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STATUTORY INSTRUMENTS

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**2014 No. 1610**

**The Criminal Procedure Rules 2014**

**PART 76**

**COSTS**

*SECTION 1: GENERAL*

**When this Part applies**

- 76.1.**—(1) This Part applies where the court can make an order about costs under—
- (a) Part II of the Prosecution of Offences Act 1985<sup>(1)</sup> and Part II, IIA or IIB of The Costs in Criminal Cases (General) Regulations 1986<sup>(2)</sup>;
  - (b) section 109 of the Magistrates' Courts Act 1980<sup>(3)</sup>;
  - (c) section 52 of the Senior Courts Act 1981<sup>(4)</sup> and rule 76.6 or rule 76.7;
  - (d) section 8 of the Bankers Books Evidence Act 1879<sup>(5)</sup>;
  - (e) section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965<sup>(6)</sup>;
  - (f) section 36(5) of the Criminal Justice Act 1972<sup>(7)</sup>;
  - (g) section 159(5) and Schedule 3, paragraph 11, of the Criminal Justice Act 1988<sup>(8)</sup>;
  - (h) section 14H(5) of the Football Spectators Act 1989<sup>(9)</sup>;
  - (i) section 4(7) of the Dangerous Dogs Act 1991<sup>(10)</sup>;
  - (j) Part 3 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008<sup>(11)</sup>; or
  - (k) Part 1 or 2 of the Extradition Act 2003<sup>(12)</sup>.
- (2) In this Part, 'costs' means—
- (a) the fees payable to a legal representative;

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- (1) 1985 c. 23.
  - (2) S.I. 1986/1335.
  - (3) 1980 c. 43; section 109(2) was amended by section 109 of, and paragraph 234 of Schedule 8 to, the Courts Act 2003 (c. 39).
  - (4) 1981 c. 54. The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).
  - (5) 1879 c. 11.
  - (6) 1965 c. 69; section 2C was substituted with section 2, 2A, 2B, 2D and 2E, for the existing section 2 by section 66(1) and (2) of the Criminal Procedure and Investigations Act 1996 (c. 25).
  - (7) 1972 c. 71; section 36(5) was amended by section 40 of, and paragraph 23 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).
  - (8) 1988 c. 33; paragraph 11 of Schedule 3 was amended by section 40 of, and paragraph 48 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and paragraph 11 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
  - (9) 1989 c. 37; section 14H was substituted, together with sections 14, 14A-14G and 14J, for existing sections 14-17, by section 1 of, and paragraphs 1 and 2 of Schedule 1 to, the Football (Disorder) Act 2000 (c. 25).
  - (10) 1991 c. 65.
  - (11) S.I. 2008/1863.
  - (12) 2003 c. 41.

- (b) the disbursements paid by a legal representative; and
- (c) any other expenses incurred in connection with the case.

[*Note. A costs order can be made under—*

- (a) *section 16 of the Prosecution of Offences Act 1985(13)(defence costs), for the payment out of central funds of a defendant's costs (see rule 76.4);*
- (b) *section 17 of the Prosecution of Offences Act 1985(14)(prosecution costs), for the payment out of central funds of a private prosecutor's costs (see rule 76.4);*
- (c) *section 18 of the Prosecution of Offences Act 1985(15)(award of costs against accused), for the payment by a defendant of another person's costs (see rules 76.5 and 76.6);*
- (d) *section 19(1) of the Prosecution of Offences Act 1985(16)and regulation 3 of the Costs in Criminal Cases (General) Regulations 1986, for the payment by a party of another party's costs incurred as a result of an unnecessary or improper act or omission by or on behalf of the first party (see rule 76.8);*
- (e) *section 19A of the Prosecution of Offences Act 1985(17)(costs against legal representatives, etc.)—*
  - (i) *for the payment by a legal representative of a party's costs incurred as a result of an improper, unreasonable or negligent act or omission by or on behalf of the representative, or*
  - (ii) *disallowing the payment to that representative of such costs (see rule 76.9);*
- (f) *section 19B of the Prosecution of Offences Act 1985(18)(provision for award of costs against third parties) and regulation 3F of the Costs in Criminal Cases (General) Regulations 1986(19), for the payment by a person who is not a party of a party's costs where there has been serious misconduct by the non-party (see rule 76.10);*
- (g) *section 109 of the Magistrates' Courts Act 1980, section 52 of the Senior Courts Act 1981 and rule 76.6, for the payment by an appellant of a respondent's costs on abandoning an appeal to the Crown Court (see rule 76.6);*
- (h) *section 52 of the Senior Courts Act 1981 and—*
  - (i) *rule 76.6, for the payment by a party of another party's costs on an appeal to the Crown Court in any case not covered by (c) or (g),*
  - (ii) *rule 76.7, for the payment by a party of another party's costs on an application to the Crown Court about the breach or variation of a deferred prosecution agreement,*

