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STATUTORY INSTRUMENTS

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**2005 No. 3478**

**DEFENCE**

**The Armed Forces Proceedings (Costs) Regulations 2005**

*Made* - - - - *19th December 2005*  
*Laid before Parliament* *22nd December*  
*Coming into force* - - *2005*  
*1st February 2006*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 26(1), (2) and (3), 27(1) and (2) and 28(2) of the Armed Forces Act 2001<sup>(1)</sup>:

**Citation and commencement**

1. These Regulations may be cited as the Armed Forces Proceedings (Costs) Regulations 2005 and shall come into force on 1st February 2006.

**Interpretation**

2. In these Regulations—

“the Act” means the Armed Forces Act 2001;

“the court administration officer” has, in relation to a court-martial, the meaning given to that expression by section 84A of the Army Act 1955<sup>(2)</sup>, section 84A of the Air Force Act 1955<sup>(3)</sup> and section 53A of the Naval Discipline Act 1957<sup>(4)</sup> and in relation to a Standing Civilian Court, has the meaning given to that expression by paragraph 1(1) of Schedule 3 to the Armed Forces Act 1976<sup>(5)</sup>;

“court-martial” has the same meaning as it has for the purposes of the services Acts<sup>(6)</sup>;

“the Courts-Martial Appeal Court” means the court established by the Courts-Martial (Appeals) Act 1951<sup>(7)</sup> and continued in existence by section 1 of the Courts-Martial (Appeals) Act 1968<sup>(8)</sup>;

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(1) 2001 c. 19.

(2) 1955 c. 18; section 84A was inserted by section 5 of and paragraph 19 of Schedule 1 to the Armed Forces Act 1996 (c. 46).

(3) 1955 c. 19; section 84A was inserted by section 5 of and paragraph 35 of Schedule 1 to the Armed Forces Act 1996.

(4) 1957 c. 53; section 53A was inserted by section 5 of and paragraph 51 of Schedule 1 to the Armed Forces Act 1996.

(5) 1976 c. 52; Schedule 3 was amended by section 5 of and paragraph 103(2) of Schedule 1 to the Armed Forces Act 1996.

(6) The services Acts are defined in section 26(4) of the Armed Forces Act 2001 as the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957.

(7) 1951 c. 46.

(8) 1968 c. 20.

“interested party” means the party benefiting from an order made under regulation 3 of these Regulations or a wasted costs order and, where he was receiving representation funded for him as part of the Criminal Defence Service<sup>(9)</sup> or 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;

“representation order” means a document granting a right to representation in criminal proceedings under section 14 of the Access to Justice Act 1999<sup>(10)</sup>;

“Standing Civilian Court” means a court established under section 6 of the Armed Forces Act 1976<sup>(11)</sup>;

“wasted costs order” means any action taken by a court-martial, a summary appeal court, the Courts-Martial Appeal Court or a Standing Civilian 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 for an offence under any of the services Acts—

- (a) a court-martial,
- (b) a summary appeal court<sup>(12)</sup>,
- (c) the Courts-Martial Appeal Court, or
- (d) a Standing Civilian 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 representation order or 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 a Standing 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.

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(9) The Criminal Defence Service was established by the Legal Services Commission under section 12(1) of the Access to Justice Act 1999 (c. 22).

(10) 1999 c. 22.

(11) Section 6 was amended by section 5 of and paragraph 102 of Schedule 1 to the Armed Forces Act 1996 and by sections 34 and 38 of and Schedule 6 to the Armed Forces Act 2001.

(12) A summary appeal court is defined in section 26(4) of the Armed Forces Act 2001.

(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 a court-martial, to the Courts-Martial Appeal Court, and
- (b) in the case of an order made by a summary appeal court or a Standing 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 administration officer of 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 Courts-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 administration officer of 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 administration officer of 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 administration officer of the court which made the order.

### **Recovery of sums due under a wasted costs order**

6. Where the person required to make a payment in respect of sums due under a wasted costs order fails to do so, the payment may be recovered summarily as a sum adjudged to be paid as a civil debt by order of a magistrates' court by the party benefiting from the order, save that where he was receiving services funded for him as part of the Criminal Defence Service, the power to recover shall be exercisable by the Lord Chancellor, and where he was receiving services under a legal aid scheme operated by any of Her Majesty's forces, the power to recover shall be exercisable by the Secretary of State for Defence.

### **Costs incurred by prosecuting authorities**

7. 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 prosecuting authority of its functions as a party

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to proceedings under the services Acts such costs shall be taken for the purposes of any order under regulation 3 or 4 to have been incurred by that authority.

**Payment in respect of costs**

8. Where an order for the payment of costs taken to have been incurred by the prosecuting authority as described in regulation 7 is made under these Regulations payment shall be made to the court service of the appropriate service of Her Majesty's forces.

19th December 2005

*Don Touhig*  
Parliamentary Under Secretary of State Ministry  
of Defence

## SCHEDULE

Regulation 7

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

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### EXPLANATORY NOTE

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

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

- (a) they enable a court-martial, a summary appeal court, the Courts-Martial Appeal Court and a Standing Civilian Court to make orders for the payment of costs which have been incurred by one of the parties to proceedings for an offence under the services Acts as a result of an unnecessary or improper act or omission by another party (regulation 3);
- (b) they enable any of these courts to disallow or order the legal or other representative of a party to proceedings for an offence under the services Acts to meet the wasted costs incurred by a party to such proceedings (regulation 4);
- (c) they provide for appeals against the orders referred to in (a) and (b) (regulation 5);
- (d) they enable the party benefiting from a wasted costs order to recover an outstanding payment through the magistrates' courts and enable the Lord Chancellor or the Secretary of State for Defence to recover payments where the person required to make the payment was receiving services funded by the Criminal Defence Service or a legal aid scheme operated by any of Her Majesty's forces (regulation 6);
- (e) they provide for recovery of certain of Her Majesty's forces' costs as if they were incurred by the prosecuting authority (regulation 7) and specify the recipient of such costs (regulation 8).