STATUTORY INSTRUMENTS

2009 No. 1109

DEFENCE

The Armed Forces (Forfeitures and Deductions) Regulations 2009

Made - - - -	*24th April 2009*
Laid before Parliament	*1st May 2009*
Coming into force - -	*31st October 2009*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 342 of the Armed Forces Act 2006(**a**):

PART 1

FORFEITURES AND DEDUCTIONS

Citation and commencement

1. These Regulations may be cited as the Armed Forces (Forfeitures and Deductions) Regulations 2009 and shall come into force on 31st October 2009.

Interpretation

2. In these Regulations—

"the Act" means the Armed Forces Act 2006 and, unless expressly provided otherwise, a reference in these Regulations to a numbered section is a reference to that section of the Act;

"AA 1955" means the Army Act 1955(**b**);

"AFA 1955" means the Air Force Act 1955(**c**);

"NDA 1957" means the Naval Discipline Act 1957(**d**);

"the 2000 Council Regulation" means Council Regulation (EC) No 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as amended from time to time and as applied by the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters(**e**);

"Sovereign Base Areas" means the Sovereign Base Areas of Akrotiri and Dhekelia.

(**a**) 2006 c. 52.
(**b**) 1955 c. 18.
(**c**) 1955 c. 19.
(**d**) 1957 c. 53.
(**e**) OJ No L 299 16.11.2005 at p 62.

Forfeiture of pay – absence from duty

3.—(1) The Defence Council, or an officer authorised by them, may make an order authorising a day's pay of a person subject to service law to be forfeited for—

(a) any day during which he was absent from duty and in respect of which the Defence Council are, or the authorised officer is, satisfied that his conduct amounted to an offence under section 8 or 9 or under section 97(1)(a) of the Reserve Forces Act 1996(**a**);

(b) any day during which he was absent from duty serving a relevant sentence, including any day counted under section 246(2) as time served by him as part of the sentence;

(c) any day during which he was absent from duty serving a sentence of imprisonment or detention imposed by a civilian court (anywhere);

(d) any day during which he was absent from duty detained under an order of a civilian court (anywhere) other than an order within sub-paragraph (e);

(e) any day during which he was absent from duty, detained under an order of a civilian court (anywhere) for his detention awaiting or during trial or awaiting sentence, if that day was counted as time served by him as part of a sentence of a civilian court;

(f) any day during which he was absent from duty by reason of sickness or injury if the Defence Council are, or the authorised officer is, satisfied that the sickness or injury was contributed to, or caused by, conduct in relation to which—

(i) he has been convicted of a service offence, or

(ii) a charge against him has been determined to have been proved at a summary hearing under section 131,

whether that absence occurred before or after he was convicted or the charge was determined to have been proved;

(g) any day during which he was absent from duty by reason of his having been captured by an enemy if the Defence Council are, or the authorised officer is, satisfied that the immediate cause of his capture by the enemy was conduct amounting to an intentional breach of his duty in respect of which—

(i) he has been convicted of an offence under Part 1 of the Act; or

(ii) a charge against him in respect of an offence under Part 1 of the Act has been determined to have been proved at a summary hearing under section 131;

(h) any day during which he was absent from duty and the Defence Council are, or the authorised officer is, satisfied that the absence was by reason of conduct in relation to which he has been convicted of an offence under section 5(2); or

(i) any day during which he was absent from duty and in respect of which the Defence Council are, or the authorised officer is, satisfied that he has been convicted of an offence under section 1(2).

(2) In paragraph (1)(b) a "relevant sentence" means—

(a) a custodial sentence awarded under the Act;

(b) a hospital order, made under section 37 of the Mental Health Act 1983(**b**) as modified by Schedule 4 to the Act, that a person be detained;

(c) an order made under section 214(3) that a person be detained in youth detention accommodation;

(d) a sentence of service detention.

(3) For the purposes of paragraph (1)—

(a) a reference to a person being absent from duty during a day includes his being absent for part of a day;

(**a**) 1996 c. 14.
(**b**) 1983 c. 20.

