

## SCHEDULES

### SCHEDULE 7

Section 62

#### COSTS IN CRIMINAL CASES

##### PART 1

#### PROSECUTION OF OFFENCES ACT 1985

##### *Introduction*

- 1 The Prosecution of Offences Act 1985 is amended as follows.

##### *Defence costs*

- 2 (1) Section 16 (defence costs) is amended as follows.
- (2) After subsection (6) insert—
- “(6A) Where the court considers that there are circumstances that make it inappropriate for the accused to recover the full amount mentioned in subsection (6), a defendant’s costs order must be for the payment out of central funds of such lesser amount as the court considers just and reasonable.
- (6B) Subsections (6) and (6A) have effect subject to—
- (a) section 16A, and
- (b) regulations under section 20(1A)(d).
- (6C) When making a defendant’s costs order, the court must fix the amount to be paid out of central funds in the order if it considers it appropriate to do so and—
- (a) the accused agrees the amount, or
- (b) subsection (6A) applies.
- (6D) Where the court does not fix the amount to be paid out of central funds in the order—
- (a) it must describe in the order any reduction required under subsection (6A), and
- (b) the amount must be fixed by means of a determination made by or on behalf of the court in accordance with procedures specified in regulations made by the Lord Chancellor.”
- (3) Omit subsections (7) and (9).

*Legal costs*

3 After section 16 insert—

**“16A Legal costs**

- (1) A defendant’s costs order may not require the payment out of central funds of an amount that includes an amount in respect of the accused’s legal costs, subject to the following provisions of this section.
- (2) Subsection (1) does not apply where condition A, B or C is met.
- (3) Condition A is that the accused is an individual and the order is made under—
  - (a) section 16(1),
  - (b) section 16(3), or
  - (c) section 16(4)(a)(ii) or (iii) or (d).
- (4) Condition B is that the accused is an individual and the legal costs were incurred in proceedings in a court below which were—
  - (a) proceedings in a magistrates’ court, or
  - (b) proceedings on an appeal to the Crown Court under section 108 of the Magistrates’ Courts Act 1980 (right of appeal against conviction or sentence).
- (5) Condition C is that the legal costs were incurred in proceedings in the Supreme Court.
- (6) The Lord Chancellor may by regulations make provision about exceptions from the prohibition in subsection (1), including—
  - (a) provision amending this section by adding, modifying or removing an exception, and
  - (b) provision for an exception to arise where a determination has been made by a person specified in the regulations.
- (7) Regulations under subsection (6) may not remove or limit the exception provided by condition C.
- (8) Where a court makes a defendant’s costs order requiring the payment out of central funds of an amount that includes an amount in respect of legal costs, the order must include a statement to that effect.
- (9) Where, in a defendant’s costs order, a court fixes an amount to be paid out of central funds that includes an amount in respect of legal costs incurred in proceedings in a court other than the Supreme Court, the latter amount must not exceed an amount specified by regulations made by the Lord Chancellor.
- (10) In this section—

“legal costs” means fees, charges, disbursements and other amounts payable in respect of advocacy services or litigation services including, in particular, expert witness costs;

“advocacy services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide;

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“expert witness costs” means amounts payable in respect of the services of an expert witness, including amounts payable in connection with attendance by the witness at court or elsewhere;

“litigation services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to proceedings, or contemplated proceedings, to provide.”

#### *Prosecution costs*

- 4 (1) Section 17 (prosecution costs) is amended as follows.
- (2) In subsection (1) for “subsection (2)” substitute “subsections (2) and (2A)”.
- (3) After subsection (2) insert—
- “(2A) Where the court considers that there are circumstances that make it inappropriate for the prosecution to recover the full amount mentioned in subsection (1), an order under this section must be for the payment out of central funds of such lesser amount as the court considers just and reasonable.
- (2B) When making an order under this section, the court must fix the amount to be paid out of central funds in the order if it considers it appropriate to do so and—
- (a) the prosecutor agrees the amount, or
- (b) subsection (2A) applies.
- (2C) Where the court does not fix the amount to be paid out of central funds in the order—
- (a) it must describe in the order any reduction required under subsection (2A), and
- (b) the amount must be fixed by means of a determination made by or on behalf of the court in accordance with procedures specified in regulations made by the Lord Chancellor.”
- (4) Omit subsections (3) and (4).

