

EXPLANATORY MEMORANDUM TO
THE COSTS IN CRIMINAL CASES (GENERAL) (AMENDMENT) REGULATIONS
2013

2013 No. 2526

1. This Explanatory Memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These regulations amend regulations 14(2) and 15 of the Costs in Criminal Cases (General) Regulations 1986 (“the 1986 Regulations”) in consequence of the abolition of committals for trial. They also amend regulation 16, in order to allow an intermediary who is required to assist a defendant in criminal proceedings to receive payment from central funds. This latter amendment is made to give effect, in part, to the requirements of Directive 2010/64/EU of the European Parliament and of the Council of 20th October, 2010, on the right to interpretation and translation in criminal proceedings (“the Directive”).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The 1986 Regulations concern the procedure for making certain costs orders in criminal and related proceedings, the determination of costs payable out of central funds and allowances to persons such as witnesses.

4.2 The amendments to regulations 14(2) and 15 are made in consequence of the commencement of Schedule 3 to the Criminal Justice Act 2003. That Schedule relevantly abolished the committal procedure by which offences which are triable either in a magistrates’ court or the Crown Court (“either way offences”) reach the Crown Court. The committal procedure was replaced with a sending procedure. Schedule 3 was commenced in a staged fashion concluding with the Criminal Justice Act 2003 (Commencement No. 31 and Savings Provisions) Order 2013 (S.I. 2013/1103). These amendments remove references in the 1986 Regulations to aspects of the committal procedure, replacing them where needed with references to the new sending procedure.

4.3 The effect of the amendment to regulation 16 is to provide that where a court appoints an intermediary to assist a defendant, payments to that intermediary will be met out of central funds. This is done in consequence of one of the requirements of the Directive. The Directive provides that the right to interpretation during criminal proceedings includes appropriate assistance for those with speech impediments. The cost of such assistance is to be met by Member States. In England and Wales, such assistance may be provided by way of an intermediary. This amendment means that sums may be paid out of central funds for such intermediaries.

4.4 A transposition note in respect of the Directive is set out in Annex A. There are other relevant instruments which transpose the Directive. These are also referred to in that note.

4.5 The scrutiny history of the Directive is set out in Annex B.

5. Territorial extent and Application

5.1 This instrument applies to 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*

Changes in consequence of the abolition of the committal procedure

7.1 The 1986 Regulations contain references to the committal procedure which are updated in light of the change in the procedure by which either way offences reach the Crown Court.

The right to interpretation and translation

7.2 As stated above, the Directive sets out that the right to interpretation under the Directive includes appropriate assistance for defendants with a speech impediment and that Member States are to meet the costs of this assistance. At present, the courts in England and Wales have an inherent power to appoint an intermediary for a defendant who has communication difficulties and the costs of that intermediary may be met out of local court funds, see *R (C) v Sevenoaks Youth Court* [2009] EWHC 3088 (Admin). In consequence of the Directive, the Criminal Procedure Rules, as they are being amended by the Criminal Procedure (Amendment) Rules 2013 (S.I. 2013/2525, L. 22), provide at rule 3.8(6) that where a defendant requires interpretation as a result of a speech impediment, that interpretation can be provided by an intermediary. It was at the same time thought desirable to provide that, rather than payments to those intermediaries continuing to be met out of local court funds, those payments should be made out of central funds. This means that intermediaries appointed to assist the defendant will have their payments met out of same source (central funds) as for interpreters arranged on account of a defendant's lack of English.

Bringing the regulations into force

7.3 These regulations come into force on 27th October 2013 which is the date by which Member States are to transpose the Directive.

- *Consolidation*

7.4 Given the limited nature of these amendments, it is not considered necessary to consolidate the regulations.

8. Consultation outcome

8.1 The amendments made by these regulations were proposed by the government, to give effect to the requirements described above. The government conducted no formal consultation on the terms of the amendments, given their limited nature and effect.

9. Guidance

9.1 Amendments to the regulations are drawn to the attention of participants in the criminal justice system by correspondence to members of the judiciary, to other relevant representative bodies (for example, the Law Society and the Bar Council) and to the editors of relevant legal journals; as well as by publicity within Her Majesty's Courts and Tribunals Service, within the principal prosecuting authorities, and among local criminal justice boards.

10. Impact

10.1 These regulations have no impact on business, charities or voluntary bodies.

10.2 These regulations have no impact on the public sector. The intention is to change the source of funding for intermediaries appointed to assist a defendant rather than the amount of public money that is spent on such intermediaries.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring and review

12.1 Given the limited nature of the amendments made by this instrument, no formal monitoring or review is considered necessary. However, if unintended consequences were to be brought to our attention, consideration would be given to making further amendments.

13. Contact

David Carter at the Ministry of Justice can answer any queries regarding the instrument. Telephone: 020 3334 4211, or e-mail: David.Carter@justice.gsi.gov.uk.

