

**EXPLANATORY MEMORANDUM TO**  
**THE ARMED FORCES PROCEEDINGS (COSTS) REGULATIONS 2005**

**2005 No. 3478**

**1.** This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 These Regulations enable the courts with jurisdiction over offences committed under any of the services Acts (the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957) by members of the armed forces and civilians who are subject to service discipline to exercise two new powers relating to costs. The courts concerned are courts-martial, summary appeal courts, the Courts-Martial Appeal Court and Standing Civilian Courts. Under these Regulations, any such court may order one party's costs to be paid by the other where it is satisfied that those costs have been incurred as a result of that other party's unnecessary or improper act or omission. In addition, a court may disallow costs incurred as a result of a legal or other representative's improper, unreasonable or negligent act or omission and may order a legal or other representative to meet a party's costs wasted as a result of any such act or omission.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Background**

4.1 These Regulations are made under powers in sections 26 to 28 of the Armed Forces Act 2001 which allow the Secretary of State to make regulations empowering the relevant courts to make orders for the payment of costs incurred as a result of an unnecessary or improper act or omission by another party and for the payment of wasted legal costs. These are the first Regulations to be made under those powers. Sections 26 to 28 of the Armed Forces Act are equivalent to sections 19, 19A and 20 of the Prosecution of Offences Act 1985 which enable regulations to be made for the civil courts to be able to make orders in criminal proceedings for payment of costs incurred as a result of another party's unnecessary or improper act or omission and of wasted legal costs. The Costs in Criminal Cases (General) Regulations 1986 (S.I. 1986/1335) were made under the relevant powers in the Prosecution of Offences Act and contain provisions on which these Regulations are modelled.

4.2 Linked instruments have been made under the rule-making powers in the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 (amended in relation to courts-martial by section 28 of the Armed Forces Act 2001) amending the relevant court rules to enable the power conferred on a court-martial or a Summary Appeal Court by these Regulations to make an order for payment of costs incurred as a result of a party's unnecessary or improper act or omission or for costs wasted as a

result of a legal or other representative's act or omission to be exercised by a judge advocate sitting alone. The instruments concerned are the Courts-Martial (Army) (Amendment) Rules 2005 (S.I.3483 /2005), the Courts-Martial (Royal Navy) (Amendment) Rules 2005 (S.I.3484/2005), the Courts-Martial (Royal Air Force) (Amendment) Rules 2005 (S.I.3485 /2005), the Summary Appeal Court (Army) (Amendment) Rules 2005 (S.I.3486/2005), the Summary Appeal Court (Navy) Amendment Rules 2005 (S.I.3487/2005) and the Summary Appeal Court (Air Force) Amendment Rules 2005 (S.I.3488/2005).

## **5. Extent**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The policy objective behind sections 28 to 30 of the Armed Forces Act 2001 is to enable the courts with jurisdiction over offences under the services Acts to order the payment of costs to provide a sanction for time-wasting and obstructive behaviour by either the prosecution or the defence and to penalise legal or other representatives whose improper, unreasonable or unsatisfactory action cause costs on either side to mount up. As stated above, this reflects the position in the civil criminal justice system. It is now considered to be appropriate for Regulations to be made empowering the relevant courts in the military justice system to make such orders as well.

7.2 It is not possible to estimate with any degree of accuracy how many cases may arise where costs orders may be made under the Regulations but it is considered by the Department that the availability of the power will be a useful deterrent to obstructive action by parties or their legal representatives in prosecutions for offences under the services Acts.

7.3 No consultation process has been undertaken in relation to the order because its provisions are not considered to be contentious and are very similar to those of the Costs in Criminal Cases (General) Regulations 1986.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is likely to be minimal.

## **9. Contact**

**Mrs S J McIntosh** at the Ministry of Defence Tel: 0207 218 0564 or e-mail: Sue.McIntosh641@mod.uk can answer any queries regarding the Regulations.