

**2012 No. 1804**

**CRIMINAL LAW, ENGLAND AND WALES**

**The Costs in Criminal Cases (General) (Amendment)  
Regulations 2012**

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| <i>Made</i> - - - -           | <i>9th July 2012</i>    |
| <i>Laid before Parliament</i> | <i>12th July 2012</i>   |
| <i>Coming into force</i> - -  | <i>1st October 2012</i> |

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by sections 20 and 29(2) of the Prosecution of Offences Act 1985(a).

**Citation, commencement, application and transitional provision**

1. These Regulations may be cited as the Costs in Criminal Cases (General) (Amendment) Regulations 2012 and come into force on 1st October 2012.

2. With the exception of regulation 7, these Regulations apply—

- (a) to cases committed, transferred or sent to the Crown Court on or after 1st October 2012;
- (b) to appeals and references to the Court of Appeal where the application for leave to appeal, appeal notice or notice of reference was served on or after 1st October 2012; and
- (c) in all other cases, to proceedings commenced on or after 1st October 2012.

3. In any case, appeal or reference not described in regulation 2, the Costs in Criminal Cases (General) Regulations 1986(b) apply as though the amendments in regulations 5 and 6 of these Regulations had not been made.

**Amendment to the Costs in Criminal Cases (General) Regulations 1986**

4. The Costs in Criminal Cases (General) Regulations 1986 are amended as follows.

5. After regulation 4 insert—

**“Costs fixed by the court**

**4A.** Where the court fixes an amount to be paid to the accused out of central funds in accordance with section 16(6C) of the Act(c) or sections 62A(4) or 135A(4) of the

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(a) 1985 c.23. Sections 20 and 29(2) of the Prosecution of Offences Act 1985 are amended by paragraphs 6 and 8 respectively of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10).

(b) S.I. 1986/1335 as amended by S.I. 1999/2096, S.I. 2001/611, S.I. 2005/2622, S.I. 2008/2448 and S.I. 2009/2720. There are other amendments that are not relevant to the subject matter of these Regulations.

(c) Subsection (6C) is inserted by paragraph 2 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Extradition Act 2003(a), it must, in relation to any amounts payable in respect of legal costs(b), calculate such amounts in accordance with the rates or scales or other provision made by the Lord Chancellor pursuant to regulation 7(7), whether or not that results in the fixing of an amount that the court considers reasonably sufficient or necessary to compensate the accused.”

6. For regulation 7 substitute—

“7.—(1) The appropriate authority shall consider the claim and any further particulars, information or documents submitted by the applicant under regulation 6(5), and shall allow costs in respect of—

- (a) such work as appears to it to have been actually and reasonably done; and
- (b) such disbursements as appear to it to have been actually and reasonably incurred.

(2) In calculating costs under paragraph (1) the appropriate authority shall take into account all the relevant circumstances of the case including the nature, importance, complexity and difficulty of the work and the time involved.

(3) Any doubts which the appropriate authority may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved against the applicant.

(4) The costs awarded shall not exceed the costs actually incurred.

(5) Subject to paragraph (6), the appropriate authority shall allow such legal costs as it considers reasonably sufficient to compensate the applicant for any expenses properly incurred by him in the proceedings.

(6) Where the subject of a costs order is an individual and—

- (a) the order was made under section 16(1), (3) or (4)(a)(ii) or (iii) or (d) of the Act;
- (b) the order was made under section 16 and includes legal costs that were incurred in proceedings in a court below which were—
  - (i) proceedings in a magistrates’ court; or
  - (ii) proceedings on an appeal to the Crown Court under section 108 of the Magistrates’ Courts Act 1980(c); or
- (c) the order includes an amount in respect of legal costs incurred in proceedings in a magistrates’ court under the Extradition Act 2003,

the appropriate authority shall calculate amounts payable out of central funds in respect of legal costs to the individual in accordance with the rates or scales or other provision made by the Lord Chancellor pursuant to paragraph (7), whether or not that results in the fixing of an amount that the appropriate authority considers reasonably sufficient or necessary to compensate the individual.

