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## STATUTORY INSTRUMENTS

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# 2009 No. 1059

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

### PART 6

#### DOUBLE JEOPARDY

##### **Saving of existing bars to service proceedings**

**25.**—(1) This article applies where immediately before commencement a person was by virtue of a provision mentioned in paragraph (3) not liable to be tried by court-martial in respect of an SDA offence.

(2) Where this article applies—

- (a) the Court Martial may not try that person for that offence;
- (b) the Service Civilian Court may not try that person for that offence;
- (c) a charge against that person in respect of that offence may not be heard summarily by an officer.

(3) The provisions referred to in paragraph (1) are—

- (a) section 134 of AA 1955 or AFA 1955 or section 129(2) of NDA 1957 (prohibition of trial by service court for offence already disposed of);
- (b) section 18 of CMAA 1968 (conviction quashed by Appeal Court);
- (c) a direction under section 52I(12) or (13) of NDA 1957 (direction that accused not liable to be tried for offence charged);
- (d) a direction under section 81(2) of AA 1955 or AFA 1955 (direction prohibiting trial for desertion where confession made);
- (e) an order under section 74 of NDA 1957 (order dispensing with trial of rating for desertion where confession made).

(4) Where immediately before commencement a person was by virtue of section 134 of AA 1955 or AFA 1955 not liable to be tried by court-martial in respect of an SDA offence by reason of having had an offence taken into consideration when being sentenced by a court-martial or a Standing Civilian Court, paragraph (2) above ceases to apply in respect of the SDA offence if after commencement that sentence is quashed.

##### **Saving of existing bars to civilian court proceedings**

**26.**—(1) This article applies where immediately before commencement a person was by virtue of a provision mentioned in paragraph (3) not liable to be tried by a civilian court in respect of an offence.

(2) Where this article applies, a civilian court may not try that person for that offence.

(3) The provisions referred to in paragraph (1) are—

- (a) section 133 of AA 1955 or AFA 1955 (prohibition of trial by civilian court for offence already disposed of);
- (b) section 129(1) of NDA 1957 (corresponding provision for persons subject to NDA 1957);
- (c) section 18 of CMAA 1968 (conviction quashed by Appeal Court).

(4) Where immediately before commencement a person was by virtue of section 133 of AA 1955 or AFA 1955 not liable to be tried by a civilian court in respect of an offence (“offence C”) by reason of having had an offence taken into consideration when being sentenced by a court-martial or a Standing Civilian Court, paragraph (2) above ceases to apply in respect of offence C if after commencement that sentence is quashed.

### **Application of AFA 2006 ss. 63 and 64**

**27.—**(1) In section 63 of AFA 2006 (service proceedings barring subsequent service proceedings)

- (a) any reference to a service offence includes an SDA offence; and
- (b) subsection (3) has effect as if the cases mentioned in it included the following cases—
  - (i) where the person was convicted or acquitted of offence A by a court-martial convened under AA 1955 or AFA 1955 or a Standing Civilian Court and offence B is an offence of which the person could, on acquittal of offence A, have been convicted under section 98(2), (5) or (6) of AA 1955 or AFA 1955;
  - (ii) where the person was convicted or acquitted of offence A by a court-martial assembled under NDA 1957, or at a summary trial under that Act, and offence B is an offence of which the person could, on acquittal of offence A, have been convicted under section 68 of NDA 1957.

(2) In section 64 of AFA 2006 (service proceedings barring subsequent civilian proceedings)—

- (a) the references in subsection (1) to an offence under section 42 of that Act include an SDA civil offence; and
- (b) where section 64 applies by reason of the conviction, acquittal or taking into consideration of an SDA civil offence, the reference in subsection (3) to the offence under section 42 is to be read as a reference to the SDA civil offence.

(3) In sections 63 and 64 of that Act, and in this article, in relation to an SDA offence—

- (a) references to conviction include—
  - (i) a finding being recorded under section 76B(7) of AA 1955 or AFA 1955 that a charge has been proved; and
  - (ii) a finding of guilt being recorded under section 52D(7) of NDA 1957;
- (b) references to acquittal include—
  - (i) dismissal of a charge under section 76(5)(a) or 76B(2) of AA 1955 or AFA 1955 or section 52B(5)(a) of NDA 1957; and
  - (ii) referral of a charge back under section 76A(2) of AA 1955 or AFA 1955 or section 52C(2) of NDA 1957 with a direction to dismiss the charge.

(4) For the purposes of sections 63 and 64 of AFA 2006 a person shall be taken not to have had an SDA offence taken into consideration when being sentenced if the taking into consideration was annulled by the reviewing authority.

(5) Paragraph (4) does not affect section 65(3) of AFA 2006 in its application to SDA offences.

(6) In section 63(3)(c) of AFA 2006, the reference to section 161 includes a reference to article 77.

### **Application of AFA 2006 s. 66**

- 28.** In section 66 of AFA 2006 (civilian proceedings barring subsequent service proceedings)—
- (a) references to an offence under section 42 of that Act include an SDA civil offence;
  - (b) references to a non-criminal service offence include an SDA offence other than an SDA civil offence.

**Changes to legislation:**

There are currently no known outstanding effects for the The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, PART 6.