(b) in relation to a day's absence from duty—

(i) "a day's pay" of a person subject to service law by reason of section 367(1) or (2)(a), (b), (c) or (e) means one twelfth of his gross annual basic pay(**a**) on that day divided by the number of days in the month in which that day occurred plus his gross specialist pay, if any, for that day;

(ii) "a day's pay" of a person subject to service law by reason of section 367(2)(d) means his gross daily rate of pay on that day plus his gross specialist pay, if any, for that day.

Deduction from pay – amount paid to meet sum ordered to be paid by civilian court

4.—(1) Subject to paragraph (2), the Defence Council, or an officer authorised by them, may make an order authorising a deduction to be made from the pay of a relevant person and to be appropriated in or towards satisfaction of any amount paid by or on behalf of a service authority to meet the whole or part of a relevant sum.

(2) An order made under paragraph (1) may only authorise a deduction to be made on or after the date on which the relevant sum is required to be paid.

(3) Subject to paragraph (2), the Defence Council, or an officer authorised by them, may by order vary an order made under paragraph (1).

(4) The Defence Council, or an officer authorised by them, may by order revoke an order made under paragraph (1).

(5) In this regulation "relevant sum" means a sum that a relevant person has been ordered to pay by a civilian court (anywhere).

Deduction from pay – compensation for damage to or the loss of property

5.—(1) Subject to paragraphs (2), (3) and (4), the Defence Council, or an officer authorised by them, may make an order authorising a deduction to be made from the pay of a relevant person and to be appropriated as or towards compensation for any damage to or the loss of any public or service property, if the Defence Council are, or the authorised officer is, satisfied that the relevant person's conduct caused the damage to or the loss of property and amounted to an offence under section 24.

(2) No order shall be made under paragraph (1) with respect to damage to or the loss of any public or service property, if—

(a) a court or officer has sentenced the relevant person for a service offence and on passing sentence had power to make a service compensation order in respect of that damage to or that loss of property; or

(b) in circumstances involving a finding that the relevant person was not guilty of intentionally, recklessly or negligently causing that damage to or that loss of property—

(i) he has been acquitted of a service offence;

(ii) a charge against him in respect of a service offence has been determined at a summary hearing under section 131 not to have been proved; or

(iii) the Summary Appeal Court has quashed a finding that a charge against him in respect of a service offence has been proved.

(3) An order under paragraph (1) shall state the total sum to be deducted from the pay of the relevant person to whom it relates.

(4) The total sum authorised to be deducted from the pay of a relevant person under paragraph (1) in respect of the same damage to or the same loss of property shall not exceed £1,000.

(**a**) Basic pay and specialist pay are provided for from time to time under Royal Warrant (see section 333 of the Armed Forces Act 2006).

(5) Subject to paragraphs (3) and (4), the Defence Council, or an officer authorised by them, may by order vary an order made under paragraph (1).

(6) The Defence Council, or an officer authorised by them, may by order revoke an order made under paragraph (1).

Deduction from pay – financial penalty

6.—(1) Subject to paragraph (2), the Defence Council, or an officer authorised by them, may make an order authorising a deduction to be made from the pay of a person subject to service law and to be appropriated in or towards satisfaction of any payment which he is required to make in respect of a financial penalty.

(2) An order made under paragraph (1) may only authorise a deduction to be made on or after the date on which the payment is required to be made.

(3) Subject to paragraph (2), the Defence Council, or an officer authorised by them, may by order vary an order made under paragraph (1).

(4) The Defence Council, or an officer authorised by them, may by order revoke an order made under paragraph (1).

Deduction from pay – United Kingdom or Sovereign Base Areas maintenance order

7.—(1) Subject to paragraph (2), the Defence Council, or an officer authorised by them, may make an order authorising a deduction to be made from the pay of a relevant person and to be appropriated in or towards satisfaction of a payment which he is required to make under a maintenance order of a court in the United Kingdom or the Sovereign Base Areas.

(2) An order made under paragraph (1) may only authorise a deduction to be made on or after the date on which the payment is required to be made.

(3) Subject to paragraph (2), the Defence Council, or an officer authorised by them, may by order vary an order made under paragraph (1).

(4) The Defence Council, or an officer authorised by them, may by order revoke an order made under paragraph (1).

