STATUTORY INSTRUMENTS

2009 No. 993

DEFENCE

The Armed Forces (Proceedings) (Costs) Regulations 2009

Made - - - -	*14th April 2009*
Laid before Parliament	*20th April 2009*
Coming into force - -	*31st October 2009*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 26, 27 and 28(2) of the Armed Forces Act 2001(**a**):

PART 1

General Provisions

Citation and Commencement

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

Interpretation

2. In these Regulations—

"the Act" means the Armed Forces Act 2001;

"the court administration officer" has the same meaning as in section 363 of the Armed Forces Act 2006(**b**);

"interested party" means the party benefiting from an order made under regulation 3 or a wasted costs order and, where he was receiving representation funded for him under any legal aid scheme operated by any of Her Majesty's forces, shall include the authority responsible for determining costs payable in respect of work done under the representation order, or as the case may be, such a legal aid scheme;

"wasted costs order" means any action taken by the Court Martial, the Summary Appeal Court, the Service Civilian Court or the Court Martial Appeal Court under section 27(1) of the Act.

Unnecessary or improper acts or omissions

3.—(1) Subject to the provisions of this regulation, where at any time during proceedings before—

(**a**) 2001 c. 19
(**b**) 2006 c. 52

(a) the Court Martial,

(b) the Summary Appeal Court,

(c) the Service Civilian Court, or

(d) the Court Martial Appeal Court

the court is satisfied that costs have been incurred in respect of the proceedings by one of the parties as a result of an unnecessary or improper act or omission by, or on behalf of, another party to the proceedings, the court may, after hearing the parties, order that all or part of the costs so incurred by that party shall be paid to him by the other party.

(2) Before making an order under paragraph (1), the court shall take into account any other order as to costs (including any order under a legal aid scheme operated by any of Her Majesty's forces) which has been made in respect of the proceedings.

(3) An order made under paragraph (1) shall specify the amount of costs to be paid in pursuance of the order.

(4) Where an order has been made under paragraph (1), the court may take that order into account when making any other order as to costs in respect of the proceedings.

(5) No order shall be made under paragraph (1) by the Service Civilian Court which requires a person under the age of eighteen who has been convicted of an offence to pay an amount by way of costs which exceeds the amount of any fine imposed on him by that court.

Wasted costs

4.—(1) A wasted costs order may provide for the whole or any part of the wasted costs to be disallowed or ordered to be paid and the court shall specify the amount of such costs.

(2) Before making a wasted costs order the court shall allow the legal or other representative and any party to the proceedings to make representations.

(3) When making a wasted costs order the court may take into account any other order as to costs in respect of the proceedings and may take the wasted costs order into account when making any such other order.

(4) Where a wasted costs order has been made the court shall notify any interested party benefiting from the order that it has been made and of the amount disallowed or ordered to be paid.

Appeals

5.—(1) Any person against whom a court makes an order under regulation 3 and any legal or other representative against whom a wasted costs order is made may appeal—

(a) in the case of an order made by the Court Martial, to the Court Martial Appeal Court, and

(b) in the case of an order made by the Summary Appeal Court or the Service Civilian Court, to the High Court in England and Wales.

(2) In the following paragraphs any person or legal or other representative who appeals under paragraph (1) is referred to as "the appellant".

(3) Subject to paragraph (5), an appeal shall be instituted, within 21 days of the order under regulation 3 or the wasted costs order being made, by the appellant giving notice in writing to the court which made the order, stating the grounds of appeal.

(4) The appellant shall serve a copy of the notice of appeal and grounds, including any application for an extension of time in which to appeal, on any interested party.

(5) The time limit within which an appeal may be instituted may, for good reason, be extended before or after it expires—

(a) in the case of an appeal to the Court Martial Appeal Court, by a judge of that court;

(b) in the case of an appeal to the High Court in England and Wales, by a judge of that court;

and in each case the court to which the appeal is made ("the appeal court") shall give notice of the extension to the appellant, the court which made the order under regulation 3 or the wasted costs order appealed against and any interested party.

(6) The appeal court shall give notice of the hearing date to the appellant, the court which made the order under regulation 3 or the wasted costs order and any interested party and shall allow the interested party to make representations which may be made orally or in writing.

(7) The appeal court may affirm, vary or revoke the order as it thinks fit and shall notify its decision to the appellant, any interested party and the court which made the order.

Costs incurred by the Director of Service Prosecutions

6. Where any of Her Majesty's forces incurs costs of any of the descriptions in the Schedule to these Regulations in respect of the exercise by the Director of his functions as a party to proceedings before a court mentioned in section 27(1), such costs shall be taken for the purposes of any order under regulation 3 or 4 to have been incurred by the Director.

Payment in respect of costs

7. Where an order for the payment of costs taken to have been incurred by the Director as described in regulation 6 is made under these Regulations payment shall be made to the court administration officer.