Transposition Note

Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (“the Directive”)

This transposition note has been prepared for the UK Parliament to set out the respects in which the following instruments implement the Directive. These instruments are all subject to the negative procedure and have been laid together. The note does not deal with aspects of the Directive to which these instruments are not directly relevant. The instruments are:

- the Criminal Procedure (Amendment) Rules 2013 (S.I. 2013/2525, L. 22) (“the Criminal Procedure Amendment Rules”);
- the Costs in Criminal Cases (General) (Amendment) Regulations 2013 (S.I. 2013/2526) (“the Costs Amendment Regulations”);
- the Armed Forces (Interpretation, Translation and Alcohol and Drug Tests) Rules 2013 (S.I. 2013/2527) (“the Armed Forces Amendment Rules”);
- the Court Martial Appeal Court (Interpretation and Translation) Rules 2013 (S.I. 2013/2524) (“the CMAC Amendment Rules”).

Article	Detail	Implementation	Responsibility
Article 2	Right to interpretation		
2(1) and (2)	These paragraphs set out rights to interpretation in criminal proceedings. They provide that Member States must ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings are to be provided with interpretation during those proceedings and that, in certain circumstances, interpretation is available for communication between suspected or accused persons and their legal representatives.	<p><u>Criminal Procedure Amendment Rules, rule 3</u></p> <p>New rule 3.8(5)(a) and (6) of the Criminal Procedure Rules provides that the court officer must arrange for interpretation to be provided at every hearing which the defendant is due to attend if the defendant does not speak or understand English. This supports the common law rule that in all criminal proceedings a defendant who does not speak or understand English is provided with interpretation. See in particular <i>R v Lee Kun</i> [1916] 1 KB 337. There is also an obligation on the courts to act compatibly with the European Convention on Human Rights (“ECHR”), section 6 of the Human Rights Act 1998, which may include the need to arrange interpretation. This interpretation is available for communication at the hearing between the defendant and the defendant’s legal representative.</p> <p><u>The Armed Forces Amendment Rules, rules 3, 6, 10, 13, 16 and 20</u></p> <p>New provisions relating to interpretation are set out in changes to the Armed Forces</p>	<p>Throughout this Directive, responsibility for implementation is as follows:</p> <ul style="list-style-type: none"> • for criminal cases in England and Wales, the Secretary of State for Justice; • for service law, the Secretary of State for Defence.

Article	Detail	Implementation	Responsibility
		<p>(Custody Proceedings) Rules 2009 (new rule 20), the Armed Forces (Summary Appeal Court) Rules 2009 (new rule 29), the Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules 2009 (new rules 11A and 33A), the Armed Forces (Court Martial) Rules 2009 (new rule 22), and the Armed Forces (Service Civilian Court) Rules 2009 (new rule 21). These changes provide that an interpreter shall be appointed to act at a hearing which a person to whom proceedings relate (or person to whom any proceedings relate, or appellant, or accused, or offender, depending on the proceedings concerned) is due to attend unless the court administration officer (or commanding officer, depending on the proceedings concerned) is satisfied that the person does not need interpretation. In those hearings where legal representatives are present, the provision of interpretation includes assisting a person to communicate with their legal representative – see new rule 22(9) of the Armed Forces (Court Martial) Rules 2009 and the equivalent provisions in the other service court rules.</p> <p><u>The CMAC Amendment Rules, rule 3</u></p> <p>The Court Martial Appeal Court Rules 2009 (new rule 16) provide that an interpreter must be appointed to act at a hearing which a person to whom proceedings relate is due to attend if the Registrar is satisfied that the person needs interpretation. The provision of interpretation includes assisting a person to communicate with their legal representative – see new rule 16(8).</p>	
2(3)	<p>The purpose of this paragraph is to provide that the right to interpretation under articles 2(1) and (2) includes appropriate assistance for persons with hearing or speech impediments.</p>	<p><u>Criminal Procedure Amendment Rules, rule 3</u></p> <p>The rules identified for article 2(1) and (2) apply in the same way for persons with hearing or speech impediments. See new rule 3.8(5)(b) and (6) of the Criminal Procedure Rules. In particular, appropriate assistance for persons with speech impediments may be provided by way an intermediary, new rule 3.8(6)(b).</p> <p><u>The Armed Forces Amendment Rules, rules 3, 6, 10, 13, 16 and 20 and the CMAC Amendment Rules, rule 3</u></p> <p>The rules identified for article 2(1) and (2) apply in the same way for persons with hearing or speech impediments. See new rule 22(7) of the Armed Forces (Court Martial) Rules 2009 and the equivalent provisions in the other service court rules. In particular, appropriate assistance for persons with speech impediments may be provided by way of</p>	

