



Prosecution of Offences Act 1985

1985 CHAPTER 23

PART II

COSTS IN CRIMINAL CASES

Award of costs out of central funds

16 Defence costs.

(1) Where—

- (a) an information laid before a justice of the peace for any area, charging any person with an offence, is not proceeded with;
- (b) a magistrates' court inquiring into an indictable offence as examining justices determines not to commit the accused for trial;
- (c) a magistrates' court dealing summarily with an offence dismisses the information;

that court or, in a case falling within paragraph (a) above, a magistrates' court for that area, may make an order in favour of the accused for a payment to be made out of central funds in respect of his costs (a "defendant's costs order").

(2) Where—

- (a) any person is not tried for an offence for which he has been indicted or committed for trial; or
- [^{F1}(aa) a notice of transfer is given under section 4 of the Criminal Justice Act 1987 but a person in relation to whose case it is given is not tried on a charge to which it relates; or]
- (b) any person is tried on indictment and acquitted on any count in the indictment; the Crown Court may make a defendant's costs order in favour of the accused.

(3) Where a person convicted of an offence by a magistrates' court appeals to the Crown Court under section 108 of the ^{M1}Magistrates' Courts Act 1980 (right of appeal against conviction or sentence) and, in consequence of the decision on appeal—

- (a) his conviction is set aside; or

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(b) a less severe punishment is awarded;
the Crown Court may make a defendant's costs order in favour of the accused.

(4) Where the Court of Appeal—

- (a) allows an appeal under Part I of the ^{M2}Criminal Appeal Act 1968 against—
- (i) conviction;
 - (ii) a verdict of not guilty by reason of insanity; or
 - [^{F2}(iii) a finding under the Criminal Procedure (Insanity) Act 1964 that the appellant is under a disability, or that he did the act or made the omission charged against him;]
- [^{F3}(aa) directs under section 8(1B) of the Criminal Appeal Act 1968 the entry of a judgment and verdict of acquittal;]
- (b) on an appeal under that Part against conviction—
- (i) substitutes a verdict of guilty of another offence;
 - (ii) in a case where a special verdict has been found, orders a different conclusion on the effect of that verdict to be recorded; or
 - (iii) is of the opinion that the case falls within paragraph (a) or (b) of section 6(1) of that Act (cases where the court substitutes a finding of insanity or unfitness to plead); or
- (c) on an appeal under that Part against sentence, exercises its powers under section 11(3) of that Act (powers where the court considers that the appellant should be sentenced differently for an offence for which he was dealt with by the court below);

the court may make a defendant's costs order in favour of the accused.

[^{F4}(4A) The court may also make a defendant's costs order in favour of the accused on an appeal under section 9(11) of the Criminal Justice Act 1987 (appeals against orders or rulings at preparatory hearings).]

(5) Where—

- (a) any proceedings in a criminal cause or matter are determined before a Divisional Court of the Queen's Bench Division;
- (b) the House of Lords determines an appeal, or application for leave to appeal, from such a Divisional Court in a criminal cause or matter;
- (c) the Court of Appeal determines an application for leave to appeal to the House of Lords under Part II of the ^{M3}Criminal Appeal Act 1968; or
- (d) the House of Lords determines an appeal, or application for leave to appeal, under Part II of that Act;

the court may make a defendant's costs order in favour of the accused.

(6) A defendant's costs order shall, subject to the following provisions of this section, be for the payment out of central funds, to the person in whose favour the order is made, of such amount as the court considers reasonably sufficient to compensate him for any expenses properly incurred by him in the proceedings.

(7) Where a court makes a defendant's costs order but is of the opinion that there are circumstances which make it inappropriate that the person in whose favour the order is made should recover the full amount mentioned in subsection (6) above, the court shall—

- (a) assess what amount would, in its opinion, be just and reasonable; and
- (b) specify that amount in the order.

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- (8) F5
- (9) Subject to subsection (7) above, the amount to be paid out of central funds in pursuance of a defendant's costs order shall—
- (a) be specified in the order, in any case where the court considers it appropriate for the amount to be so specified and the person in whose favour the order is made agrees the amount; and
 - (b) in any other case, be determined in accordance with regulations made by the Lord Chancellor for the purposes of this section.
- (10) Subsection (6) above shall have effect, in relation to any case falling within subsection (1)(a) or (2)(a) above, as if for the words “in the proceedings ” there were substituted the words “in or about the defence ”.
- (11) Where a person ordered to be retried is acquitted at his retrial, the costs which may be ordered to be paid out of central funds under this section shall include—
- (a) any costs which, at the original trial, could have been ordered to be so paid under this section if he had been acquitted; and
 - (b) if no order was made under this section in respect of his expenses on appeal, any sums for the payment of which such an order could have been made.

