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STATUTORY INSTRUMENTS

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**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 7

Community supervision orders

**Community supervision orders**

**166.**—(1) In this Chapter “a community supervision order” means an order under paragraph 4(1) of Schedule 5A to AA 1955 or of Schedule 5A to AFA 1955 or of Schedule 4A to NDA 1957.

(2) For the purposes of this Chapter a community supervision order is “current at commencement” if by commencement—

- (a) the order has not been discharged under paragraph 4(11) of that Schedule or ceased to have effect by reason of paragraph 5(5) of that Schedule; and
- (b) the supervision period has not ended.

(3) In this Chapter “the supervision period” means the period specified in a community supervision order.

**Savings in respect of community supervision orders: provisions of SDAs**

**167.**—(1) In this article “the Schedule” means each of Schedule 5A to AA 1955, Schedule 5A to AFA 1955 and Schedule 4A to NDA 1957.

(2) The following provisions of paragraph 4 of the Schedule continue to have effect in relation to a community supervision order which is current at commencement—

- (a) sub-paragraph (6) (failure to comply with order), subject to the modification in paragraph (3) below;
- (b) sub-paragraph (7D) (limitation period for proceedings in respect of failure to comply);
- (c) sub-paragraph (11) (power to discharge or vary order, or replace supervisor);
- (d) sub-paragraph (2) (definitions), so far as relating to the provisions saved by this Chapter.

(3) In paragraph 4(6) of the Schedule, as saved by this article, the words “triable by court-martial” are omitted.

**Offence of failure to comply to be treated as service offence for certain purposes**

**168.**—(1) An offence under paragraph 4(6) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957 committed after commencement is to be treated as a service offence for the purposes of the following provisions of AFA 2006—

- (a) section 50(1) (jurisdiction of Court Martial);
- (b) section 51(1) (jurisdiction of Service Civilian Court);
- (c) section 63 (double jeopardy);
- (d) sections 67 and 68(3) (powers of arrest);
- (e) Part 4 (custody);
- (f) section 116(2) and (5) (duty of service policeman to refer case to DSP), subject to the modification in paragraph (4)(a) below;
- (g) section 118 (duty of service policeman to notify CO of referral to DSP), subject to the modification in paragraph (4)(b) below;
- (h) section 127(1) (direction barring further proceedings).

(2) A person may not be arrested under section 67 of AFA 2006 by virtue of paragraph (1)(d) above after the end of 6 months beginning with the end of the supervision period.

(3) In section 92 of AFA 2006 (power to make provision conferring powers of entry and search after arrest), the reference to a person who has been arrested under section 67 of that Act does not include a person so arrested by virtue of paragraph (1)(d) above.

(4) In their application to an offence under paragraph 4(6) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957 committed after commencement—

- (a) section 116(2)(b) of AFA 2006 has effect as if the words from “and is aware” to the end of the paragraph were omitted; and
- (b) section 118 of that Act has effect as if subsection (3)(b) were omitted.

#### **Community supervision order made by court-martial: conviction of further offence by Court Martial**

**169.**—(1) This article applies where—

- (a) a person in whose case a community supervision order has been made is convicted by the Court Martial of any offence committed during the supervision period (including an offence under paragraph 4(6) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957); and
- (b) the order was made by a court-martial or the Appeal Court.

(2) The Court Martial may deal with the offender for the offence for which the order was made in any way in which it could deal with the offender if it had just convicted the offender of that offence.

#### **CSO made by any SDA court: conviction of further offence by Service Civilian Court**

**170.**—(1) This article applies where a person in whose case a community supervision order has been made is convicted by the Service Civilian Court of an offence committed during the supervision period (including an offence under paragraph 4(6) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957).

(2) The Service Civilian Court may deal with the offender for the offence for which the order was made in any way in which it could deal with the offender if it had just convicted the offender of that offence.

(3) It is to be assumed for the purposes of paragraph (2) that the offence is one the Service Civilian Court would have jurisdiction to try.

#### **CSO made by Standing Civilian Court: conviction of further offence by Court Martial**

**171.**—(1) This article applies where—

- (a) a person in whose case a community supervision order has been made is convicted by the Court Martial of an offence committed during the supervision period (including an offence under paragraph 4(6) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957); and
- (b) the order was made by a Standing Civilian Court.

(2) The Court Martial may deal with the offender for the offence for which the order was made in any way in which the Service Civilian Court could deal with the offender if it had just convicted the offender of that offence.

(3) It is to be assumed for the purposes of paragraph (2) that the offence is one the Service Civilian Court would have jurisdiction to try.

### **Restriction on other powers of punishment in respect of failure to comply with order**

**172.**—(1) Where the Court Martial or the Service Civilian Court convicts a person of 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, the court—

- (a) may, instead of dealing with the offender under article 169, 170 or 171 for the offence for which the order was made, impose on the offender a fine not exceeding £1,000 for the offence under paragraph 4(6);
- (b) may not impose any other punishment on the offender for that offence.

(2) Where the Court Martial or the Service Civilian Court convicts a person of an offence under paragraph 4(6) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957 committed after commencement, the court may not impose any punishment for that offence (but this is without prejudice to its power to deal with the offender under article 169, 170 or 171 for the offence for which the order was made).

### **Appeals against re-sentence, etc**

**173.**—(1) Paragraph (2) applies where a person is sentenced by a court under this Chapter for an offence in respect of which a community supervision order was made.

(2) The person is to be treated, for the purpose of enabling the making of an appeal against the sentence under CMAA 1968 or section 285 of AFA 2006, as if the conviction of that offence had been by the court which sentenced the offender under this Chapter.

(3) Paragraph 5 of Schedule 5A to AA 1955 and AFA 1955 and of Schedule 4A to NDA 1957 continues to have effect in relation to community supervision orders, but as if the references in subparagraphs (1)(i) and (6) to paragraph 4(8) or (9) were to this Chapter.

(4) A conviction of an offence under paragraph 4(6) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957 committed after commencement shall be deemed not to be a conviction except for the purposes of—

- (a) this Chapter; and
- (b) any appeal against the conviction or against a sentence passed by reason of the conviction.

### **Savings of regulations**

**174.**—(1) The following provisions of the Courts-Martial and Standing Civilian Courts (Army and Royal Air Force) (Additional Powers on Trial of Civilians) Regulations 1997(1) continue to have effect in relation to a community supervision order—

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(1) [SI 1997/597](#).

- (a) regulation 4 (persons fit to be supervisors);
  - (b) regulation 6 (general duty of supervisor);
  - (c) regulation 8(4) (requirements may not operate so as to conflict with religion, work or education);
  - (d) regulation 9 (calculation of periods specified);
  - (e) regulation 12 (discharge or modification of order or replacement of supervisor), together with—
    - (i) row 1 of the Table in Part 2 of Schedule 2 as applied by regulation 12(1)(b); and
    - (ii) regulation 3 so far as relating to regulation 12(1)(b);
  - (f) the definition of “the 1955 Act” in regulation 2.
- (2) In row 1 of the Table in Part 2 of Schedule 2 to those Regulations as saved by paragraph (1) (e) above, the reference to “the commanding officer of the offender” is to be read as to the person who is the offender’s commanding officer within the meaning of AFA 2006.