

EXPLANATORY MEMORANDUM TO
THE PROSECUTION OF OFFENCES ACT 1985 (CRIMINAL COURTS CHARGE)
(AMENDMENT) REGULATIONS 2015

2015 No. 1970

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 To omit those parts of the Prosecution of Offences Act 1985 (Criminal Courts Charge) Regulations 2015 (“the 2015 Regulations”) which specify the criminal courts charge (“the charge”) levels to be imposed on adult offenders. The purpose of this is to suspend the application of the charge pending a wider review.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Section 21A of the Prosecution of Offences Act 1985 (“the 1985 Act”) provides that a court must order a person convicted of an offence to pay a charge in respect of relevant court costs. Section 21C of that Act gives the Lord Chancellor power to specify amounts of charge by regulations. When doing so he must seek to ensure that an amount specified in respect of a class of case does not exceed the relevant court costs attributable to a case of that class. Section 21A is subject to section 21C.
- 3.2 Section 21C of the 1985 Act, read alongside section 14 of the Interpretation Act 1978, gives the Lord Chancellor the power to amend or revoke the regulations. It is in the Department’s view within the power in section 21C to do so and a valid exercise of Ministerial power in the circumstances. The application of the charge has been heavily criticised in many quarters, including recently by the Justice Committee, the imposition of a charge under section 21A is explicitly subject to the power in section 21C and the Lord Chancellor has decided to suspend the application of the charge pending a wider review of financial impositions in the criminal courts.

Other matters of interest to the House of Commons

- 3.3 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 54 of the Criminal Justice and Courts Act 2015 (“the 2015 Act”) introduced the provisions relating to the charge. The 2015 Regulations specified the charge levels to be imposed for particular classes of case, exempted certain classes of case from the

imposition of the charge and set the period of time that must have passed before the charge may be remitted.

- 4.2 The Lord Chancellor has the power to set appropriate charge levels. This amending instrument will omit regulation 3 and the Schedule to the 2015 Regulations in which the charge levels are set. This will mean there are no amounts specified for payment of the charge. The practical effect is therefore that courts will no longer be able to order an offender to pay a charge when dealing with an offender on or after the date the instrument comes into force.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 The provisions originally introduced in section 54 of the 2015 Act and the 2015 Regulations require the Court to order a person convicted of an offence to pay a charge when dealing with an offender following conviction of a criminal offence or for failing to comply with a community requirement, suspended sentence order or supervision requirement and when dismissing an appeal against conviction or sentence. The charging levels set out in the 2015 Regulations range from £100 to £1,200 and offenders have the option where relevant to pay the charge in instalments, allowing them to manage their repayments.
- 7.2 After two years on the application of the offender (or 12 months on the court's own motion), the charge can be cancelled where a magistrates' court is satisfied that the offender has made reasonable attempts to pay or that collection and enforcement is impracticable and the offender has not reoffended. We are not amending regulation 4 of the 2015 Regulations, which specifies the period after which a court may remit the charge for the purposes of section 21E(4) of the 1985 Act, because to do so might cast doubt on the power of the courts to remit the charge.
- 7.3 We have chosen not to amend regulation 2 of the 2015 Regulations which specifies the cases in which no charge should be made under the current law because the policy as regards those particular categories of case has not changed. Whether or not this will need to be amended will depend on the outcome of the review referred to.
- 7.4 The charge was introduced to ensure offenders contributed to the costs of the criminal courts and to reduce the burden on the law-abiding taxpayer in England and Wales. Rather than being funded entirely by taxpayers, this Government believes that those who break the law and are dealt with by a criminal court should contribute towards its costs.
- 7.5 While this principle still holds, the intent behind this amending instrument is to suspend the charge pending the review referred to. Since the introduction of the

charge there has been widespread concern about the provisions and the impact it may have on offenders and other financial impositions. Courts take money from offenders in many ways, including fines, the victim surcharge, compensation orders, prosecution costs and the criminal courts charge. The Ministry of Justice will be reviewing the purpose of these financial impositions, and consider options for simplification and improvement. The Lord Chancellor and Secretary of State for Justice has therefore decided to suspend the charge, pending the outcome of the wider review.

- 7.6 This review will allow us time to take a view on a new charging regime for the criminal courts which achieves the ultimate aim of protecting justice while reducing the burden on taxpayers.

Consolidation

- 7.7 The provisions in the 2015 Regulations, the application of the charge and the 2015 Act will be revisited following the outcome of the review.

8. Consultation outcome

- 8.1 None. The Department has been monitoring commentary on the charge and has been keeping the policy under review. This includes representations from the public, stakeholder groups, members of the judiciary, the Justice Committee, the Secondary Legislation Scrutiny Committee and members of Parliament.

9. Guidance

- 9.1 A Written Ministerial Statement will be laid in parallel with this instrument to publicise the changes and the wider review.
- 9.2 Guidance on the changes will also be issued through a Ministry of Justice Circular which will be sent to members of the judiciary, court staff and other Criminal Justice System partners and stakeholders.

10. Impact

- 10.1 There is no impact on business, charities, or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The Ministry of Justice will be conducting a comprehensive review of court-ordered impositions in the criminal courts; the charge will be included in this.

13. Contact

- 13.1 Rabiah Narey at the Ministry of Justice Telephone: 07580701464 or email: Rabiah.Narey@justice.gsi.gov.uk can answer any queries regarding the instrument.