Textual Amendments

- F1** S. 16(2)(aa) inserted by Criminal Justice Act 1987 (c. 38, SIF 39:1), s. 15, **Sch. 2 para. 14**
- F2** S. 16(4)(a)(iii) substituted (01. 01. 1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), s. 7, **Sch. 3 para.7**; S.I. 1991/2488, **art.2**.
- F3** S. 16(4)(aa) inserted by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 170, Sch. 8 para. 16, **Sch. 15 para. 103**
- F4** S. 16(4A) added by Criminal Justice Act 1987 (c. 38, SIF 39:1), s. 15, **Sch. 2 para. 15**
- F5** S. 16(8) repealed by Legal Aid Act 1988 (c. 34, SIF 77:1), s. 45, **Sch. 6**

Modifications etc. (not altering text)

- C1** S. 16 applied by S.I. 1986/1335, **art. 14(4)**

Marginal Citations

- M1** 1980 c. 43.
- M2** 1968 c. 19.
- M3** 1968 c. 19.

17 Prosecution costs.

- (1) Subject to subsection (2) below, the court may—
- (a) in any proceedings in respect of an indictable offence; and
 - (b) in any proceedings before a Divisional Court of the Queen's Bench Division or the House of Lords in respect of a summary offence;
- order the payment out of central funds of such amount as the court considers reasonably sufficient to compensate the prosecutor for any expenses properly incurred by him in the proceedings.
- (2) No order under this section may be made in favour of—
- (a) a public authority; or

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- (b) a person acting—
 - (i) on behalf of a public authority; or
 - (ii) in his capacity as an official appointed by such an authority.
- (3) Where a court makes an order under this section but is of the opinion that there are circumstances which make it inappropriate that the prosecution should recover the full amount mentioned in subsection (1) above, the court shall—
 - (a) assess what amount would, in its opinion, be just and reasonable; and
 - (b) specify that amount in the order.
- (4) Subject to subsection (3) above, the amount to be paid out of central funds in pursuance of an order under this section shall—
 - (a) be specified in the order, in any case where the court considers it appropriate for the amount to be so specified and the prosecutor agrees the amount; and
 - (b) in any other case, be determined in accordance with regulations made by the Lord Chancellor for the purposes of this section.
- (5) Where the conduct of proceedings to which subsection (1) above applies is taken over by the Crown Prosecution Service, that subsection shall have effect as if it referred to the prosecutor who had the conduct of the proceedings before the intervention of the Service and to expenses incurred by him up to the time of intervention.
- (6) In this section “public authority ” means—
 - (a) a police force within the meaning of section 3 of this Act;
 - (b) the Crown Prosecution Service or any other government department;
 - (c) a local authority or other authority or body constituted for purposes of—
 - (i) the public service or of local government; or
 - (ii) carrying on under national ownership any industry or undertaking or part of an industry or undertaking; or
 - (d) any other authority or body whose members are appointed by Her Majesty or by any Minister of the Crown or government department or whose revenues consist wholly or mainly of money provided by Parliament.

Modifications etc. (not altering text)

C2 S. 17 applied by **S.I. 1986/1335, art. 14(1)**

Award of costs against accused

18 Award of costs against accused.

- (1) Where—
 - (a) any person is convicted of an offence before a magistrates’ court;
 - (b) the Crown Court dismisses an appeal against such a conviction or against the sentence imposed on that conviction; or
 - (c) any person is convicted of an offence before the Crown Court;
 the court may make such order as to the costs to be paid by the accused to the prosecutor as it considers just and reasonable.
- (2) Where the Court of Appeal dismisses—

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- (a) an appeal or application for leave to appeal under Part I of the ^{M4}Criminal Appeal Act 1968; or
 - (b) an application by the accused for leave to appeal to the House of Lords under Part II of that Act;
- it may make such order as to the costs to be paid by the accused, to such person as may be named in the order, as it considers just and reasonable [^{F6}or
- (c) an appeal or application for leave to appeal under section 9(11) of the Criminal Justice Act 1987;]
- (3) The amount to be paid by the accused in pursuance of an order under this section shall be specified in the order.
 - (4) Where any person is convicted of an offence before a magistrates' court and—
 - (a) under the conviction the court orders payment of any sum as a fine, penalty, forfeiture or compensation; and
 - (b) the sum so ordered to be paid does not exceed £5;the court shall not order the accused to pay any costs under this section unless in the particular circumstances of the case it considers it right to do so.
 - (5) Where any person under the age of seventeen is convicted of an offence before a magistrates' court, the amount of any costs ordered to be paid by the accused under this section shall not exceed the amount of any fine imposed on him.
 - (6) Costs ordered to be paid under subsection (2) above may include the reasonable cost of any transcript of a record of proceedings made in accordance with rules of court made for the purposes of section 32 of the Act of 1968.