Article	Detail	Implementation	Responsibility
		an intermediary.	
2(4)	It is an obligation under this paragraph to have a procedure or mechanism to ascertain whether suspected or accused persons need interpretation.	<p><u>Criminal Procedure Amendment Rules, rule 3</u></p> <p>Criminal courts are obliged to take every reasonable step to determine whether a defendant needs interpretation, see new rule 3.8(5) of the Criminal Procedure Rules.</p> <p><u>The Armed Forces Amendment Rules, rules 3, 6, 10, 13, 16 and 20</u></p> <p>The changes to the various service court rules provide that an interpreter shall be appointed to act at a hearing which a person to whom the proceedings relate (or person to whom any proceedings relate, or appellant, or accused, or offender, depending on the proceedings concerned) is due to attend unless the court administration officer (or commanding officer, depending on the proceedings concerned) is satisfied that the person does not need interpretation – see Armed Forces (Court Martial) Rules 2009 (new rule 22(1)) and the equivalent provisions in the other service court rules.</p> <p><u>The CMAC Amendment Rules, rule 3</u></p> <p>The Court Martial Appeal Court Rules 2009 (new rule 16) provide that an interpreter must be appointed to act at a hearing which a person to whom proceedings relate is due to attend if the Registrar is satisfied that the person needs interpretation.</p>	
2(5)	<p>This paragraph provides that suspected or accused persons must have the right to challenge or complain about the following:</p> <ul style="list-style-type: none"> • a decision finding that there is no need for interpretation; • the quality of the interpretation. <p>There is a related recital (26) which states that when the quality</p>	<p><u>Criminal Procedure Amendment Rules, rule 3</u></p> <p>The changes to the Criminal Procedure Rules set out a complaints procedure by which the defendant may apply to the court where no interpretation is provided or the defendant complains about the quality of the interpretation. The court must give any direction it thinks appropriate, including a direction for interpretation by a different interpreter. See new rule 3.8(6)(d)(i) and (iii) of the Criminal Procedure Rules.</p> <p><u>The Armed Forces Amendment Rules, rules 3, 6, 10, 13, 16 and 20 and the CMAC Amendment Rules, rule 3</u></p> <p>The changes to the various service court rules set out a complaints procedure by which the person to whom the proceedings relate (or person to whom any proceedings relate, or</p>	

Article	Detail	Implementation	Responsibility
	of interpretation is considered insufficient, the competent authorities should be able to replace the appointed interpreter.	appellant, or accused, or offender, depending on the proceedings concerned) may apply to the court (or judge advocate or commanding officer depending upon the proceedings concerned) where no interpretation is provided or the person complains about the quality of the interpretation. The court (or judge advocate or commanding officer depending upon the proceedings concerned) shall give any direction (or take such steps) it thinks appropriate, including a direction for interpretation by a different interpreter – see rule 22(6) of the Armed Forces (Court Martial) Rules 2009 and the equivalent provisions in the other service court rules.	
2(7)	This paragraph provides a right to interpretation in proceedings for the execution of an EAW where the subject of those proceedings does not speak or understand the language of the proceedings.	<p><u>Criminal Procedure Amendment Rules, rule 3</u></p> <p>The Criminal Procedure Rules which apply for interpretation in criminal proceedings also apply to proceedings concerning the EAW. This means that the court officer must arrange for interpretation to be provided at every hearing which the defendant is due to attend if the defendant does not speak or understand English. See new rule 3.8(5)(a) and (6) of the Criminal Procedure Rules.</p>	
Article 3	Right to translation of essential documents		
3(1)	This article provides that suspected or accused persons who do not understand the language of the criminal proceedings are provided with written translations of essential documents. Paragraphs (1), (2), (3), (4), (7) and (8) deal with the meaning of essential documents and when essential documents need otherwise not be translated in writing.	<p><u>Criminal Procedure Amendment Rules, rule 3</u></p> <p>New rule 3.8(6)(c) provides that where the defendant does not understand English, on application or its own initiative, the court may require a written translation of a document or part of a document. However, there is no need to translate the part of the document that is not needed to explain the case against the defendant or the defendant waives the right to a written translation. These rule changes support the courts' inherent common law powers to require written translations of documents, which the court will exercise when it considers that a written translation of a document is necessary to ensure that the defendant receives a fair trial.</p> <p><u>The Armed Forces Amendment Rules, rules 3, 6, 10, 13, 16 and 20 and the CMAC Amendment Rules, rule 3</u></p> <p>The changes to the various service court rules provide that on application or on its own initiative, the court (or judge advocate or commanding officer depending upon the proceedings concerned) may require a written translation of a document or part of a</p>	

