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STATUTORY INSTRUMENTS

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**2009 No. 1169**

**DEFENCE**

**The Armed Forces (Review of Court Martial Sentence)  
(Supplementary Provision) Regulations 2009**

<i>Made</i>	- - - -	<i>5th May 2009</i>
<i>Laid before Parliament</i>		<i>7th May 2009</i>
<i>Coming into force</i>	- -	<i>31st October 2009</i>

The Secretary of State, in exercise of the powers conferred by section 275 of the Armed Forces Act 2006<sup>(1)</sup>, makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Armed Forces (Review of Court Martial Sentence) (Supplementary Provision) Regulations 2009 and shall come into force on 31st October 2009.

**Interpretation**

2. In these Regulations—

“the Act” means the Armed Forces Act 2006;

“the registrar” means the registrar of the Court Martial Appeal Court;

“reference to the Court Martial Appeal Court” means a reference to the Court Martial Appeal Court under section 273(1) of the Act and references to an application for leave to refer a case to the Court Martial Appeal Court or to leave to refer a case to the Court Martial Appeal Court are to be construed accordingly;

“reference to the Supreme Court” means a reference to the Supreme Court under section 274(1) of the Act and references to an application for leave to refer a case to the Supreme Court or to leave to refer a case to the Supreme Court are to be construed accordingly.

**Application for leave to refer a case to the Court Martial Appeal Court**

3.—(1) Notice of an application for leave to refer a case to the Court Martial Appeal Court must be given within 28 days from the day on which the sentence in the case was passed.

(2) For the purposes of this regulation if a sentence is varied under rules made under section 163 of the Act it shall be regarded as passed on the day on which it is varied.

#### **Duties of the registrar in preparation for hearings**

- 4.—(1) This regulation applies if the registrar is given notice of—
- (a) an application for leave to refer a case to the Court Martial Appeal Court;
  - (b) a reference to the Court Martial Appeal Court;
  - (c) an application to the Court Martial Appeal Court for leave to refer a case to the Supreme Court.
- (2) The registrar must—
- (a) take all necessary steps for obtaining a hearing of the application or the reference to the Court Martial Appeal Court; and
  - (b) obtain and lay before the Court Martial Appeal Court in proper form all documents, exhibits and other things which appear necessary for the proper determination of the application or the reference to the Court Martial Appeal Court.

#### **Application for leave to refer a case to the Supreme Court**

5.—(1) An application to the Court Martial Appeal Court for leave to refer a case to the Supreme Court must be made within the period of 14 days beginning with the date on which the Court Martial Appeal Court concluded its review of the case referred to it under section 273(1) of the Act.

(2) An application to the Supreme Court for leave to refer a case to the Supreme Court must be made within 14 days beginning with—

- (a) the date on which the Court Martial Appeal Court concluded its review of the case referred to it under section 273(1) of the Act, or
- (b) the date on which the Court Martial Appeal Court refused leave to refer the case to the Supreme Court,

whichever is the later.

#### **Time spent in custody pending review**

6. The time during which a person whose case has been referred for review under section 273(1) of the Act is in custody pending its review and pending any reference to the Supreme Court under section 274(1) of the Act shall be reckoned as part of the term of any sentence to which he is for the time being subject.

#### **Presence of offender at hearings**

7.—(1) Except as provided by paragraphs (2) and (3), a person whose sentence is the subject of a reference to the Court Martial Appeal Court shall be entitled to be present, if he wishes it, on the hearing of the reference, although he may be in custody.

- (2) A person in custody shall not be entitled to be present—
- (a) on an application for leave to refer a case to the Court Martial Appeal Court or an application to the Court Martial Appeal Court for leave to refer a case to the Supreme Court,
  - (b) on any proceedings preliminary or incidental to a reference,
- unless the Court Martial Appeal Court gives him leave to be present.

(3) The power of the Court Martial Appeal Court to pass sentence on a person under section 273(5)(b) of the Act may be exercised although he is not present.

(4) A person whose sentence is the subject of a reference to the Supreme Court and who is detained pending the hearing of that reference shall not be entitled to be present on the hearing of the reference or of any preliminary or incidental proceedings except where an order of the Supreme Court authorises him to be present, or where the Supreme Court or the Court Martial Appeal Court, as the case may be, gives him leave to be present.

### **Effect of sentence passed by the Court Martial Appeal Court or Supreme Court**

8. The term of any sentence passed by the Court Martial Appeal Court under section 273(5)(b) of the Act or the Supreme Court under section 274(4)(b) of the Act shall, unless they otherwise direct, begin to run from the time when it would have begun to run if passed in the proceedings in relation to which the reference was made.

### **Costs**

9. Where on a reference to the Court Martial Appeal Court, or a reference to the Supreme Court, the person whose sentence is the subject of the reference appears by counsel for the purpose of presenting any argument to the Court Martial Appeal Court or to the Supreme Court, he shall be entitled to his costs, that is to say to the payment out of public funds of such funds as are reasonably sufficient to compensate him for the expenses properly incurred by him for the purpose of being represented on the reference; and any amount recoverable under this paragraph shall be ascertained, as soon as practicable, by the registrar or, as the case may be, such officer as may be prescribed by order of the Supreme Court.

### **Transitory provision**

10. Until section 23 of the Constitutional Reform Act 2005(2) comes into force, the references in regulations 2, 4, 5, 6, 7, 8 and 9 to the Supreme Court are to be read as references to the House of Lords.

5th May 2009

*Kevan Jones*  
Parliamentary Under Secretary of State  
Ministry of Defence

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make supplementary provision with respect to: references under section 273(1) of the Armed Forces Act 2006 (“the Act”) for a review of sentence by the Court Martial Appeal Court where the Attorney General considers a sentence awarded by the Court Martial to be unduly lenient; or, references to the Supreme Court under section 274(1) of the Act on a point of law where the Court Martial Appeal Court has concluded such a review.

Regulation 3 provides for a time limit of 28 days from the day on which the sentence in the case was passed within which notice of an application for leave to refer a case to the Court Martial Appeal Court must be given.

Regulation 4 requires the registrar of the Court Martial Appeal Court to make arrangements for a hearing if given notice of: an application for leave to refer a case to the Court Martial Appeal Court; a reference to the Court Martial Appeal Court; or, an application for leave to refer a case to the Supreme Court.

Regulation 5 provides for a time limit of 14 days from the date on which the Court Martial Appeal Court has concluded its review of a case or has refused leave to refer a case to the Supreme Court within which an application for leave to a case to the Supreme Court must be made.

Regulation 6 provides that time spent in custody by a person whose case is pending its review and pending any reference to the Supreme Court shall be reckoned as part of the term of his sentence.

Regulation 7 relates to the entitlement of a person whose sentence is the subject of a reference to the Court Martial Appeal Court or the Supreme Court to be present on the hearing of the reference or related proceedings. It also provides that the Court Martial Appeal Court may, on a reference under section 273(1) of the Act, pass sentence on a person although he is not present.

Regulation 8 provides that, unless the Court Martial Appeal Court or the Supreme Court directs otherwise, the term of any sentence passed by them on a reference shall begin to run from the time when it would have begun to run if passed in the original proceedings.

Regulation 9 relates to the entitlement of a person whose sentence is the subject of a reference to the Court Martial Appeal Court or the Supreme Court to reasonable costs if he is represented by Counsel.

Regulation 10 makes a transitory provision.

These provisions are broadly equivalent to those set out in Schedule 3 to the Criminal Justice Act 1988 (c. 33).