

2009 No. 1212

DEFENCE

**The Armed Forces (Financial Penalty Enforcement Orders)
Regulations 2009**

<i>Made</i> - - - -	<i>7th May 2009</i>
<i>Laid before Parliament</i>	<i>13th May 2009</i>
<i>Coming into force</i> - -	<i>31st October 2009</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 322 of the Armed Forces Act 2006(a):

Citation and commencement

1. These Regulations may be cited as the Armed Forces (Financial Penalty Enforcement Orders) Regulations 2009 and shall come into force on 31st October 2009.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Armed Forces Act 2006;

“the relevant court” means—

- (a) the magistrates’ court in England or Wales,
- (b) the sheriff court in Scotland,
- (c) the court of summary jurisdiction in Northern Ireland, or
- (d) a court of summary jurisdiction in the Isle of Man,

within whose jurisdiction the person against whom the financial penalty enforcement order is made appears to the Defence Council or any person authorised by them to reside or to be likely to reside;

“service enforcement procedures” means any procedure provided for in or under section 341 or 342 of the Act.

(2) In these Regulations, other than regulations 5 and 6, any reference to a financial penalty being awarded shall include a reference to a sum being adjudged to be paid under section 236(3) of the Act, and “award” shall be construed accordingly.

Financial penalty enforcement orders

3.—(1) If—

- (a) a financial penalty is awarded against any person,

(a) 2006 c. 52.

- (b) no appeal is outstanding and the time provided for the giving of the notice of appeal against the award has expired,
- (c) the whole or any part of the penalty remains unpaid or unrecovered, and
- (d) the person against whom the award was made is a person to whom these Regulations apply,

the Defence Council or any person authorised by them may make an order (in these Regulations referred to as a “ financial penalty enforcement order”) for the registration of the penalty by the relevant court.

(2) These Regulations apply to a person who—

- (a) is neither subject to service law nor a civilian subject to service discipline; or
- (b) is subject to service law because he is a special member, within the meaning of the Reserve Forces Act 1996(a), of a reserve force.

(3) A financial penalty enforcement order shall contain a certificate issued on behalf of the Defence Council or by a person authorised by them and stating—

- (a) that a financial penalty has been awarded against the person named in the order;
- (b) that the conditions specified in sub-paragraphs (b) to (d) of paragraph (1) are satisfied;
- (c) the nature and amount of the penalty;
- (d) the date on which, and the service offence or offences in respect of which, it was awarded;
- (e) if it was awarded against the person named in the order as the parent or guardian of some other person, the fact that it was so awarded and the name of that other person;
- (f) sufficient particulars of the case (including particulars of any service offences taken into consideration at the trial);
- (g) the date of any payment or recovery of a sum on account of the penalty;
- (h) the sum outstanding; and
- (i) the authority to whom and address to which any service compensation order or costs included in the penalty will fall, on recovery, to be remitted under paragraph (6).

(4) A document purporting to be a financial penalty enforcement order and to be signed on behalf of the Defence Council or by any person authorised by them shall be deemed to be such an order unless the contrary is proved, and a certificate under paragraph (3) shall be evidence of the matters stated.

(5) Subject to paragraph (6), upon registration of a financial penalty enforcement order —

- (a) service enforcement procedures shall cease to be available for the recovery of the sum certified as outstanding; and
- (b) that sum shall be treated for all purposes as if it had been a fine imposed upon a conviction by the relevant court.

(6) Compensation or costs recovered under these Regulations shall be remitted to the authority at the address specified in the certificate under paragraph (3).

(7) Where it appears from a financial penalty enforcement order that the penalty was imposed in respect of more than one service offence, it shall be deemed for the purposes of enforcement to be a single penalty only.

(8) Where—

- (a) a financial penalty enforcement order has been made against any person, and
- (b) he ceases to be a person to whom these Regulations apply at a time when the whole or any part of the certified sum is still outstanding,

(a) 1996 c. 14.

service enforcement procedures shall apply to the amount outstanding as if it were a sum that he had been ordered to pay by a civilian court (anywhere).

(9) Where two or more financial penalties have been awarded together, these Regulations shall have effect in relation to the financial penalties as if they were separate penalties.

Transitional provisions

4. A reference in regulation 3 to a service offence shall include a reference to an offence under the Army Act 1955(a), the Air Force Act 1955(b) or the Naval Discipline Act 1957(c).

5.—(1) Subject to regulation 6, this regulation applies where, before the date on which these Regulations come into force, a financial penalty has been awarded against a person under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957.

(2) The Defence Council or an officer authorised by them may make an order for the registration of the penalty by a relevant court as if section 133A of the Army Act 1955, section 133A of the Air Force Act 1955 or section 128F of the Naval Discipline Act 1957 (as appropriate to the Act under which the financial penalty was imposed) continued in force in relation to the penalty, except that—

- (a) any reference in the section to “service enforcement procedures” shall be treated as a reference to any procedure provided for in or under section 341 or 342 of the Act; and
- (b) any reference in the section to a person to whom the section applies shall be treated as a reference to a person within regulation 3(2).

(3) An order referred to in paragraph (2) shall take effect as if the section mentioned in that paragraph, appropriate to the Act under which the final penalty was imposed, continued in force.

(4) In this regulation “financial penalty” has the same meaning as in section 133A of the Army Act 1955, section 133A of the Air Force Act 1955 or section 128F of the Naval Discipline Act 1957 (as appropriate to the Act under which it was awarded).

6.—(1) This regulation applies where, on or after the date on which these Regulations come into force, a financial penalty is awarded under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 or is confirmed by the Summary Appeal Court.

(2) Regulation 3 shall apply in respect of the financial penalty as if in that regulation—

- (a) any reference to a financial penalty included a reference to a financial penalty within paragraph (1);
- (b) in its paragraph (3)(i), for “any service compensation order or costs” there were substituted “any stoppages or compensation”;
- (c) in its paragraph (6), for “Compensation or costs” there were substituted “Stoppages or compensation”; and
- (d) immediately after its paragraph (9), the following new paragraph were inserted—

“(10) In this regulation “stoppages” does not include sums awarded by virtue of section 147 or 148 of the Army Act 1955, section 147 or 148 of the Air Force Act 1955 or section 128C of the Naval Discipline Act 1957.”

(3) In paragraph (1) “financial penalty” has the same meaning as in section 133A of the Army Act 1955, section 133A of the Air Force Act 1955 or section 128F of the Naval Discipline Act 1957 (as appropriate to the Act under which the financial penalty was, or is, awarded).

(a) 1955 c. 18.
(b) 1955 c. 19.
(c) 1957 c. 53.

7th May 2009

Kevan Jones
Parliamentary Under Secretary of State
Ministry of Defence

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations provide for the Defence Council, or persons authorised by them, to make financial penalty enforcement orders (“FPEOs”) for the registration of financial penalties by specified civilian courts.

Regulation 3(1) specifies the circumstances in which an FPEO may be made, and regulation 3(2) specifies the persons against whom such an order may be made.

Regulation 3(3) provides that an FPEO must contain a certificate stating certain information, including the amount of the financial penalty outstanding. Under regulation 3(4) the certificate is evidence of the matters stated in it. Under regulation 3(5), where an FPEO is registered, the sum certified as outstanding is to be treated as if it were a fine imposed by the court which registered it. Regulation 3(5) also provides for certain alternative enforcement procedures under the Armed Forces Act 2006 not to be available for the recovery of the certified sum.

Regulations 4, 5 and 6 make transitional provisions.

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