#### *Costs of witnesses and appellants not in custody*

- 5 (1) Section 19 (provision for orders as to costs in other circumstances) is amended as follows.
- (2) After subsection (3) insert—
- “(3ZA) In relation to a sum that may be required by a court other than the Supreme Court to be paid out of central funds under regulations under subsection (3) —
- (a) the requirement under that subsection for the sum to be such sum as the court considers reasonably necessary to cover or compensate for expenses, fees, costs, trouble or losses is subject to regulations made under section 20(1A)(d), and
- (b) regulations under subsection (3) may make provision accordingly.”

(3) After subsection (3C) insert—

“(3D) Regulations under subsection (3) may make provision generally or only in relation to particular descriptions of persons, expenses, fees, costs, trouble or losses.”

(4) After subsection (4) insert—

“(4A) Subsection (4) has effect subject to regulations under section 20(1A)(d).

(4B) An order under subsection (4) may not require the payment out of central funds of a sum that includes a sum in respect of legal costs (as defined in section 16A), except where regulations made by the Lord Chancellor provide otherwise.

(4C) Regulations under subsection (4B) may, in particular, include—

- (a) provision for an exception to arise where a determination has been made by a person specified in the regulations,
- (b) provision requiring the court, when it orders the payment of a sum that includes a sum in respect of legal costs, to include a statement to that effect in the order, and
- (c) provision that the court may not order the payment of a sum in respect of legal costs exceeding an amount specified in the regulations.”

### *Regulations*

6 (1) Section 20 (regulations) is amended as follows.

(2) In subsection (1) omit the words from “and the regulations” to the end.

(3) After that subsection insert—

“(1A) The Lord Chancellor may by regulations—

- (a) make provision as to the amounts that may be ordered to be paid out of central funds in pursuance of a costs order, whether by specifying rates or scales or by making other provision as to the calculation of the amounts,
- (b) make provision as to the circumstances in which and conditions under which such amounts may be paid or ordered to be paid,
- (c) make provision requiring amounts required to be paid out of central funds by a costs order to be calculated having regard to regulations under paragraphs (a) and (b),
- (d) make provision requiring amounts required to be paid to a person out of central funds by a relevant costs order to be calculated in accordance with such regulations (whether or not that results in the fixing of an amount that the court considers reasonably sufficient or necessary to compensate the person), and
- (e) make provision as to the review of determinations of amounts required to be paid out of central funds by costs orders.

(1B) In subsection (1A)(d) “relevant costs order” means a costs order other than—

- (a) an order made by any court under section 17, and

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- (b) so much of a costs order made by the Supreme Court as relates to expenses, fees, costs, trouble or losses incurred in proceedings in that court.
- (1C) Regulations under subsection (1A) may, in particular—
- (a) make different provision in relation to amounts to be paid in respect of different expenses, fees, costs, trouble and losses,
  - (b) make different provision in relation to different costs orders and different areas, and
  - (c) make different provision in relation to the fixing of an amount in a costs order and the fixing of an amount by means of a determination.”
- (4) In subsection (3)—
- (a) for “subsection (1)” substitute “subsection (1A)”,
  - (b) for “rates or scales of allowances” substitute “provision as to the calculation of amounts”, and
  - (c) after “order” insert “(whether in the form of rates or scales or other provision)”.

### *Interpretation*

- 7 (1) Section 21 (interpretation) is amended as follows.
- (2) In subsection (4) after “16” insert “, 16A”.
  - (3) In subsection (4A)(a) after “16” insert “, 16A”.

### *Supplementary*

- 8 (1) Section 29 (regulations) is amended as follows.
- (2) For subsection (1) substitute—
    - “(1) A power to make regulations under this Act is exercisable by statutory instrument.
    - (1A) A statutory instrument containing regulations under this Act is subject to annulment in pursuance of a resolution of either House of Parliament, subject to subsection (1B).
    - (1B) A statutory instrument containing (whether alone or with other provision) regulations under section 16A(6) or 19(4B) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”
  - (3) In subsection (2) for “Any such regulations” substitute “Regulations under this Act”.