Textual Amendments

F6 S. 18(2)(c) added by [Criminal Justice Act 1987 \(c. 38, SIF 39:1\)](#), s. 15, [Sch. 2 para. 16](#)

Modifications etc. (not altering text)

C3 S. 18 applied by [S.I. 1986/1335](#), [art. 14\(1\)\(2\)\(3\)](#)

Marginal Citations

M4 1968 c. 19.

Other awards

19 Provision for orders as to costs in other circumstances.

- (1) The Lord Chancellor may by regulations make provision empowering magistrates' courts, the Crown Court and the Court of Appeal, in any case where the court is satisfied that one party to criminal proceedings has incurred costs as a result of an unnecessary or improper act or omission by, or on behalf of, another party to the proceedings, to make an order as to the payment of those costs.
- (2) Regulations made under subsection (1) above may, in particular—
 - (a) allow the making of such an order at any time during the proceedings;
 - (b) make provision as to the account to be taken, in making such an order, of any other order as to costs . . . ^{F7} which has been made in respect of the proceedings

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- [^{F8}or any grant of representation for the purposes of the proceedings which has been made under the Legal Aid Act 1988.];
- (c) make provision as to the account to be taken of any such order in the making of any other order as to costs in respect of the proceedings; and
- (d) contain provisions similar to those in section 18(4) and (5) of this Act.
- (3) The Lord Chancellor may by regulations make provision for the payment out of central funds, in such circumstances and in relation to such criminal proceedings as may be specified, of such sums as appear to the court to be reasonably necessary—
- (a) to compensate any witness in the proceedings [^{F9}, and any other person who in the opinion of the court necessarily attends for the purpose of the proceedings otherwise than to give evidence,] for the expense, trouble or loss of time properly incurred in or incidental to his attendance;
- (b) to cover the proper expenses of an interpreter who is required because of the accused’s lack of English;
- (c) to compensate a duly qualified medical practitioner who—
- (i) makes a report otherwise than in writing for the purpose of section 30 of the ^{M5}Magistrates’ Courts Act 1980 (remand for medical examination); or
- (ii) makes a written report to a court in pursuance of a request to which section 32(2) of the ^{M6}Criminal Justice Act 1967 (report by medical practitioner on medical condition of offender) applies;
- for the expenses properly incurred in or incidental to his reporting to the court.
- [^{F10}(d) to cover the proper fee or costs of a person appointed by the Crown Court under section 4A of the Criminal Procedure (Insanity) Act 1964 to put the case for the defence.]
- [^{F11}(3A) In subsection (3)(a) above “attendance ” means attendance at the court or elsewhere.]
- (4) The Court of Appeal may order the payment out of central funds of such sums as appear to it to be reasonably sufficient to compensate an appellant who is not in custody and who appears before it on, or in connection with, his appeal under Part I of the ^{M7}Criminal Appeal Act 1968.
- (5) The Lord Chancellor may by regulations provide that any provision made by or under this Part which would not otherwise apply in relation to any category of proceedings in which an offender is before a magistrates’ court or the Crown Court shall apply in relation to proceedings of that category, subject to any specified modifications.

Textual Amendments

- F7** Words repealed by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 45, Sch. 5 para. 12, [Sch. 6](#)
- F8** Words inserted by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 45, [Sch. 5 para. 12](#)
- F9** Words inserted (retrospectively) (1.10.1986) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 166(2) (4), [Sch. 8 para. 16](#)
- F10** S. 19(3)(d) inserted (01. 01. 1992) by [Criminal Procedure \(Insanity and Unfitness to Plead\) Act 1991 \(c. 25, SIF 39:1\)](#), s. 7, [Sch. 3 para.8](#); S.I. 1991/2488, [art.2](#).
- F11** S. 19(3A) inserted (retrospectively) (1.10.1986) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 166(3)(4), [Sch. 8 para. 16](#)

Marginal Citations

- M5** 1980 c. 43.

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M6 1967 c. 80.

