

**EXPLANATORY MEMORANDUM TO
THE PROSECUTION OF OFFENCES ACT 1985 (CRIMINAL COURTS CHARGE)
REGULATIONS 2015**

2015 No. 796

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1. The Prosecution of Offences Act 1985 (Criminal Courts Charge) Regulations 2015 (“the 2015 Regulations”) supplement the requirement under section 21A of the Prosecution of Offences Act 1985 (“the 1985 Act”) for courts to impose a criminal courts charge on adult offenders convicted of a criminal offence.

2.2. The 2015 Regulations specify the charge levels to be imposed, exempt certain classes of case from the imposition of the charge and set the period of time that must have passed before the charge may be remitted.

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

3.1. None.

4. Legislative context

4.1. The duty to impose a charge on offenders convicted of a criminal offence was introduced by section 54 of the Criminal Justice and Courts Act 2015 (“the 2015 Act”), which inserts section 21A to 21F into the 1985 Act. These provisions specify the circumstances in which the charge must be imposed and may be remitted and the parameters in which the charge levels must be set. Section 21C of the 1985 Act requires that the criminal courts charge be of an amount specified by the Lord Chancellor by regulations; section 21A(3) allows the Lord Chancellor to prescribe cases or classes of case in which the charge must not be made; and section 21E explains that a specified period must have passed before the charge may be cancelled, and that the period must be specified by the Lord Chancellor by regulations. The 2015 Regulations implement these provisions.

5. Territorial extent and application

5.1. The instrument extends to England and Wales.

6. European Convention on Human Rights

6.1. As the 2015 Regulations are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1. The Criminal Justice System is currently undergoing fundamental reform. As part of this reform the government is looking at new ways to fund the criminal courts and reduce the burden on the law abiding taxpayer in England and Wales. Rather than being entirely funded by taxpayers, this Government believes that those who break the law and are dealt with by a criminal court should contribute towards its costs.

7.2. The provisions introduced in section 54 of the 2015 Act therefore require a court to order the criminal courts charge when dealing with an offender following conviction of a criminal offence or for failing to comply with a community requirement, suspended sentence order or supervision requirement. It must also be ordered where an offender has been unsuccessful in an appeal against their conviction or sentence, including an application for leave to appeal to the Court of Appeal.

7.3. The new provisions introduced by the 2015 Act also enable the Lord Chancellor, by regulations, to exempt particular cases or classes of case from imposition of the courts charge. The 2015 Regulations exempt offenders who receive a disposal under the Mental Health Act 1983 or an absolute discharge for the offence. There is also to be no charge when the Crown Court or Court of Appeal dismisses an appeal following a reference by the Criminal Cases Review Commission. When a court deals with an offender for both an offence and a breach of any of the orders/requirements mentioned in section 21B of the 1985 Act then no charge should be imposed in relation to the breach. When a court deals in the same proceedings with multiple breach cases then the charge should be imposed only in relation to one of the breaches and no charge in relation to the others.

7.4. The Lord Chancellor has the power to specify what the amount of charge should be. The 2015 Regulations specify the courts charge levels as follows –

- a) Single justice proceedings – £150
- b) Summary offence guilty plea – £150
- c) Summary offence trial in absence, no plea, on the papers - £150
- d) Either way guilty plea in the magistrates' court – £180
- e) Summary offence trial – £520
- f) Either way trial in the magistrates' court – £1000
- g) Indictable guilty plea in the Crown Court – £900
- h) Either way or indictable only trial in the Crown Court – £1200
- i) Magistrates' court breach hearing – £100
- j) Crown Court breach hearing – £150
- k) Crown Court unsuccessful appeal against conviction and/or sentence - £150
- l) Court of Appeal application for leave to appeal – £150
- m) Court of Appeal unsuccessful appeal against conviction or sentence– £200

7.5. Regulation 3 also explains that where the magistrates' court commits the offender to the Crown Court for sentence the charge is the amount applicable to the magistrates' court conviction; that where the offender changes a plea from not guilty to guilty after the start of trial the charge should correspond to their not guilty plea; and that where more than one entry on the table applies to a particular case the charge is the one that gives the highest amount. This deals with the situation, for example,

where a magistrates' court deals in a trial with both an either way offence and a summary offence it should charge the amount for the either way offence.

7.6. The new provisions also allow a magistrates' court to cancel the charge after a 'specified period' has expired, starting from the point in which certain events occur, such as the day the offender was last convicted of an offence. Cancellation can only take place if a magistrates' court is satisfied that either the offender has made all reasonable efforts to pay the charge or where the charge is impracticable to enforce. The 2015 Regulations sets the specified period at two years where an application is made by an offender and one year where an application is made by the magistrates' court or fines officer.

8. Consultation

8.1 Consultation has taken place with key government departments potentially impacted by the policy. No formal public consultation was deemed necessary to accompany parliamentary scrutiny of the primary legislation; section 54 of the 2015 Act.

9. Guidance

9.1. Information on the criminal courts charge policy will be made available to HMCTS staff. Staff guidance will primarily be in the form of standard operating procedures/job cards, supplemented by appropriate Q&A documentation. We will work with the relevant judicial groups to provide appropriate Q&A documentation supplemented by a range of scenarios which articulate the approach to be taken (in terms of the criminal courts charge imposition) in given situations. We will also be producing information leaflets for court users.

10. Impact

10.1. An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

10.2. The 2015 Act will apply to all adult offenders convicted of an offence after the coming into force of section 54 of the 2015 Act on 13 April (see section 54(4) of that Act)– subject to the exemptions prescribed in the 2015 Regulations. The main bodies that will be impacted are Her Majesty's Courts and Tribunals Service through increased administrative and enforcement workloads; Her Majesty's Treasury as a result of potential reductions in payments received for other court ordered financial impositions – for example, it is anticipated that increased sums imposed on offenders as a result of the charge will have an impact on offender payment behaviour; and HMRC and DWP with regards to their involvement with HMCTS' debt recovery. Increased levels of offender debt are also anticipated.

11. Regulating small business

11.1. This instrument does not regulate small businesses.

12. Monitoring and review

12.1. The 2015 Act places a duty on the Lord Chancellor to review the policy three years after the day on which the provisions come into force. The Lord Chancellor must repeal the provisions if, having regard to the conclusions reached in the review, it is considered appropriate.

13. Contact

13.1. Rabiah Mumtaz at the Department can answer any questions regarding this Order. Tel: 07580701464 or email: rabiah.mumtaz@justice.gsi.gov.uk.