

Draft Regulations laid before Parliament under section 29(1B) of the Prosecution of Offences Act 1985, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No.

CRIMINAL LAW, ENGLAND AND WALES

**The Costs in Criminal Cases (Legal
Costs) (Exceptions) Regulations 2013**

Made - - - - *****
Coming into force - - *27th January 2014*

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by sections 16A(6) and 29(2) of the Prosecution of Offences Act 1985(1).

In accordance with section 29(1B)(2) of that Act, a draft of this instrument has been laid before and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Costs in Criminal Cases (Legal Costs) (Exceptions) Regulations 2013 and come into force on 27th January 2014.

Amendments to the Prosecution of Offences Act 1985

2.—(1) Section 16A of the Prosecution of Offences Act 1985 (defendants’ costs orders: legal costs) is amended as follows.

(2) In subsection (2), for “or C” substitute “, C or D”.

(3) After subsection (5) insert—

“(5A) Condition D is that—

- (a) the accused is an individual,
- (b) the order is made under section 16(2),
- (c) the legal costs were incurred in relevant Crown Court proceedings, and

(1) 1985 c. 23. Section 16A was inserted, and 29(2) was amended, by paragraphs 3 and 8 respectively of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
(2) Section 29(1B) was inserted by paragraph 8(2) of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

- (d) the Director of Legal Aid Casework has made a determination of financial ineligibility in relation to the accused and those proceedings
(and condition D continues to be met if the determination is withdrawn).”

(4) After subsection (10) insert—

“(11) In subsection (5A)—

“determination of financial ineligibility”, in relation to an individual and proceedings, means a determination under section 21 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012⁽³⁾ that the individual’s financial resources are such that the individual is not eligible for representation under section 16 of that Act for the purposes of the proceedings;

“Director of Legal Aid Casework” means the civil servant designated under section 4(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

“relevant Crown Court proceedings” means any of the following—

- (a) proceedings in the Crown Court in respect of an offence for which the accused has been sent by a magistrates’ court to the Crown Court for trial;
- (b) proceedings in the Crown Court relating to an offence in respect of which a bill of indictment has been preferred by virtue of section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933⁽⁴⁾;
- (c) proceedings in the Crown Court following an order by the Court of Appeal or the Supreme Court for a retrial.”

Signed by the authority of the Lord Chancellor

Date

Name
Parliamentary Under Secretary of State
Ministry of Justice

⁽³⁾ 2012 c. 10.

⁽⁴⁾ 1933 c. 36. Section 2(2)(b) was amended by section 5 of and Schedule 2 to the Criminal Appeal Act 1964 (c. 43), section 152(1) of and Schedule 5 to the Senior Courts Act 1981 (c. 54) and section 31(6) and Schedule 2 of the Prosecution of Offences Act 1985.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend section 16A of the Prosecution of Offences Act 1985 (the “1985 Act”). Section 16A of the 1985 Act provides that a defendant’s costs order made under section 16 of that Act may not require the payment out of central funds of an amount that includes an amount in respect of the accused’s legal costs, unless an exception applies.

Regulation 2 inserts a new exception (condition D) into section 16A of the 1985 Act which would enable an individual who is financially ineligible for legal aid in certain Crown Court proceedings to receive a payment out of central funds in respect of their legal costs if they are acquitted. New condition D continues to be met if the determination of financial ineligibility is withdrawn, so as to allow for the recovery by the individual of costs incurred prior to withdrawal.

A full impact assessment of the effect of the policy implemented by this instrument on the costs of business and the voluntary sector was produced with the Government’s response to consultation, *Transforming Legal Aid: Next Steps* and is available at <https://consult.justice.gov.uk/>.