

## **COURTS ACT 2003**

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### **EXPLANATORY NOTES**

#### **BACKGROUND**

##### ***Fees, costs and fines***

##### ***Fees***

213. The Act will provide a single unified power for the Lord Chancellor to set the level of fees in the Supreme Court, county courts and magistrates' courts, where another power does not take precedence. This power is subject to the consent of Treasury and it replaces the previous separate powers for each tier provided under section 130 of the SCA 1981, section 128 of the CCA 1984 and section 137 of the MCA 1980. It also incorporates and replaces the separate power in relation to family proceedings in the Matrimonial and Family Proceedings Act 1984, section 41. It will allow the Lord Chancellor to set different fees and different levels of fees for different tiers of court and for different types of business and to provide for exemptions, reductions and remissions of fees. It is anticipated that separate fees orders will be made for civil proceedings and family proceedings.
214. When including any provision in an order under this section, the Lord Chancellor must have regard to the principle that access to the courts must not be denied. Any fees orders made under the new unified fee setting power will be subject to negative resolution. Any fees orders made under this new power will require prior consultation with the relevant senior judiciary and, for civil business only, the Civil Justice Council. (The Civil Justice Council is an advisory public body established by the AJA 1999, as a continuing body with responsibility for over-seeing and co-ordinating the modernisation of the civil justice system as laid out in Lord Woolf's report "Access to Justice".)
215. The Act also provides for the Lord Chancellor to take reasonable steps to inform persons of the fees they are likely to pay and will enable the recovery of defaulted fees as a civil debt.

##### ***Award of costs against third parties***

216. The Act provides for criminal courts to have power to order third parties to pay costs incurred by parties to a criminal case as a result of the third party's serious misconduct.
217. Costs in criminal cases are governed by Part II of the Prosecution of Offences Act 1985 (POA 1985). This provides for certain costs in criminal proceedings, in particular the costs of acquitted defendants, to be paid out of 'central funds' (that is public money). This, taken with the fact that most prosecutions are brought by the State and most defendants are legally aided, means that the legal costs of criminal proceedings are mostly met by the taxpayer.
218. Section 19 of the POA 1985 provides for the Lord Chancellor to make regulations which empower the court to order one party to pay the costs incurred by the other as a result of the first party's unnecessary or improper act or omission. Section 19A of the Act provides for the court to make wasted costs orders against legal representatives

*These notes refer to the Courts Act 2003 (c.39)  
which received Royal Assent on 20 November 2003*

in criminal proceedings. Regulations provide for costs paid out of central funds or by the Criminal Defence Service to be recouped when an order is made under either of these sections.

219. The POA 1985 does not currently allow for the court to order third parties to pay costs. Where costs are wasted or incurred as a result of a third party's action these would fall to be paid by the parties to the case or, more likely, the taxpayer. In a recent case, a newspaper published an article that caused the abandonment of a trial, leading to wasted costs, mostly payable by the taxpayer, of some £1m.
220. A power for courts to order third parties to pay costs is not novel. A broader power already exists in the civil courts. However, the power introduced by the Act will be limited to instances of serious misconduct by a third party.

***Fines***

221. These sections and attendant schedules, coupled with the creation of fines officers in section 36, are intended to improve the effectiveness of fine enforcement. Further background can be found at paragraphs 33-36. The Act introduces (section 97 and Schedules 5 and 6) a range of new powers to improve the effectiveness of fine enforcement.
222. At present, performance in enforcing payment of fines is poor. Much of the work involved in enforcing fines is reserved to magistrates, including tasks that are essentially administrative in nature. The range of incentives and sanctions available to the courts is limited. Courts are constrained by legislation in the approach they can take to enforcing payment of fines and other financial penalties imposed after criminal proceedings.