
STATUTORY INSTRUMENTS

2024 No. 619

The Armed Forces (Appeals Against
Review of Sentence) Regulations 2024

Part 2

Appeals from the Court Martial under section 304D
or 304E of the Armed Forces Act 2006

Chapter 4

Costs

Costs against the Secretary of State

13.—(1) [This regulation](#) applies when the Appeal Court—

- (a) allows an appeal brought by an offender, or
- (b) dismisses an appeal or application for leave to appeal brought by the Director of Service Prosecutions.

(2) Where [this regulation](#) applies, the Appeal Court may, if it thinks fit, direct the payment by the Secretary of State of costs to the offender.

(3) The costs which may under this section be directed to be paid are such sums as appear to the Appeal Court reasonably sufficient to compensate the offender for any expenses properly incurred by the offender in the proceedings (in the Appeal Court and below), subject to [paragraph \(4\)](#), [regulation 14](#) and regulations made under [regulation 18](#).

(4) Where the Appeal Court considers that there are circumstances that make it inappropriate for the offender to recover the whole of the sums mentioned in [paragraph \(3\)](#), a direction under [this regulation](#) must be made for the payment of such lesser sums as it considers just and reasonable.

(5) The Appeal Court must fix the sums to be paid by the Secretary of State in the direction if the Appeal Court considers it appropriate to do so and—

- (a) the offender agrees the sums, or
- (b) [paragraph \(4\)](#) applies.

(6) Where the Appeal Court does not fix the sums to be paid by the Secretary of State in the direction—

- (a) it must describe in the direction any reduction required under [paragraph \(4\)](#), and
- (b) the sums must be fixed by means of a determination made by or on behalf of the Appeal Court in accordance with procedures specified in regulations made by the Lord Chancellor under [regulation 18](#).

Legal costs

14.—(1) The costs which the Appeal Court may direct the Secretary of State to pay under [regulation 13](#) do not include legal costs, except where regulations made by the Lord Chancellor provide otherwise.

- (2) Regulations under this regulation may, in particular, include—
- (a) provision for an exception to arise where a determination has been made by a person specified in the regulations,
 - (b) provision requiring the Appeal Court, when they direct the payment of a sum that includes a sum in respect of legal costs, to include a statement to that effect in the direction, and
 - (c) provision that the Appeal Court may not direct the payment of a sum in respect of legal costs exceeding an amount specified in the regulations.

Costs against offender

15.—(1) Where the Appeal Court dismisses an appeal or an application for leave to appeal by the offender it may, if it thinks fit, order the offender to pay to the Secretary of State the whole or any part of the costs of the appeal, including the costs of copying or transcribing any documents for the use of the Appeal Court.

- (2) An order under this section may be enforced—
- (a) in the same manner as an order for costs made by the criminal division of the Court of Appeal, or
 - (b) if the offender is a member of the regular or reserve forces (as defined by section 374 of the 2006 Act), by making deductions from pay due to the offender.
- (3) The methods of enforcement listed in [paragraph \(2\)](#) may be used separately or in combination.
- (4) Any sums which by virtue of [paragraph \(2\)\(a\)](#) above are recovered from a person by the Secretary of State are to be paid into the Exchequer.

Witnesses' expenses

16.—(1) The Appeal Court may, whether or not it exercises powers under either [regulation 13](#) or [15](#), order the payment out of moneys provided by Parliament of such sums as appear to the Appeal Court reasonably sufficient to compensate any person properly attending to give evidence on appeal under these Regulations or any proceedings preliminary or incidental to the appeal (whether or not that person gives evidence) for the expense, trouble or loss of time properly incurred in or incidental to the person's attendance, subject to [paragraph \(3\)](#) and regulations made under [regulation 18\(1\)\(d\)](#).

- (2) The amount of any costs to be paid under this regulation shall be ascertained as soon as practicable by the registrar.
- (3) Sums ordered to be paid out of money provided by Parliament under [paragraph \(1\)](#) may not include sums in respect of expert witness costs unless regulations made by the Lord Chancellor provide otherwise.

Offender's expenses

17.—(1) Where an offender who is not in custody appears before the Appeal Court either on the hearing of the appeal or in any preliminary or incidental proceedings, the Appeal Court may direct the Secretary of State to pay the offender the expenses of that appearance.

- (2) The expenses which the Appeal Court may direct the Secretary of State to pay under this regulation do not include legal costs, except where regulations made by the Lord Chancellor provide otherwise.

- (3) Regulations made under this regulation may, in particular, include—
- (a) provision for an exception to arise where a determination has been made by a person specified in the regulations,
 - (b) provision requiring the Appeal Court, when they direct the payment of a sum that includes a sum in respect of legal costs, to include a statement to that effect in the direction, and
 - (c) provision that the Appeal Court may not direct the payment of a sum in respect of legal costs exceeding an amount specified in the regulations.

Further provision about costs

18.—(1) The Lord Chancellor may by regulations make provision—

- (a) as to the sums that may be directed or ordered to be paid under [regulations 13, 16 or 17](#), whether by specifying rates or scales or by making other provision as to the calculation of the sums;
- (b) as to the circumstances in which and conditions under which such sums may be paid or directed or ordered to be paid;
- (c) requiring such sums to be fixed having regard to regulations under paragraphs (a) and (b);
- (d) requiring such sums to be calculated in accordance with such regulations (whether or not that results in the fixing of an amount that the Appeal Court considers reasonably sufficient to compensate the person concerned);
- (e) as to the review of determinations of sums directed to be paid under [regulation 13](#).

(2) Regulations under this regulation may provide that provision as to the calculation of sums (whether in the form of rates or scales or other provision) may be determined by the Lord Chancellor with the consent of the Treasury.

Regulations under this Chapter

19.—(1) Regulations made under [regulations 13 to 18](#) may, in particular—

- (a) make different provision in relation to different cases and different classes of case, including different provision in relation to different expenses, trouble and loss, different directions and order and different areas;
- (b) make different provision in relation to the fixing of a sum in a direction or order and the fixing of a sum by means of a determination.

(2) A power to make regulations under [regulations 13 to 18](#) is exercisable by statutory instrument.

(3) A statutory instrument containing regulations under [regulations 13 to 18](#) is subject to annulment in pursuance of a resolution of either House of Parliament, subject to [paragraph \(4\)](#).

(4) A statutory instrument containing (whether alone or with any other provision) regulations under [regulations 14, 16 or 17](#) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.