
DRAFT STATUTORY INSTRUMENTS

2013 No.

The Armed Forces (Retrial for Serious Offences) Order 2013

PART 2

Cases that may be retried

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3.—(1) This Order applies where a person has been acquitted of a qualifying offence in proceedings—

- (a) before the Court Martial;
- (b) on appeal against a conviction or finding in proceedings before the Court Martial; or
- (c) on appeal from a decision on such an appeal.

(2) In paragraph (1) references to the Court Martial include a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957.

(3) Where a conviction of an offence in proceedings before a court-martial was quashed on appeal before section 12(3) of the 1968 Act⁽¹⁾ came into force, the appellant is to be treated for the purposes of paragraph (1) as acquitted of the offence.

(4) A person acquitted of an offence in proceedings mentioned in paragraph (1) is treated for the purposes of that paragraph as also acquitted of any qualifying offence of which he could have been convicted in the proceedings because of the first-mentioned offence being charged on the charge sheet⁽²⁾, except an offence—

- (a) of which he has been convicted;
- (b) of which he has been found not guilty by reason of insanity; or
- (c) in respect of which, in proceedings where he has been found to be unfit to stand trial (within the meaning of section 166 of the 2006 Act) a finding has been made that he did the act or made the omission charged against him.

(5) In relation to proceedings before a court-martial under any of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957, the reference in paragraph (4)(c) to section 166 of the 2006 Act is to be read as a reference to section 115A of the Army Act 1955 or of the Air Force Act 1955⁽³⁾, or section 62A of the Naval Discipline Act 1957⁽⁴⁾ (as the case may be).

(6) References in paragraphs (1) and (4) to a qualifying offence do not include references to an offence which, at the time of the acquittal, was the subject of an order under article 9.

(7) This Order applies whether the acquittal was before or after the making of this Order.

⁽¹⁾ Section 12(3) was inserted by paragraphs 1 and 10(b) of Schedule 8 to the 2006 Act.

⁽²⁾ To bring a charge under the 2006 Act a charge sheet is required to be prepared pursuant to regulation 11 of the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009, [S.I. 2009/2055](#).

⁽³⁾ Section 115A of each of the 1955 Acts was inserted by paragraph 1 of Schedule 2 to the Armed Forces Act 1996; repealed by Schedule 11 to the Domestic Violence, Crime and Victims Act 2004 ([c. 28](#)).

⁽⁴⁾ Section 62A was inserted by paragraph 3 of Schedule 3 to the Domestic Violence, Crime and Victims Act 2004 ([c. 28](#)) repealed by section 378(2) of, and Schedule 17 to the 2006 Act.

(8) This Order has effect notwithstanding the restrictions on a retrial imposed by Chapter 3 of Part 2 of the 2006 Act (double jeopardy) or by article 25 of the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009⁽⁵⁾.

(5) S.I. 2009/1059.