**PART 2**

## ATTORNEY GENERAL'S REFERENCES

*Reference of point of law following acquittal on indictment*

- 9 (1) Section 36 of the Criminal Justice Act 1972 (reference of point of law following acquittal on indictment) is amended as follows.
- (2) In subsection (5) omit “to his costs, that is to say”.
- (3) Omit subsection (5A).
- (4) After that subsection insert—
- “(5A) Subsection (5) has effect subject to—
- (a) subsection (5B), and
- (b) regulations under section 20(1A)(d) of the Prosecution of Offences Act 1985 (as applied by this section).
- (5B) A person is not entitled under subsection (5) to the payment of sums in respect of legal costs (as defined in section 16A of the Prosecution of Offences Act 1985) incurred in proceedings in the Court of Appeal.
- (5C) Subsections (1A) to (1C) and (3) of section 20 of the Prosecution of Offences Act 1985 (regulations as to amounts ordered to be paid out of central funds) apply in relation to amounts payable out of central funds under subsection (5) as they apply in relation to amounts payable out of central funds in pursuance of costs orders made under section 16 of that Act.”
- 10 In consequence of the amendments made by paragraph 9, omit paragraph 8 of Schedule 1 to the Prosecution of Offences Act 1985.

*Reference of sentence of Crown Court appearing to be unduly lenient*

- 11 (1) Schedule 3 to the Criminal Justice Act 1988 (reference of sentence of Crown Court appearing to be unduly lenient) is amended as follows.
- (2) In paragraph 11 (recovery of costs of representation)—
- (a) number the existing provision sub-paragraph (1),
- (b) in that sub-paragraph, omit “to his costs, that is to say”, and
- (c) after that sub-paragraph insert—
- “(2) Sub-paragraph (1) has effect subject to—
- (a) sub-paragraph (3), and
- (b) regulations under section 20(1A)(d) of the Prosecution of Offences Act 1985 (as applied by this paragraph).
- (3) A person is not entitled under sub-paragraph (1) to the payment of sums in respect of legal costs (as defined in section 16A of the Prosecution of Offences Act 1985) incurred in proceedings in the Court of Appeal.
- (4) Subsections (1A) to (1C) and (3) of section 20 of the Prosecution of Offences Act 1985 (regulations as to amounts ordered to be

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paid out of central funds) apply in relation to funds payable out of central funds under sub-paragraph (1) as they apply in relation to amounts payable out of central funds in pursuance of costs orders made under section 16 of that Act.”

- (3) In paragraph 12 (application to Northern Ireland)—
- (a) for “11”, in each place, substitute “11(1)”, and
  - (b) after sub-paragraph (d) insert—
    - “(e) paragraph 11 has effect as if sub-paragraphs (2) to (4) were omitted.”

### PART 3

#### EXTRADITION ACT 2003

##### *Introduction*

- 12 The Extradition Act 2003 is amended as follows.

##### *Extradition to Category 1 Territories*

- 13 (1) Section 61 (costs where discharge ordered) is amended as follows.
- (2) After subsection (5) insert—
- “(5A) In England and Wales, an order under subsection (5) is to be made, and the appropriate amount is to be determined, in accordance with sections 62A and 62B.
  - (5B) In Scotland and Northern Ireland, an order under subsection (5) is to be made, and the appropriate amount is to be determined, in accordance with subsections (6) to (9).”
- 14 In section 62 (supplementary provision about costs where discharge ordered) omit subsections (1) and (2).
- 15 After section 62 insert—

##### **“62A Appropriate amount: England and Wales**

- (1) For the purposes of an order under section 61(5), the appropriate amount is such amount as the judge or court making the order considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses properly incurred by the person in the proceedings under this Part.
- (2) But if the judge or court considers that there are circumstances that make it inappropriate for the person to recover the full amount mentioned in subsection (1), the order under section 61(5) must be for the payment out of money provided by Parliament of such lesser amount as the judge or court considers just and reasonable.
- (3) Subsections (1) and (2) have effect subject to—
  - (a) section 62B, and

