

Draft Regulations laid before Parliament under section 108(3)(b) of the Courts Act 2003 and section 49(6)(aa) of the Tribunals, Courts and Enforcement Act 2007, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2020 No. XXXX

COUNTY COURT, ENGLAND AND WALES

FAMILY COURT, ENGLAND AND WALES

JUSTICES OF THE PEACE, ENGLAND AND WALES

MAGISTRATES' COURTS, ENGLAND AND WALES

SENIOR COURTS, ENGLAND AND WALES

TRIBUNALS AND INQUIRIES

**The Justices of the Peace and Authorised Court and Tribunal
Staff (Costs) Regulations 2020**

Made - - - -

Coming into force - -

6th April 2020

The Lord Chancellor, in exercise of the powers conferred by sections 34(5) and 67F(4) of the Courts Act 2003(a) and section 29D(4) of the Tribunals, Courts and Enforcement Act 2007(b), having consulted the Lord Chief Justice of England and Wales and the Senior President of Tribunals, makes the following Regulations.

In accordance with section 108(3)(b) of the Courts Act 2003(c) and section 49(6)(aa) of the Tribunals, Courts and Enforcement Act 2007(d), a draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament.

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- (a) 2003 c. 39. Section 34(5) of this Act was amended by the Constitutional Reform Act 2005 (c. 4), Schedule 4, paragraph 329, and by the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33) ("the 2018 Act"), Schedule, paragraph 29. Section 67F was inserted by the 2018 Act, Schedule, paragraph 32.
- (b) 2007 c. 15. Section 29D of this Act was inserted by the 2018 Act, Schedule, paragraph 41.
- (c) Section 108(3)(b) was amended by the 2018 Act, Schedule, paragraph 36.
- (d) Section 49(6)(aa) was inserted by the 2018 Act, Schedule, paragraph 42.

Part 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Justices of the Peace and Authorised Court and Tribunal Staff (Costs) Regulations 2020 and come into force on 6th April 2020.

Extent

2.—(1) Except as provided by paragraph (2), these Regulations extend to England and Wales, Scotland and Northern Ireland.

(2) Part 2 of these Regulations extends to England and Wales only.

Part 2

Justices of the Peace and Authorised Court Staff

Interpretation

3. In this Part—

“claim” means a claim for costs made by the receiving party;

“costs judge” means a taxing master of the Senior Courts;

“order” means an order of the court made under section 34(4) or 67F(3) of the Courts Act 2003 that the Lord Chancellor make a payment in respect of the costs of a person in the proceedings;

“proceedings” means proceedings in respect of any act or omission of—

- (a) a justice of the peace in the execution (or purported execution) of any duty as a justice of the peace; or
- (b) an authorised person in the execution (or purported execution) of that person’s duty as an authorised person exercising a relevant judicial function by virtue of section 67B(1) of the Courts Act 2003(a);

“receiving party” means the person in whose favour the order is made.

Payment of costs by the Lord Chancellor

4. No order may be made in favour of—

- (a) a public authority; or
- (b) a person acting—
 - (i) on behalf of a public authority; or
 - (ii) in that person’s capacity as an official appointed by a public authority.

Determination of costs

5. Where the court makes an order, the amount of costs payable by the Lord Chancellor is to be determined in accordance with this Part.

(a) Section 67B was inserted by the 2018 Act, Schedule, paragraph 32.

Court order and determination of costs by the court

- 6.—(1) Except as provided by paragraph (2), the court when making an order must—
- (a) determine such amount as it considers sufficient reasonably to compensate the receiving party for any costs properly incurred by the receiving party in the proceedings; and
 - (b) specify that amount in the order.
- (2) The amount of costs is to be determined by a costs judge in accordance with regulations 7 and 8 where—
- (a) the hearing has lasted more than one day or there is insufficient time for the court to determine the costs on the day of the hearing; or
 - (b) the court considers that there is other good reason for the costs judge to determine the amount of costs.
- (3) The court must serve the order on the receiving party and on the Lord Chancellor, together with, where paragraph (2) applies, notification that costs will be determined by a costs judge.

Procedure where costs to be determined by a costs judge

7.—(1) Where the amount of costs is to be determined by a costs judge, the receiving party must, no later than three months from (but excluding) the date on which the order was made, file the claim and a copy of the order in the Senior Courts Costs Office and serve a copy of the claim on the Lord Chancellor.

(2) The costs judge may, in exceptional circumstances, extend the period of three months on the application of the receiving party made to the Senior Courts Costs Office.

