

SCHEDULES

SCHEDULE 8

Section 62

COSTS IN CRIMINAL CASES: SERVICE COURTS

PART 1

APPEALS FROM COURT MARTIAL

Introduction

- 1 Part 2 of the Court Martial Appeals Act 1968 (appeals from Court Martial) is amended as follows.

Costs of successful appellant

- 2 (1) Section 31 (costs of successful appellant) is amended as follows.
- (2) In subsection (1) omit “other than an appeal against sentence”.
- (3) In subsection (2) at the end insert “, subject to subsection (3), section 31A and regulations under section 33B(1)(d).”
- (4) After subsection (2) insert—
- “(3) Where the Appeal Court consider that there are circumstances that make it inappropriate for the appellant to recover the whole of the sums mentioned in subsection (2), a direction under this section must be for the payment of such lesser sums as they consider just and reasonable.
- (4) The Appeal Court must fix the sums to be paid by the Secretary of State in the direction if they consider it appropriate to do so and—
- (a) the appellant agrees the sums, or
- (b) subsection (3) applies.
- (5) Where the Appeal Court do not fix the sums to be paid by the Secretary of State in the direction—
- (a) they must describe in the direction any reduction required under subsection (3), 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.”

Legal costs

- 3 After section 31 insert—

“31A Legal costs

- (1) The costs which the Appeal Court may direct the Secretary of State to pay under section 31 do not include legal costs, except where regulations made by the Lord Chancellor provide otherwise.
- (2) Regulations under this section 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.

- (3) In this section—

“legal costs” means fees, charges, disbursements and other amounts payable in respect of advocacy services or litigation services including, in particular, expert witness costs;

“advocacy services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide;

“expert witness costs” means amounts payable in respect of the services of an expert witness, including amounts payable in connection with attendance by the witness at court or elsewhere;

“litigation services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to proceedings, or contemplated proceedings, to provide.”

Witnesses’ expenses

- 4 (1) Section 33 (witnesses’ expenses) is amended as follows.
- (2) In subsection (1) at the end insert “, subject to subsection (3) and regulations under section 33B(1)(d)”.
- (3) At the end insert—

“(3) Sums ordered to be paid out of money provided by Parliament under subsection (1) may not include sums in respect of expert witness costs (as defined in section 31A), unless regulations made by the Lord Chancellor provide otherwise.”

Expenses of appellant not in custody

- 5 (1) Section 33A (appellant’s expenses) is amended as follows.
- (2) Number the existing provision subsection (1).
- (3) After that subsection insert—

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- “(2) The expenses which the Appeal Court may direct the Secretary of State to pay under this section do not include legal costs (as defined in section 31A), except where regulations made by the Lord Chancellor provide otherwise.
- (3) Regulations under this section 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

6 After section 33A insert—

“33B Further provision about costs

- (1) The Lord Chancellor may by regulations—
- (a) make provision as to the sums that may be directed or ordered to be paid under section 31, 33 or 33A, whether by specifying rates or scales or by making other provision as to the calculation of the sums,
 - (b) make provision as to the circumstances in which and conditions under which such sums may be paid or directed or ordered to be paid,
 - (c) make provision requiring such sums to be fixed having regard to regulations under paragraphs (a) and (b),
 - (d) make provision requiring such sums to be calculated in accordance with such regulations (whether or not that results in the fixing of an amount that the court considers reasonably sufficient to compensate the person concerned), and
 - (e) make provision as to the review of determinations of sums directed to be paid under section 31.
- (2) Regulations under this section 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

7 After section 33B insert—

“33C Regulations

- (1) Regulations under sections 31, 31A, 33, 33A and 33B 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 orders and different areas, and

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- (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 those sections is exercisable by statutory instrument.
- (3) A statutory instrument containing regulations under those sections is subject to annulment in pursuance of a resolution of either House of Parliament, subject to subsection (4).
- (4) A statutory instrument containing (whether alone or with other provision) regulations under section 31A, 33 or 33A may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

Consequential repeal

- 8 In consequence of the amendment made by paragraph 2(2), omit paragraph 1(6) of Schedule 2 to the Armed Forces Act 1971.

PART 2

APPEALS FROM COURT MARTIAL APPEAL COURT

Introduction

- 9 Part 3 of the Court Martial Appeals Act 1968 (appeals from Court Martial Appeal Court) is amended as follows.