(5) The Defence Council, or an officer authorised by them, may treat an order made under paragraph (1) as being in suspense during any period in which the relevant person's pay is suspended.

Deduction from pay – external maintenance order

8.—(1) This regulation applies with respect to a maintenance order of a court, tribunal or person outside the United Kingdom and the Sovereign Base Areas (an "external maintenance order").

(2) Subject to paragraph (4), if an external maintenance order has been registered in or confirmed by a court in the United Kingdom, the Defence Council, or an officer authorised by them, may make an order authorising a deduction to be made from the pay of a relevant person and to be appropriated in or towards satisfaction of a payment which he is required to make under the maintenance order as so registered or confirmed, subject to any variation for the time being made to the maintenance order by such a court.

(3) Subject to paragraph (5), if an external maintenance order has not been registered in or confirmed by a court in the United Kingdom, but the Defence Council are, or the authorised officer is, satisfied either—

(a) that the maintenance order is capable of being registered in a court in the United Kingdom, or

(b) that the maintenance order would be capable of being so registered but for the fact that the relevant person is serving in the Armed Forces outside the United Kingdom,

the Defence Council or the authorised officer may make an order authorising a deduction to be made from the pay of a relevant person and to be appropriated in or towards satisfaction of a payment which he is required to make under the maintenance order.

(4) An order made under paragraph (2) may only authorise a deduction to be made on or after the date on which the payment is required to be made under the maintenance order as registered in, or confirmed by, the court in the United Kingdom, including any variation for the time being made to that order by such a court.

(5) An order made under paragraph (3) may only authorise a deduction to be made on or after the date on which the payment is required to be made under the maintenance order.

(6) An order made under paragraph (3) may provide—

(a) that it shall continue in force for a specified period, or

(b) that it shall continue in force until the occurrence of a specified event,

and for the earlier termination of the order if a specified event has not occurred within a specified period.

(7) Subject to paragraphs (4) and (5), the Defence Council, or an officer authorised by them, may by order vary an order made under this regulation.

(8) The Defence Council, or an officer authorised by them, may by order revoke an order made under this regulation.

(9) The Defence Council, or an officer authorised by them, may treat an order made under this regulation as being in suspense during any period in which the relevant person's pay is suspended.

(10) In this regulation—

(a) a reference to a maintenance order being registered in a court in the United Kingdom means registered in such a court under—

(i) the Maintenance Orders (Facilities for Enforcement) Act 1920(**a**);

(ii) Part 1 of the Maintenance Orders (Reciprocal Enforcement) Act 1972(**b**);

(iii) Part 1 of the Civil Jurisdiction and Judgments Act 1982(**c**); or

(iv) the 2000 Council Regulation;

(b) a reference to a maintenance order confirmed by a court in the United Kingdom means confirmed in such a court under the Maintenance Orders (Facilities for Enforcement) Act 1920.

"Maintenance order", "spouse" and "civil partner"

9.—(1) Subject to paragraph (2), in regulations 7 and 8 "maintenance order" means an order requiring a relevant person to make a payment for or in respect of—

(a) the maintenance of his spouse or civil partner;

(b) the maintenance of any child of his, his spouse or his civil partner;

(c) the maintenance of any other child who has been treated by him and his spouse, or by him and his civil partner, as a child of their family;

(d) any costs incurred in obtaining an order within sub-paragraph (a), (b) or (c); or

(e) any costs incurred in proceedings on appeal against, or for the variation, revocation or revival of an order within sub-paragraph (a), (b) or (c).

(2) For the purposes of regulation 8, "order" in paragraph (1) includes an authentic instrument or court settlement as referred to in—

(a) section 13 of the Civil Jurisdiction and Judgments Act 1982, or

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(**a**) 1920 c. 33.
(**b**) 1972 c. 18.
(**c**) 1982 c. 27.

(b) the 2000 Council Regulation,

and the expression "maintenance order" is to be read accordingly.

(3) References in paragraph (1) to the spouse of a relevant person include, in relation to an order made in proceedings in connection with the dissolution or annulment of a marriage, references to the person who would have been his spouse if the marriage had subsisted.

