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STATUTORY INSTRUMENTS

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**2009 No. 1059**

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

**PART 18**

**DISCIPLINE: MISCELLANEOUS**

**Findings and sentences passed by reviewing authority**

**176.** Any finding or sentence which, immediately before commencement, is to be treated by virtue of section 113AA of AA 1955 or AFA 1955, section 71 of NDA 1957 or paragraph 20 of Schedule 3 to AFA 1976 as having been made or passed by a court-martial or Standing Civilian Court is to continue to be treated for all purposes as having been made or passed by that court.

**Testing for alcohol and drugs**

**177.**—(1) In section 308(1) of AFA 2006 (power to make regulations about testing for alcohol and drugs), the reference to the analysis of samples obtained under sections 305(1) and 306(2) of that Act includes the analysis of samples obtained under section 34A(1) of AA 1955 or AFA 1955, section 12A(1) of NDA 1957 or section 32(3) or (4) of AFA 2001.

(2) In section 308(3) of AFA 2006 (inadmissibility of analysis of sample)—

- (a) the reference to a requirement imposed under section 305(1) or 306(2) of that Act includes a requirement imposed under section 34A(1) of AA 1955 or AFA 1955, section 12A(1) of NDA 1957 or section 32(3) or (4) of AFA 2001; and
- (b) the reference to proceedings in respect of a service offence includes proceedings in respect of an SDA offence.

**Offences in relation to service courts**

**178.**—(1) Where a person has been sentenced under section 57(2) of AA 1955 or AFA 1955 or section 38(3) of NDA 1957 (summary disposal of offences in relation to service courts), the sentence may be revoked and (if the person is in custody) his discharge ordered.

(2) The powers conferred by paragraph (1) may be exercised—

- (a) where the person was sentenced by a court-martial, by the judge advocate for the court-martial;
- (b) where the person was sentenced by a summary appeal court, by the judge advocate for the proceedings before the summary appeal court;
- (c) where the person was sentenced by a judicial officer, by the judicial officer.

(3) Where—

- (a) an offence has under section 101 of AA 1955 or AFA 1955 or section 65 of NDA 1957 been certified to a civil court in the United Kingdom or a British overseas territory, and

(b) that court has not exercised the powers conferred by that section, section 311(3) of AFA 2006 (power of civil court to deal with contempt certified by service court) applies as if the offence had been certified to that court under section 311(2) of that Act.

(4) In section 312(3) and (4) of AFA 2006 (power to make committal for misbehaviour in court consecutive to a sentence), references to a sentence of service detention that has been passed on the person on a previous occasion include an SDA sentence of service detention.

(5) In section 312(6)(a) of AFA 2006 (inclusion of committal for misbehaviour in court in references to service detention), the reference to a committal to service custody under section 309 of that Act includes a sentence of detention under section 57(2) of AA 1955 or AFA 1955 or section 38(3) of NDA 1957.

### Witness anonymity orders

**179.**—(1) In section 6(1) of the Criminal Evidence (Witness Anonymity) Act 2008<sup>M1</sup> (discharge or variation of witness anonymity order), the reference to a court that has made a witness anonymity order in relation to any criminal proceedings is to be read—

- (a) in relation to an order made by a court-martial, as a reference to the Court Martial;
- (b) in relation to an order made by a Standing Civilian Court, as a reference to the Service Civilian Court; and
- (c) in relation to an order made by a summary appeal court, as a reference to the Summary Appeal Court.

(2) Section 311 of AFA 2006 (certification of contempt to civil courts) applies if, in relation to a witness anonymity order made by a court-martial, a Standing Civilian Court or a summary appeal court, a person within section 309(6) of that Act does any act that would constitute contempt of court if the order had been made by a court having power to commit for contempt.

