
STATUTORY INSTRUMENTS

2009 No. 1059

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

PART 13

ACTIVATION OF SUSPENDED SENTENCES

CHAPTER 2

Activation of suspended SDA sentence by the Court Martial

Activation of suspended SDA sentence of imprisonment

94.—(1) Where—

- (a) a sentence of imprisonment passed on a person by a court-martial is for the time being suspended, and
- (b) the Court Martial convicts the person of an offence committed since the suspension date, the court may make an order under this article determining the suspension of the sentence and committing the person to imprisonment.

(2) Paragraph (1) is subject to any provision of Court Martial rules made by virtue of section 165(6) of AFA 2006 as modified by article 78(1) (powers of Court Martial where election for trial by that court or by court-martial).

(3) An order under this article is an order—

- (a) that the suspended sentence shall take effect with the original term unaltered; or
- (b) that the suspended sentence shall take effect with the substitution of a lesser term for the original term.

(4) In paragraph (1)(a) the reference to a sentence passed by a court-martial includes a sentence passed—

- (a) by the Appeal Court before commencement; or
- (b) by the House of Lords or the Supreme Court before commencement, on an appeal brought from a decision of the Appeal Court.

Activation of suspended SDA sentence of service detention on conviction by Court Martial

95.—(1) Where—

- (a) an SDA sentence of service detention passed on a person is for the time being suspended, and
- (b) the Court Martial convicts the person of an offence committed since the suspension date, the court may make an order under section 191(3) of AFA 2006 in respect of the sentence.

(2) This article is subject to section 244 of AFA 2006 (limit on combined term of sentences) as modified by article 104.

Activation of suspended NDA 1957 sentence of service detention following conviction by another court or a CO

96.—(1) Where—

- (a) an SDA sentence of service detention passed on a person by a court-martial under NDA 1957 is for the time being suspended,
- (b) the person—
 - (i) has been convicted of a service offence,
 - (ii) has been convicted since commencement of an SDA offence, or
 - (iii) has been convicted of an offence in the British Islands,
- (c) the offence was committed since the suspension date, and
- (d) the person appears or is brought before the Court Martial following the issue of a summons or warrant under paragraph (8),

the court may make an order under section 191(3) of AFA 2006 in respect of the sentence.

(2) Paragraphs (3) to (6) apply where—

- (a) by virtue of this article the Court Martial makes an order under section 191(3) of AFA 2006 in respect of a sentence for a term of more than 90 days; and
- (b) the sentence is not one to which paragraph (5) applies (by virtue of a previous order under section 191(3) of AFA 2006).

(3) The order must be an order that the suspended sentence shall take effect with the substitution for the original term of a specified term, which must be 90 days or less.

(4) For the purposes of section 244 of AFA 2006 (limitation of combined term of sentences) the term of the sentence is to be treated as the term specified in the order.

(5) For the purposes of this Part, the part of the sentence that exceeds 90 days (“the excess”) is to be treated as a sentence passed by a court-martial under NDA 1957 and suspended under section 90(1) of NDA 1957 on the date when the order under section 191(3) of AFA 2006 was made; but this is subject to paragraph (6).

(6) The court may order that paragraph (5)—

- (a) shall not apply; or
- (b) shall apply only in relation to a specified part of the excess.

(7) Where—

- (a) the Court Martial makes an order under section 191(3) of AFA 2006 by virtue of this article, and
- (b) the conviction mentioned in paragraph (1)(b) is a conviction by an officer or the Summary Appeal Court,

any unserved part of any service supervision and punishment order or minor punishment awarded by the officer or the Summary Appeal Court is remitted by the making of the order.

(8) If it appears to the Court Martial—

- (a) that paragraph (1)(a) to (c) apply, and
- (b) that the offender has not been dealt with in respect of the sentence mentioned in paragraph (1)(a),

the court may issue a summons requiring him to appear at the time and place specified in it, or a warrant for his arrest.

(9) This article is subject to section 244 of AFA 2006 (limit on combined term of sentences) as modified by article 104 and (where it applies) paragraph (4).

(10) In paragraph (1)(a) the reference to a sentence passed by a court-martial under NDA 1957 includes a sentence passed—

- (a) by the Appeal Court before commencement, on appeal from a court-martial under that Act; or
- (b) by the House of Lords or the Supreme Court before commencement, on an appeal brought from a decision of the Appeal Court where the appeal to that court was from a court-martial under that Act.