial sentence; and
- (c) an SDA sentence of service detention.

Service of SDA sentence of service detention

146.—(1) In section 296 of AFA 2006 (service of sentence of service detention), references to a sentence of service detention include an SDA sentence of service detention.

(2) In subsection (2)(b) of that section the reference to section 290 or 291 includes a reference to section 118ZA(3) or (4) of AA 1955 or AFA 1955 or section 85A(4) or (5) of NDA 1957.

Detention in service custody following passing of custodial sentence etc in respect of SDA offence

147. In section 297(1)(a) of AFA 2006 (detention in service custody following passing of custodial sentence etc), the reference to a custodial sentence passed in respect of a service offence includes—

- (a) an SDA custodial sentence; and
- (b) a custodial sentence passed in respect of an SDA offence.

Removal to England and Wales following passing of custodial sentence etc in respect of SDA offence

148.—(1) In section 298(1)(a) of AFA 2006 (removal to England and Wales following passing of custodial sentence etc), the reference to a custodial sentence passed in respect of a service offence includes—

- (a) an SDA custodial sentence; and
- (b) a custodial sentence passed in respect of an SDA offence.

(2) Nothing in this article applies section 298 of AFA 2006 in relation to a person who, before commencement, was committed to the appropriate establishment in the United Kingdom.

Duty to receive and detain prisoners

149. In section 299 of AFA 2006 (duty to receive prisoners), the reference to rules under section 300 of that Act includes Imprisonment and Detention Rules within the meaning of section 122 of AA 1955.

Service custody etc rules

150. In section 300 of AFA 2006 (service custody etc rules)—

- (a) references to a sentence of service detention include an SDA sentence of service detention;
- (b) references to a relevant sentence include (as well as, by reason of paragraph (a), an SDA sentence of service detention)—
 - (i) an SDA custodial sentence; and
 - (ii) a custodial sentence passed in respect of an SDA offence;
- (c) the reference in subsection (4) to a disciplinary offence created by the rules includes a disciplinary offence created by rules under section 122 of AA 1955.

Duration of sentences: persons unlawfully at large or on temporary release

151.—(1) In section 301 of AFA 2006 (duration of sentences: persons unlawfully at large or on temporary release)—

- (a) references to service detention include an SDA sentence of service detention;
- (b) references to a custodial sentence passed in respect of a service offence include—
 - (i) an SDA custodial sentence; and
 - (ii) a custodial sentence passed in respect of an SDA offence.

(2) In subsection (3) of that section, the reference to rules under section 300 includes rules made under section 122 of AA 1955.

(3) Section 119(5) of AA 1955 and AFA 1955 (provision corresponding to section 301(4) of AFA 2006) apply for the purposes of section 301 of AFA 2006.

(4) Section 88(2) of NDA 1957 (provision corresponding to section 301(4) of AFA 2006) applies for the purposes of section 301 of AFA 2006, but as if—

- (a) the reference to civil custody were omitted; and
- (b) in the definition of “the appropriate rules” in section 88(3) of NDA 1957, paragraph (c) were omitted.

Remission of certain sentences on passing of custodial sentence etc

152.—(1) In section 302(1) of AFA 2006 (remission of certain sentences on passing of custodial sentence etc)—

- (a) the reference to a “relevant sentence” includes—
 - (i) an SDA sentence of service detention; and
 - (ii) an SDA minor punishment; and
- (b) the reference in paragraph (a) to a service offence includes an SDA offence.

(2) Where part of an SDA minor punishment was unserved immediately before commencement, that part is remitted on commencement if, between the award of that punishment and commencement, there has been passed on the offender (and not quashed)—

- (a) an SDA custodial sentence; or
- (b) a sentence of imprisonment, or a sentence that corresponds to a custodial sentence within the meaning of AFA 2006, passed by a civilian court in the British Islands.

(3) In this article “an SDA minor punishment” means a minor punishment under section 71(1)(l) or 76C(2)(e) of AA 1955 or AFA 1955 or section 43(1)(m) of NDA 1957.