(4) References in paragraph (1) to the civil partner of a relevant person include, in relation to an order made in proceedings in connection with the dissolution or annulment of a civil partnership, references to the person who would have been his civil partner if the civil partnership had subsisted.

Deduction from pay – child maintenance

10.—(1) Subject to paragraph (2), the Defence Council, or an officer authorised by them, may make an order authorising a deduction to be made from the pay of a relevant person and to be appropriated in or towards satisfaction of any obligation of his to make a periodical payment in respect of a child in accordance with a maintenance calculation or maintenance assessment made under the 1991 Act or the 1991 Order.

(2) An order made under paragraph (1) may only authorise a deduction to be made on or after the date on which the relevant person is obliged to make the periodical payment.

(3) Subject to paragraph (2), the Defence Council, or an officer authorised by them, may by order vary an order made under paragraph (1).

(4) The Defence Council, or an officer authorised by them, may by order revoke an order made under paragraph (1).

(5) The Defence Council, or an officer authorised by them, may treat an order made under paragraph (1) as being in suspense during any period in which the relevant person's pay is suspended.

(6) In this regulation—

(a) "the 1991 Act" means the Child Support Act 1991(**a**);

(b) "the 1991 Order" means the Child Support (Northern Ireland) Order 1991(**b**).

Deduction from pay – judgment or order enforceable by a United Kingdom court

11.—(1) Subject to paragraphs (2) and (3), the Defence Council, or an officer authorised by them, may make an order authorising a deduction to be made from the pay of a relevant person and to be appropriated in or towards satisfaction of any amount required to be paid by him by virtue of any judgment or order enforceable by a court in the United Kingdom.

(2) Paragraph (1) shall not apply to—

(a) a relevant sum within regulation 4(1);

(b) any payment in respect of which a deduction may be authorised under regulation 7(1) or 8(2); or

(c) any sum in respect of which a deduction may be made by virtue of section 32(2)(b) of the Court Martial Appeals Act 1968(**c**).

(3) An order made under paragraph (1) may only authorise a deduction to be made on or after the date on which the amount is required to be paid.

(4) Subject to paragraph (3), the Defence Council, or an officer authorised by them, may by order vary an order made under paragraph (1).

(**a**) 1991 c. 48.
(**b**) S.I. 1991/2628 (N.I. 23)
(**c**) 1968 c. 20. Paragraph 53 of Schedule 8 to the Armed Forces Act 2006 provides for the Courts-Martial (Appeals) Act 1968 to be renamed the Court Martial Appeals Act 1968.

(5) The Defence Council, or an officer authorised by them, may by order revoke an order made under paragraph (1).

(6) The Defence Council, or an officer authorised by them, may treat an order made under paragraph (1) as being in suspense during any period in which the relevant person's pay is suspended.

PART 2

TRANSITIONAL PROVISIONS

Forfeiture of pay – absence from duty

12.—(1) References in regulation 3 to absence include absence before the time at which these Regulations come into force.

(2) The reference in regulation 3(1)(a) to an offence under section 8 or 9 is to be read as including an offence under section 37 or 38 of AA 1955, section 37 or 38 of AFA 1955 or section 15 or 17 of NDA 1957.

(3) The reference in regulation 3(1)(b) to a relevant sentence is to be read as including a sentence of imprisonment or detention awarded under Part 2 of AA 1955, Part 2 of AFA 1955 or Part 1 of NDA 1957.

(4) The references in regulation 3(1)(f) to being convicted of a service offence are to be read as including being convicted of an offence under Part 2 of AA 1955, Part 2 of AFA 1955 or Part 1 of NDA 1957.

(5) In regulation 3(1)(f)(ii) "a charge against him has been determined to have been proved at a summary hearing under section 131" is to be read as including being found guilty of an offence under Part 2 of AA 1955, Part 2 of AFA 1955 or Part 1 of NDA 1957 and "was determined to have been proved" in regulation 3(1)(f) is to be read accordingly.

(6) In regulation 3(1)(g)—

(a) the references to Part 1 of the Act are to be read as including Part 2 of AA 1955, Part 2 of AFA 1955 or Part 1 of NDA 1957; and

(b) "a charge against him in respect of an offence under Part 1 of the Act has determined to have been proved at a summary hearing under section 131" is to be read as including being found guilty of an offence under Part 2 of AA 1955, Part 2 of AFA 1955 or Part 1 of NDA 1957.

