
STATUTORY INSTRUMENTS

2009 No. 1059

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

PART 10

SUMMARY DEALING

CHAPTER 1

Proceedings in progress at commencement

Summary hearing where court-martial trial declined before commencement

54.—(1) This article applies where—

- (a) a charge falls within article 46(3) (charges allocated for summary hearing); and
- (b) before commencement, the accused was given the opportunity to elect court-martial trial of the charge under section 76AA(1) of AA 1955 or AFA 1955 or section 52D(2) of NDA 1957 and declined to elect court-martial trial (or, having elected court-martial trial, withdrew the election with leave).

(2) Section 129(1) of AFA 2006 (giving of opportunity to elect Court Martial trial) must be complied with before the charge is heard summarily, despite the fact that the accused had been given the opportunity to elect court-martial trial.

(3) Where this article applies and the charge had begun to be heard summarily before commencement, in section 124(2) and 129 of AFA 2006 and paragraph (2) above references to hearing the charge summarily are to be read as references to proceeding with the hearing of the charge.

(4) The reference in paragraph (1) to a charge falling within article 46(3) includes a charge that—

- (a) would fall within article 46(3) but for the fact that it is an excluded charge; and
- (b) is an excluded charge only by reason of article 47(1)(a).

(5) A charge within paragraph (4) to which this article applies is to be regarded for the purposes of Part 5 of AFA 2006 as allocated for summary hearing.

(6) Nothing in this article enables an officer to hear a charge summarily, or continue to do so, where summary hearing of the charge is prohibited by article 48(3) or 49.

Powers of punishment where finding reached before commencement

55.—(1) This article applies where, at commencement, an SDA finding of guilt has been recorded but punishment has not been awarded.

(2) For the purposes of paragraph (1) “an SDA finding of guilt” has been recorded if—

- (a) a finding that a charge has been proved has been recorded under section 76B(7) of AA 1955 or AFA 1955; or

(b) a finding of guilt has been recorded under section 52D(7) of NDA 1957.

(3) Where this article applies, the appropriate officer must award punishment as if the SDAs and related subordinate legislation continued in force (and had done so since commencement) and AFA 2006 were not in force.

(4) In paragraph (3) “related subordinate legislation” means—

(a) any regulations, or orders of the Secretary of State, made under the SDAs that were in force immediately before commencement; and

(b) any authorisation by the Defence Council for the purposes of section 76C(2)(e) of AA 1955 or AFA 1955 (minor punishments) that had effect immediately before commencement.

(5) The officer’s duty under paragraph (3) to award punishment includes a duty to make any other order or direction when dealing with the offender that the officer would have made under the SDAs; but this is subject to paragraph (6).

(6) If by virtue of paragraph (3) the officer imposes a sentence of detention under section 43(1)(e) of NDA 1957, the officer may not make a committal order under section 81(3) of that Act (but this does not affect his power to make an order under section 90(1) of that Act suspending the sentence).

(7) Regulations 45A, 49A and 53A of the Naval Summary Discipline Regulations (February) 2009⁽¹⁾ shall continue in force in relation to any order or direction made or proposed to be made under section 91B of NDA 1957 in pursuance of paragraph (5).

(8) In paragraph (3) the reference to “the appropriate officer” is to the officer who would have awarded punishment if the repeal of the SDAs had not come into force.

(9) The powers conferred by this article include power—

(a) for the officer who recorded the finding to exercise any power that that officer would have had, under regulations made under the SDAs, to refer the case to another officer for punishment;

(b) for an officer to whom the case is referred by virtue of sub-paragraph (a), or to whom it was referred for punishment before commencement, to exercise any power that that officer would have had under such regulations to refer the case to another officer for punishment; and

(c) accordingly, for the officer (if any) to whom the case is referred by virtue of sub-paragraph (a) or (b) to award punishment as mentioned in this article.

(10) In this article “the SDAs” means the provisions of AA 1955, AFA 1955 and NDA 1957 whose repeal came into force at commencement.

(11) Any reference in this Order to a sentence or punishment under a provision of AA 1955, AFA 1955 or NDA 1957 includes such a sentence or punishment awarded by virtue of this article.

Deemed disrating

56.—(1) Where a punishment awarded under article 55—

(a) is by reason of section 43(4) of NDA 1957 required to include disrating or reduction to the ranks, and

(b) does not include it,

the punishment is not invalid but is deemed to include disrating or (as the case may be) reduction to the ranks.

(1) These Regulations are made by the Defence Council under sections 43, 52E and 52F of NDA 1957 and published in the Manual of Naval Law.

(2) Where disrating is deemed by paragraph (1) to be included in a punishment, it reduces the offender to the rate that he would have been reduced to by virtue of section 43(5) of NDA 1957, had that Act continued in force.

Approval of summary punishment (NDA cases)

57.—(1) Paragraph (2) applies where—

- (a) at commencement, an SDA finding of guilt has been recorded but punishment has not been awarded;
- (b) the case is one where, under regulation 36 of the Naval Summary Discipline Regulations (February) 2009, punishment could not have been awarded without the approval of a submission under that regulation; and
- (c) at commencement, such a submission has not been made, or has been made but not approved.

(2) Punishment must not be awarded under article 55 unless a submission has been made (whether before or after commencement) and approved in accordance with that regulation.

(3) In this article “an SDA finding of guilt” has the same meaning as in article 55.

Warrant punishments

58.—(1) In this article “warrant punishment” is to be read in accordance with regulation 44 of the Naval Summary Discipline Regulations (February) 2009 (“the NSD Regulations”).

(2) A warrant punishment must not be awarded under article 55 unless a warrant has, before or after commencement—

- (a) been prepared in the format prescribed under regulation 45 of the NSD Regulations; and
- (b) been approved in accordance with regulation 40, 46, 47 or 48 of those Regulations (which shall continue in force for the purposes of this article).

(3) Regulation 49 of those Regulations (powers where punishment warrant submitted for approval) shall continue in force for the purposes of any case where—

- (a) at commencement, an SDA finding of guilt has been recorded but punishment has not been awarded; and
- (b) at a time after commencement, a punishment warrant has been submitted for approval (either before commencement or, by virtue of paragraph (2), after commencement) but the warrant has not yet been approved.

(4) Regulations 50 and 53 of the NSD Regulations (formal reading of punishment warrant, and power to modify punishment) shall continue in force in relation to any award of a warrant punishment under article 55.