Power of service policeman to arrest person unlawfully at large

153.—(1) In section 303(1) of AFA 2006 (power of service policeman to arrest person sentenced to service detention who is unlawfully at large), the reference to service detention includes an SDA sentence of service detention.

(2) Section 119(5) of AA 1955 and AFA 1955 (provision corresponding to section 303(2) of AFA 2006) apply for the purposes of section 303(1) of AFA 2006.

(3) Section 88(2) of NDA 1957 (provision corresponding to section 303(2) of AFA 2006) applies for the purposes of section 303(1) of AFA 2006, but as if—

- (a) the reference to civil custody were omitted; and
- (b) in the definition of “the appropriate rules” in section 88(3) of NDA 1957, paragraph (c) were omitted.

Sentences passed by civilian courts

154. In section 304(1) of AFA 2006 (references to custodial sentence do not include sentence passed by civilian court), the reference to a service offence includes an SDA offence.

CHAPTER 3

Financial penalties

Effect of appeal on SDA service compensation order, etc

155.—(1) In section 176(1) of AFA 2006 (suspension of entitlement to payment of service compensation order), the reference to a service compensation order includes a compensation order under paragraph 11 of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957.

(2) In section 176(3) of AFA 2006 (effect of appeal, etc, where service compensation order made in respect of offence taken into consideration), the reference to a service compensation order includes—

- (a) stoppages under AA 1955, AFA 1955 or NDA 1957; and
- (b) a compensation order under paragraph 11 of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957.

Review of stoppages and SDA compensation order, etc

156. In section 177 of AFA 2006 (review of service compensation order), references to a service compensation order include—

- (a) stoppages under AA 1955, AFA 1955 or NDA 1957; and
- (b) a compensation order under paragraph 11 of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957.

Power to allow payment of fine or stoppages by instalments

157. In section 251(2) to (7) of AFA 2006 (power to allow payment of fine or service compensation order by instalments)—

- (a) references to a fine include one awarded by virtue of any provision of AA 1955, AFA 1955, NDA 1957 or AFA 1976;
- (b) references to a service compensation order include—
 - (i) stoppages under AA 1955, AFA 1955 or NDA 195; and

- (ii) a compensation order under paragraph 11 of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957.

Imprisonment in default of payment of fine

158.—(1) An order under section 71B(1) of AA 1955 or AFA 1955 or section 43B(1) of NDA 1957 (power to fix further consecutive term of imprisonment or detention in default of payment of fine) shall continue to have effect notwithstanding the repeal of that subsection by AFA 2006.

(2) In relation to such an order—

- (a) subsections (3) to (6) of section 71B of AA 1955 or AFA 1955 or of section 43B of NDA 1957 (as the case may be) shall apply notwithstanding their repeal by AFA 2006; and
- (b) in relation to any time after commencement, references in subsection (6) of section 71B of AA 1955 or AFA 1955 or of section 43B of NDA 1957 (as the case may be) to deductions from pay and amounts forfeited under Part 3 of AA 1955 or AFA 1955 or Part 4 of NDA 1957 are to be read as references to (respectively) deductions from pay and amounts forfeited in accordance with authority given by or under AFA 2006 or any other enactment.

CHAPTER 4

Second class for conduct

Second class for conduct

159.—(1) This article applies to a punishment of Reduction to the Second Class for Conduct, awarded by virtue of regulation 43 of the Naval Summary Discipline Regulations (February) 2009^{M1}, all or any of which falls to be served after commencement.

(2) Regulation 55 of those Regulations shall continue in force for the purposes of any such punishment, but with the following amendments.

(3) For paragraphs (c) and (d) substitute—

- “(c) perform extra duties (that is, work, training or any other duty performed by the rating at times when he would not otherwise be required to perform any duty)—
- (i) during the first 14 days of the punishment, for a period not exceeding 5½ hours each day;
- (ii) during the remainder of the punishment, for a period not exceeding 1 hour each day.”

(4) In relation to a punishment of Reduction to the Second Class for Conduct to which this article applies, the offender's commanding officer—

- (a) must decide in respect of each day of the punishment—
- (i) what extra duties the rating must perform;
- (ii) the period (not exceeding the permitted maximum) for which extra duties are to be performed; and
- (iii) the time or times for performing the extra duties; and
- (b) must inform the rating accordingly.

