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STATUTORY INSTRUMENTS

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**2009 No. 1059**

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

**PART 15**

**APPEALS AND REFERENCES TO THE COURT MARTIAL APPEAL COURT**

**Retrial authorised by Appeal Court**

**119.**—(1) Where the Appeal Court has made (whether before or after commencement) an order under section 19 of CMAA 1968 (power to authorise retrial) on quashing a conviction by court-martial, subsection (3) of that section applies without the amendments made by AFA 2006.

(2) In paragraph (1), the reference to a conviction by court-martial includes a finding of not guilty by reason of insanity.

(3) Where—

- (a) before commencement, the Appeal Court made an order under section 19 of CMAA 1968 for the retrial of a person on a charge, and
- (b) the charge is current at commencement,

the charge is to be regarded for the purposes of Part 5 of AFA 2006 as allocated for Court Martial trial.

(4) For the purposes of this article a charge is “current at commencement” if, at commencement—

- (a) neither article 25 of this Order (saving of existing bars to service proceedings) nor Chapter 3 of Part 2 of AFA 2006 (double jeopardy) as modified by this Order prohibits the trial of the person by the Court Martial for the offence to which the charge relates;
- (b) proceedings on the charge have not been stayed; and
- (c) proceedings on the charge have not been discontinued under section 83B(8) of AA 1955 or AFA 1955 or section 52I(7) of NDA 1957, and no other charge has been substituted for it.

(5) In section 20(1) of CMAA 1968 (requirement of leave for arraignment more than three months after making of order for retrial) the reference to an order under section 19 of that Act includes one made before commencement.

**Changes to legislation:**

There are currently no known outstanding effects for the The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, Section 119.