



Costs in Criminal Cases Act (Northern Ireland) 1968

1968 CHAPTER 10

An Act to provide for the payment of costs in certain criminal proceedings; to repeal certain obsolete or unnecessary enactments; and for matters connected therewith. [11th June 1968]

1 Expenses of prosecution.

- (1) Where any criminal proceedings are instituted by or on behalf of, or taken over by, the Attorney General, or are instituted by a constable, or by or on behalf of the Ministry of Home Affairs^{F1} (in this Act referred to as “the Ministry”), the costs of the prosecution of such proceedings (including any costs incurred in connection with any matter preliminary or incidental to, and with any appeal from, those proceedings) shall,^{F2} in accordance with arrangements approved by the Treasury], be defrayed in the first instance by the Ministry.
- (2) Except in the case of proceedings to which subsection (1) applies, the costs of the prosecution of any criminal proceedings (including any costs incurred in connection with any matter preliminary or incidental to, and with any appeal from, those proceedings) shall, subject to subsection (3), be defrayed in the first instance by the prosecutor.
- (3) ... where the prosecutor is any ...^{F3} department of the Government of Northern Ireland, the costs to be defrayed by that department under subsection (2) shall be at such rates or of such amounts as may be generally or specially approved by the Ministry of Finance.^{F4}

Annotations:

- F1** Functions transf., SI 1973/2163
F2 2003 NI 13
F3 SI 1973/2163
F4 SI 1973/2163

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Modifications etc. (not altering text)

C1 S. 1 applied (6.4.2008) by Serious Crime Act 2007 (c. 27), ss. 37, 94(1), **Sch. 2 para. 20**; S.I. 2008/755, **art. 15(1)(g)(h)**

2 Costs of prosecution in cases of conviction.

- (1) The court by or before which any person is convicted of any offence may, in addition to any other order which it may make on or in consequence of such conviction, order, subject to rules made pursuant to section 7, that person to pay—
- (a) where the proceedings have been instituted by or on behalf of, or taken over by, the Attorney General, or have been instituted by a constable, or by or on behalf of the Ministry, to the Ministry; and
 - (b) in any other case, to the prosecutor;

the whole or any part of the costs of the prosecution, including any costs incurred in connection with any matter preliminary or incidental to the trial.

[^{F5}(1A) The amount of any costs ordered by a magistrates' court under this section to be paid by a person under the age of [^{F6} eighteen] shall not exceed the amount of any fine imposed on him.]

- (2) Any order under this section shall be enforceable—
- (a) if made by a magistrates' court, in the same manner as any other sum adjudged to be paid by a conviction of that court; or
 - (b) if made by any other court—
 - (i) in any case where the prosecutor is a private prosecutor, in the same manner as an order under section 3 for the payment by a private prosecutor of the costs of the defence; and
 - (ii) in any other case, in the same manner as any fine which has been or might have been imposed, in respect of the offence for which the person has been convicted, by the court making the order.

Annotations:

F5 1998 NI 9
F6 2002 c.26

3 Costs of defence in cases of acquittal, dismissal or discharge.

- (1) Subject to the provisions of this section and of section 6, any court before which a person is prosecuted or tried (including a magistrates' court conducting the preliminary investigation of an indictable offence)^{F7} or a judge of the Crown Court conducting a preparatory hearing under the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988], if—
- (a) the accused is acquitted; or
 - (b) the charge is dismissed, withdrawn or struck out; or
 - (c) in the case of a magistrates' court conducting the preliminary investigation of an indictable offence, the accused is discharged;

may—

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- (i) where the proceedings have been instituted by or on behalf of, or taken over by, the Attorney General, or have been instituted by a constable, or by or on behalf of the Ministry, order the Ministry; and
- (ii) in any other case, order the prosecutor;

to pay to the accused the whole or any part of the costs of the defence.

- (2) Where a person committed for trial is not subsequently tried, the court to which he is committed shall have the same power to order payment of costs under this Act as if the accused had been tried and acquitted.

[^{F7}(2A) Where a notice of transfer is given under Article 3 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988^{F8} (serious and complex fraud) or under Article 4 of the Children's Evidence (Northern Ireland) Order 1995 (certain cases involving children)] but a person in relation to whose case it is given is not tried on a charge to which it relates, the Crown Court shall have the same power to order the payment of costs under this Act as if that person had been tried and acquitted.]

