



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) [^{F1}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 [^{F2}sent] for trial; or
- [^{F3}(aa) [^{F4}a notice of transfer is given under [^{F5}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

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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

^{F6}[(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;]

^{F7}(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); ^{F8} . . .

(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);

^{F9}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.

^{F10}(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) ^{F11} or section 35(1) of the Criminal Procedure and Investigations Act 1996] ^{F12} 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 ^{F13}Supreme Court] 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 ^{F13}Supreme Court] under Part II of the ^{M3}Criminal Appeal Act 1968; or

(d) the ^{F13}Supreme Court] 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.

^{F14}(6A) Where the court considers that there are circumstances that make it inappropriate for the accused to recover the full amount mentioned in subsection (6), a defendant's costs

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order must be for the payment out of central funds of such lesser amount as the court considers just and reasonable.

(6B) Subsections (6) and (6A) have effect subject to—

- (a) section 16A, and
- (b) regulations under section 20(1A)(d).

(6C) When making a defendant's costs order, the court must fix the amount to be paid out of central funds in the order if it considers it appropriate to do so and—

- (a) the accused agrees the amount, or
- (b) subsection (6A) applies.

(6D) Where the court does not fix the amount to be paid out of central funds in the order—

- (a) it must describe in the order any reduction required under subsection (6A), and
- (b) the amount must be fixed by means of a determination made by or on behalf of the court in accordance with procedures specified in regulations made by the Lord Chancellor.]

^{F15}(7)

(8) ^{F16}

^{F17}(9)

(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.

[^{F18}(12) [^{F19}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** S. 16(1)(b) repealed (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\(3\)\(a\)](#), [Sch. 37 Pt. 4](#); [S.I. 2012/1320](#), art. 4(1)(c)(d)(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)(d), [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)(d)(2)(3) (with arts. 3, 4)
- F2** 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)
- F3** S. 16(2)(aa) inserted by [Criminal Justice Act 1987 \(c. 38, SIF 39:1\)](#), s. 15, [Sch. 2 para. 14](#)

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- F4** S. 16(2)(aa) repealed (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)(ii), Sch. 37 Pt. 4; S.I. 2012/1320, art. 4(1)(c)(d)(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)(d), 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)(d)(2)(3) (with arts. 3, 4)
- F5** 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
- F6** 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.
- F7** 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
- F8** 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)
- F9** 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)
- F10** S. 16(4A) added by Criminal Justice Act 1987 (c. 38, SIF 39:1), s. 15, Sch. 2 para. 15
- F11** 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)
- F12** 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)
- F13** Words in s. 16(5) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), Sch. 9 para. 41(3); S.I. 2009/1604, art. 2(d)
- F14** S. 16(6A)-(6D) inserted (1.10.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), Sch. 7 para. 2(2) (with Sch. 7 Pt. 4); S.I. 2012/2412, art. 2(g)
- F15** S. 16(7) omitted (1.10.2012) by virtue of Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), Sch. 7 para. 2(3) (with Sch. 7 Pt. 4); S.I. 2012/2412, art. 2(g)
- F16** S. 16(8) repealed by Legal Aid Act 1988 (c. 34, SIF 77:1), s. 45, Sch. 6
- F17** S. 16(9) omitted (1.10.2012) by virtue of Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), Sch. 7 para. 2(3) (with Sch. 7 Pt. 4); S.I. 2012/2412, art. 2(g)
- F18** 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
- F19** S. 16(12) repealed (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)(c), Sch. 37 Pt. 4; S.I. 2012/1320, art. 4(1)(c)(d)(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)(d), 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)(d)(2)(3) (with arts. 3, 4)

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.

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[^{F20}16A Legal costs

- (1) A defendant's costs order may not require the payment out of central funds of an amount that includes an amount in respect of the accused's legal costs, subject to the following provisions of this section.
- (2) Subsection (1) does not apply where condition A, B or C is met.
- (3) Condition A is that the accused is an individual and the order is made under—
 - (a) section 16(1),
 - (b) section 16(3), or
 - (c) section 16(4)(a)(ii) or (iii) or (d).
- (4) Condition B is that the accused is an individual and the legal costs were incurred in proceedings in a court below which were—
 - (a) proceedings in a magistrates' court, or
 - (b) proceedings on an appeal to the Crown Court under section 108 of the Magistrates' Courts Act 1980 (right of appeal against conviction or sentence).
- (5) Condition C is that the legal costs were incurred in proceedings in the Supreme Court.
- (6) The Lord Chancellor may by regulations make provision about exceptions from the prohibition in subsection (1), including—
 - (a) provision amending this section by adding, modifying or removing an exception, and
 - (b) provision for an exception to arise where a determination has been made by a person specified in the regulations.
- (7) Regulations under subsection (6) may not remove or limit the exception provided by condition C.
- (8) Where a court makes a defendant's costs order requiring the payment out of central funds of an amount that includes an amount in respect of legal costs, the order must include a statement to that effect.
- (9) Where, in a defendant's costs order, a court fixes an amount to be paid out of central funds that includes an amount in respect of legal costs incurred in proceedings in a court other than the Supreme Court, the latter amount must not exceed an amount specified by regulations made by the Lord Chancellor.
- (10) In this section—
 - “legal costs” means fees, charges, disbursements and other amounts payable in respect of advocacy services or litigation services including, in particular, expert witness costs;
 - “advocacy services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide;
 - “expert witness costs” means amounts payable in respect of the services of an expert witness, including amounts payable in connection with attendance by the witness at court or elsewhere;
 - “litigation services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to

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conduct litigation in relation to proceedings, or contemplated proceedings, to provide.]

Textual Amendments

F20 S. 16A inserted (1.10.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 7 para. 3](#) (with [Sch. 7 Pt. 4](#)); S.I. 2012/2412, art. 2(g)

17 Prosecution costs.

(1) Subject to [F21 subsections (2) and (2A)] 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 [F22 Supreme Court] 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.

[F23(2A) Where the court considers that there are circumstances that make it inappropriate for the prosecution to recover the full amount mentioned in subsection (1), an order under this section must be for the payment out of central funds of such lesser amount as the court considers just and reasonable.

(2B) When making an order under this section, the court must fix the amount to be paid out of central funds in the order if it considers it appropriate to do so and—
(a) the prosecutor agrees the amount, or
(b) subsection (2A) applies.

(2C) Where the court does not fix the amount to be paid out of central funds in the order—
(a) it must describe in the order any reduction required under subsection (2A), and
(b) the amount must be fixed by means of a determination made by or on behalf of the court in accordance with procedures specified in regulations made by the Lord Chancellor.]

F24(3)

F24(4)

(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;

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- (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.

Textual Amendments

- F21** Words in s. 17(1) substituted (1.10.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 7 para. 4\(2\)](#) (with [Sch. 7 Pt. 4](#)); S.I. 2012/2412, art. 2(g)
- F22** Words in s. 17(1)(b) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), [Sch. 9 para. 41\(3\)](#); S.I. 2009/1604, art. 2(d)
- F23** S. 17(2A)-(2C) inserted (1.10.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 7 para. 4\(3\)](#) (with [Sch. 7 Pt. 4](#)); S.I. 2012/2412, art. 2(g)
- F24** S. 17(3)(4) omitted (1.10.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 7 para. 4\(4\)](#) (with [Sch. 7 Pt. 4](#)); S.I. 2012/2412, art. 2(g)

Modifications etc. (not altering text)

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

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