

EXPLANATORY MEMORANDUM TO
THE COSTS IN CRIMINAL CASES (GENERAL)(AMENDMENT)
REGULATIONS 2005

2005 No.2622

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. This instrument amends regulation 11(7) of the Costs in Criminal Cases (General) Regulations 1986 (S.I. 1986/1335), by substituting Part 52 of the Civil Procedure Rules in place of a Part 8 application when lodging an appeal to the High Court from a decision of a Costs Judge of the Supreme Court Costs Office. It also amends regulation 12(2) permitting a determining officer, Costs Judge or Judge of the High Court to impose a penalty by reducing the costs claimed when extending the time limits for lodging a claim or appeal.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. These Regulations make the same amendments to the appeal procedure for the determination of costs awarded to a defendant out of central funds as are being made for legal aid costs in criminal proceedings by the Criminal Defence Service (Funding) (Amendment) Order 2005. Because the changes are the same as some of the changes made in the Funding Order, it is desirable that they come into force at the same time. The Order making the legal aid amendments was delayed by our trying to take account of, and balance, the interests of the public purse and those of the people affected by the Order. For these reasons it will regrettably be necessary to infringe the normal rule whereby a statutory instrument should be laid at least 21 days before it comes into force.

4. Legislative Background

4.1. This Regulation is made by the Secretary of State, in exercise of the powers originally conferred upon the Lord Chancellor, under section 20 of the Prosecution of Offences Act 1985 and is subject to the negative resolution procedure under section 29 of that Act.

4.2. An identical amendment to that being made to regulation 11(7) of the Costs in Criminal Cases (General) Regulations 1986 under this statutory instrument is being made to paragraph 22(7) of Schedule 1 of the Criminal Defence Service (Funding) Order 2001 by the Criminal Defence Service (Funding) (Amendment) Order 2005 for which there is a separate explanatory memorandum.

5. Extent

5.1. The Instrument applies only to England and Wales.

6. European Convention on Human Rights

6.1. As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1. The amendment to the Costs in Criminal Cases (General) Regulations 1986 is being made at the suggestion of the Senior Costs Judge in order to simplify the appeals process where a Costs Judge certifies a point of principle of general importance that forms the basis of an appeal to the High Court or where the Lord Chancellor (Secretary of State) is dissatisfied with the decision of a Costs Judge and wishes to appeal the decision. Both the General Council of the Bar and Law Society are content with this amendment.

8. Impact

8.1. A regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

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