(3) The claim must—

- (a) summarise the items of work done by a legal representative or by the receiving party as a litigant in person, as appropriate;
- (b) state, where appropriate, the dates on which items of work were done, the time taken and the sums claimed;
- (c) specify any disbursements claimed, including Counsel's fees, the circumstances in which they were incurred and the amounts claimed in respect of them; and
- (d) be accompanied by receipts or other evidence of the receiving party's payment of the costs claimed, and any receipts or other documents in support of any disbursements claimed.

(4) If the receiving party wishes to draw any special circumstances to the attention of the costs judge, those circumstances must be specified in the claim.

(5) If the Lord Chancellor wishes to make any written representations in respect of the claim, the Lord Chancellor must, no later than one month from (but excluding) the date on which the Lord Chancellor received the claim from the receiving party, file those representations at the Senior Courts Costs Office and serve a copy of them on the receiving party.

(6) The costs judge may make directions in respect of—

- (a) the claim;
- (b) any written representations;
- (c) the filing and serving of any further particulars and documents; and
- (d) ensuring that the determination of costs is dealt with justly.

(7) Where the costs judge considers it appropriate, the claim is to be listed for a hearing before the costs judge, and the Senior Courts Costs Office must serve notification of the place, date and time of the hearing on the receiving party and on the Lord Chancellor.

Determination of costs by costs judge

8.—(1) The costs judge must consider the claim and allow such costs in respect of—

- (a) such work as appears to the costs judge to have been actually and reasonably done; and
- (b) such disbursements as appear to the costs judge to have been actually and reasonably incurred,

as the costs judge considers sufficient reasonably to compensate the receiving party for any expenses properly incurred by the receiving party in the proceedings.

(2) In determining costs under paragraph (1), the costs judge must take into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved.

(3) When determining costs for the purposes of this regulation, there is to be allowed a reasonable amount in respect of all costs reasonably incurred, and any doubts which the costs judge may have as to whether the costs were reasonably incurred or were reasonable in amount are to be resolved against the receiving party.

(4) When the costs judge has determined the amount of costs payable to the receiving party, the Senior Courts Costs Office must notify the receiving party and the Lord Chancellor of the amount of costs payable.

Part 3

Authorised Tribunal Staff

Interpretation

9.—(1) In this Part—

“claim” means a claim for costs made by the receiving party;

“costs judge” means—

- (a) in relation to an order of a court in England and Wales, a taxing master of the Senior Courts;
- (b) in relation to an order of a court in Scotland, the Auditor of the Court of Session;
- (c) in relation to an order of a court in Northern Ireland, the Court of Judicature of Northern Ireland Taxing Master or (as the case may be) a district judge;

“Costs Office” means—

- (a) in relation to an order of a court in England and Wales, the Senior Courts Costs Office;
- (b) in relation to an order of a court in Scotland, the Office of the Auditor of the Court of Session;
- (c) in relation to an order of a court in Northern Ireland, the Court of Judicature of Northern Ireland Taxing Office or (as the case may be) the office of the chief clerk or relevant county court office;

“order” means an order of the court made under section 29D(3) of the Tribunals, Courts and Enforcement Act 2007 that the Lord Chancellor make a payment in respect of the costs of a person in the proceedings;

“proceedings” means proceedings in respect of any act or omission of an authorised person in the execution (or purported execution) of that person’s duty as an authorised person exercising a relevant judicial function by virtue of paragraph 3 of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007(a);

“receiving party” means the person in whose favour the order is made.

(2) In the application of this Part to Scotland—

- (a) references to costs are to be read as references to expenses;

(a) Paragraph 3 of Schedule 5 was amended by the 2018 Act, Schedule, paragraph 44.

- (b) references to disbursements are to be read as references to outlays;
- (c) references to a requirement to serve any document are to be read as references to a requirement to intimate that document, and “serving” is to be construed accordingly.

Payment of costs by the Lord Chancellor

10. No order may be made in favour of—

- (a) a public authority; or
- (b) a person acting—
 - (i) on behalf of a public authority; or
 - (ii) in that person’s capacity as an official appointed by a public authority.

Determination of costs

11. Where the court makes an order, the amount of costs payable by the Lord Chancellor is to be determined in accordance with this Part.

Court order and determination of costs by the court

12.—(1) Except as provided by paragraph (2), the court when making an order must—

- (a) determine such amount as it considers sufficient reasonably to compensate the receiving party for any costs properly incurred by the receiving party in the proceedings; and
- (b) specify that amount in the order.