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- (13) 1985 c. 23; section 16 was amended by section 15 of, and paragraphs 14 and 15 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 150 of, and paragraph 103 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 7 of, and paragraph 7 of Schedule 3 to, the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), sections 69 and 312 of, and paragraph 57 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44), section 58 of, and Schedule 11 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 40 of, and paragraph 23 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and paragraphs 1 and 2 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
  - (14) 1985 c. 23; section 17 was amended by section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and paragraphs 1 and 4 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
  - (15) 1985 c. 23; section 18 was amended by section 15 of, and paragraph 16 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 26 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), sections 69 and 312 of the Criminal Justice Act 2003 (c. 44) and section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).
  - (16) 1985 c. 23.
  - (17) 1985 c. 23; section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).
  - (18) 1985 c. 23; section 19B was inserted by section 93 of the Courts Act 2003 (c. 39).
  - (19) S.I. 1986/1335; regulation 3F was inserted by regulation 7 of S.I. 2004/2408 and amended by regulations 2 and 5 of S.I. 2008/2448.

or on an application to lift the suspension of a prosecution after breach of such an agreement;

- (i) section 8 of the Bankers Books Evidence Act 1879, for the payment of costs by a party or by the bank against which an application for an order is made (see rule 76.7);
- (j) section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965, for the payment by the applicant for a witness summons of the costs of a party who applies successfully under rule 28.7 to have it withdrawn (see rule 76.7);
- (k) section 36(5) of the Criminal Justice Act 1972 or Schedule 3, paragraph 11, of the Criminal Justice Act 1988, for the payment out of central funds of a defendant's costs on a reference by the Attorney General of—
  - (i) a point of law, or
  - (ii) an unduly lenient sentence(see rule 76.4);
- (l) section 159(5) of the Criminal Justice Act 1988, for the payment by a person of another person's costs on an appeal about a reporting or public access restriction (see rule 76.6);
- (m) section 14H(5) of the Football Spectators Act 1989, for the payment by a defendant of another person's costs on an application to terminate a football banning order (see rule 76.7);
- (n) section 4(7) of the Dangerous Dogs Act 1991, for the payment by a defendant of another person's costs on an application to terminate a disqualification for having custody of a dog (see rule 76.7);
- (o) article 14 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008<sup>(20)</sup>, corresponding with section 16 of the Prosecution of Offences Act 1985 (see rule 76.4);
- (p) article 15 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with section 18 of the Prosecution of Offences Act 1985 (see rule 76.6);
- (q) article 16 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with an order under section 19(1) of the 1985 Act (see rule 76.8);
- (r) article 17 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with an order under section 19A of the 1985 Act (see rule 76.9);
- (s) article 18 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with an order under section 19B of the 1985 Act (see rule 76.10);
- (t) section 60 or 133 of the Extradition Act 2003 (costs where extradition ordered) for the payment by a defendant of another person's costs; or
- (u) section 61 or 134 of the Extradition Act 2003<sup>(21)</sup>(costs where discharge ordered) for the payment out of central funds of a defendant's costs.

See also the Criminal Costs Practice Direction.

Part 68 (Appeal to the Court of Appeal about conviction or sentence) contains rules about appeals against costs orders made in the Crown Court under the legislation listed in (c) above.

Part 63 (Appeal to the Crown Court) and Part 68 (Appeal to the Court of Appeal about conviction or sentence) contain rules about appeals against costs orders made under the legislation listed in (e) and (f) above.

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<sup>(20)</sup> S.I. 2008/1863.

<sup>(21)</sup> 2003 c. 41; sections 61 and 134 were amended by paragraphs 12, 13 and 16 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

*As to costs in restraint or receivership proceedings under Part 2 of the Proceeds of Crime Act 2002(22), see rules 61.19 to 61.22.*

*A costs order can be enforced—*

- (a) *against a defendant, under section 41(1) or (3) of the Administration of Justice Act 1970(23);*
- (b) *against a prosecutor, under section 41(2) or (3) of the Administration of Justice Act 1970;*
- (c) *against a representative, under regulation 3D of the Costs in Criminal Cases (General) Regulations 1986(24) or article 18 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008; or*
- (d) *against a non-party, under regulation 3I of the Costs in Criminal Cases (General) Regulations 1986(25) or article 31 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(26).*

*See also section 58, section 150(1) and Part III of the Magistrates' Courts Act 1980(27) and Schedule 5 to the Courts Act 2003(28).]*

### **Costs orders: general rules**

**76.2.**—(1) The court must not make an order about costs unless each party and any other person directly affected—

- (a) is present; or
- (b) has had an opportunity—
  - (i) to attend, or
  - (ii) to make representations.

