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STATUTORY INSTRUMENTS

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**2009 No. 1059**

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

PART 9

INVESTIGATION, CHARGING AND MODE OF TRIAL

**Exceptions to allocation for summary hearing**

**47.**—(1) For the purposes of article 46(3)(c) and paragraph (2) below an “excluded charge” is any of the following—

- (a) a charge which is not capable of being heard summarily (within the meaning given by section 52 of AFA 2006 as modified by articles 14 and 15); but this is subject to paragraph (3) below;
- (b) a charge where—
  - (i) the case to which the charge relates was referred to the prosecuting authority by higher authority under section 76A(1) of AA 1955 or AFA 1955 or section 52C(1) of NDA 1957; and
  - (ii) there has been no referral back of the case, or of a part of the case to which the charge relates, under section 83B(2) or 83BB(2A) of AA 1955 or AFA 1955 or section 52I(2) or 52II(2A) of NDA 1957;
- (c) a charge as respects which the accused—
  - (i) elected court-martial trial; and
  - (ii) has not withdrawn that election with leave;
- (d) a charge where—
  - (i) the charge has been referred to higher authority under section 76(5)(b) or 76B(4) of AA 1955 or AFA 1955 or section 52B(5)(b) or 52D(5) of NDA 1957;
  - (ii) it has not been referred back under section 76A(3) or (4) of AA 1955 or AFA 1955 or section 52C(3) or (3A)(a) or (b) of NDA 1957 to be dealt with or tried summarily; and
  - (iii) the case to which the charge relates has not been referred to the prosecuting authority;
- (e) a charge against a civilian.

(2) An excluded charge, if falling within article 46(3)(a) and (b), is to be regarded for the purposes of Part 5 of AFA 2006 as allocated for Court Martial trial (subject to any provision of that Part under which, at any time after commencement, the charge ceases to be allocated for Court Martial trial).

(3) A charge which is not capable of being heard summarily is not an excluded charge by reason of paragraph (1)(a) if the case, or a part of the case to which the charge relates, was referred back under section 83B(2) or 83BB(2A) of AA 1955 or AFA 1955 or section 52I(2) or 52II(2A) of NDA 1957.

(4) For the purposes of paragraph (1)(e) a charge is “against a civilian” if, when the offence was committed or at any time since, the accused was a person who was not—

- (a) subject to service law (including military law, air-force law or NDA 1957);
- (b) a member of a volunteer reserve force; or
- (c) a member of an ex-regular reserve force who is subject to an additional duties commitment.