(2) The amount of costs is to be determined by a costs judge in accordance with regulations 13 and 14 where—

- (a) the hearing has lasted more than one day or there is insufficient time for the court to determine the costs on the day of the hearing; or
- (b) the court considers that there is other good reason for the costs judge to determine the amount of costs.

(3) The court must serve the order on the receiving party and on the Lord Chancellor, together with, where paragraph (2) applies, notification that costs will be determined by a costs judge.

Procedure where costs to be determined by a costs judge

13.—(1) Where the amount of costs is to be determined by a costs judge, the receiving party must, no later than three months from (but excluding) the date on which the order was made, file the claim and a copy of the order in the Costs Office and serve a copy of the claim on the Lord Chancellor.

(2) The costs judge may, in exceptional circumstances, extend the period of three months on the application of the receiving party made to the Costs Office.

(3) The claim must—

- (a) summarise the items of work done by a legal representative or by the receiving party as a litigant in person, as appropriate;
- (b) state, where appropriate, the dates on which items of work were done, the time taken and the sums claimed;
- (c) specify any disbursements claimed, including Counsel’s fees, the circumstances in which they were incurred and the amounts claimed in respect of them; and
- (d) be accompanied by receipts or other evidence of the receiving party’s payment of the costs claimed, and any receipts or other documents in support of any disbursements claimed.

(4) If the receiving party wishes to draw any special circumstances to the attention of the costs judge, those circumstances must be specified in the claim.

(5) If the Lord Chancellor wishes to make any written representations in respect of the claim, the Lord Chancellor must, no later than one month from (but excluding) the date on which the Lord Chancellor received the claim from the receiving party, file those representations at the Costs Office and serve a copy of them on the receiving party.

(6) The costs judge may make directions in respect of—

- (a) the claim;
- (b) any written representations;
- (c) the filing and serving of any further particulars and documents; and
- (d) ensuring that the determination of costs is dealt with justly.

(7) Where the costs judge considers it appropriate, the claim is to be listed for a hearing before the costs judge, and the Costs Office must serve notification of the place, date and time of the hearing on the receiving party and on the Lord Chancellor.

Determination of costs by costs judge

14.—(1) The costs judge must consider the claim and allow such costs in respect of—

- (a) such work as appears to the costs judge to have been actually and reasonably done; and
- (b) such disbursements as appear to the costs judge to have been actually and reasonably incurred,

as the costs judge considers sufficient reasonably to compensate the receiving party for any expenses properly incurred by the receiving party in the proceedings.

(2) In determining costs under paragraph (1), the costs judge must take into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved.

(3) When determining costs for the purposes of this regulation, there is to be allowed a reasonable amount in respect of all costs reasonably incurred, and any doubts which the costs judge may have as to whether the costs were reasonably incurred or were reasonable in amount are to be resolved against the receiving party.

(4) When the costs judge has determined the amount of costs payable to the receiving party, the Costs Office must notify the receiving party and the Lord Chancellor of the amount of costs payable.

Date _____
Parliamentary Under Secretary of State
Ministry of Justice
Name

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply where a court makes an order under section 34(4) or section 67F(3) of the Courts Act 2003 (c. 39) (“the 2003 Act”), or section 29D(3) of the Tribunals, Courts and Enforcement Act 2007 (c. 15) (“the 2007 Act”), that the Lord Chancellor make a payment in respect of the costs of a person in the proceedings. The Regulations provide for when such an order cannot be made, and for how the costs are to be determined when such an order can be made.

Section 34(4) of the 2003 Act applies where a court is prevented by section 34(1) of that Act from ordering a justice of the peace to pay costs in any proceedings in respect of any act or omission in the execution (or purported execution) of any duty as a justice of the peace. Section 67F(3) of the 2003 Act similarly applies where a court is prevented by 67F(1) of that Act from ordering an authorised person to pay costs in any proceedings in respect of any act or omission of the authorised person in the execution (or purported execution) of that person's duty as an authorised person when exercising a relevant judicial function by virtue of section 67B(1) of the 2003 Act.

Section 29D(3) of the 2007 Act similarly applies where a court is prevented by section 29D(1) of that Act from ordering an authorised person to pay costs in any proceedings in respect of any act or omission of the authorised person in the execution (or purported execution) of that person's duty as an authorised person when exercising a function of a tribunal by virtue of paragraph 3 of Schedule 5 to the 2007 Act.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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£6.90

UK202001301013 02/2020 19585

<http://www.legislation.gov.uk/id/ukdsi/2020/9780111192788>

ISBN 978-0-11-119278-8



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