

**EXPLANATORY MEMORANDUM TO  
THE COSTS IN CRIMINAL CASES (GENERAL) (AMENDMENT)  
REGULATIONS 2008**

**2008 No 2448**

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

**2 Description**

- 2.1 These Regulations make changes relating to the payment of costs and expenses in criminal cases.
- 2.2 The Regulations, which amend the Costs in Criminal Cases (General) Regulations 1986 (S.I. 1986/1335), make a number of changes to the Costs in Criminal Cases (General) Regulations. In particular they transfer responsibility for determining costs out of central funds in the magistrates' courts from justices' clerks to officers appointed by the Lord Chancellor (in practice the National Taxing Team (NTT) of Her Majesty's Court Service will take that responsibility), and provide for payment to intermediaries authorised under the Youth Justice and Criminal Evidence Act 1999.

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

- 3.1 None.

**4 Legislative Background**

- 4.1 These amendments are being made now because the Probation Service is at risk of no longer being able to seek costs against defendants in breach proceedings and secondly intermediaries are now available nationally to assist witnesses in giving evidence. It has been decided that the National Taxing Team (NTT) should take over responsibility from justices' clerks for determining orders for costs out of central funds in magistrates' courts and so amendments to allow this are being made at the same time. We have also taken the opportunity of making other minor amendments as detailed below. As it is required to do, the Ministry of Justice has consulted the Criminal Procedure Rule Committee Secretariat, who were content with the proposals and agreed that there was no need for formal consultation.

**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 negative resolution procedure and does not amend primary legislation, no statement is required.

## **7 Policy background**

7.1 The Costs in Criminal Cases (General) Regulations 1986 set out how the provisions relating to costs in criminal cases in the Prosecution of Offences Act 1985 are to be applied. These regulations amend the 1986 regulations to bring them up to date, by referring to recent sentencing legislation and introducing reference to intermediaries, whose use has been introduced to assist vulnerable witnesses to give evidence. The regulations also implement a change in who is responsible for determining costs in magistrates' courts, and make other minor procedural changes for the sake of consistency in costs orders.

7.2 Regulations 3, 4 and 5 will achieve consistency in the provisions of regulation 3 relating to costs unnecessarily incurred, wasted costs and third party costs orders. Currently there are minor differences between the procedures relating to the three different types of order. These amendments:

- remove an outdated reference to “a legal aid order” in regulation 3(2);
- amend the wording of regulation 3E(2) to clarify that the authority responsible for determining costs out of central funds is an “interested party” where a third party costs order is being considered, regardless of whether or not the party benefiting from such an order was receiving services funded for him as part of the Criminal Defence Service. This brings regulation 3E into line with regulation 3A, which deals with wasted costs orders. An “interested party” has to be notified of an order being made, and also has the right to be heard on an appeal against an order; and
- remove the ability of a court to vary another order for costs when making a third party costs order, which again achieves consistency with wasted costs orders.

7.3 Regulation 9 updates a reference in regulation 6(3) to legal aid, by removing a reference to legislation which has since been repealed and replacing it with a reference to current legislation. The Regulations currently refer to the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989, and will now refer to "services funded... as part of the Criminal Defence Service".

7.4 Regulations 6, 7, 8 and 10 transfer responsibility for determining costs payable out of central funds in criminal proceedings in magistrates' courts from the justices' clerks to officers appointed by the Lord Chancellor (in

practice the National Taxing Team (NTT) of Her Majesty's Courts Service). This is due to an increase in the number of defendant's costs orders following the re-introduction of means testing in the magistrates' courts, and a decrease in workload of the NTT following the introduction of the Litigator Graduated Fee Scheme in the Crown Court;

- 7.5 Regulation 11 updates the references to the sentencing provisions under which orders can be made that may give rise to breach proceedings. This ensures that costs can continue to be ordered against defendants in breach proceedings in relation to sentences and orders made under recent legislation. This provision has been deemed to be necessary because justices in some areas are declining to make orders for costs against defendants in breach proceedings on the grounds that the order being breached is not contained in the regulations, and that there is therefore no power to make an order. This provision does not reflect any change in policy.
- 7.6 Regulations 6, 12, 13, 14, 15 and 16 provide for payment to intermediaries authorised under the Youth Justice and Criminal Evidence Act 1999 for the defence. Intermediaries (communication experts who assist vulnerable witnesses in giving evidence) were introduced in the 1999 Act, and are only now being more widely used, therefore the regulations need to be updated to provide a power to make payment out of central funds for their attendance at court, in a similar way to interpreters.
- 7.7 Due to the non-controversial nature of the amendments, no public consultation was undertaken. The following interested agencies and representative bodies were given an opportunity to comment on the draft regulations:- the Law Society, the Bar Council, the Justices' Clerks' Society and the National Offender Management Service.
- 7.8 The Bar Council did not comment. The Law Society, the Justices' Clerks' Society and the National Offender Management Service were content with the proposed changes.

## **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.
- 8.2 This instrument has no significant impact on the public sector.

## **9 Contact**

- 9.1 David Carter at the Ministry of Justice, 3rd Floor (3.22) Selborne House, 54-60 Victoria Street, London SW1E 6QW, telephone 020 7210 8772, or email [David.Carter@justice.gsi.gov.uk](mailto:David.Carter@justice.gsi.gov.uk) can answer any queries regarding the instrument.

**Ministry of Justice**  
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