(3) Where section 311 of AFA 2006 applies by virtue of paragraph (2) above—

- (a) in subsection (2) of that section, “the qualifying service court” means—
  - (i) if the order was made by a court-martial, the Court Martial,
  - (ii) if the order was made by a Standing Civilian Court, the Service Civilian Court, and
  - (iii) if the order was made by a summary appeal court, the Summary Appeal Court,
 and the definition of “qualifying service court” in subsection (5) of that section applies only for the purposes of subsection (4);
- (b) in that section, “the offence” means the act mentioned in paragraph (2) above.

(4) In this article—

- “act” includes an omission, and references to the doing of an act are to be read accordingly;
- “witness anonymity order” has the same meaning as in the Criminal Evidence (Witness Anonymity) Act 2008.

#### Marginal Citations

**M1** 2008 c. 15.

### Arrest by civilian police under warrant

**180.**—(1) Section 313 of AFA 2006 (arrest by civilian police under warrant of judge advocate) is modified as follows.

(2) In subsection (1), the reference to a service offence includes an SDA offence.

(3) In subsections (3) and (4), references to a warrant issued under that section include a warrant issued under section 190A of AA 1955 or AFA 1955 or section 103 of NDA 1957.

#### **Arrest by civilian police of deserters etc**

**181.**—(1) In sections 314 to 316 of AFA 2006 (arrest etc by civilian police of deserters and absentees without leave), references to a person subject to service law who has deserted include a person who is subject to service law and has committed an offence under section 37(1) of AA 1955 or AFA 1955 or section 16(1) of NDA 1957.

(2) In section 314(4) of AFA 2006, the reference to a person arrested under section 314 includes—

(a) a person who was arrested before commencement under section 186 of AA 1955 or AFA 1955 or section 105 of NDA 1957 in a relevant territory (as defined by section 314(5) of AFA 2006) and has not been brought before a court of summary jurisdiction; and

(b) a person arrested after commencement, in a relevant territory, in pursuance of a warrant issued under section 186(3) of AA 1955 or AFA 1955 or section 105(3) of NDA 1957.

(3) Section 315(1) of AFA 2006 applies in relation to a person who before commencement surrendered himself to a constable in a relevant territory as being a person illegally absent from the regular forces (within the meaning of AFA 2006) and has not been brought to a police station under section 188(1) of AA 1955 or AFA 1955 or section 108(1) of NDA 1957.

(4) Section 315(3) and (4) of AFA 2006 apply in relation to a person who—

(a) was brought to a police station in a relevant territory under section 188(1) of AA 1955 or AFA 1955 or section 108(1) of NDA 1957, or surrendered himself to a constable at such a police station as being a person illegally absent from the regular forces (within the meaning of AFA 2006); and

(b) has not been delivered into service custody, brought before a court of summary jurisdiction or released from police custody.

(5) In paragraphs (3) and (4)—

(a) references to section 188(1) of AA 1955 include that subsection as applied by section 13 of the Visiting Forces Act 1952<sup>M2</sup>; and

(b) references to a person illegally absent from the regular forces include a person illegally absent from the forces of a country to which that section applies.

#### **Marginal Citations**

**M2** 1952 c. 67.

#### **Remand by civil court**

**182.**—(1) In this article, references to a person's remand are to his remand under section 187(2) or (3) of AA 1955 or AFA 1955, section 109(1)(b) or (3)(a) of NDA 1957 or paragraph 4(2)(b) or 5(3) of Schedule 2 to RFA 1996 for the purpose of arranging for his delivery into service custody.

(2) A person remanded in custody is to be regarded as having been committed under section 316(5) of AFA 2006 to be held in custody pending his transfer into service custody.

(3) Where a person was remanded on bail and answers to his bail, section 316(3) of AFA 2006 (transfer into service custody) applies.

(4) Where a person was remanded on bail and does not answer to his bail, he is to be regarded for the purposes of section 317 of AFA 2006 (warrant for arrest) as having been released under section 316(3)(a)(ii) of that Act subject to a condition that he report to the court by which he was remanded on the date to which he was remanded.

### **Arrest of persons unlawfully at large**

**183.**—(1) In section 318(1) of AFA 2006 (arrest by civilian police of persons unlawfully at large) the reference to a person who has been sentenced to service detention includes a person on whom an SDA sentence of service detention has been passed.

