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SCOTTISH STATUTORY INSTRUMENTS

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**2003 No. 233**

**INCOME TAX**

**GENERAL COMMISSIONERS OF INCOME TAX**

**The General Commissioners of Income Tax  
(Expenses) (Scotland) Regulations 2003**

*Made* - - - - *1st April 2003*  
*Coming into force* - - *2nd April 2003*

The Scottish Ministers, in exercise of the powers conferred by section 2A(4) of the Taxes Management Act 1970<sup>(1)</sup>, hereby make the following Regulations, a draft of which has, in accordance with section 2A(5) of that Act, been laid before and approved by resolution of the Scottish Parliament:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the General Commissioners of Income Tax (Expenses) (Scotland) Regulations 2003, and shall come into force on the day after the day on which they are made.

(2) These Regulations extend to Scotland only.

**Interpretation**

2. In these Regulations—

“order” means an order of the court under section 2A(3) of the Taxes Management Act 1970 that the Scottish Ministers make a payment in respect of the expenses of a person in proceedings; and

“proceedings” means proceedings in respect of any act or omission of a General Commissioner in the execution (or purported execution) of a duty as such General Commissioner.

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<sup>(1)</sup> 1970 c. 9; section 2A was inserted by section 102 of the Access to Justice Act 1999 (c. 22), and the functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2003 (S.I. 2003/415), article 2 and the Schedule.

**Determination of expenses: general**

3. Where the court makes an order, the amount of expenses to be paid under an order shall be determined in accordance with these Regulations.

**Determination of expenses: making an order**

- 4.—(1) When making an order the court shall—
- (a) award such amount as will compensate the party in whose favour the order is made for expenses reasonably incurred by that party in the proceedings; and
  - (b) have regard, when determining the expenses reasonably incurred, to the factors specified in paragraph (2).
- (2) The factors specified are—
- (a) the nature of the work;
  - (b) the complexity or difficulty of the work;
  - (c) the time expended on the work; and
  - (d) the importance of the work to the party in whose favour an order is made.

**No order in favour of any public authority**

5. No order shall be made in favour of—
- (a) a public authority; or
  - (b) a person acting—
    - (i) on behalf of a public authority; or
    - (ii) in his or her capacity as an official appointed by a public authority.

St Andrew's House, Edinburgh  
1st April 2003

*JAMES WALLACE*  
A member of the Scottish Executive

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## EXPLANATORY NOTE

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

The Taxes Management Act 1970 (“the 1970 Act”) provides in section 2A(1) a general rule that an order to pay expenses may not be made against a General Commissioner of income tax in any proceedings in respect of an act or omission in execution, or purported execution, of his or her duty. Exceptions to that general rule are provided in section 2A(2) of the 1970 Act for proceedings in which:–

- (a) a General Commissioner is being tried for an offence, or appealing against a conviction; or
- (b) it is proved that a General Commissioner acted in bad faith.

Section 2A(3) of the 1970 Act permits the court in proceedings where an order to pay expenses cannot be made against a General Commissioner to make an order against the Scottish Ministers for such payment.

These Regulations make provision for how the amount of an payment is to be determined, and circumstances in which such an order for payment may be made.

Regulation 3 provides a general rule that the amount of an order for payment of expenses shall be determined in accordance with these Regulations.

Regulation 4 provides that such an order, if made, shall provide compensation to the person concerned for expenses reasonably incurred.

Regulation 5 provides that the court has no power to make such an order in favour of a public authority.