(2) The court may make an order about costs—

- (a) at a hearing in public or in private; or
- (b) without a hearing.

(3) In deciding what order, if any, to make about costs, the court must have regard to all the circumstances, including—

- (a) the conduct of all the parties; and
- (b) any costs order already made.

(4) If the court makes an order about costs, it must—

- (a) specify who must, or must not, pay what, to whom; and
- (b) identify the legislation under which the order is made, where there is a choice of powers.

(5) The court must give reasons if it—

- (a) refuses an application for a costs order; or

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(22) 2002 c. 29.

(23) 1970 c. 31; section 41(3) was amended by section 62 of, and paragraph 35 of Schedule 13 to the Tribunals, Courts and Enforcement Act 2007 (c. 15). It is further amended by section 17 of, and paragraph 52 of Schedule 9 to, the Crime and Courts Act 2013 (c. 22), with effect from a date to be appointed.

(24) S.I. 1986/1335; regulation 3D was inserted by article 2 of S.I. 1991/789 and amended by regulation 6 of S.I. 2004/2408.

(25) S.I. 1986/1335; regulation 3I was inserted by regulation 7 of S.I. 2004/2408.

(26) S.I. 2008/1863.

(27) 1980 c. 43; section 58 was amended by section 33 of, and paragraph 80 of Schedule 2 to, the Family Law Reform Act 1987 (c. 42); a relevant amendment was made to section 150(1) by paragraph 250 of Schedule 8, and Schedule 10 to, the Courts Act 2003 (c. 39).

(28) 2003 c. 39; Schedule 5 was amended by articles 2, 4, 6, 7 and 8 of S.I. 2006/1737. It is further amended by section 88 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), with effect from a date to be appointed.

- (b) rejects representations opposing a costs order.
- (6) If the court makes an order for the payment of costs—
  - (a) the general rule is that it must be for an amount that is sufficient reasonably to compensate the recipient for costs—
    - (i) actually, reasonably and properly incurred, and
    - (ii) reasonable in amount; but
  - (b) the court may order the payment of—
    - (i) a proportion of that amount,
    - (ii) a stated amount less than that amount,
    - (iii) costs from or until a certain date only,
    - (iv) costs relating only to particular steps taken, or
    - (v) costs relating only to a distinct part of the case.
- (7) On an assessment of the amount of costs, relevant factors include—
  - (a) the conduct of all the parties;
  - (b) the particular complexity of the matter or the difficulty or novelty of the questions raised;
  - (c) the skill, effort, specialised knowledge and responsibility involved;
  - (d) the time spent on the case;
  - (e) the place where and the circumstances in which work or any part of it was done; and
  - (f) any direction or observations by the court that made the costs order.
- (8) If the court orders a party to pay costs to be assessed under rule 76.11, it may order that party to pay an amount on account.
- (9) An order for the payment of costs takes effect when the amount is assessed, unless the court exercises any power it has to order otherwise.

*[Note. Under the powers to which apply rule 76.8 (costs resulting from unnecessary or improper act, etc.) and rule 76.9 (costs against a legal representative), specified conduct must be established for such orders to be made.*

*The amount recoverable under a costs order may be affected by the legislation under which the order is made. See, for example, section 16A of the Prosecution of Offences Act 1985(29).*

*Under section 141 of the Powers of Criminal Courts (Sentencing) Act 2000(30) and section 75 of the Magistrates' Courts Act 1980(31), the Crown Court and magistrates' court respectively can allow time for payment, or payment by instalments.]*

### **Court's power to vary requirements under Sections 2, 3 and 4**

- 76.3.—**(1) The court may—
- (a) extend a time limit for serving an application or representations under section 2, 3 or 4 of this Part, even after it has expired; and
  - (b) consider an application or representations—
    - (i) made in a different form to one set out in the Practice Direction, or

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(29) 1985 c. 23; section 16A was inserted by paragraphs 1 and 3 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(30) 2000 c. 6.

(31) 1980 c. 43, section 75 was amended by section 11 of, and paragraph 6 of Schedule 2 to, the Maintenance Enforcement Act 1991 (c. 17).

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- (ii) made orally instead of in writing.
- (2) A person who wants an extension of time must—
  - (a) apply when serving the application or representations for which it is needed; and
  - (b) explain the delay.