- (3) The costs of the defence mentioned in subsection (1) shall, subject to subsection (4) and to rules pursuant to section 7, be such sums as appear to the court reasonably sufficient to compensate the accused for the expenses properly incurred by him in carrying on the defence (including, in the case of a trial, any proceedings preliminary or incidental to such trial) and to compensate any witness for the defence for the expense, trouble or loss of time properly incurred in, or incidental to, his attendance to give evidence.
- (4) Where an appellant is retried by virtue of an order under [^{F9} section 6 of the Criminal Appeal (Northern Ireland) Act 1980] and is acquitted on the retrial, the costs of the defence mentioned in subsection (1) shall include—
 - (a) any costs which could have been ordered to be paid under this section by the court by which he was originally tried if he had been acquitted at the original trial; and
 - (b) if no order was made under section 4(2) of this Act or under [section 41(2) of the Criminal Appeal (Northern Ireland) Act 1980] in respect of his expenses on appeal, any sums for the payment of which such an order could have been made.
- (5) Notwithstanding that the court makes no order under subsection (1) for the payment of the costs of the defence, it may, subject to section 6, order the payment by the Ministry or the prosecutor, as the case may require, of such sums as, subject to rules made pursuant to section 7, appear to the court reasonably sufficient to compensate any witness for the defence for the expense, trouble or loss of time properly incurred in, or incidental to, his attendance to give evidence.
- (6) Unless the court otherwise directs, no sum shall be payable in pursuance of an order under this section to, or in respect of, any witness for the defence who is a witness to character only.
- (7) Where a court orders, under this section, payment of the costs of the defence, the order shall be enforceable—
 - (a) where the prosecutor is a private prosecutor—
 - (i) if the court is a magistrates' court, in the same manner as an order made by a magistrates' court in respect of a civil debt; or

Sub-para. (ii) rep. by 1978 c. 23

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- (iii) in any other case, in the same manner as an order for the payment of costs made by the High Court in a civil case; or
 - (b) if the prosecutor is not a private prosecutor, in the same manner as is provided by section 25 of the Crown Proceedings Act 1947 for the payment of costs in civil proceedings.
- (8) In this section, “witness” means a person properly attending to give evidence, whether or not he gives evidence; and a person called to give evidence at the instance of the court may, whether or not he is a witness for the defence, be made the subject of an order under subsection (5).

Annotations:

- F7** 1988 NI 16
- F8** 1995 NI 3
- F9** 1980 c.47

4 Costs awarded by Court of Appeal.

- [^{F10}(1) When the Court of Appeal dismisses an appeal or an application for leave to appeal, it may, subject to rules made pursuant to section 7, order the appellant—
- (a) to pay to the Secretary of State the whole or any part of the costs of the appeal or application, including any expenses payable by the Secretary of State by virtue of section 28(2) of the Criminal Appeal (Northern Ireland) Act 1980;
 - ^{F11}(b) to pay to the Lord Chancellor the whole or any part of any expenses payable by the Lord Chancellor in respect of the appeal or application by virtue of the said section 28(2); and
 - (c) to pay the cost of any transcript of a record of proceedings made in accordance with rules of court under section 21 of that Act.]
- [^{F12}(1A) Where the Court of Appeal reverses or varies a ruling on an appeal under Part IV of the Criminal Justice (Northern Ireland) Order 2004 (prosecution appeals) it may, subject to rules made pursuant to section 7, make such order as to the costs to be paid by the accused, to such person as may be named in the order, as it considers just and reasonable.
- (1B) Costs ordered to be paid under subsection (1A) may include the cost of any transcript of a record of proceedings made in accordance with rules of court under section 21 of the Criminal Appeal (Northern Ireland) Act 1980.]
- (2) Without prejudice to the said [^{F13} section 28(2)] but subject to section 6 of this Act, the [^{F14} Court of Appeal] may, when it allows an appeal against conviction, including an appeal against a finding of not guilty on the ground of insanity^{F15} or a finding of unfitness to be tried], order the Ministry to pay to the appellant the whole or any part of the costs of the appellant.
- [^{F16}(2A) The Court may also order the Secretary of State to pay the costs of the appellant on an appeal under Article 8(11) of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988^{F12} or under Part IV of the Criminal Justice (Northern Ireland) Order 2004 (prosecution appeals)].]
- (3) The costs of the appellant mentioned in^{F16} subsections (2) and (2A)] shall, subject to rules made pursuant to section 7, be such sums as appear to the Court reasonably sufficient to compensate the appellant for any expenses properly incurred in the

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prosecution of his appeal (including any proceedings preliminary or incidental to such appeal) and in carrying on his defence at the court of trial, including any proceedings preliminary or incidental to such trial.

