

**EXPLANATORY MEMORANDUM TO THE
COSTS IN CRIMINAL CASES (GENERAL)(AMENDMENT) REGULATIONS
2004**

2004 No 2408

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

2. Description

The Regulations, which insert a new Part IIB into the Costs in Criminal Cases (General) Regulations 1986 (S.I. 1986/1335), enable the court in which the criminal proceedings took place to make a third party costs order, on the application of any party to the criminal proceedings, or on its own initiative, at any time during or after the criminal proceedings, where there has been serious misconduct by a third party and the court considers it appropriate to make a costs order against him.

The Regulations also make a small number of minor changes to existing parts of the Costs in Criminal Cases (General) Regulations, mainly to update references to legal aid to take into account the establishment of the Criminal Defence Service.

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

Thirteen media organisations were given an opportunity to see the draft regulations before they were made so that they could comment. Six replied. Of these the Commercial Radio Companies Association and the Office of Communications (Ofcom) had no comments. The Periodical Publishers Association, Fleet Street Lawyers Society and Publishers Association adopted the line on the contents and drafting of the regulations taken by the Newspaper Society. These related to the practical application and interpretation of this legislation. For example the Newspaper Society requested that the regulations should specify types of misconduct and impose

time limits for the making of third party costs orders. This suggestion was rejected, as we do not consider it necessary, or desirable, to impose any restraints on the courts as regards definitions of misconduct and time limits. We did alter the draft regulations so as to meet their concerns that consideration of any wasted costs should only be made after the conclusion of the trial, unless there were good reasons to do otherwise. The Crown Court Rule Committee and Magistrates' Courts Rule Committee were also consulted, in accordance with section 20 of the Prosecution of Offences Act, as amended.

4. Legislative Background

Section 93 of the Courts Act 2003 inserts new section 19B into the Prosecution of Offences Act 1985. This section confers power on the Lord Chancellor to make regulations empowering magistrates' courts, the Crown Court and the Court of Appeal to make costs orders against third parties in relation to costs incurred in criminal proceedings. The Regulations are made under this new power.

The minor amendments to the rest of the 1986 Regulations referred to above are made under the existing powers in sections 19 and 19A of the Prosecution of Offences Act 1985.

5. Extent

The Instrument applies only to England and Wales.

6. European Convention on Human Rights

The Parliamentary Under-Secretary of State, David Lammy MP has made the following statement:

In my view the provisions of the Costs in Criminal Cases (General) (Amendment) Regulations 2004 are compatible with the Convention rights.

7. Policy background

The proposed amendment to the Costs in Criminal Cases (General) Regulations 1986 will enable a the court to make a third party costs order, on the application of any party to criminal proceedings or on its own initiative, at any time during or after the criminal proceedings. This measure was largely inspired by the abandonment, following a Sunday Mirror article, of the trial in the “Leeds Footballers” case (R v Woodgate & others), wasting costs of about £1million. Before this amendment the courts only had power to make wasted costs orders against the legal or other representative of a party to the proceedings where “wasted costs” have been incurred by any party to the proceedings as a result of any improper, unreasonable or negligent act or omission on the part of the legal representative or his employee.

This instrument will empower magistrates’ courts, the Crown Court and the Court of Appeal to make wasted costs orders against third parties. It also sets out the procedures to be adopted on an application for such an order, or when a court is minded one. It also provides for an appeal, from a magistrates’ court to the Crown Court and from the Crown Court to the Court of Appeal.

It is likely that there will be some media, public, political and legal interest in this instrument.

8. Impact

It is not considered that the instrument will have any significant impact on business, charities, voluntary bodies or the Exchequer. It will however have an impact in individual cases as it provides for the judiciary to award significant costs against the third party but the regulations do provide the affected third party with a right of appeal against the costs order that has been made.

9. Contact

If the committee require any further information on the proposed legislation, they should address enquiries to:

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