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STATUTORY INSTRUMENTS

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**2009 No. 1059**

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

PART 2

LIABILITY FOR SDA OFFENCES

**Liability for SDA offences**

6.—(1) A person guilty of an SDA offence is liable to any punishment mentioned in the Table in section 164 of AFA 2006; but this is subject to article 7.

(2) Section 164(2) and (3) of AFA 2006 (interpretation etc) apply in relation to paragraph (1).

**Punishment may not be more severe than maximum court-martial punishment**

7.—(1) A sentence awarded in respect of an SDA offence may not be more severe than the maximum court-martial sentence.

(2) In this article “the maximum court-martial sentence” means the maximum sentence that could have been awarded if the offender (having been convicted on the date he was actually convicted) had been sentenced for that offence by a relevant court-martial according to the law in force at the time the offence was committed.

(3) In paragraph (2) “a relevant court-martial” means—

- (a) where paragraph (4) applies, a district court-martial;
- (b) otherwise, a general court-martial or (as the case may be) a court-martial under NDA 1957.

(4) This paragraph applies where—

- (a) the offender was arraigned under section 91A of AA 1955 or AFA 1955 on a charge of the offence in question (or on a charge of another offence on the trial of which he was convicted of the offence in question);
- (b) at the time of arraignment, the charge sheet specified that the charge was to be tried by a district court-martial; and
- (c) it is not the case that a district court-martial was convened to try the charge and was dissolved before commencement without reaching a finding.

(5) Any provision of Part 9 of AFA 2006 which requires a court or officer to treat a matter as an aggravating factor is subject to this article.

**Civilian offenders**

8.—(1) In Schedule 3 to AFA 2006 (which modifies the Table in section 164 in relation to civilian offenders etc), the reference in paragraph 1(2) to a service offence includes an SDA offence.

(2) A person who (but for this paragraph) would be a civilian offender under paragraph 1(2) of Schedule 3 to AFA 2006 as modified by this article is not a civilian offender for the purposes of Part 1 of that Schedule if that person was subject to military law, air-force law or NDA 1957—

- (a) when the offence was committed; or
- (b) at any time between committing the offence and commencement.