Article	Detail	Implementation	Responsibility
		document. However, there is no need to translate the part of the document that is not needed to explain the issues arising in the proceedings in relation to the person (including, in the case of a trial, the case against the defendant), or if the person waives the right to a written translation. See rule 22(5) of the Armed Forces (Court Martial) Rules 2009 and the equivalent provisions in the other service court rules.	
3(5)	<p>This paragraph provides there to be a right to challenge:</p> <ul style="list-style-type: none"> • a decision finding that there is no need for a translation; • the quality of the translation. 	<p><u>Criminal Procedure Amendment Rules, rule 3</u></p> <p>The Criminal Procedure Rules set out a complaints procedure by which the defendant may apply to the court where no translation is provided or the defendant complains about the quality of the translation. The court must give any direction it thinks appropriate. See new rule 3.8(6)(d)(ii) and (iii).</p> <p><u>The Armed Forces Amendment Rules, rules 3, 6, 10, 13, 16 and 20 and the CMAC Amendment Rules, rule 3</u></p> <p>The changes to the various service court rules set out a complaints procedure by which the person to whom the proceedings relate (or person to whom any proceedings relate, or appellant, or accused, or offender, depending on the proceedings concerned) may apply to the court (or judge advocate or commanding officer depending upon the proceedings concerned) where no translation is provided or the person complains about the quality of the translation. The court (or judge advocate or commanding officer depending upon the proceedings concerned) shall give any direction (or take such steps) it thinks appropriate – see rule 22(6) of the Armed Forces (Court Martial) Rules 2009 and the equivalent provisions in the other service court rules.</p>	
3(6)	<p>Where the person subject to EAW proceedings does not understand the language of the warrant or into which it has been translated, that person has a right to a written translation of the document.</p> <p>This is subject to paragraph (7) which deals with the circumstances when an oral translation or oral</p>	<p>The Criminal Procedure Rules which apply for interpretation in criminal proceedings also apply to proceedings concerning the EAW. See the court proceedings section of article 3(1).</p>	

Article	Detail	Implementation	Responsibility
	summary of the document may be provided.		
Article 4	Costs of interpretation and translation		
4	Member States shall meet the costs of interpretation and translation resulting from the application of Articles 2 and 3, irrespective of the outcome of the proceedings.	<p><u>The Costs Amendment Regulations</u></p> <p>The costs of interpretation and translation for defendants in criminal courts are already met out of central funds (that is, public money). See the Prosecution of Offences Act 1985, s 19(3)(b) and the Costs in Criminal Cases (General) Regulations 1986 (“the 1986 Regulations”), Part 5.</p> <p>The 1986 Regulations are amended by regulation 2(4) of the Costs Amendment Regulations so that the costs of an intermediary required to assist a defendant with a speech impediment are also met out of central funds.</p>	
Article 7	Record-keeping		
7	<p>This article sets out the requirements for record-keeping. The following events will need to be noted:</p> <ul style="list-style-type: none"> • when a suspected or accused person has been subject to questioning or hearings in court with the assistance of an interpreter; • when an oral translation or oral summary of essential documents has been provided in the presence of such an authority; • when a person has waived the 	<p><u>Criminal Procedure Amendment Rules, rule 4</u></p> <p>See the Criminal Procedure Rules, rule 5.4.</p> <p><u>The Armed Forces Amendment Rules, rules 4, 7, 12, 14, 17 and 21 and the CMAC Amendment Rules, rule 3</u></p> <p>The changes to the various service court rules set out procedures for the keeping of records – see rule 23(2) of the Armed Forces (Court Martial) Rules 2009 and the equivalent provisions in the other service court rules.</p>	

Article	Detail	Implementation	Responsibility
	right to translation.		

Scrutiny History

Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (“the Directive”)

On 30 December 2009, an Explanatory Memorandum was deposited with the United Kingdom Parliament, outlining the Government’s initial response to a Member States’ Initiative for a Proposal for the Directive (16801/09). The text was deposited at the same time.

On 20 January 2010, the Proposal cleared scrutiny by the European Union Select Committee. The Government responded to the Committee with an update on 3 February 2010. Also on 20 January, the European Scrutiny Committee released its first report into the Proposal, and the Government responded, again on 3 February 2010. The Government decided to opt in to the Proposal on 8 March 2010.

On 30 March 2010, the European Scrutiny Committee issued its second report into the proposed Directive.

On 15 April 2010 Member States considered the text of the Proposal in detail, and on 19 April 2010 the Proposal entered trilogue with the European Parliament and the Commission.

On 9 June 2010, the Government deposited an updated Explanatory Memorandum with the UK Parliament. The update was necessary to reflect amendments proposed by the European Parliament. On 16 June 2010 the updated text of the Proposal was overwhelmingly adopted by the European Parliament at first reading.

On 1 July 2010 the revised text was cleared from scrutiny by the European Union Select Committee, and on 9 September 2010 the European Scrutiny Committee followed with scrutiny clearance.

The Directive was formally adopted by Member States at a meeting of the Justice and Home Affairs Council on 20 October 2010.