M7 1968 c. 19.

[^{F12}19A Costs against legal representatives etc.

(1) In any criminal proceedings—

- (a) the Court of Appeal;
- (b) the Crown Court; or
- (c) a magistrates' court,

may disallow, or (as the case may be) order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with regulations.

(2) Regulations shall provide that a legal or other representative against whom action is taken by a magistrates' court under subsection (1) may appeal to the Crown Court and that a legal or other representative against whom action is taken by the Crown Court under subsection (1) may appeal to the Court of Appeal.

(3) In this section—

“legal or other representative ”, in relation to any proceedings, means a person who is exercising a right of audience, or a right to conduct litigation, on behalf of any party to the proceedings;

“regulations ” means regulations made by the Lord Chancellor; and

“wasted costs ” means any costs incurred by a party—

- (a) as a result of any improper, unreasonable, or negligent act or omission on the part of any representative or any employee of a representative; or
- (b) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay.]

Subordinate Legislation Made

P1 S. 19A: s. 20 (with s. 19A) power exercised (21.3.1991) by [S.I. 1991/789](#).

Textual Amendments

F12 S. 19A inserted (1.5.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), [s. 111](#); [S.I. 1991/985](#), [art. 2\(a\)](#)

VALID FROM 01/02/2004

[^{F13}19B Provision for award of costs against third parties

(1) The Lord Chancellor may by regulations make provision empowering magistrates' courts, the Crown Court and the Court of Appeal to make a third party costs order if the condition in subsection (3) is satisfied.

(2) A “third party costs order” is an order as to the payment of costs incurred by a party to criminal proceedings by a person who is not a party to those proceedings (“the third party”).

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- (3) The condition is that—
- (a) there has been serious misconduct (whether or not constituting a contempt of court) by the third party, and
 - (b) the court considers it appropriate, having regard to that misconduct, to make a third party costs order against him.
- (4) Regulations made under this section may, in particular—
- (a) specify types of misconduct in respect of which a third party costs order may not be made;
 - (b) allow the making of a third party costs order at any time;
 - (c) make provision for any other order as to costs which has been made in respect of the proceedings to be varied on, or taken account of in, the making of a third party costs order;
 - (d) make provision for account to be taken of any third party costs order in the making of any other order as to costs in respect of the proceedings.
- (5) Regulations made under this section in relation to magistrates' courts must provide that the third party may appeal to the Crown Court against a third party costs order made by a magistrates' court.
- (6) Regulations made under this section in relation to the Crown Court must provide that the third party may appeal to the Court of Appeal against a third party costs order made by the Crown Court.]

Textual Amendments

F13 S. 19B inserted (1.2.2004) by *Courts Act 2003 (c. 39)*, ss. 93, 110; S.I. 2004/174, art. 2(a)

Supplemental

20 Regulations.

- (1) The Lord Chancellor may make regulations for carrying this Part into effect and the regulations may, in particular, make provision as to—
- (a) the scales or rates of payments of any costs payable out of central funds in pursuance of any costs order, the circumstances in which and conditions under which such costs may be allowed and paid and the expenses which may be included in such costs; and
 - (b) the review, as respects costs payable out of central funds in pursuance of any costs order, of any decision on taxation, or determination of the amount, of the costs;
- and any provision made by or under this Part enabling any sum to be paid out of central funds shall have effect subject to any such regulations.
- (2) The Lord Chancellor may by regulations make provision for the recovery of sums paid [^{F14}by the Legal Aid Board or out of] central funds in cases where—
- (a) a costs order has been made against a [^{F15}person]; and

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- (b) the person in whose favour the order was made is a legally assisted person or a person in whose favour a defendant's costs order or, as the case may be, an order under section 17 of this Act has been made.
- (3) Regulations made under subsection (1) above may provide that rates or scales of allowances payable out of central funds under a costs order shall be determined by the Lord Chancellor with the consent of the Treasury.
- (4) Regulations made under subsection (2) above may, in particular—
 - (a) require the person mentioned in paragraph (a) of that subsection to pay sums due under the costs order in accordance with directions given by the Lord Chancellor (either generally or in respect of the particular case); and
 - (b) enable the Lord Chancellor to enforce those directions in cases to which they apply.
- (5) Subsection (4) of section 61 of the Justices of the ^{M8}Peace Act 1979 (regulations as to accounts of justices' clerks) shall apply in relation to sums payable to the Lord Chancellor by virtue of regulations made under subsection (2) above as it applies in relation to sums payable to the [^{F16}Lord Chancellor] under that section.
- (6) Any regulations under this Part may contain such incidental and supplemental provisions as the Lord Chancellor considers appropriate.
- (7) Before making any regulations under section 19(1) of this Act which affect the procedure of any court, the Lord Chancellor shall so far as is reasonably practicable consult any rule committee by whom, or on whose advice, rules of procedure for the court may be made or whose concurrence is required to any such rules.
- (8) In this section "costs order" means—
 - (a) an order made under or by virtue of this Part for payment to be made—
 - (i) out of central funds; or
 - (ii) by a party to proceedings; or
 - (b) an order made in a criminal case by the House of Lords for the payment of costs by a party to proceedings.