(7) The reference in regulation 3(1)(h) to being convicted of an offence under section 5(2) is to be read as including being convicted of an offence under section 25(1)(e) of AA 1955 or section 25(1)(e) of AFA 1955 or being convicted or found guilty of an offence under section 3(1)(e) of NDA 1957.

(8) The reference in regulation 3(1)(i) to an offence under section 1(2) is to be read as including an offence under section 25(1)(d) of AA 1955, section 25(1)(d) of AFA 1955 or section 3(1)(d) of NDA 1957.

Deduction from pay – compensation for damage to or the loss of property

13. In regulation 5—

(a) in its paragraph (1) the reference to section 24 is to be read as including section 44 or 44A of AA 1955, section 44 or 44A of AFA 1955 or section 29 or 29A of NDA 1957;

(b) in its paragraph (2) the references to a service offence are to be read as including an offence under Part 2 of AA 1955, Part 2 of AFA 1955 or Part 1 of NDA 1957;

(c) in its paragraph (2)(a) the reference to making a service compensation order is to be read as including awarding stoppages within the meaning of section 225(1) of AA 1955,

section 223(1) of AFA 1955 or section 43(1)(l) of NDA 1957 in respect of that damage to, or the loss of, property;

(d) in its paragraph (2)(b)(ii) the reference to a charge being determined not to have been proved is to be read as including—

(i) a charge being dismissed under AA 1955 or AFA 1955; or

(ii) acquittal by an appropriate superior authority or commanding officer under NDA 1957;

(e) in its paragraph (2)(b)(iii) the reference to the Summary Appeal Court is to be read as including a summary appeal court constituted under section 83ZA of AA 1955, section 83ZA of AFA 1955 or section 52FF of NDA 1957.

Kevan Jones
Parliamentary Under Secretary of State
Ministry of Defence

24th April 2009

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, made under section 342 of the Armed Forces Act 2006 ("the Act"), make provision for the forfeiture of pay and for deductions from pay of certain members of the armed forces.

Regulation 3 provides that the Defence Council, or an officer authorised by them, may make an order authorising a day's pay of such a person to be forfeited for certain days of absence from duty.

Regulation 4 provides that the Defence Council, or an officer authorised by them, may by order authorise deductions from the pay of such a person to satisfy amounts paid by or on behalf of the armed forces to meet an amount the person has been ordered to pay by a court of ordinary criminal jurisdiction.

Regulation 5 provides that the Defence Council, or an officer authorised by them, may in certain circumstances by order authorise a deduction from the pay of such a person, to be used as compensation for any loss of, or damage to public or service property caused by that person's wrongful act or negligence.

Regulation 6 provides that the Defence Council, or an officer authorised by them, may by order authorise a deduction from the pay of such a person to satisfy a payment which he is required to make in respect of certain financial penalties imposed under the Act.

Regulation 7 provides that the Defence Council, or an officer authorised by them, may by order authorise a deduction from the pay of such a person to satisfy a payment which he is required to make under a maintenance order of a court in the United Kingdom or the Sovereign Base Areas.

Regulation 8 provides that the Defence Council, or an officer authorised by them, may by order authorise in certain circumstances a deduction from the pay of such a person to satisfy a payment which he is required to make under a maintenance order of a court, tribunal or person outside the United Kingdom or the Sovereign Base Areas. Regulation 9 defines certain expressions for the purposes of regulations 7 and 8.

Regulation 10 provides that the Defence Council, or an officer authorised by them, may by order authorise a deduction from the pay of such a person to meet an obligation he has to make a payment in respect of a child in accordance with a maintenance calculation or maintenance assessment made under the Child Support Act 1991 or the Child Support (Northern Ireland) Order 1991.

Regulation 11 provides that the Defence Council, or an officer authorised by them, may by order authorise a deduction from the pay of such a person to satisfy any amount the person is required pay by virtue of any judgment or order enforceable by a court in the United Kingdom.

Regulations 12 and 13 make transitional provisions.

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£5.50

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