- (4) Where the [Court of Appeal] orders the payment of costs under this section, the order shall be enforceable in the same manner as an order for the payment of costs made by the High Court in a civil case but subject, in the case of costs payable by the Ministry, to section 25 of the Crown Proceedings Act 1947 .

[^{F17}(5) Where section 47A of the Criminal Appeal (Northern Ireland) Act 1980 (death of convicted person) applies, any reference in this section to the appellant includes the person approved under that section.]

Annotations:

- F10** SI 1982/159
F11 prosp. subst. by 2003 NI 10
F12 2004 NI 9
F13 [1980 c.47](#)
F14 [1978 c.23](#)
F15 1986 NI 4
F16 1988 NI 16
F17 [1995 c.35](#)

[^{F18}**4A** **Costs in certain proceedings in High Court or Court of Appeal.**

Where an order for the payment of costs is made in any criminal cause by the High Court or the Court of Appeal, not being an order under section 2 or 3, the order shall be enforceable in the same manner as an order for the payment of costs made by the High Court in a civil case, but subject to section 25 of the Crown Proceedings Act 1947 where that section is applicable.]

Annotations:

- F18** 1979 NI 3

5 **Costs awarded by county courts on appeals.**

- (1) A county court, when exercising, in criminal appeals, the jurisdiction conferred on it by [^{F19} Part IV of the County Courts (Northern Ireland) Order 1980 ^{M1}], may—
- (a) when it dismisses an appeal, order, subject to rules made pursuant to section 7, the appellant to pay to the respondent the whole or any part of the costs of the appeal; or
 - (b) when it allows an appeal against conviction, order, subject to section 6, the respondent to pay to the appellant the whole or any part of the costs of the appellant.
- (2) The costs of the appellant mentioned in subsection (1)(b) shall, subject to rules made pursuant to section 7, be such sums as appear to the county court reasonably sufficient to compensate the appellant for any expenses properly incurred in the prosecution of his appeal (including any proceedings preliminary or incidental to such an appeal) and in carrying on his defence at the magistrates' court, including any proceedings preliminary or incidental to the proceedings in that court.

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- (3) Notwithstanding that the court makes no order under subsection (1)(b) for the payment of the costs of the appellant, it may, subject to section 6, order the payment by the respondent of such sums as, subject to rules made pursuant to section 7, appear to the county court reasonably sufficient to compensate any person properly attending to give evidence for the appellant, or at the instance of the court, on an appeal against conviction to that court, or in proceedings preliminary or incidental to such appeal, whether or not he gives evidence, for the expense, trouble or loss of time properly incurred in, or incidental to, his attendance.
- (4) Where, under this section, a county court orders the payment of costs by—
- (a) the person who has appealed against the conviction, the order shall be enforceable in the same manner as a sum adjudged to be paid by a conviction of a magistrates' court;
 - (b) a prosecutor who is a private prosecutor, the order shall be enforceable in the same manner as an order made by a magistrates' court in respect of a civil debt;
 - (c) a prosecutor who is not a private prosecutor, the order shall be enforceable in the same manner as is provided by section 25 of the Crown Proceedings Act 1947 for the payment of costs in civil proceedings.

Annotations:

F19 1980 NI 3

Marginal Citations

M1 1980 N.I. 3

^{F20}5A Fees of required interpreter.

Notwithstanding anything to the contrary contained in this Act, where in any criminal proceedings an interpreter is required because of a defendant's lack of English, the expenses properly incurred on his employment shall, in accordance with rules made pursuant to section 7, be defrayed by the Ministry.]

Annotations:

F20 1973 c.15

6 Effect of costs of legal aid.

Notwithstanding anything to the contrary contained in sections 3, 4 and 5, where any costs of a defence or appeal are defrayable under^{F21} [^{F22} Part III of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981^{M2}] or under [^{F23} section 28(2) of the Criminal Appeal (Northern Ireland) Act 1980^{M3}]—

- (a) no order shall be made under section 3(1) or (5), 4(2) or 5(1)(b) or (3) in favour of the defendant or appellant; and
- (b) the appropriate court may, if the costs would, had any order been made under section 3(1) or 5(1)(b), have been payable to the defendant or appellant, as the case may be, by any person other than the Ministry or any ...^{F24} department of the Government of Northern Ireland, order the prosecutor or the respondent, as the case may be,^{F25} to pay to the Lord Chancellor the whole or any part of any costs of the defence or appeal defrayable by him under the said Order of 1981].