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- (b) regulations under section 20(1A)(d) of the Prosecution of Offences Act 1985 (as applied by this section).
- (4) When making an order under section 61(5), the judge or court must fix the amount to be paid out of money provided by Parliament in the order if the judge or court considers it appropriate to do so and—
  - (a) the person in whose favour the order is made agrees the amount, or
  - (b) subsection (2) applies.
- (5) Where the judge or court does not fix the amount to be paid out of money provided by Parliament in the order—
  - (a) the judge or court must describe in the order any reduction required under subsection (2), and
  - (b) the amount must be fixed by means of a determination made by or on behalf of the judge or court in accordance with procedures specified in regulations made by the Lord Chancellor.
- (6) Subsections (1A) to (1C) and (3) of section 20 of the Prosecution of Offences Act 1985 (regulations as to amounts ordered to be paid out of central funds) apply in relation to amounts payable out of money provided by Parliament in pursuance of an order under section 61 as they apply in relation to amounts payable out of central funds in pursuance of costs orders made under section 16 of that Act.
- (7) This section extends to England and Wales only.

#### **62B Legal costs: England and Wales**

- (1) An order under section 61(5) may not require the payment out of money provided by Parliament of an amount that includes an amount in respect of legal costs incurred by the person in whose favour the order is made, subject to the following provisions of this section.
- (2) Subsection (1) does not apply in relation to legal costs incurred in—
  - (a) proceedings in a magistrates' court, or
  - (b) proceedings in the Supreme Court.
- (3) The Lord Chancellor may by regulations make provision about exceptions from the prohibition in subsection (1), including—
  - (a) provision amending this section by adding, modifying or removing an exception, and
  - (b) provision for an exception to arise where a determination has been made by a person specified in the regulations.
- (4) Regulations under subsection (3) may not remove or limit the exception provided by subsection (2)(b).
- (5) Where a judge or court makes an order under section 61(5) requiring the payment out of money provided by Parliament of an amount that includes an amount in respect of legal costs, the order must include a statement to that effect.
- (6) Where, in an order under section 61(5), a judge or court fixes an amount to be paid out of money provided by Parliament that includes an amount



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in respect of legal costs incurred in proceedings in a court other than the Supreme Court, the latter amount must not exceed an amount specified by regulations made by the Lord Chancellor.

(7) In this section—

“legal costs” means fees, charges, disbursements and other amounts payable in respect of advocacy services or litigation services including, in particular, expert witness costs;

“advocacy services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide;

“expert witness costs” means amounts payable in respect of the services of an expert witness, including amounts payable in connection with attendance by the witness at court or elsewhere;

“litigation services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to proceedings, or contemplated proceedings, to provide.

(8) This section extends to England and Wales only.”

#### *Extradition to Category 2 Territories*

16 (1) Section 134 (costs where discharge ordered) is amended as follows.

(2) After subsection (5) insert—

“(5A) In England and Wales, an order under subsection (5) is to be made, and the appropriate amount is to be determined, in accordance with sections 135A and 135B.

(5B) In Scotland and Northern Ireland, an order under subsection (5) is to be made, and the appropriate amount is to be determined, in accordance with subsections (6) to (9).”

17 In section 135 (supplementary provision about costs where discharge ordered) omit subsections (1) and (2).

18 After section 135 insert—

#### **“135A Appropriate amount: England and Wales**

(1) For the purposes of an order under section 134(5), the appropriate amount is such amount as the judge or court making the order considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses properly incurred by the person in the proceedings under this Part.

(2) But if the judge or court considers that there are circumstances that make it inappropriate for the person to recover the full amount mentioned in subsection (1), the order under section 134(5) must be for the payment out of money provided by Parliament of such lesser amount as the judge or court considers just and reasonable.