Revocation of the Armed Forces Proceedings (Costs) Regulations 2005

8. The Armed Forces Proceedings (Costs) Regulations 2005(**a**) are revoked.

PART 2

Transitional Provisions

Definitions for the purposes of Part 2

9. In this part—

"court-martial" means a court-martial constituted under any of the services Acts;

"the services Acts" means the Army Act 1955(**b**), the Air Force Act 1955(**c**) and the Naval Discipline Act 1957(**d**);

"Standing Civilian Court" means a court established under section 6 of the Armed Forces Act 1976(**e**);

"a summary appeal court" means a summary appeal court established by any of the services Acts.

Proceedings under the services Acts

10.—(1) In relation to proceedings before a court-martial, a summary appeal court, or a Standing Civilian Court for an offence under any of the services Acts, these Regulations have effect with the following modifications.

(2) The definition of "wasted costs order is to be read as if for that definition there were substituted—

(**a**) SI 2005/3478
(**b**) 1955 c. 18.
(**c**) 1955 c. 19.
(**d**) 1957 c. 53.
(**e**) 1976 c. 52.

""wasted costs order" means any action taken by a court-martial, a summary appeal court, a Standing Civilian Court or the Court Martial Appeal Court under section 27(1) of the Act."

(3) Regulation 3(1) is to be read as if for the words before "is satisfied" there were substituted—

"Subject to the provisions of this regulation, where at any time during proceedings for an offence under any of the services Acts—

(a) a court-martial,

(b) a summary appeal court, or

(c) a Standing Civilian Court".

(4) Regulation 3(5) is to be read as if for "the Service Civilian Court" there were substituted "a Standing Civilian Court".

(5) Regulation 5(1)(a) is to be read as if for "the Court Martial" there were substituted "a court-martial".

(6) Regulation 5(1)(b) is to be read as if—

(a) for "the Summary Appeal Court" there were substituted "a summary appeal court"; and

(b) for "the Service Civilian Court" there were substituted "a Standing Civilian Court".

(7) In regulation 6, the reference to "a court mentioned in section 27(1)" is to be taken to include a court-martial, a summary appeal court and a Standing Civilian Court.

Costs incurred by prosecuting authorities

11.—(1) This regulation applies in relation to proceedings before a court-martial, a summary appeal court, a Standing Civilian Court or the Court Martial Appeal Court.

(2) In regulation 6, the reference to the exercise by the Director of his functions as a party to proceedings is to be taken to include any exercise by a prosecuting authority appointed under any of the services Acts, before the coming into force of these regulations, of its functions as a party to the same proceedings.

Appeals instituted under the Armed Forces Proceedings (Costs) Regulations 2005

12. Where an appeal has been instituted under regulation 5 of the Armed Forces Proceedings (Costs) Regulations 2005 ("the 2005 Regulations") but not determined—

(a) it shall be treated as if it had been an appeal instituted under regulation 5 of these regulations as modified by regulations 10(5) and (6);

(b) any notice given or document served in accordance with a provision of regulation 5 of the 2005 Regulations shall be treated as given or, as the case may be, served in accordance with the corresponding provision of regulation 5 of these Regulations;

(c) any extension of time granted under regulation 5(5) of the 2005 Regulations shall be treated as if it had been granted under regulation 5(5) of these Regulations; and

(d) where an interested party has, in accordance with rule 5(6) of the 2005 Regulations, been allowed to make representations, the appeal court's duty under regulation 5(6) of these Regulations to allow any interested party to make representations shall be treated as discharged.

Kevan Jones
Parliamentary Under Secretary of State
Ministry of Defence

14th April 2009

SCHEDULE

Regulation 6

Costs incurred in relation to the recovery and disclosure of information in the course of proceedings.

Costs incurred in the preparation of case papers and reports.

Travelling and subsistence expenses of witnesses.

Travelling and subsistence expenses of prosecuting authority staff.

Fees and expenses of a prosecuting authority advocate.

Any other costs properly incurred in preparing for a trial or an appeal.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under sections 26, 27 and 28 of the Armed Forces Act 2001 and contain provisions on the following matters:

They enable the Court Martial, the Summary Appeal Court, the Court Martial Appeal Court and the Service Civilian Court to make orders for the payment of costs which have been incurred by one of the parties to proceedings before the court as a result of an unnecessary or improper act or omission by another party (regulation 3);

They also make provision in relation to the determination by those courts of the proportion of wasted costs to be disallowed, or met by legal or other representatives (regulation 4);

They provide for appeals against the orders referred to in (a) and (b) (regulation 5);

They provide for recovery of certain of Her Majesty's forces' costs as if they were incurred by the Director of Service Prosecutions (regulation 6) and specify the recipient of such costs (regulation 7);

They revoke the Armed Forces Proceedings (Costs) Regulations 2005;

They make transitional provision (regulations 9-12).

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