Subordinate Legislation Made

- P2** S. 20: power previously exercised by S.I. 1986/1335;
S. 20 (with s. 19A) power exercised by S.I. 1991/789.

Textual Amendments

- F14** Words substituted by Legal Aid Act 1988 (c. 34, SIF 77:1), s. 45, **Sch. 5 para. 13**
- F15** Words in s. 20(2)(a) substituted (1.5.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 125(3), **Sch. 18 para. 53**; S.I. 1991/985, **art. 2(b)**
- F16** Words in s. 20(5) substituted (1.4.1992) by S.I. 1992/709, **art. 2(3)(b)**

Marginal Citations

- M8** 1979 c. 55.

21 Interpretation, etc.

- (1) In this Part—

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“defendant’s costs order ” has the meaning given in section 16 of this Act;
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[^{F18}“legally assisted person ”, in relation to any proceedings, means a person to whom representation under the Legal Aid Act 1988 has been granted for the purposes of the proceedings;]

“proceedings ” includes—

- (a) proceedings in any court below; and
- (b) in relation to the determination of an appeal by any court, any application made to that court for leave to bring the appeal; and

“witness ” means any person properly attending to give evidence, whether or not he gives evidence or is called at the instance of one of the parties or of the court, but does not include a person attending as a witness to character only unless the court has certified that the interests of justice required his attendance.

- (2) Except as provided by or under this Part no costs shall be allowed on the hearing or determination of, or of any proceedings preliminary or incidental to, an appeal to the Court of Appeal under Part I of the ^{M9}Criminal Appeal Act 1968.
- (3) Subject to rules of court made under section 53(1) of the ^{M10}Supreme Court Act 1981 (power by rules to distribute business of Court of Appeal between its civil and criminal divisions), the jurisdiction of the Court of Appeal under this Part, or under regulations made under this Part, shall be exercised by the criminal division of that Court; and references in this Part to the Court of Appeal shall be construed as references to that division.
- (4) For the purposes of sections 16 and 17 of this Act, the costs of any party to proceedings shall be taken to include the expense of compensating any witness for the expenses, trouble or loss of time properly incurred in or incidental to his attendance.

[^{F19}(4A) Where one party to any proceedings is a legally assisted person then—

- (a) for the purposes of sections 16 and 17 of this Act, his costs shall be taken not to include either the expenses incurred on his behalf by the Legal Aid Board or the Lord Chancellor or, if he is liable to make a contribution under section 23 of the Legal Aid Act 1988, any sum paid or payable by way of contribution; and
- (b) for the purposes of sections 18 and 19 of this Act, his costs shall be taken to include the expenses incurred on his behalf by the Legal Aid Board or the Lord Chancellor (without any deduction on account of any contribution paid or payable under section 23 of the Legal Aid Act 1988) but, if he is liable to make such a contribution his costs shall be taken not to include any sum paid or payable by way of contribution.]

- (5) Where, in any proceedings in a criminal cause or matter or in either of the cases mentioned in subsection (6) below, an interpreter is required because of the accused’s lack of English, the expenses properly incurred on his employment shall not be treated as costs of any party to the proceedings.
- (6) The cases are—
 - (a) where an information charging the accused with an offence is laid before a justice of the peace for any area but not proceeded with and the expenses are incurred on the employment of the interpreter for the proceedings on the information; and

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- (b) where the accused is committed for trial but not tried and the expenses are incurred on the employment of the interpreter for the proceedings in the Crown Court.

Textual Amendments

F17 Definition of “legal aid order ” repealed by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 45, [Sch. 6](#)

F18 Definition substituted by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 45, [Sch. 5 para. 14](#)

F19 [S. 21\(4A\)](#) inserted by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 45, [Sch. 5 para. 15](#)

Marginal Citations

M9 1968 c. 19.

M10 1981 c. 54.

Status:

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Changes to legislation:

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