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 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.