
STATUTORY INSTRUMENTS

2009 No. 1059

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

PART 5

TIME LIMITS FOR COMMENCING PROCEEDINGS ETC

No charge to be brought where SDA time limit for trial expired before commencement etc

17.—(1) A person may not be charged with an offence if, immediately before commencement, section 132(1) of AA 1955 or AFA 1955 or section 52(1) of NDA 1957 (proceedings for SDA civil offence barred if proceedings on indictment for the corresponding civil offence time-barred) prevented proceedings from being taken against the person for the offence.

(2) A person may not be charged with an offence if, immediately before commencement, section 132(2) of AA 1955 or AFA 1955 (no person to be tried for desertion if since the offence he has served for three or more years in an exemplary manner) prevented the person from being tried for the offence.

(3) A person may not be charged with an offence (other than one within paragraph (5)) if—

- (a) the offence was committed at a time when the person was subject to military law, air-force law or NDA 1957 or was a civilian subject to the SDAs; and
- (b) after that time, and more than six months before commencement, the person ceased to be so subject or to be a civilian subject to the SDAs (as the case may be).

(4) Paragraph (3) applies even if the person again became subject to military law, air-force law or NDA 1957 or a civilian subject to the SDAs.

(5) Paragraphs (3) and (4) do not apply in relation to the following offences—

- (a) an offence under section 31 or 32 of AA 1955 or AFA 1955;
- (b) an offence of desertion within the meaning of section 132(3A) of AA 1955 or AFA 1955;
- (c) an offence of mutiny or desertion within the meaning of section 52(3) of NDA 1957; or
- (d) an SDA civil offence committed outside the United Kingdom where the Attorney General has consented to the bringing of the charge.

(6) In this article “charged” means charged under Part 5 of AFA 2006.

General time limits for charging servicemen or former servicemen with SDA offences

18.—(1) In sections 55 to 57 of AFA 2006 (general time limits for commencing proceedings against servicemen or former servicemen), references to a service offence include an SDA offence except one under RFA 1996.

(2) In section 55 of AFA 2006 as it applies in relation to an SDA offence—

- (a) references to a person ceasing to be a member of a regular or reserve force include a person having ceased before commencement to be such a member;

- (b) the reference to a person rejoining a regular or reserve force includes a person having rejoined it before commencement.
- (3) In section 56 of AFA 2006 as it applies in relation to an SDA offence, references to a person ceasing to be subject to an additional duties commitment include a person having ceased before commencement to be so subject.
- (4) In section 57 of AFA 2006 as it applies in relation to an SDA offence—
 - (a) references to a person ceasing to be subject to service law include a person having ceased to be subject to military law, air-force law or NDA 1957 except where at the time he did so he became subject to service law;
 - (b) references to being (or becoming) subject to service law include having been (or become) subject to military law, air-force law or NDA 1957.

Time limits for charging civilian formerly subject to SDAs

- 19.**—(1) Paragraph (2) applies where a person has ceased to be a civilian subject to the SDAs, except where at the time he did so he became—
- (a) subject to military law, air-force law or NDA 1957; or
 - (b) a civilian subject to service discipline.
- (2) Where this paragraph applies—
- (a) the person may not, after the end of six months beginning with the date he ceased to be a civilian subject to the SDAs, be charged with an SDA offence (other than one under RFA 1996) committed while he was such a civilian; and
 - (b) this applies even if he again became such a civilian (or a civilian subject to service discipline) within those six months.
- (3) Where a person ceased to be a civilian subject to the SDAs and at the time he did so became subject to military law, air-force law or NDA 1957, section 57 of AFA 2006 has effect as if (in addition to the modifications made by article 18)—
- (a) the reference in subsection (2) to a service offence committed while the person was subject to service law included an SDA offence (other than one under RFA 1996) committed while he was a civilian subject to the SDAs;
 - (b) the reference in subsection (3) to becoming subject to service law included having become a civilian subject to the SDAs.
- (4) A person who ceased to be a civilian subject to the SDAs by reason only of a fact mentioned in section 209(3A)(a) or (b) of AA 1955 or AFA 1955 or paragraph 4A(a) or (b) of Schedule 4 to NDA 1957 is to be treated for the purposes of this article as not having ceased to be so subject (but nothing in this paragraph causes a person to be regarded as so subject after commencement).
- (5) Section 61(1) to (3) of AFA 2006 (exceptions and interpretation) apply in relation to this article as they apply in relation to section 57 of that Act.
- (6) Paragraph (7) applies where, at commencement—
- (a) a person is residing or staying in an area designated for the purposes of Schedule 15 to AFA 2006, and would be a civilian subject to service discipline if in that area;
 - (b) a person is residing or staying outside the British Islands, and would be a civilian subject to service discipline if outside the British Islands; or
 - (c) a person—
 - (i) has been designated for the purposes of paragraph 7 of Schedule 15 to AFA 2006;

(ii) is residing or staying in an area which the designation specifies as an area that the person must be in for the designation to apply; and

(iii) would be a civilian subject to service discipline if in that area.

(7) Where this paragraph applies, the person is to be regarded for the purposes of paragraph (1) as becoming a civilian subject to service discipline at commencement.

Time limit for charging civilian formerly subject to service discipline with SDA offence

20.—(1) In section 58(2)(a) of AFA 2006 (time limit where person ceases to be a civilian subject to service discipline without becoming subject to service law), the reference to a service offence committed while the person was a civilian subject to service discipline includes an SDA offence (other than one under RFA 1996) committed while he was a civilian subject to the SDAs.

(2) Where section 58(3) of AFA 2006 (time limit where person ceases to be civilian subject to service discipline on becoming subject to service law) applies, section 57 of that Act has effect as if (in addition to the modifications made by section 58(3)) the reference in section 57(2) to a service offence committed while the person was subject to service law included an SDA offence (other than one under RFA 1996) committed while he was a civilian subject to the SDAs.

(3) Where at commencement a person falls within paragraph (a), (b) or (c) of article 19(6), the person is to be treated for the purposes of section 58 of AFA 2006 as being a civilian subject to service discipline for so long as the person continues to fall within that paragraph.

Time limit for charging SDA offence of failing to comply with requirement imposed on release from custody

21. Section 59 of AFA 2006 (time limit for charging offence under section 107 of AFA 2006) applies in relation to an offence under section 75J of AA 1955 or AFA 1955 or section 47K of NDA 1957 as it applies in relation to an offence under section 107 of AFA 2006.

Time limits for charging RFA offences

22.—(1) In section 62 of AFA 2006 (time limit for charging Reserve Forces Act offences), the reference to a Reserve Forces Act offence includes an SDA offence under RFA 1996.

(2) In section 62 of AFA 2006 as it applies by reason of paragraph (1) above, the reference to a person's commanding officer is to be read, as regards any time before commencement, without regard to the definition in AFA 2006 of that expression.

False statements made on enlistment

23.—(1) Except where paragraph (2) applies—

(a) the Court Martial may not try a person for an offence under section 61 of AA 1955 or AFA 1955 or section 34A of NDA 1957 (false statements made on enlistment); and

(b) a charge against a person in respect of such an offence may not be heard summarily by an officer.

(2) This paragraph applies if the person became subject to military law, air-force law or NDA 1957 and remained so until commencement.

Breach of community supervision order

24. No proceedings shall be taken against a person for an offence mentioned in article 2(4)(d) unless the trial is begun within six months after the end of the period specified in the community supervision order.