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STATUTORY INSTRUMENTS

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**2009 No. 1059**

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

PART 1

GENERAL

**Citation and commencement**

1.—(1) This Order may be cited as the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009.

(2) The following provisions of this Order come into force on the day after the day on which this Order is made—

- (a) in article 2(1), the definitions of “AA 1955”, “AFA 1955” and “NDA 1957”;
- (b) article 196 (complaints to employment tribunals etc).

(3) The other provisions of this Order come into force—

- (a) so far as is necessary for any purpose mentioned in article 3 of the Armed Forces Act 2006 (Commencement No. 4) Order 2009(1), on the day after the day on which this Order is made;
- (b) for all other purposes, on 31st October 2009.

**Interpretation**

2.—(1) In this Order—

- “AA 1955” means the Army Act 1955(2);
- “AFA 1955” means the Air Force Act 1955(3);
- “NDA 1957” means the Naval Discipline Act 1957(4);
- “AFA 1966” means the Armed Forces Act 1966(5);
- “CMAA 1968” means the Court Martial Appeals Act 1968(6);
- “AFA 1976” means the Armed Forces Act 1976(7);
- “RFA 1980” means the Reserve Forces Act 1980(8);

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(1) S.I. 2009/812 (C. 54). That Order brought into force on 28th March 2009, for certain specified purposes, those provisions of AFA 2006 not already in force (except section 351 and Schedule 12).

(2) 1955 c. 18.

(3) 1955 c. 19.

(4) 1957 c. 53.

(5) 1966 c. 45.

(6) 1968 c. 20. The Act was formerly known as the Courts-Martial (Appeals) Act 1968. AFA 2006, section 272 and Schedule 8, paragraph 53, amends section 61(1) so as to provide for the Act to be cited as the Court Martial Appeals Act 1968.

(7) 1976 c. 52.

(8) 1980 c. 9.

- “AFA 1981” means the Armed Forces Act 1981<sup>(9)</sup>;
- “AFA 1991” means the Armed Forces Act 1991<sup>(10)</sup>;
- “RFA 1996” means the Reserve Forces Act 1996<sup>(11)</sup>;
- “AFA 2001” means the Armed Forces Act 2001<sup>(12)</sup>;
- “AFA 2006” means the Armed Forces Act 2006<sup>(13)</sup>;
- “the Appeal Court” means the Court Martial Appeal Court;
- “civilian subject to the SDAs” is to be read in accordance with paragraph (2);
- “commencement” means the beginning of 31st October 2009;
- “the corresponding civil offence”, in relation to an SDA civil offence, means—
- (a) the act or omission constituting the SDA civil offence; or
  - (b) if that act or omission is not punishable by the law of England and Wales, the equivalent act done or omission made in England or Wales;
- “SDA civil offence” means an offence under section 70 of AA 1955 or AFA 1955 or section 42 of NDA 1957;
- “SDA custodial sentence” has the meaning given by paragraph (3);
- “SDA offence” has the meaning given by paragraph (4);
- “SDA sentence of service detention” means a sentence of detention under section 71(1)(e) or 76C(2)(a) of AA 1955 or AFA 1955 or section 43(1)(e) of NDA 1957;
- “subject to air-force law” has the same meaning as in AFA 1955;
- “subject to military law” has the same meaning as in AA 1955;
- “subject to NDA 1957” means subject to NDA 1957, within the meaning of that Act.

(2) For the purposes of this Order a person was, at any time before commencement, a “civilian subject to the SDAs” if at that time any provision of AA 1955, AFA 1955 or NDA 1957 applied to him by virtue of section 209(1) or (2) of AA 1955 or AFA 1955 or section 118(1) or (2) of NDA 1957 (application of SDAs to civilians).

- (3) In this Order “SDA custodial sentence” means any of the following—
- (a) a sentence of imprisonment passed by—
    - (i) a court-martial;
    - (ii) a Standing Civilian Court;
    - (iii) the Appeal Court before commencement; or
    - (iv) the House of Lords or the Supreme Court, before commencement, on an appeal brought from a decision of the Appeal Court;
  - (b) a sentence of custody for life under section 71A(1A) or (1B) of AA 1955 or AFA 1955 or section 43A(1A) or (1B) of NDA 1957;
  - (c) a sentence of detention during Her Majesty’s pleasure under section 71A(3) of AA 1955 or AFA 1955 or section 43A(3) of NDA 1957;
  - (d) a sentence of detention under section 71A(4) of AA 1955 or AFA 1955 or section 43A(4) of NDA 1957 (detention for serious offence committed by young person);

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(9) 1981 c. 55.  
 (10) 1991 c. 62.  
 (11) 1996 c. 14.  
 (12) 2001 c. 19.  
 (13) 2006 c. 52.

- (e) a custodial order under—
  - (i) section 71AA of, or paragraph 10 of Schedule 5A to, AA 1955 or AFA 1955; or
  - (ii) section 43AA of, or paragraph 10 of Schedule 4A to, NDA 1957.
- (4) In this Order “SDA offence” means any of the following—
  - (a) any offence under Part 2 of AA 1955 or AFA 1955;
  - (b) any offence under Part 1 of NDA 1957;
  - (c) an offence under section 47K of that Act;
  - (d) an offence under paragraph 4(6) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957 committed before commencement;
  - (e) an offence under section 18 or 20 of AFA 1991 committed before commencement;
  - (f) an offence under any of sections 95 to 97 of RFA 1996 committed before commencement;
  - (g) an offence under paragraph 5(1) of Schedule 1 to that Act committed before commencement by a person within paragraph (5) below.
- (5) A person is within this paragraph if—
  - (a) after committing the offence and before commencement, he became a member of a reserve force and—
    - (i) he remained such a member until commencement; or
    - (ii) immediately before commencement, he was subject to military law, air-force law or NDA 1957; or
  - (b) after commencement, he becomes a member of the reserve forces.

### **SDA offences to be dealt with under this Order**

**3.** A person who has committed an SDA offence shall be liable to be tried and punished in accordance with this Order (and not, except to the extent provided by article 55 or 84, under AA 1955, AFA 1955 or NDA 1957).

### **Offences triable by civilian court**

**4.—(1)** Insofar as an offence under an enactment repealed by AFA 2006 is triable by a civilian court—

- (a) nothing in this Order affects the application of section 16 of the Interpretation Act 1978(14) (general savings) in relation to the offence;
  - (b) subject to paragraph (2), nothing in this Order applies in relation to the offence.
- (2) Paragraph (1)(b) does not affect the application of articles 154 and 199 to 201.

### **“Service offence” in AFA 2006 not to include offences committed before commencement**

**5.** In section 50(2) of AFA 2006 (definition of “service offence”), references in paragraphs (g) to (i) to an offence do not include one committed before commencement.