(5) The commanding officer may delegate any functions under paragraph (4) to a person of or above the rate of chief petty officer.

Marginal Citations

- M1** These Regulations are made by the Defence Council under sections 43, 52E and 52F of NDA 1957 and published in the Manual of Naval Law.

CHAPTER 5

Restitution orders

Restitution orders

160.—(1) Paragraph (2) applies in any case where an order under section 138 of AA 1955 or AFA 1955 or section 76 of NDA 1957 (restitution orders) was, immediately before commencement, suspended by virtue of section 138(10) of AA 1955 or AFA 1955 or section 77(1) of NDA 1957.

(2) The following provisions shall continue in force for the purposes of any such case—

- (a) section 138(9), (10), and (12) of AA 1955 or AFA 1955 or, as the case may be, section 77 of NDA 1957 (with the substitution for references to the Courts-Martial Appeal Court of references to the Court Martial Appeal Court);
- (b) section 46 of CMAA 1968.

(3) Section 46 of CMAA 1968 shall continue in force for the purposes of any case where, immediately before commencement, an order under section 138 of AA 1955 or AFA 1955 or section 76 of NDA 1957 is suspended by virtue of section 46 of CMAA 1968.

(4) For the avoidance of doubt, the operation of an order under section 138 of AA 1955 or AFA 1955 or section 76 of NDA 1957 which has taken effect (either before or after commencement) is not affected by the coming into force of the repeal of those sections.

CHAPTER 6

SDA orders for conditional discharge

SDA orders for conditional discharge

161. In this Chapter—

“SDA order for conditional discharge” means an order under paragraph 3(1) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957 discharging a person subject to a condition;

“the period of conditional discharge” means the period specified in the SDA order for conditional discharge.

Order of court-martial: conviction of further offence by Court Martial

162.—(1) This article applies where—

- (a) a person in whose case an SDA order for conditional discharge has been made is convicted by the Court Martial of an offence committed during the period of conditional discharge; and
- (b) the order was made by a court-martial or the Appeal Court.

(2) The Court Martial may deal with the offender for the offence for which the order was made in any way in which it could deal with the offender if it had just convicted the offender of that offence.

Order of any SDA court: conviction of further offence by Service Civilian Court

163.—(1) This article applies where a person in whose case an SDA order for conditional discharge has been made is convicted by the Service Civilian Court of an offence committed during the period of conditional discharge.

(2) The Service Civilian Court may deal with the offender for the offence for which the order was made in any way in which it could deal with the offender if it had just convicted the offender of that offence.

(3) It is to be assumed for the purposes of paragraph (2) that the offence is one the Service Civilian Court would have jurisdiction to try.

Order of Standing Civilian Court: conviction of further offence by Court Martial

164.—(1) This article applies where—

- (a) a person in whose case an SDA order for conditional discharge has been made is convicted by the Court Martial of an offence committed during the period of conditional discharge; and
- (b) the order was made by a Standing Civilian Court.

(2) The Court Martial may deal with the offender for the offence for which the order was made in any way in which the Service Civilian Court could deal with the offender if it had just convicted the offender of that offence.

(3) It is to be assumed for the purposes of paragraph (2) that the offence is one the Service Civilian Court would have jurisdiction to try.

Appeals against re-sentence, etc

165.—(1) Paragraph (2) applies where a person is sentenced by a court under this Chapter for an offence in respect of which an SDA order for conditional discharge was made.

(2) The person is to be treated, for the purpose of enabling the making of an appeal against the sentence under CMAA 1968 or section 285 of AFA 2006, as if the conviction of that offence had been by the court which sentenced the person under this Chapter.

(3) Paragraph 5 of Schedule 5A to AA 1955 and AFA 1955 and of Schedule 4A to NDA 1957 continues to have effect in relation to SDA orders for conditional discharge, but as if the references in sub-paragraphs (1)(i) and (6) to paragraph 3(2) or (3) were to this Chapter.