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Annotations:

- F21 prosp. subst. by 2003 NI 10
- F22 1981 NI 8
- F23 1980 c.47
- F24 SI 1973/2163
- F25 SI 1982/159

Marginal Citations

- M2 1981 NI 8
- M3 1980 c. 47

F267 Rules relating to costs.

Rules of court, Crown Court rules, county court rules and magistrates' courts rules may provide for the rates or scales of payment [^{F27} or the taxation] of costs under sections 2 to 5 in so far as those sections relate to costs in the Court of Appeal, the Crown Court, county courts and magistrates' courts respectively.]

Annotations:

- F26 1978 c.23
- F27 SR 1979/90

8 Saving.

Nothing in this Act shall affect any other statutory provision requiring the payment of the costs of the prosecution or defence, or of an appeal, in respect of any offence, out of any assets, moneys or fund, or by any person other than the Ministry or the prosecutor, defendant, appellant or respondent, as the case may be.

9 Financial provisions.

Any sum which is to be defrayed or paid —
(a) by the Ministry ...^{F28} under this Act; or

Para. (b) rep. by 1980 c. 47

shall be defrayed out of moneys provided by [^{F29} the Parliament of the United Kingdom and any sum to be defrayed under this Act by a department of the Government of Northern Ireland shall be defrayed out of moneys appropriated by Measure].

Annotations:

- F28 SI 1973/2163
- F29 SI 1973/2163

10 Interpretation.

(1) In this Act—

“constable” means any member of the Royal Ulster Constabulary acting as such
...^{F30};

“the Ministry” has the meaning assigned to it by section 1(1);

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“private prosecutor” means a prosecutor in any prosecution other than a prosecution instituted by or on behalf of, or taken over by, the Attorney General, or instituted by a constable, or by or on behalf of a department of the Government of Northern Ireland or of the United Kingdom;

“prosecutor” means the person by or on whose behalf the criminal proceedings were instituted;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

[^{F31}(1A) References in this Act to the Attorney General include references to the Director of Public Prosecutions.]

(2) Without prejudice to the definition of “costs” in section 46(2) of the Interpretation Act (Northern Ireland) 1954 , references in this Act to costs paid or defrayed, or ordered to be paid or defrayed, by the Ministry, or by a prosecutor, defendant, appellant or respondent, as the case may be, under this Act shall be construed as including references to any sums so paid or defrayed, or ordered to be paid or defrayed, as compensation to, or expenses of, a witness or other person or as counsel's or solicitor's fees.

Annotations:

F30 SLR 1980

F31 2003 NI 13

S. 11, with Schedule, effects repeals

12 Short title and commencement.

(1) This Act may be cited as the Costs in Criminal Cases Act (Northern Ireland) 1968.

(2) *Commencement*

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Schedule—Repeals

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Changes and effects yet to be applied to :

- s. 1(1) substituted by S.I. 2010/976 Sch. 14 para. 3(2)
- s. 1(3) text amended by S.I. 2010/976 Sch. 14 para. 3(3)
- s. 2(1)(a) substituted by S.I. 2010/976 Sch. 14 para. 4
- s. 3(1)(i) substituted by S.I. 2010/976 Sch. 14 para. 5(2)
- s. 3(5) text amended by S.I. 2010/976 Sch. 14 para. 5(3)
- s. 4(1)(a) text amended by S.I. 2010/976 Sch. 14 para. 6(2)
- s. 4(2) text amended by S.I. 2010/976 Sch. 14 para. 6(3)
- s. 4(2A) text amended by S.I. 2010/976 Sch. 14 para. 6(4)
- s. 4(4) text amended by S.I. 2010/976 Sch. 14 para. 6(5)
- s. 5A text amended by S.I. 2010/976 Sch. 14 para. 7
- s. 6(b) text amended by S.I. 2010/976 Sch. 14 para. 8
- s. 8 text amended by S.I. 2010/976 Sch. 14 para. 9
- s. 9 omitted by S.I. 2010/976 Sch. 14 para. 10
- s. 10(1) text amended by S.I. 2010/976 Sch. 14 para. 11(2)
- s. 10(1A) omitted by S.I. 2010/976 Sch. 14 para. 11(3)
- s. 10(2) text amended by S.I. 2010/976 Sch. 14 para. 11(4)

Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:

- Act transfer of functions by S.I. 2010/976 Sch. 17 para. 26