(7) The Lord Chancellor shall, with the consent of the Treasury, determine provision (whether in the form of rates or scales or other provision) as to how amounts payable out of central funds in respect of legal costs shall be calculated.”

7. In regulation 20(2)(b)(d), for “section 30 of the Magistrates’ Courts Act 1980” substitute “section 11 of the Powers of Criminal Courts (Sentencing) Act 2000(e)”.

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- (a) 2003 c.41. Sections 62A(4) and 135A(4) are inserted by paragraphs 15 and 18 respectively of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
  - (b) ‘Legal costs’ are defined in section 16A(10) of the Prosecution of Offences Act 1985, inserted by paragraph 3 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
  - (c) 1980 c.43.
  - (d) Section 30 of the Magistrates’ Courts Act 1980 was repealed by paragraph 1 of Schedule 12 to the Powers of Criminal Courts (Sentencing) Act 2000 (c.6). Section 11 of the Powers of Criminal Courts (Sentencing) Act 2000 now governs remand by magistrates’ court for medical examination.
  - (e) 2000 c.6.

Signed by the authority of the Lord Chancellor

9th July 2012

*J Djanogly*  
Parliamentary Under Secretary of State  
Ministry of Justice

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend Part III of the Costs in Criminal Cases (General) Regulations 1986 (S.I. 1986/1335) (the 1986 Regulations), which set out procedures relating to payments out of central funds pursuant to Part 2 of the Prosecution of Offences Act 1985 (c.23) (“the Act”) in respect of costs incurred in criminal proceedings. These regulations also correct an error in regulation 20 of the 1986 Regulations.

Regulation 2 provides that, with the exception of regulation 7 (which applies to all cases), these Regulations only apply to criminal proceedings arising on or after 1<sup>st</sup> October 2012. Regulation 3 provides that in any case, appeal or reference arising before 1<sup>st</sup> October 2012 the Costs in Criminal Cases (General) Regulations 1986 apply as though they had not been amended by these regulations.

Regulation 5 inserts new regulation 4A into the 1986 Regulations. Regulation 4A applies where the court fixes an amount to be paid out of central funds to a successful defendant or appellant in accordance with section 16(6C) of the Act or sections 62A(4) or 135A(4) of the Extradition Act 2003 (c.41). It provides that the court in such cases must, in relation to any amounts payable in respect of legal costs, calculate such amounts in accordance with the rates or scales or other provision made by the Lord Chancellor in relation to the calculation of amounts payable out of central funds, whether or not that results in the fixing of an amount that the court considers reasonably sufficient or necessary to compensate the accused.

Regulation 6 substitutes regulation 7 of the 1986 Regulations. New regulation 7(1)-(5) of the 1986 Regulations makes similar provision to the regulation being substituted. New regulation 7(6) of the 1986 Regulations applies to legal proceedings where not all individuals are eligible for legal aid and provides that in such proceedings, if the amount of an award out of central funds is not fixed by the court, any amount payable in respect of legal costs must be calculated in accordance with rates or scales or other provision made by the Lord Chancellor, whether or not that results in the fixing of an amount that the appropriate authority considers reasonably sufficient or necessary to compensate the person. New regulation 7(7) of the 1986 Regulations requires the Lord Chancellor with the consent of the Treasury, to determine provision as to how amounts payable out of central funds in respect of legal costs shall be calculated.

Regulation 7 replaces a reference to section 30 of the Magistrates’ Courts Act 1980 (c.43), which has been repealed, with a reference to section 11 of the Powers of Criminal Courts (Sentencing) Act 2000 (c.6), which replaced section 30.

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£4.00

E3913 07/2012 123913T 19585

ISBN 978-0-11-152666-8



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