



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 [^{F1}sent] for trial; or
- [^{F2}(aa) a notice of transfer is given under [^{F3}a relevant transfer provision] 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

Status: Point in time view as at 09/05/2005.

Changes to legislation: There are currently no known outstanding effects for the Prosecution of Offences Act 1985, Cross Heading: Award of costs out of central funds. (See end of Document for details)

(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

[^{F4}(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;]

[^{F5}(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); ^{F6} . . .

(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);

[^{F7}or

(d) allows, to any extent, an appeal under section 16A of that Act (appeal against order made in cases of insanity or unfitness to plead);]

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

[^{F8}(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) [^{F9}or section 35(1) of the Criminal Procedure and Investigations Act 1996][^{F10}or under Part 9 of the Criminal Justice Act 2003] .]

(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

Status: Point in time view as at 09/05/2005.

Changes to legislation: There are currently no known outstanding effects for the Prosecution of Offences Act 1985, Cross Heading: Award of costs out of central funds. (See end of Document for details)

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.

(8) ^{F11}

(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.

[^{F12}(12) In subsection (2)(aa) “relevant transfer provision ” means—

- (a) section 4 of the Criminal Justice Act 1987, or
- (b) section 53 of the Criminal Justice Act 1991.]

Textual Amendments

- F1** Word in s. 16(2)(a) substituted (9.5.2005 for specified purposes, 18.6.2012 for specified purposes, 5.11.2012 for specified purposes, 28.5.2013 for specified purposes) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), [Sch. 3 para. 57\(3\)\(b\)\(i\)](#); [S.I. 2005/1267](#), art. 2(1)(2)(a), [Sch. Pt. 1](#); [S.I. 2012/1320](#), art. 4(1)(c)(2)(3) (with art. 5) (see [S.I. 2012/2574](#), art. 4(2) and [S.I. 2013/1103](#), art. 4); [S.I. 2012/2574](#), art. 2(2)(3)(c), [Sch.](#) (with arts. 3, 4) (as amended (4.11.2012) by [S.I. 2012/2761](#), art. 2) (with [S.I. 2013/1103](#), art. 4); [S.I. 2013/1103](#), art. 2(1)(c)(2)(3) (with arts. 3, 4)
- F2** S. 16(2)(aa) inserted by [Criminal Justice Act 1987 \(c. 38, SIF 39:1\)](#), s. 15, [Sch. 2 para. 14](#)
- F3** Words in s. 16(2)(aa) substituted (3.2.1995) by [1994 c. 33](#), s. 168(3), [Sch. 9 para. 25\(a\)](#); [S.I. 1995/127](#), art. 2(1), [Sch. 1](#) Appendix A
- F4** S. 16(4)(a)(iii) substituted (1.1.1992) 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](#).
- F5** 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](#)
- F6** Word in s. 16(4) repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), ss. 58(2), 60, [Sch. 11](#); [S.I. 2005/579](#), [art. 3\(h\)\(i\)\(vii\)](#)
- F7** S. 16(4) and preceding word inserted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), ss. 58(1), 60, [Sch. 10 para. 25](#); [S.I. 2005/579](#), [art. 3\(f\)\(g\)](#)
- F8** S. 16(4A) added by [Criminal Justice Act 1987 \(c. 38, SIF 39:1\)](#), s. 15, [Sch. 2 para. 15](#)
- F9** Words in s. 16(4A) inserted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 312, 336; [S.I. 2005/950](#), [art. 2\(1\)](#), [Sch. 1 para. 25](#) (subject to [art. 2\(2\)](#), [Sch. 2](#)) (as amended by [2005/2122](#), art. 2 and [2007/391](#), art. 2)

Status: Point in time view as at 09/05/2005.

Changes to legislation: There are currently no known outstanding effects for the Prosecution of Offences Act 1985, Cross Heading: Award of costs out of central funds. (See end of Document for details)

- F10** Words in s. 16(4A) inserted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), **ss. 69(2)**, 336; [S.I. 2005/950](#), **art. 2(1)**, **Sch. 1 para. 4** (subject to **art. 2(2)**, **Sch. 2**) (as amended by [2005/2122](#), **art. 2** and [2007/391](#), **art. 2**)
- F11** S. 16(8) repealed by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 45, **Sch. 6**
- F12** S. 16(12) inserted (3.2.1995) by [1994 c. 33](#), s. 168(3), **Sch. 9 para. 25(b)**; [S.I. 1995/127](#), **art. 2(1)**, **Sch.1** Appendix A

Modifications etc. (not altering text)

- C1** S. 16 applied by [S.I. 1986/1335](#), **art. 14(4)**
- C2** S. 16(1)(c) applied (with modifications): (15.3.1996) by [S.I. 1996/716](#), **arts. 1(2)**, 24(1)(a); (1.4.1997) by [1989 c. 33](#), s. 9(2), **Sch. 1 para. 6(1)** (as amended by [1994 c. 33](#), **ss. 158(5)(a)**, 158(8)(a)) and [S.I. 1997/882](#), **art.3** (with savings in **art. 3(2)**)
- S. 16(1)(c) applied (with modifications) (1.9.2001) by [2001 c. 17](#), **s. 6(2)(d)**; [S.I. 2001/2161](#), **art. 2** (subject to **art. 3**)

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
 - (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

Status: Point in time view as at 09/05/2005.

Changes to legislation: There are currently no known outstanding effects for the Prosecution of Offences Act 1985, Cross Heading: Award of costs out of central funds. (See end of Document for details)

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)

C3 S. 17 applied by [S.I. 1986/1335](#), [art. 14\(1\)](#)

Status:

Point in time view as at 09/05/2005.

Changes to legislation:

There are currently no known outstanding effects for the Prosecution of Offences Act 1985,
Cross Heading: Award of costs out of central funds.