CHAPTER 7

Community supervision orders

Community supervision orders

166.—(1) In this Chapter “a community supervision order” means an order under paragraph 4(1) of Schedule 5A to AA 1955 or of Schedule 5A to AFA 1955 or of Schedule 4A to NDA 1957.

(2) For the purposes of this Chapter a community supervision order is “current at commencement” if by commencement—

- (a) the order has not been discharged under paragraph 4(11) of that Schedule or ceased to have effect by reason of paragraph 5(5) of that Schedule; and
- (b) the supervision period has not ended.

(3) In this Chapter “the supervision period” means the period specified in a community supervision order.

Savings in respect of community supervision orders: provisions of SDAs

167.—(1) In this article “the Schedule” means each of Schedule 5A to AA 1955, Schedule 5A to AFA 1955 and Schedule 4A to NDA 1957.

(2) The following provisions of paragraph 4 of the Schedule continue to have effect in relation to a community supervision order which is current at commencement—

- (a) sub-paragraph (6) (failure to comply with order), subject to the modification in paragraph (3) below;
- (b) sub-paragraph (7D) (limitation period for proceedings in respect of failure to comply);
- (c) sub-paragraph (11) (power to discharge or vary order, or replace supervisor);
- (d) sub-paragraph (2) (definitions), so far as relating to the provisions saved by this Chapter.

(3) In paragraph 4(6) of the Schedule, as saved by this article, the words “triable by court-martial” are omitted.

Offence of failure to comply to be treated as service offence for certain purposes

168.—(1) An offence under paragraph 4(6) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957 committed after commencement is to be treated as a service offence for the purposes of the following provisions of AFA 2006—

- (a) section 50(1) (jurisdiction of Court Martial);
- (b) section 51(1) (jurisdiction of Service Civilian Court);
- (c) section 63 (double jeopardy);
- (d) sections 67 and 68(3) (powers of arrest);
- (e) Part 4 (custody);
- (f) section 116(2) and (5) (duty of service policeman to refer case to DSP), subject to the modification in paragraph (4)(a) below;
- (g) section 118 (duty of service policeman to notify CO of referral to DSP), subject to the modification in paragraph (4)(b) below;
- (h) section 127(1) (direction barring further proceedings).

(2) A person may not be arrested under section 67 of AFA 2006 by virtue of paragraph (1)(d) above after the end of 6 months beginning with the end of the supervision period.

(3) In section 92 of AFA 2006 (power to make provision conferring powers of entry and search after arrest), the reference to a person who has been arrested under section 67 of that Act does not include a person so arrested by virtue of paragraph (1)(d) above.

(4) In their application to an offence under paragraph 4(6) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957 committed after commencement—

- (a) section 116(2)(b) of AFA 2006 has effect as if the words from “and is aware” to the end of the paragraph were omitted; and
- (b) section 118 of that Act has effect as if subsection (3)(b) were omitted.

Community supervision order made by court-martial: conviction of further offence by Court Martial

169.—(1) This article applies where—

- (a) a person in whose case a community supervision order has been made is convicted by the Court Martial of any offence committed during the supervision period (including an

offence under paragraph 4(6) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957); and

(b) the order was made by a court-martial or the Appeal Court.

(2) The Court Martial may deal with the offender for the offence for which the order was made in any way in which it could deal with the offender if it had just convicted the offender of that offence.

CSO made by any SDA court: conviction of further offence by Service Civilian Court

170.—(1) This article applies where a person in whose case a community supervision order has been made is convicted by the Service Civilian Court of an offence committed during the supervision period (including an offence under paragraph 4(6) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957).

(2) The Service Civilian Court may deal with the offender for the offence for which the order was made in any way in which it could deal with the offender if it had just convicted the offender of that offence.

(3) It is to be assumed for the purposes of paragraph (2) that the offence is one the Service Civilian Court would have jurisdiction to try.

CSO made by Standing Civilian Court: conviction of further offence by Court Martial

171.—(1) This article applies where—

(a) a person in whose case a community supervision order has been made is convicted by the Court Martial of an offence committed during the supervision period (including an offence under paragraph 4(6) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957); and

(b) the order was made by a Standing Civilian Court.