Application to Appeal Court

- 10 Before section 47 insert—

“46A Costs: application to Appeal Court by Director of Service Prosecutions

- (1) Where the Appeal Court dismiss an application for leave to appeal to the Supreme Court made by the Director of Service Prosecutions, the Appeal Court may direct the payment by the Secretary of State of such sums as appear to them to be reasonably sufficient to compensate the accused for any expenses properly incurred by the accused in resisting the application, subject to—
 - (a) subsection (2), and
 - (b) regulations under section 47A(1)(d).
- (2) The sums which the Appeal Court may direct the Secretary of State to pay do not include legal costs (as defined in section 31A), except where regulations made by the Lord Chancellor provide otherwise.
- (3) Regulations under subsection (2) may, in particular, include—
 - (a) provision for an exception to arise where a determination has been made by a person specified in the regulations,

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- (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.

46B Costs: application to Appeal Court by accused

Where the Appeal Court dismiss an application for leave to appeal to the Supreme Court made by the accused—

- (a) the Appeal Court may make the like order as may be made by the Court under section 32(1) of this Act where they dismiss an application for leave to appeal to the Court,
- (b) an order made under this section may be enforced in the manner described in section 32(2) of this Act, and
- (c) section 32(3) of this Act applies in relation to any sum recovered by virtue of section 32(2)(a) (as applied by this section)."

Application to Supreme Court

11 (1) Section 47 (costs) is amended as follows.

(2) In subsections (1) and (2) omit "the Appeal Court or" (in each place).

(3) After subsection (2) insert—

"(2A) Section 32(3) of this Act applies in relation to any sum recovered by virtue of section 32(2)(a) (as applied by subsection (2))."

(4) In subsection (3), at the end insert "subject to—

- (a) subsection (3A), and
- (b) regulations under section 47A(1)(d)."

(5) After subsection (3) insert—

"(3A) The costs which the Supreme Court may direct the Secretary of State to pay do not include legal costs (as defined in section 31A) incurred in proceedings in a court below, except where regulations made by the Lord Chancellor provide otherwise.

(3B) Regulations under subsection (3A) 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 Supreme 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 Supreme Court may not direct the payment of a sum in respect of legal costs exceeding an amount specified in the regulations."

(6) In subsection (4) for "the foregoing provisions of" substitute "sections 46A, 46B and".

- 12 Accordingly, in the heading of section 47, at the end insert “: application to Supreme Court”.

Further provision about costs

- 13 After section 47 insert—

“47A Further provision about costs

- (1) The Lord Chancellor may by regulations—
- (a) make provision as to the sums that may be directed to be paid under section 46A or 47(3), whether by specifying rates or scales or by making other provision as to the calculation of the sums,
 - (b) make provision as to the circumstances in which and conditions under which such sums may be paid or directed to be paid,
 - (c) make provision requiring such sums to be fixed having regard to regulations under paragraphs (a) and (b), and
 - (d) make provision requiring such sums to be calculated in accordance with such regulations (whether or not that results in the fixing of an amount that the court considers reasonably sufficient to compensate the person concerned).
- (2) The power under subsection (1)(d) may not be exercised in respect of sums ordered to be paid by the Supreme Court in respect of expenses incurred in proceedings before that court.
- (3) Regulations under this section 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

- 14 After section 47A insert—

“47B Regulations

- (1) Regulations under sections 46A, 47 and 47A may, in particular, 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 orders and different areas.
- (2) A power to make regulations under those sections is exercisable by statutory instrument.
- (3) A statutory instrument containing regulations under those sections is subject to annulment in pursuance of a resolution of either House of Parliament, subject to subsection (4).
- (4) A statutory instrument containing (whether alone or with other provision) regulations under section 46A or 47 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

PART 3

SAVINGS

- 15 The amendments made by this Schedule do not have effect in relation to directions and orders made by a court in proceedings commenced before the relevant day.
- 16 For the purposes of paragraph 15—
- (a) “the relevant day”, in relation to an amendment, means the day on which the amendment comes into force;
 - (b) proceedings commence in the Court Martial Appeal Court when an application for leave to appeal is made or (in the absence of such an application) when notice of appeal is given;
 - (c) proceedings commence in the Supreme Court when an application for leave to appeal is made.