(3) Subsections (1) and (2) have effect subject to—

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- (a) section 135B, and
  - (b) regulations under section 20(1A)(d) of the Prosecution of Offences Act 1985 (as applied by this section).
- (4) When making an order under section 134(5), the judge or court must fix the amount to be paid out of money provided by Parliament in the order if the judge or court considers it appropriate to do so and—
- (a) the person in whose favour the order is made agrees the amount, or
  - (b) subsection (2) applies.
- (5) Where the judge or court does not fix the amount to be paid out of money provided by Parliament in the order—
- (a) the judge or court must describe in the order any reduction required under subsection (2), and
  - (b) the amount must be fixed by means of a determination made by or on behalf of the court in accordance with procedures specified in regulations made by the Lord Chancellor.
- (6) Subsections (1A) to (1C) and (3) of section 20 of the Prosecution of Offences Act 1985 (regulations as to amounts ordered to be paid out of central funds) apply in relation to amounts payable out of money provided by Parliament in pursuance of an order under section 134 as they apply in relation to amounts payable out of central funds in pursuance of costs orders made under section 16 of that Act.
- (7) This section extends to England and Wales only.

### **135B Legal costs: England and Wales**

- (1) An order under section 134(5) may not require the payment out of money provided by Parliament of an amount that includes an amount in respect of legal costs incurred by the person in whose favour the order is made, subject to the following provisions of this section.
- (2) Subsection (1) does not apply in relation to legal costs incurred in—
- (a) proceedings in a magistrates' court, or
  - (b) proceedings in the Supreme Court.
- (3) The Lord Chancellor may by regulations make provision about exceptions from the prohibition in subsection (1), including—
- (a) provision amending this section by adding, modifying or removing an exception, and
  - (b) provision for an exception to arise where a determination has been made by a person specified in the regulations.
- (4) Regulations under subsection (3) may not remove or limit the exception provided by subsection (2)(b).
- (5) Where a judge or court makes an order under section 134(5) requiring the payment out of money provided by Parliament of an amount that includes an amount in respect of legal costs, the order must include a statement to that effect.

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(6) Where, in an order under section 134(5), a judge or court fixes an amount to be paid out of money provided by Parliament that includes an amount in respect of legal costs incurred in proceedings in a court other than the Supreme Court, the latter amount must not exceed an amount specified by regulations made by the Lord Chancellor.

(7) In this section—

“legal costs” means fees, charges, disbursements and other amounts payable in respect of advocacy services or litigation services including, in particular, expert witness costs;

“advocacy services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide;

“expert witness costs” means amounts payable in respect of the services of an expert witness, including amounts payable in connection with attendance by the witness at court or elsewhere;

“litigation services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to proceedings, or contemplated proceedings, to provide.

(8) This section extends to England and Wales only.”

### Regulations

- 19 In section 223(6) (orders and regulations subject to affirmative procedure), at the appropriate places insert—  
“section 62B(3)”;  
“section 135B(3)”.

## PART 4

### SAVINGS

- 20 The amendments made by paragraphs 2 to 5 do not have effect in relation to costs orders made by a court in proceedings which commenced before the relevant day.
- 21 The amendments made by paragraphs 9 to 11 do not have effect in relation to a person’s entitlement to costs in connection with a reference made before the relevant day.
- 22 The amendments made by paragraphs 12 to 19 do not have effect in relation to orders made by a judge or court in proceedings which commenced before the relevant day.
- 23 In paragraphs 20 to 22 “the relevant day”, in relation to an amendment, means the day on which the amendment comes into force.
- 24 For the purposes of paragraphs 20 and 22—  
(a) proceedings commence in a magistrates’ court when a warrant, requisition or summons relating to the proceedings is issued;

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- (b) proceedings commence on an appeal to the Crown Court when a notice of appeal is served;
- (c) other proceedings commence in the Crown Court when they are committed, transferred or sent to that court;
- (d) proceedings commence in the High Court when an application for leave to appeal by way of case stated is made or (in the absence of such an application) when notice of appeal is given;
- (e) proceedings commence in the Court of Appeal when an application for leave to appeal is made or (in the absence of such an application) when notice of appeal is given;
- (f) proceedings commence in the Supreme Court when an application for leave to appeal is made.