
STATUTORY INSTRUMENTS

2009 No. 1059

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

PART 21

MISCELLANEOUS

Offences punishable by civilian courts

199.—(1) In paragraph (a) of section 344(3) of AFA 2006 (offence of impeding a person's apprehension or prosecution for desertion or absence without leave), the reference to an offence under section 8 or 9 of that Act includes an offence under section 37 or 38 of AA 1955 or AFA 1955 or section 16 or 17 of NDA 1957.

(2) The repeal of section 220 of AA 1955, section 218 of AFA 1955 and section 100 of NDA 1957 does not deprive any court of any jurisdiction which it would otherwise have had.

Evidence in proceedings before civilian courts

200.—(1) In section 372 of AFA 2006 (evidence in proceedings before civilian courts) the reference to an offence created by or under AFA 2006 includes—

- (a) an SDA offence;
- (b) an offence under any of sections 19, 161, 171 and 191 to 197 of AA 1955 or AFA 1955.

(2) In relation to any proceedings which are part heard at commencement, section 198 of AA 1955 and AFA 1955 and paragraphs 1 to 8 of Schedule 3 to RFA 1996 shall continue to apply, notwithstanding their repeal by AFA 2006.

- (3) For the purposes of paragraph (2), proceedings before a civilian court are part heard if—
- (a) the first hearing (or, in Scotland, the first calling) in those proceedings has taken place; and
 - (b) the proceedings have not been concluded.

Trial by civil courts of offences committed before commencement

201.—(1) In section 105(3) of RFA 1996 (service offences triable by civil court) the reference to any service offence other than an offence under that Act or an offence mentioned in section 98(1) of that Act includes any SDA offence other than—

- (a) an offence under RFA 1996; or
- (b) an offence under section 37 or 38 of AA 1955 or AFA 1955 or section 16 or 17 of NDA 1957 (desertion and absence without leave).

(2) In relation to an offence under section 95(1)(b) of RFA 1996 (threatening or insulting language or insubordination), section 95(2)(b) of that Act has effect without the amendment made by AFA 2006.

(3) In section 98(1) and (3) of RFA 1996 (trial and punishment by civil court of desertion or absence without leave), references to an offence under section 8 or 9 of AFA 2006 include an offence under section 37 or 38 of AA 1955 or AFA 1955 or section 16 or 17 of NDA 1957.

(4) In relation to an offence under section 99 of RFA 1996 (false pretence of illegal absence) committed before commencement, that section has effect notwithstanding its repeal by AFA 2006.

(5) In section 107(1) of RFA 1996 (time for institution of proceedings) the reference to a service offence includes an SDA offence.

(6) Section 107(3) of RFA 1996 (time for institution of proceedings for an offence under section 96(1) committed by a person liable to recall) does not apply in relation to an offence under section 96(1) of that Act committed before commencement if, immediately before commencement, any enactment prohibited the institution of proceedings for the offence.

(7) For the purposes of paragraph (6), an enactment is to be regarded as having prohibited the institution of proceedings for an offence if, had proceedings been instituted, the enactment would have prohibited the trial of the offence.

Affidavits and declarations

202. Section 204(2) of AA 1955 or (as the case may be) AFA 1955 (admissibility of document pursuant to affidavit or declaration) shall continue to apply in relation to an affidavit or declaration taken in pursuance of the power conferred by section 204(1) of that Act, notwithstanding its repeal by AFA 2006.

Protection of children of service families

203. In section 20(6)(b)(iii) of AFA 1991 (return of child to person other than parent etc), the reference to the agreement of a judge advocate includes an agreement given before commencement by the officer having jurisdiction.

Service of process

204. In section 355(2)(b) of AFA 2006 (power to make provision with respect to cases in which service of process is to be of no effect), the reference to service of process includes service of process on a person's commanding officer before commencement.

Minor and consequential amendments and repeals

205. Schedule 1 has effect.

Transitory provisions

206. Schedule 2 has effect.