
STATUTORY INSTRUMENTS

2022 No. 815

The Criminal Procedure (Amendment No. 2) Rules 2022

Amendments to the Criminal Procedure Rules

23. In Part 45 (Costs), in rule 45.4 (Costs out of central funds)—

(a) for paragraphs (4) to (8) substitute—

“(4) Where a person wants the court to make an order that person must apply as soon as practicable and—

(a) on an application for a defendant’s costs order—

(i) outline the type of costs and the amount claimed, if that person the applicant wants the court to direct an assessment; or

(ii) specify the amount claimed, giving details, if that person the applicant wants the court to assess the amount itself; or

(b) on an application for a prosecutor’s costs order—

(i) apply in writing and serve it on the court officer (or, in the Court of Appeal, the Registrar), and

(ii) in the application specify the amount claimed to the date of the application and provide the information listed in paragraph (5).

(5) The information required by paragraph (4)(b) is—

(a) a summary of the items of work to date done by a solicitor;

(b) a statement of the dates on which items of work were done, the time taken and the sums claimed;

(c) details of any disbursements claimed, the circumstances in which they were incurred and the amounts claimed in respect of them, and

(d) such further particulars, information and documents as the court may require.

(6) The general rule is that the court must make an order, but—

(a) the court may decline to make a defendant’s costs order if, for example—

(i) the defendant is convicted of at least one offence, or

(ii) the defendant’s conduct led the prosecutor reasonably to think the prosecution case stronger than it was;

(b) the court may decline to make a prosecutor’s costs order if, for example, the prosecution was started or continued unreasonably; and

(c) the court may decline to make an order if the applicant fails to provide enough information for the court to decide whether to make an order at all and, if so, whether it should be for the full amount recoverable or for a lesser sum.

(7) If the court makes an order—

(a) the general rule is that it must be for such amount as the court considers reasonably sufficient to compensate the applicant for any expenses properly incurred in the proceedings;

- (b) where the court considers there to be circumstances making it inappropriate for the applicant to recover that amount then the order must be for such lesser amount as the court considers just and reasonable;
 - (c) the court may fix the amount to be paid in a case in which either—
 - (i) the recipient agrees the amount, or
 - (ii) the court decides to allow a lesser sum than the full amount otherwise recoverable; and
 - (d) if the court does not fix the amount itself it must direct an assessment under, as applicable—
 - (i) Part III of the Costs in Criminal Cases (General) Regulations 1986(1), or
 - (ii) Part 3 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(2).
- (8) If the court makes a defendant’s costs order—
- (a) the order may not require the payment of any amount in respect of fees payable to a legal representative, or disbursements paid by a legal representative (including expert witness costs), but if the defendant is an individual then an order may require payment of such an amount in a case—
 - (i) in a magistrates’ court, including in an extradition case,
 - (ii) in the Crown Court, on appeal from a magistrates’ court,
 - (iii) in the Crown Court, where the defendant has been sent for trial, the High Court gives permission to serve a draft indictment or the Court of Appeal orders a retrial and the defendant has been found financially ineligible for legal aid, or
 - (iv) in the Court of Appeal, on an appeal against a verdict of not guilty by reason of insanity, or against a finding under the Criminal Procedure (Insanity) Act 1964(3), or on an appeal under section 16A of the Criminal Appeal Act 1968(4) (appeal against order made in cases of insanity or unfitness to plead);
 - (b) any such amount may not exceed an amount specified by regulations made by the Lord Chancellor; and
 - (c) an order which includes an amount in respect of fees payable to a legal representative, or disbursements paid by a legal representative, must include a statement to that effect.
- (9) If the court fixes the amount to be paid itself, it must do so subject to any restriction on the amount that is imposed by regulations made by the Lord Chancellor.
- (10) If the court directs an assessment, the order must specify any restriction on the amount to be paid that the court considers appropriate.”; and
- (b) for the final paragraph of the note to the rule substitute—

“Where the court makes an order for the payment of a defendant’s costs out of central funds, see also section 16A of the Prosecution of Offences Act 1985(5), sections 62A, 62B,

(1) S.I. 1986/1335; relevant amending instruments are S.I. 1999/2096 and S.I. 2008/2448.

(2) S.I. 2008/1863.

(3) 1964 c. 84.

(4) 1968 c. 19; section 16A was inserted by section 25 of the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(5) 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) and amended by S.I. 2014/130.

135A and 135B of the Extradition Act 2003(6) and regulations 4A and 7 of the Costs in Criminal Cases (General) Regulations 1986(7).J”

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- (6) [2003 c. 41](#); sections 62A and 62B were inserted by paragraphs 12 and 15 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act [2012 \(c. 10\)](#) and sections 135A and 135B were inserted by paragraphs 12 and 18 and Part 4 of that Schedule.
- (7) [S.I. 1986/1335](#); regulation 4A was inserted by regulations 4 and 5 of [S.I. 2012/1804](#). Regulation 7 was substituted by regulations 4 and 6 of [S.I. 2012/1804](#) and amended by [S.I. 2013/2830](#).