(2) The Court Martial may deal with the offender for the offence for which the order was made in any way in which the Service Civilian Court could deal with the offender if it had just convicted the offender of that offence.

(3) It is to be assumed for the purposes of paragraph (2) that the offence is one the Service Civilian Court would have jurisdiction to try.

Restriction on other powers of punishment in respect of failure to comply with order

172.—(1) Where the Court Martial or the Service Civilian Court convicts a person of an offence under paragraph 4(6) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957 committed before commencement, the court—

(a) may, instead of dealing with the offender under article 169, 170 or 171 for the offence for which the order was made, impose on the offender a fine not exceeding £1,000 for the offence under paragraph 4(6);

(b) may not impose any other punishment on the offender for that offence.

(2) Where the Court Martial or the Service Civilian Court convicts a person of an offence under paragraph 4(6) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957 committed after commencement, the court may not impose any punishment for that offence (but this is without prejudice to its power to deal with the offender under article 169, 170 or 171 for the offence for which the order was made).

Appeals against re-sentence, etc

173.—(1) Paragraph (2) applies where a person is sentenced by a court under this Chapter for an offence in respect of which a community supervision order was made.

(2) The person is to be treated, for the purpose of enabling the making of an appeal against the sentence under CMAA 1968 or section 285 of AFA 2006, as if the conviction of that offence had been by the court which sentenced the offender under this Chapter.

(3) Paragraph 5 of Schedule 5A to AA 1955 and AFA 1955 and of Schedule 4A to NDA 1957 continues to have effect in relation to community supervision orders, but as if the references in subparagraphs (1)(i) and (6) to paragraph 4(8) or (9) were to this Chapter.

(4) A conviction of an offence under paragraph 4(6) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957 committed after commencement shall be deemed not to be a conviction except for the purposes of—

- (a) this Chapter; and
- (b) any appeal against the conviction or against a sentence passed by reason of the conviction.

Savings of regulations

174.—(1) The following provisions of the Courts-Martial and Standing Civilian Courts (Army and Royal Air Force) (Additional Powers on Trial of Civilians) Regulations 1997^{M2} continue to have effect in relation to a community supervision order—

- (a) regulation 4 (persons fit to be supervisors);
- (b) regulation 6 (general duty of supervisor);
- (c) regulation 8(4) (requirements may not operate so as to conflict with religion, work or education);
- (d) regulation 9 (calculation of periods specified);
- (e) regulation 12 (discharge or modification of order or replacement of supervisor), together with—
 - (i) row 1 of the Table in Part 2 of Schedule 2 as applied by regulation 12(1)(b); and
 - (ii) regulation 3 so far as relating to regulation 12(1)(b);
- (f) the definition of “the 1955 Act” in regulation 2.

(2) In row 1 of the Table in Part 2 of Schedule 2 to those Regulations as saved by paragraph (1) (e) above, the reference to “the commanding officer of the offender” is to be read as to the person who is the offender’s commanding officer within the meaning of AFA 2006.

Marginal Citations

M2 SI 1997/597.

CHAPTER 8

Supplementary provisions relating to trial of civilians

Service of documents

175.—(1) Regulation 11 of and Part 2 of Schedule 2 to the Additional Powers on Trial of Civilians Regulations (duty to serve court orders and copies) shall continue to have effect in relation to any case where, immediately before commencement, they required an order or certified copy to be served on a person.

(2) Regulation 3 of those regulations (method of service) shall continue in effect for the purposes of the provisions saved by paragraph (1).

(3) In those provisions—

- (a) “the court administration officer” has the meaning given by section 374 of AFA 2006; and
- (b) any reference to the commanding officer of the offender is to be read as to the person who is the offender's commanding officer within the meaning of AFA 2006.

(4) In this article “the Additional Powers on Trial of Civilians Regulations” means the Courts-Martial and Standing Civilian Courts (Army and Royal Air Force) (Additional Powers on Trial of Civilians) Regulations 1997.

Changes to legislation:

There are currently no known outstanding effects for the The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, PART 17.