
STATUTORY INSTRUMENTS

2009 No. 1059

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

PART 3

CERTAIN ACTS BEFORE COMMENCEMENT

Offence incomplete at commencement

9.—(1) This article applies where an offence under an enactment mentioned in article 2(4)(a), (b), (f) or (g) is partly committed by a person before commencement.

(2) For the purposes of this article an offence is partly committed by a person before commencement if—

- (a) an act or omission by the person, proof of which is required for conviction of the offence, occurs before commencement; and
- (b) a relevant event occurs after commencement.

(3) In this article “relevant event”, in relation to an offence, means any act, omission or other event (including any result of one or more acts or omissions) proof of which is required for conviction of the offence.

(4) Where this article applies in relation to an offence under an enactment mentioned in article 2(4)(a) or (b), any question whether that offence has been committed is to be decided as if the SDAs were still in force at the time of the relevant events that occurred after commencement.

(5) Where this article applies in relation to an offence under an enactment mentioned in article 2(4)(f) or (g), the offence is to be treated for the purposes of articles 2(4) and 5 as having been committed before commencement.

(6) Where this article applies in relation to an offence—

- (a) each of articles 7 and 13 has effect as if in paragraph (2) of that article the reference to the time the offence was committed were to the time of the act or omission referred to in paragraph (2)(a) above; and
- (b) for the purposes of article 20(1) and (2) the offence is to be treated as having been committed at that time.

(7) In this article “the SDAs” means—

- (a) the provisions of AA 1955, AFA 1955 and NDA 1957 whose repeal came into force at commencement; and
- (b) any subordinate legislation made under those provisions that was in force immediately before commencement.

Course of conduct carried on over commencement

10.—(1) This article applies where—

- (a) an act or omission, proof of which is required for conviction of an offence under an enactment mentioned in article 2(4)(a), (b) or (f), is or can be a continuing course of conduct; and
- (b) such a continuing course of conduct is carried on partly before and partly after commencement.

(2) Where this article applies in relation to an offence under an enactment mentioned in article 2(4)(a) or (b), any question whether that offence has been committed is to be decided as if the SDAs had been in force during the whole of the period over which the continuing course of conduct was carried on.

(3) Where this article applies in relation to an offence under an enactment mentioned in article 2(4)(f), the offence is to be treated for the purposes of articles 2(4) and 5 as having been committed before commencement.

(4) Where this article applies in relation to an offence, each of articles 7 and 13 has effect as if in paragraph (2) of that article the reference to the time the offence was committed were to the time immediately before commencement.

(5) In this article “the SDAs” has the same meaning as in article 9.

Conduct at a time unknown

11.—(1) This article applies where it is alleged that a relevant act took place at an unknown time between—

- (a) a particular time before commencement; and
- (b) a particular time after commencement.

(2) In this article a “relevant act” means an act or omission which—

- (a) if it took place before commencement (or at a particular time before commencement), would be an SDA offence under an enactment mentioned in article 2(4)(a), (b), (d) or (f); and
- (b) if it took place after commencement (or at a particular time after commencement), would be a service offence.

(3) If the relevant act would (if it took place before commencement, or at a particular time before commencement) be an offence under an enactment mentioned in article 2(4)(a) or (b), any question whether the relevant act is an SDA offence is to be decided as if the SDAs had remained in force until the time referred to in paragraph (1)(b) above.

(4) Where the relevant act is an offence under an enactment mentioned in article 2(4)(f), for the purposes of articles 2(4)(f) and 5 it is to be taken to be such an offence committed before commencement.

(5) Where a person is convicted of an SDA offence by virtue of this article—

- (a) article 7 has effect as if the reference in paragraph (2) of that article to the time the offence was committed were to the time referred to in paragraph (1)(a) above; and
- (b) the sentence awarded for the offence must not be more severe than the maximum sentence that could be awarded for the service offence if the relevant act were known to have taken place at the time referred to in paragraph (1)(b) above.

(6) For the purposes of articles 13(2) and 20(1) and (2), any question whether the relevant act took place at a time when a person was a civilian subject to the SDAs is to be decided as if the SDAs had remained in force until the time referred to in paragraph (1)(b) above.

(7) If the relevant act is an offence under paragraph 4(6) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957, it is to be treated for the purposes of article [172](#) as having been committed after commencement.

(8) In this article “the SDAs” has the same meaning as in article [9](#).