(2) Section 119(5) of AA 1955 and AFA 1955 (provision corresponding to section 301(4) of AFA 2006) apply for the purposes of section 318(1) of AFA 2006.

(3) Section 88(2) of NDA 1957 (provision corresponding to section 301(4) of AFA 2006) applies for the purposes of section 318(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.

(4) Where a person on whom an SDA sentence of service detention had been passed was arrested by a constable under section 190B of AA 1955 or AFA 1955 or section 104 of NDA 1957 and has not been taken to a place in which he could be required to be detained, paragraph (b) of section 318(1) of AFA 2006 applies as if the constable had arrested him under paragraph (a) of that subsection.

### **The Criminal Cases Review Commission**

**184.**—(1) In section 12A(1) of the Criminal Appeal Act 1995 <sup>M3</sup> (reference of conviction by the Court Martial) the reference to a person convicted by the Court Martial includes a person so convicted on an appeal brought from a Standing Civilian Court.

(2) In section 12A(2) of that Act (reference of sentence passed by the Court Martial on appeal against sentence) the reference to a person convicted by the Service Civilian Court includes a person convicted by a Standing Civilian Court.

(3) In section 12B(1) of that Act (reference of conviction or sentence by the Service Civilian Court) the reference to a person convicted of an offence by the Service Civilian Court includes a person convicted of an offence by a Standing Civilian Court; but, in relation to such a person, that subsection has effect as if for paragraphs (a) and (b) there were substituted “may at any time refer to the Court Martial any sentence imposed by the Service Civilian Court in proceedings relating to the conviction”.

#### **Marginal Citations**

**M3** 1995 c. 35. Sections 12A and 12B are inserted by AFA 2006, section 321 and Schedule 11, paragraph 2.

### **Financial penalty enforcement orders**

**185.**—(1) In section 322 of AFA 2006 (power to make regulations for the enforcement of financial penalties), “financial penalty” includes—

- (a) a fine or stoppages awarded under AA 1955, AFA 1955 or NDA 1957;
- (b) a fine awarded by a Standing Civilian Court;

- (c) a compensation order made under paragraph 11 of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957;
- (d) an order under paragraph 13 of any of those Schedules that a service parent or guardian pay a fine or compensation; and
- (e) a sum adjudged to be paid under paragraph 14(4) of any of those Schedules (forfeiture of recognisance).

(2) In paragraph (1) the reference to a fine awarded under AA 1955 or AFA 1955 includes a fine to which a person was sentenced under section 57(2) of either of those Acts, and the reference to a fine awarded under NDA 1957 includes a fine to which a person was sentenced under section 38(3) of that Act.

### **Evidential burden as respects excuses**

**186.** The offences to which section 325 of AFA 2006 (evidential burden as respects lawful or reasonable excuse) applies include—

- (a) any SDA offence (other than an SDA civil offence) which is such that a person who would otherwise commit the offence—
  - (i) does not do so if he has a lawful excuse; or
  - (ii) does not do so if he has a reasonable excuse; and
- (b) an offence committed after commencement under paragraph 4(6) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957 (as saved by article 167).

### **Local probation boards**

**187.** In section 5A(1) of the Criminal Justice and Court Services Act 2000 <sup>M4</sup> (powers of local probation boards in relation to service justice) the reference to persons who have been subject to proceedings before the Court Martial, the Summary Appeal Court or the Service Civilian Court includes persons who have been subject to proceedings before a court-martial, a summary appeal court or a Standing Civilian Court.

#### **Marginal Citations**

**M4** 2000 c. 43. Section 5A was inserted by AFA 2006, section 378(1) and Schedule 16, paragraph 178, with effect from 1st January 2008, and is substituted by section 327 of that Act.

### **Judge advocates**

**188.** In section 362(c) of AFA 2006 (nomination of puisne judge to sit as judge advocate) the reference to nomination includes nomination before commencement.

**Changes to legislation:**

There are currently no known outstanding effects for the The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, PART 18.