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STATUTORY INSTRUMENTS

2009 No. 1093

DEFENCE

The Armed Forces (Service of Process in Maintenance Proceedings) Regulations 2009

Made - - - -	*28th April 2009*
Laid before Parliament	*30th April 2009*
Coming into force - -	*31st October* 2009

The Secretary of State in exercise of the powers conferred by section 355 of the Armed Forces Act 2006(**a**), makes the following Regulations:

Citation and commencement

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

Interpretation

2.—(1) In these Regulations—

"the Act" means the Armed Forces Act 2006;

"maintenance order" means an order made by a court in the United Kingdom or Channel Islands or registered in or confirmed by such a court under the provisions of the Maintenance Orders (Facilities for Enforcement) Act 1920(**b**) or registered in such a court under Part 1 of the Maintenance Orders (Reciprocal Enforcement) Act 1972(**c**) or Part 1 of the Civil Jurisdiction and Judgments Act 1982(**d**) or Council Regulation (EEC) No 44/2001(**e**) being an order for the payment of any periodical or other sum specified therein for or in respect of—

(a) the maintenance of the spouse or civil partner of the person against whom the order is made;

(b) the maintenance of any child of that person or that person's spouse or civil partner or of any other child who has been treated by them both as a child of their family;

(c) any costs incurred in obtaining the order; or

(d) any costs incurred in proceedings on appeal against or for the variation, revocation or revival of any such order;

(**a**) 2006 c. 52
(**b**) 1920 c. 33
(**c**) 1972 c. 18
(**d**) 1982 c. 27
(**e**) OJ No L12,16.1.01, p1

(e) "relevant person" means a person who is a relevant person, within the meaning of section 355 of the Act, by virtue of subsection (3)(a) of that section.

(2) In the definition of "maintenance order" in paragraph (1) references to a person's spouse or civil partner include, in relation to an order made in proceedings in connection with the dissolution or annulment of a marriage or civil partnership, a person who would have been that person's spouse or civil partner if the marriage or civil partnership had subsisted.

Service of proceedings

3. Subject to regulations 4 and 5 any process served on the commanding officer of a relevant person in connection with proceedings for a maintenance order, or for the variation, revocation or revival of such an order, shall be treated as duly served on the relevant person.

Circumstances in which service of process shall be of no effect

4.—(1) This regulation applies where any process in connection with proceedings for a maintenance order, or for the variation, revocation or revival of such an order, is served on the commanding officer of a relevant person.

(2) Service of process shall be of no effect if within 21 days of the date on which the process is served upon him the commanding officer certifies to the issuing court that—

(a) the relevant person is on active service, or is under orders for active service, and that in his opinion it would not be reasonably practicable for the relevant person to comply with the requirements stipulated in the process; or

(b) the relevant person is absent without leave.

(3) In paragraph (2), "active service" has the same meaning as in section 8(3) of the Act.

Proceedings in a court of summary jurisdiction

5. Nothing in these Regulations shall enable process to be served in connection with proceedings in a court of summary jurisdiction unless the relevant person is within the United Kingdom.

Transitional Provisions

6.—(1) This regulation applies where prior to commencement—

(a) process was served on a commanding officer under section 153(1) of the Army Act 1955(**a**), section 153(1) of the Air Force Act 1955(**b**) or section 101(1) of the Naval Discipline Act 1957(**c**); and

(b) the commanding officer had the power to certify to the issuing court under section 153(3) or (3A) of the Army Act 1955, section 153(3) or (3A) of the Air Force Act 1955 or section 101(4) or (4A) of the Naval Discipline Act 1957 that service shall be of no effect, but has not done so.

(2) Subject to paragraph (3), where paragraph (1) applies the commanding officer may certify to the issuing court under regulation 4(2) that service shall be of no effect.

(3) The certification mentioned in paragraph (2) must occur—

(a) within 21 days of commencement, or

(b) by the date of the hearing stipulated in the process at which the person to be served was to attend,

whichever is the earlier.

(**a**) 1955 c. 18
(**b**) 1955 c. 19
(**c**) 1957 c. 53

(4) In this regulation "commencement" means the date on which these Regulations come into force.

Kevan Jones
Parliamentary Under Secretary of State
Ministry of Defence

28th April 2009

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the service of process in connection with proceedings for a maintenance order or for ancillary proceedings in connection with such an order when the person to be served is a "relevant person" within the meaning of section 355(3)(a) of the Armed Forces Act 2006. Regulation 3 provides that service may be effected by serving the process on the commanding officer of the relevant person.

Regulation 4 provides for the circumstances in which the commanding officer may certify to the court that service is of no effect: when the relevant person is on or under orders for active service and the commanding officer considers that it would not be reasonably practicable for the relevant person to comply with the requirements set out in the process or when the relevant person is absent without leave.

Regulation 5 provides that when proceedings for a maintenance order or ancillary proceedings in connection with such an order are in a court of summary jurisdiction service of such process may only be effected if the relevant person is within the United Kingdom.

Regulation 6 provides for transitional provisions.

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