
STATUTORY INSTRUMENTS

2009 No. 1059

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

PART 10

SUMMARY DEALING

CHAPTER 4

The Summary Appeal Court

Punishments substituted for punishments imposed under NDA 1957

68.—(1) This article applies to a rehearing as respects punishment held by virtue of section 146(1) (b) or (2) of AFA 2006 (rehearing by SAC) where the punishment to which the rehearing relates was imposed—

- (a) on a summary trial under NDA 1957; or
- (b) under article 55 in relation to a finding recorded under NDA 1957.

(2) In its application to the rehearing, section 147(3) of AFA 2006 (power to substitute punishment) has effect as if for paragraph (b) there were substituted—

- “(b) quash that punishment and award in substitution for it any punishment which—
 - (i) would be available under Chapter 1 of this Part if a charge of the offence (or charges of the offences) had just been found proved by the accused’s commanding officer and that officer had extended powers for the purposes of section 133(1) or (2) (as the case may be), 134, 135(1) and 136(1)(b); and
 - (ii) in the opinion of the court is neither more severe than the punishment originally awarded nor more severe than the most severe punishment which could have been awarded, for the offence or offences for which the court is awarding punishment, by the officer who originally awarded punishment.”

(3) For the purposes of section 147(3)(b) of AFA 2006 as substituted by paragraph (2) above, the punishments in the Table in section 132 of AFA 2006 are to be taken to include—

- (a) dismissal from Her Majesty’s service;
- (b) (as an alternative to disrating or reduction in rank as permitted by row 3 of the Table) disrating, or reduction in rank, to an extent which was available to the officer who awarded punishment.

(4) Nothing in section 138 of AFA 2006 prevents the Summary Appeal Court from awarding, by virtue of this article, dismissal from Her Majesty’s service in addition to any punishment or combination of punishments permitted by that section.

(5) For the purposes of section 147(3)(b)(i) of AFA 2006 as substituted by paragraph (2) above, it is to be assumed that the charge or charges are capable of being heard summarily under AFA 2006, even if they are not in fact so capable.